Judicial Control of Administrative Actions under the Revised Administrative Litigation Law of China

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If laws are promulgated but the ruler cannot be fair and just, that is equivalent to not having any laws. Having fair laws that cannot be enforced is equivalent to not having a ruler.

Scroll 50: Yuan Zi Zheng Shu[1]

[1] In Chinese: 法出而不正，是無法也；法正而不行，是無君也, in: Qunshu Zhiyao (群书治要)，Scroll 50: Yuan Zi Zheng Shu (卷五十: 袁子正书).

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Table of important abbreviations

ALL	Administrative Litigation Law
ARC	Administrative Reconsideration Committee
ARL	Administrative Reconsideration Law
CAC	Court's Adjudicative Committee
CCP	Chinese Communist Party
CPL	Civil Procedure Law
CRR	Case Registration Regulations
MPDR	Mechanism for Pluralist Dispute Resolution
NPC	National People’s Congress
PIL	Public interest litigation
ROGI	Open Government Information Regulations
SCS	Social Credit System
SEZ	Special Economic Zone
SHFTZ	Shanghai Free Trade Zone
SPC	Supreme People’s Court
SPP	Supreme People’s Procuratorate

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Chapter 1: Introduction

I. Background and research object

This dissertation studies the revision of the Administrative Litigation Law (ALL)[2] of 2014 that the Chinese legislators introduced to systematically address the deficits of its preceding version of 1989 and to make legal protection for citizens bringing lawsuits against administrative agencies more effective. The ALL of 1989 suffered from the so-called "three difficulties".[3] The term referred to the difficulty concerning the filing of a case, the adjudication of the case and the enforcement of the judgment.[4] At the stage of case filing, plaintiffs sometimes failed to name the right defendant agency. The administrative apparatus was too complex for them to identify the administrative organ that was responsible for the administrative action. But in their complaint,[5] the naming of a specific defendant is a requirement according to the ALL.[6] Besides that, courts impeded the filing by ignoring or rejecting cases they considered inconvenient, or they delayed the filing.[7]

The adjudication process after successful filing was frequently not closed with a judicial decision. Legal experts noticed a relatively high rate of case withdrawals: Between 1989 and 2010, in more than 30 percent of cases filed at court, the plaintiff withdrew. The trend of withdrawals peaked in 1997 when plaintiffs withdrew more than 57 percent of all cases.[8] Reasons for early withdrawal were alternative dispute resolution, court mediation or the

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[2] Administrative Litigation Law of the People's Republic of China (中华人民共和国行政诉讼法), Order No. 16 of the President, issued April 4, 1989; revised November 1, 2014; revised June 27, 2017 (henceforth: ALL).

[3] In Chinese: 三难, see: *Luo* 2011, 157; *Haibo He* 2018, 144-147.

[4] A court judgment (in Chinese: 判决) affects the plaintiffs substantial rights, whereas a court ruling (in Chinese: 裁定) affects procedural rights, such as docketing, dismissing or withdrawal of a lawsuit etc. The CCP mentions the "three difficulties (in Chinese: 立案难、审理难、执行难) in the Decision of the Central Committee of the Communist Party of China concerning Some Major Questions concerning Comprehensively Promoting Governing the Country according to Law (中共中央关于全面推进依法治国若干重大问题的决定), issued at the Fourth Plenum of the 18th CCP Central Committee on October 24, 2014, at: http://www.gov.cn/xinwen/2014-10/28/content_2771714_4.htm [November 22, 2023] (henceforth: 18th CCPCC Fourth Plenum Decision 2014), at: IV. Guarantee judicial fairness and judicial credibility; First year summary of the implementation of the new Administrative Litigation Law by the people's courts (人民法院实施新行政诉讼法一周年综述), article of the Supreme People's court (最高人民法院), published in People's Daily (人民法院报), November 5, 2016, in: https://www.lawyers.org.cn/info/b983eb27572d4a2ea7fb4ef98ff9f495 [November 12, 2023]. See also: *Luo* 2011, 157; *He Haibo* 2018, 144-147.

[5] This dissertation uses the term "complaint" for the legal action or to refer to documents or the pleading of the plaintiff. The term "lawsuit" refers to the legal process.

[6] According to item 2 of Art. 41 of the ALL of 1989 (item 2 of Art. 49 of the ALL of 2014, when citizens, legal persons or social organizations file a lawsuit, they must name a distinct agency as the defendant.

[7] *NI Yi* 4, 2022, 7; *Liu Liming* 2015, 217.

[8] *Haibo He* 2011, 262-266. Such an "abnormal" rate of withdrawal also resulted from mediation by the court. Although the ALL excluded mediation for administrative cases. Yet, judges mediated without issuing a document (没有调解书的调解), see *Palmer* 2010.

people's fear of the administration or court that tried to intimidate them. The administration and sometimes even judges themselves made clear to the plaintiffs that it was difficult to win. Apart from that, judges used to avoid politically sensitive cases, such as land expropriation, business shutdown, or birth control, which could cause social protests. In particular, the conversion of agricultural land into urban real estate led to mass incidents. Lower-lever governments saw the selling of rural land as a source of revenue. However, since local village collectives usually did not get appropriate compensation, their rage against local agencies was a potential source of mass incidents.[9] Courts tried to avoid filing such cases or they tried to mediate them during the trial.

An unpleasant outcome of the trial usually also met resistance.[10] Sometimes citizens and administrative agencies alike refused to implement binding judicial decisions.[11] Noncompliance with the law was common among local government officials,[12] as illustrated by a case in Shaanxi Province: The operator of a mine lost his license due to an unlawful change of the mine's operation. The Intermediate People's Court in Yulin City ruled in favor of the original operator. The licensing agency appealed, but the Higher People's court of Shaanxi Province rejected the lawsuit. However, the land bureau of Shaanxi Province continued to ignore the ruling. One report quoted one officer saying: "It is of no use for the plaintiff that he won the lawsuit, the courts have their judgments, and I have my enforcement methods!"[13]

Overall, for the people, the three difficulties made administrative litigation unpredictable and ineffective. They did not consider administrative litigation to be a remedy capable of legal protection. Hence, law scholars compared filing an administrative dispute at court to "throwing an egg against a stone" – in the majority of cases, it became a hopeless endeavor for the people.[14]

Although the ALL of 1989 faced severe problems, why did China's political leaders not abrogate it but decide to revise it instead? Alternative dispute resolution channels were available, and since the early 2010s, the people preferred these channels to solve their disputes.[15] However, the political leadership wanted to preserve the ALL because an effective administrative litigation system functions as a monitor for administrative misbehavior that channels

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[9] *Zhang, Ginsburg* 2018, 26.
[10] *Haibo He* 2018, 4-10; *Ji Li* 2013, 819.
[11] *Haibo He* 2018, 148.
[12] *Ji Li* 2007, 355.
[13] *Wang Wenzhi* 2010.
[14] *Finder* 1989.
[15] *Zhang, Ginsburg* 2018, 25-26.

administrative and political issues from courts to the top leadership.[16] In this context, not only the ALL needed renewal, but the judicial system as well. In October 2014, the China's Communist Party (CCP) announced that they wanted to raise the people's trust in the judiciary.[17] To make judicial control of administrative actions more effective, legal reforms were necessary. The commitment of the CCP to judicial reforms prompted the revision of the ALL. In its Fourth Plenum Decision in 2014, the CCP showed that it accepted the three difficulties as a problem and promised "truly resolving prominent problems such as difficulties in filing, adjudication and enforcement of administrative litigation cases".[18] The reforms focused on the entire administrative litigation procedure including reforms for the judiciary itself, like case registration, the jurisdiction system, the hearing process, and the finality of the judgments.

Behind the Party's commitment to revise the ALL lay its main concerns regarding its own credibility and its power. The CCP at the top holds the highest decision making power and tries to secure its power and social stability by establishing a credible "Socialist rule of law".[19] To overcome the reputational issues of the judiciary, the CCP actively promoted legal reforms and announced to establish the "Socialist rule of law" at the Fourth Plenum of the 18th Central Committee of the CCP in 2014. "Socialist rule of law" refers to the institutionalization, standardization and proceduralization of "Socialist democratic politics" under the leadership of the Party. With "Socialist democratic politics", the CCP further refers to Socialist features like the people as the basis, the authority of the Constitution and legislative pragmatism. According to the CCP, the law is both supreme and under party leadership. The Party's leadership is the stabilizing force and the guarantee for the successful building of the rule of law system. The Party promises to "ensure that the law fully governs the country in the right direction."[20]

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[16] *Peerenboom* 2009, 187.
[17] 18th CCPCC Fourth Plenum Decision 2014, supra n. 4, at: IV. Guarantee judicial fairness and judicial credibility.
[18] Ibid.
[19] Amending Article 1 of the Constitution reaffirmed that the CCP has the highest authority adding "[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China. Amendment to the Constitution of the People's Republic of China (中华人民共和国宪法修正案), issued at the First Session of the 13th National People's Congress on March 11, 2018, available at: https://npcobserver.com/2018/03/11/translation-2018-amendment-to-the-p-r-c-constitution/ [October 28, 2023] (henceforth: Amendment to Constitution 2018); see also: *Garapon*, 2010, 42-43; *Guo* 2012, 6; *Heilmann* 2016, 29.
[20] *Chen Yixin* 2021; *Weidong Ji* 2018, 52; Strengthening the Party's Leadership over the Rule of Law (加强党对全面依法治国的领导), speech delivered by *XI Jinping* (*习近平*) published in Seeking truth from facts (求是) 2019, No. 4, available at: http://www.qstheory.cn/dukan/qs/2019-02/15/c_1124114454.htm [January 4, 2024]; Plan on Building the Rule of Law in China (2020-2025) (中共中央印发《法治中国建设规划(2020－2025年)》), issued by the CCP Central Committee on January 10, 2021, available at: http://www.gov.cn/zhengce/2021-01/10/content_5578659.htm [October 4, 2023] (henceforth: Rule of Law Plan 2020-2025).

Furthermore, the aim is that everyone is equal before the law, and that the Constitution[21] is the code of conduct for everyone.

The Party follows legal pragmatism, which *DENG Xiaoping* had applied at the beginning of the Reform and Opening period,[22] which means that legislation should be scientific by including consultations with legal experts and should be democratic through the participation of the people. Other pragmatic features are the state's responsiveness to changes, transparency, and strict law enforcement. In January 2021, the CCP Central Committee published the first five-year plan to establish the "Socialist rule of law" with Chinese characteristics where it merges all aspects and features of that concept into one plan of action.[23] Under the leadership of the Party, China intends to establish the rule of law by 2025 including a professional judiciary, effective judicial justice, and effective law enforcement. By 2035, the aim is to have realized a rule of law country, a rule of law government, and a rule of law society.[24]

Besides the political commitment, the Supreme People's Court (SPC) also made efforts regarding judicial control to increase its effectiveness. In 2002, the SPC had already initiated a call for a "judiciary for the people".[25] Trust should be gained by guaranteeing procedural and substantive justice which is why judges needed better qualifications for handling disputes.[26] Easy access to courts, transparent trials and plaintiff participation became key reform measures in 2010s.[27] The leadership wanted the courts to remain the major actor for solving administrative disputes and for guiding the administration to act according to the law.[28]

The SPC, leading the lower level courts, follows the Party's policy to establish a professional and competent judiciary.[29] In the current political environment, the SPC enjoys authority which it has used for the revision of the Administrative Litigation Law as well. The

[21] Constitution of the People's Republic of China (中华人民共和国宪法), issued at the Fifth Session of the Fifth National People's Congress on December 4, 1982, revised April 12, 1988; revised March 29, 1993; revised March 15, 1999; revised March 14, 2004, revised March 11, 2018 (henceforth: Constitution).
[22] *Ge* 2010, 111.
[23] Rule of Law Plan 2020-2025, supra n. 20.
[24] Ibid, section I.
[25] In Chinese: 司法为民.
[26] 23 measures manifesting the judiciary for the people (23 条措施彰显司法为民), issued March 12, 2004, by the National People's Congress, available at: http://www.npc.gov.cn/npc/oldarchives/dbdh/dbdh/common/zw.jsp@label=wxzlk&id=329383&back=1&pdmc=2865.htm [December 23, 2023] (henceforth: NPC 23 measures).
[27] Let the people bring cases before the authorities with less impediments - Highlights of the second deliberation on the draft amendment to the Administrative Litigation Law (让"民告官"渠道更畅通 - 行政诉讼法修正案草案二次审议亮点聚焦), Xinhua News article (新华网), August 25, 2014, available at: https://www.yybnet.net/qingdao/pingdu/201610/2983139.html [January 3, 2024].
[28] *Zhao* 2011, 602.
[29] *Ahl* 2019, 259.

SPC has issued judicial interpretations for the ALL, which fill gaps in the law itself and offer further definitions and explanations. The interpretations are guidelines for courts to handle administrative disputes in a uniform way. Chapter 2 introduces the SPC's interpretations. However, one must not forget that the authoritarian Chinese state can reverse judicialization any time because it is merely an instrument delivering social stability.[30]

Against the political backdrop, administrative litigation is a delicate procedure assembling actors at the top and at the bottom of the political hierarchy with different interests: Besides the CCP and the SPC, another actor involved in administrative litigation are the courts. Their main duty is the protection of the lawful rights and interests of those who ask for justice. They are in a predicament facing pressure from their superior to be professional, impartial, and transparent. At the same time, in administrative litigation, courts must deal with the administration that does not want their objectives obstructed by lawsuits. As the fourth stakeholder, the administration, enforces the laws and exercises the interrelated duties to achieve the political objectives. In between the judiciary and the administration, the fifth actor, the people's procuratorate, appears as the general supervisor of courts. But, since recently, it can also be the plaintiff in administrative public interest litigation charging the administration for misconduct and harming the interests of the society. The sixth actor is the initiator of administrative litigation including citizens, legal persons, and other organizations. When an administrative action infringes upon their lawful rights and interests, they try to get justice, and they turn to administrative litigation as one channel to get relief. Lastly, the voice of the administrative law community is also relevant. Academia offered scientific input regarding the ALL's implementation and its revision. The dissertation will introduce their debates in the relevant sections of the book.

II. Research questions and structure of the dissertation

The ALL must respond to diverse intentions and interests of the actors involved. Art. 1 of the ALL of 2014 mentions the courts, the plaintiffs and the administration, and defines as the purpose of the law "to ensure the fair and timely trial of administrative cases by the people's courts, to settle administrative disputes, to protect the lawful rights and interests of citizens, legal persons, and other organizations, and to oversee administrative agencies' exercise of power according to the law […]." In contrast to Art. 1 of the ALL of 2014, Art. 1 of the ALL of 1989 emphasized as its purpose "to ensure the *correct* [emphasis added by the author] and prompt handling of administrative cases by the people's courts, to protect the lawful rights and interests of citizens, legal persons, and other organizations, and *to safeguard* [emphasis added

[30] *Ahl* 2019, 255 and 259; *Peerenboom* 2009.

by the author] and oversee the exercise of administrative powers by administrative organs in accordance with the law."

The revised Art. 1 signals a strengthening of the courts in hearing administrative litigation disputes. As its first purpose, the revised ALL emphasizes a "fair" handling instead of a "correct" handling of cases. During the revision process, scholars had argued that the guarantee of a correct procedure or a correct application of law would not necessarily equal fairness. Only fairness could strengthen the people's trust in the judiciary.[31] Correspondingly, the CCP called fairness "the lifeline of rule of law" that they manifested during the Fourth Plenum of the 18th Central Committee of the CCP in October 2014.[32]

Besides that, the revision added "to settle administrative disputes" as a general purpose of the ALL. In general, administrative litigation refers to cases of citizens suing the state.[33] Hence, the reformers added the phrase "to settle administrative disputes" to directly point to disputes that arise between an administrative agency, performing or omitting its administrative duties and responsibilities, and the recipient of such an action.[34] Before the revision, scholars had disputed about the need for this purpose. One group believed that it was not necessary to add "to settle administrative disputes" because according to the current frame of the ALL, the courts responsibility only concerned the review of legality. For them, solving disputes would go beyond its scope and the review of legality because the concept of "administrative dispute" was too wide and vague. Administrative agencies were competent enough to solve their internal and external disputes themselves. On the other hand, the opposing group argued that the purpose was a necessary supplement because the two prefixed purposes of administrative litigation, i.e. the protection of the lawful rights and interests of the parties and the timely hearing, demand the settlement of the underlying dispute guided by the courts.[35] Hence, this purpose also emphasizes the original role of courts in dispute resolution as an organizer of the procedure and as the judge.[36] The wording "to settle disputes" also corresponds to Art. 61 of the ALL of 2014 which stipulates if a civil *dispute* is involved in an administrative procedure concerning administrative licensing, registration, expropriation, and requisition, the court can try it

[31] *Ying Songnian* 2015 a, 4.
[32] 18th CCPCC Fourth Plenum Decision 2014, supra n. 4, at: IV. Guarantee judicial fairness, raise judicial credibility.
[33] *Xin Chunying* 2015, 5-6. Administrative litigation lawsuits differ from non-litigation enforcement cases (非诉行政执行案件) which an administrative agency brings to court to force an opposing party to enforce a judgement. See also: *Liebman, Roberts, Stern, Wang* 2018, 18-19.
[34] *Xin Chunying* 2015, 4.
[35] *Liang Fengyun* 2015, 5-6.
[36] *Ying Songnian* 2015 a, 4.

concurrently. Consequently, the reformer added "settling administrative disputes" as a purpose of the revised ALL of 2014.[37]

The last core amendment in Art. 1 was the deletion of the purpose "safeguarding the exercise of administrative power". It now only stipulates that the courts oversee the exercise of administrative power. In 1989, scholars had argued in favor of the term "safeguarding the exercise of administrative power" because statistics had indicated that in about 70 percent of administrative disputes tried at court, the judge ruled that the administrative action was correct. Scholars interpreted this percentage as a sign of courts safeguarding administrative power.[38] In contrast to this, *YING Songnian* argues that the protection of the lawful work of administrative agencies would weaken the right of the plaintiff because administrative agencies have their own mechanisms that safeguard their power and operations. At least administrative laws constitute the respective frame for their work. So, if a plaintiff's claim is unfounded, the court can dismiss the complaint, which is enough to protect the effectiveness of administrative work. In general, *YING Songnian* believes that both purposes "the protection of the lawful rights and interests" and the "supervision of administrative power" are the two sides of the same coin: The protection of rights is the basis, and the supervision of administrative power is just a corollary.[39]

This dissertation takes the four purposes of the ALL of 2014 as the yardstick to analyze the outcomes of the revision of the ALL and explores the genealogy of the revision of the ALL of 1989. The research investigates the ways in which the revision amends the procedure of administrative litigation to effectively realize the ALL's purposes stated in Art. 1, namely a fair, timely and predictable procedure to protect the lawful rights and interests of the people, to settle the dispute and to guarantee an effective supervision of administrative power execution. Aligned with the leading question are four sub-questions:

1) *How does the revision change the position of administrative litigation in China's system of dispute resolution channels and Socialist rule-of-law framework?*

The dissertation starts with a historical outline of administrative litigation. Chapter 2 points out that administrative litigation has always had a controversial role in the Chinese party-state. It had a tedious start in late imperial and early republican times and only gained more acceptance during the Reform and Opening period. The institutional problems and substantial deficits of the ALL of 1989 made administrative litigation ineffective. Consequently, people

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[37] *Liang Fengyun* 2015, 7.
[38] *Ying Songnian* 2015 a, 7.
[39] Ibid., 7-8.

lost trust in courts. Hence, why did the Chinese party-state continue to rely on administrative litigation as a dispute resolution channel?

As elaborated above, the three difficulties rendered administrative litigation ineffective. But the decision makers wanted to solve these issues instead of abrogating the law altogether although there are other, less formal dispute resolution channels available, like petitions and mediation. Prior studies have analyzed the reasons why the Chinese leaders still rely on judicial control of administrative actions.[40] To understand the institutional implications of the revision of the ALL, it is essential to look at China's centralized party-state, which lacks separation of powers as understood by liberal democracies. Its separation of powers is functional. In this centralized system, courts are a competent platform for dispute resolution and controlling administrative actions. They can measure and judge the administration's adherence to legal procedures. Since the party-state realized that investment in legal institutions helped to regain the people's trust in the legal system, legal procedures became central aspects of legal reforms, which, then again, increased expectations regarding the courts' performance. Furthermore, an effective judiciary strengthens the private sector by ensuring legal protection for foreign investors.[41] In addition to this, since 2012, the Chinese state under *XI Jinping* (习近平, *1953) has been establishing a system for pluralist dispute-resolution methods including litigation, alternative dispute resolution and administrative reconsideration.[42] Thus, with regard to the pluralist dispute resolution system, how beneficial is formal administrative litigation compared to informal dispute resolution channels? Chapter 3 highlights the motivation of the CCP to rely on courts against the backdrop of what the academia calls the "Mechanism for Pluralist Dispute Resolution" (MPDR).[43] Besides establishing a pluralist system for dispute resolution, reforms for the judicial system were introduced as well. These reforms consist of, for instance, defining clear criterions for judicial transparency,[44] outlining new standards for the national judicial exam,[45] and the case registration system and remodeling the jurisdiction system.[46]

Moreover, the SPC has gained more power in the realm of legislation to promote procedural law reforms albeit in deference to interests of the CCP.[47] For instance, the SPC has the authority

[40] *Fang Yu* 2004; *Ginsburg, Moustafa (eds.)* 2008; *Ginsburg, Chen (eds.)* 2009; *Wang, Chen* 2020; *Zhang Taisu* 2009.
[41] *Ginsburg, Moustafa (eds.)* 2008; *Wang, Chen* 2020.
[42] *Wang, Chen* 2020, 173-174.
[43] In Chinese: 多元化争端解决机制, *Wang, Chen* 2020, 174.
[44] *Ahl, Sprick, Czoske* 2014.
[45] *Ahl* 2017.
[46] The dissertation analyzes the case registration system and the jurisdiction system in detail in Chapter 5.
[47] *Ahl* 2019.

to issue judicial interpretations, which are "general and abstract norms adopted by the SPC adjudication committee" and which have legal effect for the lower-level courts.[48] In addition, the administrative law community in China, that has observed the implementation of the ALL of 1989 and the existing difficulties from the beginning and still believed in its merits, supported the SPC as well. Chapter 2 discusses the relevant SPC interpretations and presents the academic discussion surrounding the ALL. Overall, the political and legal environment characterized by the political openness towards reforms, the SPC's grown legal competencies and the support from the academia facilitated the revision.

2) *How does the revision improve access to justice?*

The second sub-question relates to the revision of the ALL asking about the access to remedies, which is the first step towards fairness and an effective protection of lawful rights and interests. The first sub-question covers three chapters, which illustrate the difficulty getting access to court. The chapters introduce the formal measures for solving this difficulty. As noted above,[49] the people's inability to name the right defendant and sometimes the courts' discretion to ignore, reject or delay the filing of a case impeded the people's access to the court. To help identifying who is eligible as party, the ALL adds a catalogue of parties in administrative litigation. Chapter 4 introduces this catalogue of parties and asks how this list adjusts the access to justice for those affected by an administrative action. The new list includes the innovation of the procuratorate appearing as plaintiff in court in public interest litigation.

Chapter 5 describes the initiation of administrative litigation. First, the chapter introduces administrative reconsideration: This can be an alternative to administrative litigation or can be its direct precursor when complainants first resort to reconsideration but are discontent with the reconsideration decision. It is optional for the parties. The chapter will compare the functions and impact of administrative reconsideration with those of administrative litigation. After showing that both administrative reconsideration and administrative litigation are important as individual and interrelated channels, the chapter focuses on conditions and rules for filing a complaint with a people's court. In that context, the chapter also illustrates the revised jurisdiction system and the newly introduced cross-district jurisdiction.

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[48] *Ahl* 2019, 260 and 265; and Art. 5 of the Provisions of the Supreme People's Court on Judicial Interpretation Work (revised in 2021), (最高人民法院关于司法解释工作的规定（2021 年修正）), issued December 11, 2006, revised June 8, 2021, in Fafa (法发) 2021, No. 20, available at: http://www.faxin.cn/lib/zyfl/ZylfSimple.aspx?gid=A301682&libid= [December 26, 2023] (henceforth: Provisions concerning Judicial Interpretation Work 2021).
[49] See: I. Background and research object, p. 1.

Access to justice also means that a court shall consider the resources like time and money that the parties and the court must spend. For instance, the revised ALL introduced the summary procedure for cases in which the rights and obligations of the parties are clear, and the dispute is minor. The summary procedure can be beneficial because it can save judicial resources, preserve administrative effectiveness and satisfy the people's demand for justice easily. In cases where the court sees administrative claims connected to civil claims, and the court can only act when knowing the result of either of the disputes, the new ALL considers it appropriate to link both cases in one trial. The concurrent trial of a civil dispute in administrative litigation has economic benefits in saving court costs and personnel as well. Linking two disputes makes litigation easier. In Chapter 5, the dissertation looks at the way these two innovations of the ALL impact the access to administrative litigation.

3) *How does the revised ALL structure judicial review of administrative actions?*

Chapter 6 deals with the procedural organization of the trial. An extensive section of the revised ALL deals with the consideration of evidence in court. The judge has more power than before to interpret the evidence presented in court. Since the trial is the centerpiece of the procedure, the parties can participate more actively as well. At the same time, this demands clear rules for their participation to facilitate the substantive review of the administrative dispute by the court. Therefore, the revision outlined the handling of disruptions in greater details as well. In addition, the revision of the ALL has introduced a novelty that strengthens the courts' educational function towards the administration: The responsible person of the defendant administrative agency must be present during the court hearing to give a statement and to learn about the legality of administrative actions.

After analyzing the formal requirements and organizational procedures of examination and consideration that take place in administrative litigation, Chapter 7 starts with the scope of acceptable cases. Although at the stage of docketing, the case registration division must already consider whether the type of administrative action is eligible to administrative litigation, this chapter focuses on how the ALL set up the substantive review of the administrative action's legality and content. Therefore, the scope of acceptable cases forms a unit with the scope and the standard of review of administrative actions.

The revision extended the scope of acceptable cases but still relies on an enumerative approach. Moreover, the chapter deals with the hierarchy of norms as the basis for determining the legality of an administrative action. This includes the review of normative documents, which the revision specified by allowing courts to review the legality of the normative

document upon the plaintiff's request. In addition, the standard of review has new features as well. In a limited number of cases, such as cases involving payments or administrative punishments, courts can review the appropriateness of an administrative action and monitor administrative discretion to a certain extent. The laws and regulations define administrative discretion but there are circumstances in which the administration applies it erroneously or abuses its discretion. In that limited number of cases, courts can now take administrative discretion into account. Besides that, the revision also refined the types of actions and judgments. The typification helps to confirm the scope and standard of review.

Hence, Chapter 7 explores how the revised ALL structures judicial review of administrative actions with regard to substance of the administrative action and the separation of powers between courts and the administration. Against the backdrop of China's functional separation of powers, in an administrative lawsuit, Chinese courts only review whether the administrative action is lawful and based on lawful administrative regulations and rules. If the underlying administrative regulations[50] or rules[51] are unlawful, the court should not consider them. Courts cannot revoke an administrative regulation, nor can they cure such flaws and problems. However, the judge can notify the drafting administrative organ about the unlawfulness and quash the administrative action since it has no legal basis. Moreover, in its latest SPC Interpretations of the ALL of 2014, the SPC has introduced an innovation that courts can assist the administration through so-called judicial recommendations helping the administration to cure the flaws.

Judicial recommendations are a common tool in China and an expression of the courts' strengthened position towards the administration. In 2012, the SPC issued its Opinions on Strengthening the Work of Judicial Recommendations (Opinions) which determined that every court had to establish a division responsible for the filing and review of judicial recommendations. Besides that, the Opinions provide a catalogue of cases where the court can submit judicial recommendations to the responsible organs. For instance, it stipulates that the court shall issue judicial recommendations to the relevant authorities when the judge discovers problems during adjudication or enforcement, such as criminal acts or rejection to perform the effective judgment or ruling.[52] Hence, judicial recommendations are helpful to establish an

[50] In Chinese: 行政法规.

[51] In Chinese: 规章.

[52] Notice of the Supreme People's Court on Issuing the Opinions on Strengthening the Work of Judicial Recommendations (最高人民法院印发《关于加强司法建议工作的意见》的通知), 15 March 2012 (henceforth: SPC Notice on Strengthening the Work of Judicial Recommendations), Section 2, No. 7, item (7) and (8).

"administration according to law." Nevertheless, it is likely that the administration is not truly receptive to judicial recommendations telling them how to correct their administrative regulations. Again, the SPC has thought of a solution determining that the courts shall publish their recommendations to put more pressure on the administration to respect the courts' advice. Chapter 7 discusses these aspects as well.

With regard to the relation between the judiciary and the administration, one can assume that the ALL's functions are twofold: it serves as a manual for judges guiding them in how to review administrative actions. This supervisory function of the judiciary towards the administration is inherent in any litigation law. But in China, the revised ALL also fulfills an educational function. This function aims at having the defendant administrative organ dealing with the administrative action in a substantive way and avoiding errors in the future. Suitable examples are the innovations of courts reviewing administrative discretion in a limited way or sending judicial recommendations as advice to amend unlawful administrative regulations. They also indicate a strengthened position of the courts towards the administration.

4) *How does the revised ALL of 2014 organize the settling of administrative disputes and the supervision of the trial procedure?*

Linked to legal protection and the access to justice is the closure of the proceedings because all parties want a judgment or judicial decision to solve their dispute. Chapter 8 looks at the way the court settles the dispute with the judgment or ruling and at the options the parties have to disagree with it. It also includes the internal control mechanism of the court over the judges, i.e., the supervision of the trial to ensure fairness. Judgments and rulings can also have defects concerning the facts, the legal basis or procedural issues that need correction. That is why the ALL of 2014 includes the supervision of trials which follows the principle of "seeking truth from facts, and correcting mistakes"[53]. It intends to control the application of judicial discretion and to provide the people with another channel for seeking relief.[54] Internally, the president of the people's court that heard the case, or a higher people's courts can monitor judicial discretion internally and the procuratorate supervises externally. The administration is not in charge of supervision, but they can send a request to the procuratorate to protest.

The last Chapter 9 closes with a summary of the results regarding the development of administrative litigation in China. In the appendix, this dissertation offers an overview of

[53] In Chinese: 实事求是，有错必纠.
[54] *Ying Songnian* 2015 a, 302-304.

relevant legal and party documents, and judicial interpretations concerning the ALL and its revision as a source of references.

III. Literature review

Drawing on legal documents[55] such as the ALL of 1989 and 2014, the judicial interpretations by the SPC, party documents and secondary sources, like the writings of legal scholars, this dissertation analyzes the revision of the ALL by associating it with institutional reforms of the judiciary to enhance the access to justice and the political goal of establishing an administration according to law.

The core political document preparing the ground for the revision of the ALL is the Fourth Plenum Decision of the 18th Party Congress in 2014.[56] In a cycle of seven plenary sessions in a year, the fourth plenary session usually focuses on more party-internal topics such as party building.[57] In 2014, the Fourth Plenum demanded better compliance of the administration with the laws and more effective supervision mechanisms. For the judiciary, it outlines institutional reforms, such as the case registration system or the jurisdiction system with the implementation of jurisdiction crossing administrative districts, the SPC's circuits courts, the mechanism for administrative organs appearing in court and rules for punishing the obstruction of court order – all of which affect the revision of the ALL. It becomes obvious that at the Fourth Plenum in 2014, the CCP set a political agenda which they extended into the legal sphere to guarantee the protection of the people's lawful rights and interests.

The Chinese scholarly literature relevant for this dissertation consists of renowned administrative law scholars who mostly also accompanied the revision process with their expertise.[58] Just to name a selected few: *YING Songnian*[59] who is a professor at the China University of Political Science and Law was involved in all reform processes of the ALL of 1989 and 2014. *XIN Chunying*,[60] a member of the NPC Legal Affairs Committee, also supported the revision of the ALL. Both their works offer a detailed provision-by-provision and

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[55] This dissertation considers the latest versions of the relevant legal documents up to May 2024.

[56] 18th CCPCC Fourth Plenum Decision 2014, supra n. 4, at: III. Deeply move administration according to the law forward, accelerate the construction of a rule of law government; IV. Guarantee judicial fairness, raise judicial credibility.

[57] *Brødsgaard*, 2015.

[58] According to the CNKI statistics, in 2020, *YING Songnian* and *XIN Chunying* were among the most influential scholars in China, see: Ranking of the most influential scholars in Chinese Philosophy and Social Sciences (Law) (2020 Edition) (中国哲学社会科学最有影响力学者排行榜（法学）（2020 版）, available at: https://www.acacon.cn/law/influscholarslaw and https://www.163.com/dy/article/FFC8U2HK0516C2P4.html [July 15th, 2022].

[59] *Ying Songnian* 2015 a.

[60] *Xin Chunying* 2015.

problem-oriented focus on the ALL and its revision process. They summarize all the discussions that took place in the background of the drafting and compare the Chinese provisions with international ways of handling similar legal problems. They compile exemplary cases and add a personal comment or a suggestion on how to solve the problem. *LIANG Fengyun*[61] is an administrative law professor at the China University of Political Science and Law and judge at the Supreme People's Court. He offers a provision-by-provision analysis and a comprehensive appendix including, inter alia, the primary documents, decisions and explanations of the NPC and drafts of the ALL.

Nevertheless, one must not forget that they are part of the Chinese political system which is restrictive with critique. The writings do not offer a critical reflection upon the implications for the power structure within the Chinese party-state in the aftermath of the revision ALL of 2014. Party power remains unquestioned in these analyses.

HE Haibo[62], professor of Law at Tsinghua University, is among the few Chinese administrative law scholars who published Chinese and English papers about the revised ALL. In a recent paper, *HE Haibo* asks how progressive the amendments are with respect to the construction of China's legal system.[63] His focus is on the three difficulties that made the amendment necessary. *HE* describes how the amended ALL solves them by pointing out the obvious changes. He illustrates selected provisions with Chinese characteristics, like the appearance of the responsible administrative agent in court or the reconsideration agency as co-defendant. He criticizes that the scope of acceptable cases is still too narrow, and that the courts' review of normative documents does not fulfill the expectations of legal academia that wanted to empower the courts to invalidate unlawful normative documents. He also states that social organizations cannot file public interest administrative litigations which reveals the leadership's lack of trust in them. At the time of publication of his analysis in 2018, the status of procuratorial public interest litigation was on trial basis. In the end, he also assesses the preliminary effects of the revised law by providing statistical data to highlight the increase of administrative litigation cases compared to the development of petitions and administrative reconsiderations. His analysis offers insights into the reform process. Overall, he has a positive impression about the ALL's stabilizing function with regard to the construction of the legal system.

In contrast to *HE*'s study, this dissertation provides a stronger focus on the doctrinal analysis. It refers to the ALL's legal text with reference to primary sources, like the SPC's judicial

[61] *Liang Fengyun* 2015.
[62] As an exemplary work see *Haibo He* 2018.
[63] Ibid.

interpretations and party documents. Furthermore, it traces and interprets the reform's implications concerning the triad relation between the courts, the administration and the CCP more profoundly than *HE,* who notices in a disillusioned way: "None of the major issues involved in the administrative litigation system, such as incorporating normative documents into the scope of administrative litigation, raising the level of trial courts on a large scale or excluding local government's interference with court trials, will concern the adjustment between judicature and administration and the Party Committee. Only the top political authority can resolve these issues. The court system's insignificant legal and political power further increased the necessity of the amendment."[64] This dissertation highlights both the shortcomings and the potential of the ALL: Even within a "Socialist rule of law" state where all decisions rely on the final Party rule, judges in administrative litigation can become and be the important actor in guaranteeing justice effectively. What is more, the Party even wants to rely on them because they consolidate social stability. This dissertation traces how the revision ensures the protection of the lawful rights and interests and how it ensures that people's courts can exercise judicial power fairly in accordance with the ALL. Overall, this dissertation explains layer by layer how the revision makes administrative litigation clearer, more transparent, and more predictable.

It is not possible to present all the relevant Chinese textbooks and articles in detail here. As of April 2024, the search for relevant journal articles resulted in a total of more than 11,350 articles about "administrative litigation", "Administrative Litigation Law", and "Administrative Litigation Law Revision".[65] Regarding answering the research question, this dissertation selected sources that contextualize the reform by embedding it in the political system and academic debates. This reveals that the revision of the ALL was not a purely top-down procedure. Academic controversies accompanied the process of revision discussing the best legal practices to overcome the ALL's shortcomings and to improve the access to justice. We can distinguish two influential groups of scholars. The first group called for an extensive revision, even demanding a total renewal of the ALL. They supported the establishment of a special administrative court which is considered to be radical.[66] In contrast, moderate scholars

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[64] Ibid, 152.
[65] The aim here was to select documents which have a coverage in the administrative law community by at least more than three hundred downloads and that core journals, like Administrative Law Review (行政法学研究), China Legal Science (中国法学), Legal Forum (法学论坛), published. University journals, like the Journal of Henan University of Economics and Law (河南财经政法大学学报) or Hebei Law Science (河北法学) also published special issues concerning the ALL.
[66] For instance: *Ma, Wang* 2002, 75.

preferred an overhaul within the given structure of the ALL. Chapter 2 presents the debates in detail.

Furthermore, relevant international literature consists of book chapters or journal articles in English language. The authors embedded the ALL of 1989 in the analysis of China's court reforms as their primary focus, looked at the ALL's impact on the rule of law in China and worked from a comparative perspective.[67] As an example of one of the few works not published in English, Professor *LIU Fei* contrasted the Chinese and German administrative litigation procedures in German language in his dissertation in 2003.[68] This was an undertaking where the young Chinese administrative law system clearly lagged behind the established German administrative law system. Hence, in his conclusion, he pointed out that the ALL is a key development factor for China's administrative law but suffers from judicial shortcomings, such as lack of judicial independence and the missing administrative court which he recommended China could model according to the German Administrative Court. Professor *LIU* has a positive stance towards the ALL's function as a motor of the rule of law in China. This dissertation focuses more clearly on the revision's contribution to the access to justice in administrative litigation. In this context, this dissertation also points to the academic debates concerning an administrative court in China. Although law scholars are in favor of it, the political leadership has not shown any commitment towards such a major change in the court system. Ideally, an administrative court would not depend on a higher administrative authority and thus, would act independently. Chapter 2 presents this debate.

WEI Cui co-authored a "selective review" of the revised ALL in 2019.[69] The authors analyze how courts decide administrative disputes[70] and base their arguments on the comparison between the revised ALL of 2014 and the handling of administrative lawsuits in German administrative courts as well as U.S. and Canadian courts. The comparative perspective helps to understand the application ALL of 2014 in context of a "Socialist rule of law" system whereas Germany, the USA and Canada are liberal democracies. *WEI* and his co-authors base their selection on the most prominent highlights of the amendment, such as the scope of acceptable cases that they summarize as including "all issues relating to causes of action"[71]. They see that the revision strengthens the standing of the parties but does not include civil

[67] To name a selection: *Finder,* 1989; *Haibo He* 2011; *Palmer* 2010; *Ji Li* 2013; *Mahboubi* 2014. *Potter* 1994; *Li, Ma* 2014.
[68] *Liu Fei* 2003.
[69] *Wei, Jie, Wiesner* 2019.
[70] Ibid., 36.
[71] Ibid., 37.

society in disputes concerning public interest litigation. They also mention the jurisdiction system with cross-administrative district jurisdiction and circuit courts, and judicial reforms that impact the application of the ALL like the demand for judicial transparency, the re-centralization of court funding and personnel management. Another focus of the discussion is the review of normative documents and the scope of review. According to the hierarchy of norms in China, normative documents, which the authors call "informal policy documents", are administrative regulations issued by and for the administration to operate and execute the laws.[72] They illustrate that before the reform of the ALL, Chinese courts could only decide not to apply an unlawful normative document on which the administrative action in the lawsuit at hand was based but could not "preclude them from future enforcement".[73] In civil law systems, although they cannot issue or make any laws, courts can apply the law to the case at hand. For instance, in Germany, an administrative court can review a norm incidentally when in an administrative lawsuit, the norm itself is not the object of the trial but the alleged administrative action is based on that norm whose validity is important to decide about the legality of the administrative action.[74] The authors argue that as a Socialist law system, China is not so different from liberal democracies in handling normative documents. Rather, China is more innovative because during the revision of the ALL, it included a unique solution by allowing courts to issue judicial recommendations. Courts send their recommendations to the administration regarding the content of the normative document to advise them whether to revoke, amend or suspend it. Nevertheless, the ALL of 2014 restricts the review of normative documents only to cases in which the plaintiffs request it.

WEI's article is among the few published in English addressing an international readership, but they remain confined to the ALL's surface.[75] Moreover, they conclude that the revision is the result of top-down decision-making which neglects the extensive scholarly debates and influences as this dissertation will highlight in the second chapter. These debates are important because they offer insights into the controversial discussions that took place in the background of the drafting and about how progressive and sophisticated demands were, like introducing an independent administrative court. Moreover, the authors leave out aspects like the simplified procedure (summary procedure) which courts can apply when the facts of the case are clear with the parties' consent, or a joint procedure which allows them to add a civil procedure when the contents of the case overlap. They are also silent on the sanctions for

[72] *Wei, Jie, Wiesner* 2019, 38.
[73] Ibid., 40.
[74] *Michael* 2012, 760.
[75] *Wei, Jie, Wiesner* 2019, 41.

procedural violations during the trial. These aspects express more flexibility for judges in handling cases and they also signal more judicial autonomy vis-à-vis the administration. The ALL defines the standards for both procedures in detail which ensures more certainty of the litigation procedure. Therefore, the *WEI*'s perspective remains narrow.

This dissertation does not focus on the practical experiences with the application of the ALL. It explores the ALL's provisions integrating studies with an empirical perspective. For instance, recently, a study analyses the plaintiffs' motivation to file a complaint for an administrative lawsuit.[76] Although they did not expect to win the lawsuit, the author argues that their main intention was to use the court as a platform to voice their discontent in front of the responsible agent of the administrative agency issuing the alleged administrative action. However, in their empirical study, *Tianhao Chen*, *Wei Xu* and *Xiaohong Yu* found out that the presence of the responsible agent of the administrative agency is not as effective as expected.[77] They are indifferent and distant rather than engaging in a dialogue with the plaintiff. Given these findings, this dissertation refers to statistical data provided by the China Law Yearbooks to track the development of administrative litigation cases and to show the relation between the different dispute resolution channels. It reflects upon the plaintiff's motivation to choose administrative litigation as a dispute resolution channel. In addition, this dissertation includes selected court decisions to give examples for how courts decide administrative lawsuits.[78]

In a textbook-like panorama following the process of administrative litigation, this dissertation illuminates how the revised ALL realizes the law's purposes, in particular the protection of the lawful rights and interests of the plaintiffs. It offers conclusions about the revision's implications for the relation between the courts and the administration as well as between the courts and the Party. At the end, this dissertation summarizes relevant administrative laws and judicial interpretations, provisions, and notices in an overview serving as a compass navigating through the complex field of administrative litigation in China.

[76] *Baik* 2023.
[77] *Chen, Xu, Yu* 2024.
[78] In 2015, the SPC introduced a guiding cases system to offer explanation and guidance for lower-level courts about how to handle similar disputes. See: Notice of the Supreme People's Court on the "Detailed Rules for the Implementation of the Provisions of the Supreme People's Court on Case Guidance" (最高人民法院印发《〈关于案例指导工作的规定〉实施细则》的通知), issued May 13, 2015, in: Fa (法) 2015, No. 130. For more information see: *Yajun Tao*, The Guiding Cases of China's Supreme People's Court, Nomos 2023.

Chapter 2: Development of access to administrative litigation

The Chinese Constitution empowers citizens to criticize and make suggestions regarding any state organ or state employee, and to file with relevant state organs complaints, charges or reports against any state organ or state employee for violations of the law or dereliction of duty.[79] Thus, administrative litigation is one form to protect the people's lawful rights and interests when they have a dispute with the administration. This chapter looks at how the Chinese legislators developed the access to administrative litigation providing an historical overview and the surrounding academic discussion that influenced the drafting processes for the ALL of 1989 and the ALL of 2014.

Historically, administrative litigation had only two predecessors in the Chinese republican era. When Japan had defeated Russia in 1905 which took place during the gradual decline of the Chinese dynasty, the Chinese reformists at the Qing court became interested in Japan's constitutional model which had become a monarchy giving itself a constitution.[80] The death of the empress dowager in 1908 left imperial China in the midst of reforms fueling its decay that ended in the revolution of 1911 and in the proclamation of a Chinese republic. The new rulers needed to define their new state and its functions from the very beginning. For instance, in the Order of Establishing a *Pingzheng* Court[81] of March 1914, they announced the building of a dual system that separated ordinary litigation from administrative litigation. The reformers established the first *Pingzheng* court in Beijing, which heard administrative cases until 1928.[82] The *Pingzheng* court had to report to the president directly and mainly fulfilled two purposes: on the one hand, it heard administrative cases and enforced the corresponding judgments to meet the people's need for justice. On the other hand, it simultaneously functioned as a supervision organ that replaced the censorate that had controlled the Qing officials before. However, the *Pingzheng* court heard mere 186 cases in its fourteen years of action.

After *JIANG Jieshi* (蒋介石, 1887-1975, also known as *CHIANG Kai-shek*) established his rule in Nanjing in 1927, his government announced the building of an administrative court in 1932. This administrative court dealt with 404 cases between 1933 and 1935. It rejected about 179 legal actions, which account for about 44%. Only 20% of the accepted cases (about 43 of

[79] Art. 41, Amendment to the Constitution 2018, supra n. 19.
[80] *Schoppa* 2000, 55.
[81] In Chinese: 平政院编制令.
[82] *Zhang Sheng* 2002, 89; *Shu* 2010, 22.

225 cases) were successful. On average, it accepted about one hundred cases each year and decided half of them.[83]

For Communists, the law was an instrument of the ruling class and of the ruling party.[84] After the take-over of the Communists in 1949, they abolished all the laws and regulations of the nationalist government. The Communists under *MAO Zedong* (毛泽东, 1893-1976) believed that elaborating an administrative law system was unnecessary.[85] They preferred and promoted mediation instead.[86] Informal dispute resolution by families as the basic unit of community,[87] villages, and neighborhood committees was widespread and matched the "mass line" approach of the Communists under which they claimed to respect the needs and will of the people.[88] They introduced offices for petitions, called *Xinfang* that also allowed people to request assistance from higher authorities.[89]

Against the backdrop of the Cultural Revolution, a proper legal basis for handling administrative disputes in a fair way was necessary to meet the people's increasing demands for justice. Before enacting the ALL in 1989, there were two legal bases for a lawsuit against an administrative agency. The first was Art. 41 of the Constitution of 1982, which guaranteed that citizens have the right to criticize and make suggestions regarding any state organ or functionary and express their complaints to relevant state organs for violation of law or dereliction of duty.[90] The second was the second paragraph of Art. 3 of the Civil Procedure Law (henceforth: CPL) for trial implementation of 1982 stating that "[t]his Law applies to the administrative cases that the people's court hears according to the law."[91]

As the following section will point out, for drafting the ALL of 1989, the historical predecessors of administrative litigation at ordinary courts or even at special administrative courts did not serve as a reference. Thus, we can consider the current form of administrative litigation as a relatively nascent legal area in the PRC.[92] Its drafting process illustrates a cautious

[83] *Zhang Sheng* 2002, 88-89.
[84] *Tomson, Su* 1972, 59-61; *Heuser* 1999, 144.
[85] *Yuwen Li* 2014, 17.
[86] *Woo* 1999, 588.
[87] *Yao* 2000, 181.
[88] *Schoppa* 2000, 164.
[89] *Minzner* 2006, 109.
[90] Constitution, supra n. 21, see also *Potter* 1994, 274-275.
[91] Civil Procedure Law of the People's Republic of China (For Trial Implementation) (中华人民共和国民事诉讼法(试行)), adopted at the 22nd Meeting of the Standing Committee of the Fifth National People's Congress and promulgated by Order No. 8 of the Standing Committee of the National People's Congress on March 8, 1982, and implemented on a trial basis as of October 1, 1982; Civil Procedure Law of the People's Republic of China (中华人民共和国民事诉讼法), Order No. 71, issued April 9, 1991, revised October 28, 2007; August 31, 2012, and June 27, 2017 (henceforth: CPL).
[92] *Li, Ma* 2014, 16.

approach of the stakeholders. They preferred taking small legislative steps to see what would work out and would not jeopardize stability. The debate about introducing a special administrative court reflects this stance as well, which this chapter will examine closer. Where does the current ALL originate from and how was it designed? Why did the legislators and political leaders decide against a special administrative court? What were the crucial factors to revise the ALL in 2014? We assume that the ALL of 1989, enacted in a time of social and economic transition, became out-of-date and ineffective. The CCP realized that the revision of the ALL was inevitable and less challenging compared to establishing special administrative courts.

I. The Administrative Litigation Law of 1989

In April 1986, the NPC Legal Affairs Committee started the drafting process of the ALL with the approval of the CCP,[93] The Administrative Legislation Research Group[94] consisting of legal experts and scholars supported the NPC Legal Affairs Committee in its endeavors. Among the most renowned were *JIANG Bixin* (江必新，*1956 former member of the Research Office of the Supreme People's Court), *JIANG Ping* (江平, 1930-2023, Chinese University of Politics and Law), *LUO Haocai* (罗豪才,*1934, Beijing University) and *YING Songnian* (应松年,*1936, China University of Political Science and Law).[95] The legal researchers and advisors continuously demanded a reform of the inadequate legal framework and a solution for the structural problems with the powerful and even power-abusing operations of administrative agencies.[96]

In October 1986, the SPC issued the "Interim Provisions on Several Issues Concerning the Specific Application of Laws in the Trial of Public Security Administrative Cases by the People's Courts" (henceforth: Interim Provisions).[97] These Interim Provisions followed the "Regulations on administrative penalties for public security," which the NPC had passed in September 1986.[98] The Regulations stipulated in Art. 39 that a citizen who did not accept a

[93] *Potter* 1994, 276.
[94] In Chinese: 行政立法研究组.
[95] *Cheung* 2005, 551.
[96] *Cai* 2019, 3-6; *Finder* 1989, 8.
[97] Notice of the Supreme People's Court on Issuing the "Interim Provisions on Several Issues concerning the Specific Application of Laws in the Trial of Public Security Administrative Cases by the People's Courts" (最高人民法院关于印发《人民法院审理治安行政案件具体应用法律的若干问题的暂行规定》的通知), issued October 24, 1986, in: Fafa (法[研]发) 1986, No. 31, available at: www.pkulaw.com [December 26, 2023].
[98] Regulations on Administrative Penalties for Public Security (中华人民共和国治安管理处罚条例), Order No. 43 of the President, issued September 5, 1986; revised May 12, 1994; ineffective August 28, 2005, available at: http://www.law-lib.com/law/law_view.asp?id=95355 [January 4, 2024].

penalty decision of the public security organ was entitled to file a complaint. The people's courts that were still relatively inexperienced with administrative adjudication at that time needed guidance. Thus, the SPC's Interim Provisions defined the basic principles of administrative litigation in China for the first time. They were a signal for the people that they could seek redress for their grievances.[99] As another reaction to the Regulations on administrative penalties for public security" and following an order of the Supreme People's Court, administrative divisions[100] were established in five intermediate people's courts in Beijing, Shanghai, Shenyang, Shenzhen, Chongqing, and Wuhan.[101] The Intermediate People's Court in Wuhan opened the first administrative division. Two years later, in October 1988, the SPC established its own administrative division.[102] Throughout the country, more administrative divisions were set up as a reaction to the increasing number of lawsuits against authorities by people seeking redress against administrative penalties for public security.[103] In June 1988, there were almost 1.400 administrative divisions, and in June 2015, 3.320 administrative divisions were handling administrative lawsuits.[104]

The NPC Legal Affairs Committee submitted the first draft of the ALL in August 1987 which was implemented on an experimental basis in Chongqing in Sichuan Province[105], Tianjin, and Henan Province.[106] In particular, government officials responded to the draft with skepticism and reservation, fearing their interests at stake.[107] Common complaints concerned conflicts due to noncompliance and resistance towards administrative penalties, complaints about arbitrary fees and administrative interference in contracts concerning land usage, and administrative nonfeasance concerning the application for administrative licenses in construction areas and business management. More people and business entities became interested in revoking unfavorable administrative actions.[108] Hence, in such a tensed environment, a profound regulation became even more essential and increased pressure on the drafters.

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[99] *Jiang* 2019, 79-84.
[100] In Chinese: 行政审判庭.
[101] *Finder* 1989, 9.
[102] *Jiang* 2019.
[103] *Pei* 1997, 835.
[104] *Jiang* 2019.
[105] *Finder* 1989, 9. See: Provisional Regulations of Administrative Litigation of the City of Chongqing (重庆市行政诉讼暂行规定,) issued September 11, 1987, available at: http://www.chinalawedu.com/falvfagui/fg23079/114509.shtml [January 24, 2019].
[106] *Pei* 1997, 835.
[107] *Cheung* 2005, 552; *Pei* 1997, 834.
[108] *Finder* 1989, 7-8; also: *Heuser* 2003, 94.

In October 1987, *ZHAO Ziyang* (赵紫阳, 1919-2005), then General Secretary of the CCP, signaled in his speech delivered at the 13th National Party Congress that in the course of structural reforms, consolidation between the separation of the party and government was necessary and should ensure the bureaucracy's compliance with laws. Hence, administrative laws were important, including the Administrative Litigation Law, which *ZHAO* perceived as a legislative priority to control the work of administrative agencies.[109] Against the backdrop of party support, the Standing Committee of the NPC debated a revised draft in October 1988 and published it on November 10th, 1988, in the *People's Daily,* asking for further comments and suggestions by the public.[110] This draft circulated among central officials, members of the people's congresses, officials of the judiciary, and local governments. Citizens submitted three hundred commentaries.[111] The drafting process also demonstrated an increasing influence of legal scholars with their expertise on the matter. The CCP was also involved in the process through the Central Political-Legal Leading Group, now known as the Central Political and Legal Affairs Commission.[112] Only when it discovered sensitive aspects, it would intervene and delay the process with more revisions and consultations.[113]

1. Academic discussions concerning the drafting of the ALL

According to *Jianfu Chen*, the Administrative Litigation Law was "essentially a product of academic efforts".[114] Until spring 1989, representatives from local people's congresses, people's courts and legal experts met on conferences and meetings to discuss the relation between bureaucratism and abuse of power by the administration and the way to implement an administration according to law.[115] The representatives of the participating organs reviewed international examples and solutions. They analyzed solutions from the UK, the USA, Japan, Western Germany, the former Soviet Union, and Taiwan to see what examples could match the Chinese circumstances.[116]

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[109] *Heuser* 2003, 94; *Pei* 1997, 834; *Potter* 1994, 274; *Cheung* 2005, 551.
[110] Draft of the Administrative Litigation Law of the People's Republic of China (中华人民共和国行政诉讼法（草案）), published November 10, 1988, in the People's Daily, German translation available at: *Heuser* 2003, 261-268; also: *Finder* 1989, 9; *Pei* 1997, 835.
[111] *Potter* 1994, 276-277; *Heuser* 2003, 93-95.
[112] *Pei* 2021.
[113] *Cheung* 2005, 552; *Cabestan*, 2002, 38.
[114] *Jianfu Chen* 2008, 248.
[115] The Main Opinions of the Central Authorities, Local People's Congresses, People's Courts and Legal Experts on the "Administrative Litigation Law (Draft for Comment)" (中央机关， 地方人大，人民法院及法律专家对《行政诉讼法（征求意见稿）》的主要意见), published October 31, 1988, 45-51, published in *He Haibo* 2019.
[116] Relevant Provisions on Administrative Litigation in England, the United States, France, Japan, the Federal Republic of Germany, the Soviet Union and Taiwan (英、美、法、日、联邦德国、苏联和台湾地区等对行政诉讼的有关规定), published in *He Haibo* 2019, supra n. 115, 56-57.

However, it was controversial how to design the procedure of administrative litigation. Disputed issues concerned, among others, the scope of acceptable cases, the reference to administrative rules in the judicial decision, the relationship between administrative reconsideration with litigation, the jurisdiction system, the burden of proof and the collection of evidence, the application of compensation, and the role of the procuratorate.

The debates were technically adept as the following selected protocols illustrate: One group supported a wide range of acceptable cases with only few exceptions of unacceptable ones, such as matters of national security.[117] Others wanted the scope to be less comprehensive but with the option to gradually expand it when necessary.[118] They thought that the court should not interfere too much with administrative duties. Administrative authorities feared a broad scope could harm their interests.

Another intensive debate related to the use of administrative rules in adjudication. One opinion was that acknowledging the administrative rules as a legal basis in court would be disadvantageous because there was no standard for the formulation of administrative rules.[119] The lacking standardization caused flaws in many of the administrative rules. In contrast to this opinion, others pointed out that issuing administrative rules was a constitutional guarantee given to the administration to organize its operations. For them, it was necessary to specify national laws to organize administrative operations. That is why it would have a negative impact if courts did not consider administrative rules for their decision.[120]

Of same complexity was the debate concerning the burden of proof. In administrative litigation, the administrative organ had the burden to submit evidence with regard to the alleged administrative action. This was based on the unequal position of the parties, the administration being in the superior position. Supportive arguments for shifting the burden of proof to the administrative agency included that the agency is at the source by issuing the administrative action. The administrative action should be based on administrative evidence which the responsible court use as evidence as well. The opponents did not want the burden of proof to be determined to solely the administration because it would invite people to file complaints arbitrarily disrespecting the workload of courts. A third group wanted to transfer the collection of evidence from the agency to the courts as a neutral actor. The last version of the ALL of

[117] *Cheung* 2005, 552.
[118] Ibid.
[119] The Main Opinions of the Central Authorities, Local People's Congresses, People's Courts and Legal Experts on the "Administrative Litigation Law (Draft for Comment)", supra n. 115, 45-51.
[120] In the ALL of 1989, the legislators decided that courts should refer to administrative rules when they do not contradict any other higher norm.

1989 reveals that the first group had asserted itself: The administration does not only collect administrative evidence per se, but it is also in the stronger position so that they carry the burden of proof more easily.[121]

In addition, whether courts could modify the content of an administrative action in their judgment was another controversial issue. Some said that courts as external observers would be objective, so that their right to modify any unlawful administrative action could protect the people's rights and interests effectively.[122] Moderate scholars argued in favor of a partial modification when an administrative punishment was unjust, although they did not define what they thought was an unjust action.[123] The opposition thought that the courts should not have the power to modify because of the constitutional separation of executive and judicial powers. Eventually, the ALL of 1989 did not empower the courts to modify any content of administrative actions. In Art. 54, it allowed the court to demand that the administration modifies an administrative penalty that is evidently inappropriate. However, the drafters held on to the clear separation between judicial and administrative power to avoid too much judicial interference in administrative operations. Moreover, law scholars still see the judiciary as too inexperienced to handle complex administrative disputes.[124]

2. The 1988 draft of the ALL

Against the backdrop of these debates, the scholars and legislators drafted a version for the NPC's annual session in March 1989.[125] Compared to the last version, the 1988 draft was less detailed and less structured. The scope of acceptable cases was broader than the one in ALL of 1989 simply by omitting the attribute "specific" for administrative actions. Hence, according to Art. 9 of the 1988 draft, people's courts could accept any administrative cases as prescribed by the laws. For specification, four items referred to disputes concerning administrative penalties, restriction of personal freedom, licenses and business management that were eligible for administrative litigation.[126] This reveals the drafters' hesitation to commit either to a general clause or to an enumeration.

At the time of drafting, national administrative laws that unified administrative operations did not exist. The local administrations operated on the basis of local administrative rules and

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[121] See Chapter 6: The organization of the administrative trial, III. Evidence.
[122] *He Haibo* 2019, 50-51.
[123] Ibid., *Liang Junyu* 2021.
[124] *Finder* 1989, 9-10.
[125] Ibid., 28.
[126] The Main Opinions of the Central Authorities, Local People's Congresses, People's Courts and Legal Experts on the "Administrative Litigation Law (Draft for Comment)", supra n. 115, 45-51.

regulations. The drafters were aware that local normative documents were the cause of many disputes because there was no standard for their issuance. Therefore, they decided to have the complainant informed to demand the higher administrative agency of the alleged administrative agency or the standing committee of the local people's congress check the legality of the normative document. Moreover, the drafters did not think of legal persons, i.e., companies or self-employed people becoming plaintiffs. However, the socio-economic situation has changed ever since affecting companies or other entities with lawful rights and interests with administrative actions. In addition, the drafters had not yet realized how important the consideration of evidence would become. They added two rather weak provisions saying that both parties needed to collect evidence, but the administrative agency had the burden of proof with the obligation to submit the facts and legal basis of their action (Art. 31). They were not aware that the administrative agency could collect additional pieces of evidence on which they could base their decision.

A very controversial issue was the role of administrative rules as a basis for the judicial decision. In the legal hierarchy, administrative rules support administrative agencies to regulate their daily operations and to implement national laws and regulations corresponding to local circumstances. Hence, administrative agencies were in favor of admitting administrative rules as the common basis for their actions. Local people's congresses and people's courts doubted that they were useful for making a judicial decision because according to them, administrative rules missed uniform standards.

Overall, controversial debates characterized the drafting of the original ALL which had eight drafts with varying numbers of chapters and articles until the final version was accepted at the second session of the Seventh National People's Congress on April 4th, 1989.[127] A majority of 2,662 votes favored the ALL with three votes against and 23 abstentions.[128] To allow the courts to prepare themselves, the ALL was not effective right away. The set-up of more administrative divisions in courts and the training for judges were essential measures that needed some more time. The application of the law needed to be coherent and standardized. Thus, the implementation of the ALL was the central theme at the 1st National Conference of the Administrative Trial Work of the Courts held in Zhengzhou in Henan Province in September 1990.[129] Eventually, the ALL became effective on October 1st, 1990.

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[127] *Cheung* 2005, 552-553; and Administrative Litigation Law of the People's Republic of China (中华人民共和国行政诉讼法), adopted April 4, 1989; effective October 1, 1990; revised November 1, 2014; revised June 27, 2017.

[128] *Finder* 1989, 9-10.

[129] *Jiang* 2019.

3. Implementation of the ALL of 1989

Together with the Civil Procedure Law, the Administrative Litigation Law stood at the initial stage of building a legal system and of modernizing the judicial system of post-1978 China. By issuing the ALL, the government recognized the courts as an administrative dispute resolution channel. The ALL of 1989 was a new law because its predecessors did not play a role in the drafting process. Therefore, some leeway was inherent in the law and empowered the courts to shape dispute resolution more actively. They expanded the scope of acceptable cases or developed tactics to ward off local governments' interference or even "wrestled with local governments".[130]

Although the ALL of 1989 improved the administrative supervision system, it soon revealed procedural and substantial shortcomings.[131] Such structural challenges of the political and legal system rendered the ALL a "frail weapon."[132] A revision of the ALL of 1989 became necessary. The shortcomings originated from the organization of the judiciary and its interplay with other state organs. Some deficits are system-inherent, like the lack of professionalism and competence. However, external factors interfere with these internal control mechanisms as well, like the interference of local governments in adjudication.

4. Institutional setting of the people's courts

Local protectionism, low professionalization of judicial personnel, dominant bureaucratic management, and the lack of material provisions used to be the major causes of judicial dependence in China.[133] However, the Chinese government views judicial independence differently than democratic countries that link it with democracy, the rule of law, the separation of powers, stability, and order.[134] Judicial independence is not an end in itself.[135] As a centralized state, all the decisive power concentrates itself at the top.[136] The state organization follows Marxist-Leninist principles of concentration of power, claiming that the legislation, i.e., the NPC, has supreme authority to enact laws. Its Standing Committee is also empowered to interpret laws.[137] The Communist Party of China has the highest authority and calls itself the vanguard of the people since it leads the "democratic dictatorship of the proletariat."[138] The 1st

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[130] *Yu* 2021, 35.
[131] *Yang Linhong* 2014, 50.
[132] *O'Brien, Li* 2004, 76.
[133] *Trevaskes* 2007, 173.
[134] *Shetreet* 2014, 14; *Peerenboom (ed.)* 2010, 1; *Wei Cui,* 2016.
[135] *Henderson* 2010, 35; *Suli Zhu* 2010, 63; *Balme*, 2010, 156.
[136] Constitution, supra n. 21, Article 58 and Article 67, paragraph 4; *Heilmann*, 2016, 27; *Dicks* 1996, 87.
[137] *Dicks* 1996, 87.
[138] *Garapon*, 2010, 42-43; *Xu* 2010, 304; *Guo* 2012, 6; *Heilmann* 2016, 29.

Session of the 13th NPC held on March 11, 2018, has reaffirmed the Party's position by amending Art. 1 of the Constitution and adding "[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China."[139] That is why, in the words of *Tom Ginsburg* and *Tamir Moustafa* made in 2009, it has been evident that "[the Chinese Communist Party] will govern for a very long time, [it] cannot credibly promise not to interfere […]."[140]

The Organic Law of the People's Courts calls the people's courts in Art. 2 the judicial organs of the state. The bureaucratic nature of courts is evident not only from the procedural elaborateness but also from the judges' self-perception as civil servants rather than independent professionals.[141] The corollary is the so-called "administerization"[142], or, as suggested by *He* and *Ng,* "bureaucratization"[143] of courts: it is a process that integrates administrative calculations into the judicial decision-making process and its hierarchy.[144]

Financial dependence on local governments used to be another problem. During the Reform and Opening Period introduced by *DENG Xiaoping* at the end of the 1970s, the central government had delegated parts of its power down to the provincial administrations.[145] The central government lessened its control over provinces and localities and in the same course, it transferred financial authority downward so that local governments decided upon the courts' budget. The funding of courts included the judges' salaries, office supplies, and the maintenance of the court building.[146] However, local governments usually did not find court funding very appealing since "courts do not build highways or suspension bridges."[147] In 1998, the SPC introduced the so-called "dual-track" system[148] for court finance.[149] This "dual-track" system separated court revenues from court expenditures. As a result, courts were free from their financial burdens and could relieve litigants from high litigation fees. Each year, a court transmitted its estimated income from litigation fees and other fines to the government together

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139 Amendment to the Constitution 2018, supra n. 19.
140 *Ginsburg, Chen (eds.)* 2009, 8.
141 *Ng, He*, 2017, 17, 19, 31, 93, 168; *Zhu* 2010, 60.
142 In Chinese: 行政化.
143 In Chinese: 官僚化.
144 *Ng, He*, 2017, 119.
145 In Chinese: 权利下沉.
146 *Yuhua Wang* 2013, 44-45,48.
147 *Ng, He* 2017, 168.
148 In Chinese: 收支两条线.
149 Circular of the Supreme People's Court on Strictly Implementing and Enforcing the "Dual Track" Regulation (最高人民法院关于认真贯彻落实"收支两条线"规定的通知), issued June 9, 1998, at: http://www.china.com.cn/law/flfg/txt/2006-08/08/content_7063475.htm [December 26, 2023] (henceforth: SPC Circular on Implementing "Dual Track" Regulation).

with a budget plan. Then, the government decided, according to their financial situation, how much money they could grant to the courts. This put courts at the mercy of local governments.[150] In 2007, the State Council issued new Measures for the Payment of Litigation Costs.[151] These measures were necessary to decrease the litigation costs for citizens and to make access to justice easier calling it "judiciary for the people"[152]. The overall aim of this policy was to strengthen the people's trust in courts by guaranteeing procedural and substantive justice.[153] As a result, the income of governments and courts decreased significantly, so that the Ministry of Finance (MOF) had to pay compensation.[154] In October 2014, at the Fourth Plenum of the 18th Central Committee, the CCP promised to unify the management of court personnel and budget at the provincial levels to curb external interference.[155]

5. Courts and the Communist Party

The CCP exercises political control through its Political Legal Committee (PLC). For instance, the PLC influences the judges' rank order[156] in a court. Since the president of a court at each level is usually one rank lower than the head of the corresponding government, courts can only command compliance by individuals and institutions of lower or no rank.[157] According to paragraph 1 of Art. 15 of the Supervision Law issued in 2018, the people's courts and their judges as public officials are subject to supervision in the fight against corruption.[158] At court, Party representatives can selectively interfere in individual cases on their initiative or by request. In terms of case coordination, the Party representatives demand multiple agencies to cooperate, or they engage in investigations. Courts cannot scrutinize actions by the party.[159] On the national level, the CCP can issue policies that dictate specific judicial rules by which judges

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[150] *Ng, He* 2017, 170.
[151] Measures for the Payment of Litigation Costs (诉讼费用交纳办法), issued December 12, 2006, by the Order of the State Council of the People's Republic of China No. 481, at: http://www1.lawinfochina.com/display.aspx?lib=law&id=5765 [December 23, 2023]. For more a detailed analysis see: *Ng, He* 2017, 177-180.
[152] In Chinese: 司法为民.
[153] NPC 23 measures, supra n. 26.
[154] *WANG* 2013, 44-45, 49.
[155] 18th CCPCC Fourth Plenum Decision 2014, supra n. 4.
[156] In Chinese: 编制.
[157] *Xu* 2010, 227; *Li Li* 2014, 11.
[158] Supervision Law of the People's Republic of China (中华人民共和国监察法), by Order No. 3 of the President, issued March 20, 2018 (henceforth: Supervision Law).
[159] *Li Li* 2014, 10. In March 2018, the 13th National People's Congress announced an amendment of the 1982 Constitution. The CCP used to be mentioned only in the preamble, but in the amended Constitution the leadership of the CCP is consolidated in the second paragraph of Art. 1: "The defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China.", see Amendment to Constitution 2018, supra n. 19.

must abide.[160] The Party has been aware of the utility of the courts for its legitimacy and as a medium to spread the regime's values and educate the people.[161] Hence, it acts as a "delegator of sovereignty of the state"[162] whose "main interest in the outcome of most cases, […], is that the result is perceived as fair by the parties and the people."[163]

According to Art. 10 of the Organic Law of the People's Courts, the Court's Adjudicative Committee (CAC)[164] is established and epitomizes the principle of democratic centralism because it "concentrates judicial experience to discuss important and difficult cases and discuss other work related to adjudication."[165] It is composed of the court president, vice president, and chief judges and thus is the highest decision-making body in Chinese courts. The main goals of the CAC are to monitor the judges through collective decision making procedures in line with democratic centralism.[166] A case will be transferred to the CAC when the judge in the highest ranking, i.e., the president or the vice-president, considers it necessary or when the collegial panel or its presiding judge decide to transfer the case.[167] With the expertise of ten to fifteen highly-ranked judges, external influence should be reduced, legal consistency enhanced, and collective autonomy of the judiciary strengthened.[168] In significant or complicated cases, after the trial judges have written their decision, they need approval by their superior or the court's adjudicative committee. This reporting system leads to the problem that the judges who hear cases, do not decide the cases.[169] Moreover, critics also doubt that the CAC will improve the competence of judges because it might discourage trial judges from thinking for themselves and investing in their legal training. It is a way of avoiding taking responsibility in challenging cases. Hence, seeking advice from higher-level courts is a way to dilute the responsibility for a judicial decision and avoid an appeal.[170] Besides that, the CAC cannot eliminate external

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[160] *Li Li* 2014, 18-25.
[161] *Cohen* 1969, 982, 1005.
[162] *Xu* 2010, 371.
[163] *Peerenboom (ed.)* 2010, 80.
[164] In Chinese: 审判委员会. The court's adjudicative committee is a symbol of democratic centralism and adopts a monitoring function. Its origins date back to the 1930s when the Communists reigned over rural China and were at war with the nationalist government. The adjudicative committee served as a control unit because judges were poorly trained. Thus, a committee decision should reach justice. See: *Xin He* 2012, 686.
[165] Ibid., 2-3; *Ng, He* 2017, 96.
[166] *Li Li* 2014, 53-57.
[167] Organic Law of the People's Courts of China (中华人民共和国人民法院组织法), Order No. 11 of the President, issued July 1, 1979, revised September 2, 1983; December 2, 1986; October 31, 2006, and October 26, 2018 (henceforth: Organic Law of People's Courts). Art. 36-39. See also: *HE* 2012, 687.
[168] *Xu* 2010, 334-336; *HE* 2012, 683; *Yuwen Li* 2014, 6-8.
[169] *Hualing Fu* 2015, 3.
[170] *Peerenboom (ed.)* 2010, 84; *Huiling Jiang* 2010, 215; *Xin He* 2012, 708.

pressure or manipulation of the opinions of the committee members even though they are in a secretive process of judicial decision-making.[171]

6. Summary

As we can see here, the institutional embeddedness of courts is complex which makes independent adjudication difficult and political interference easy. Judges were likely to handle similar administrative disputes not uniformly when the administration interfered in the adjudication process. In addition, financial dependence on the administration combined with internal and external interference in the adjudication discredited the judiciary. Obviously, the institutional shortcomings impacted the effectiveness of the original ALL. Thus, when the CCP realized the people's distrust in the judiciary, the Party became a major motivator for institutional reforms and the revision of the ALL. A uniform application of the law needs both clear standards of legal procedures as defined within the legal text as well as clear and uniform institutional standards. That is why judicial reforms and the revision of the ALL of 1989 became interdependent. This interdependence is the main object of Chapter 4 illustrating how the revised ALL reflects upon institutional reforms. The analysis will show how the legislators address institutional shortcomings through legislative and political campaigns. Chapter 3 also describes them with regard to procuratorial public interest litigation.

II. Revision of the ALL of 1989

In October 2014, the CCP announced that they wanted to raise the people's trust in the judicial system, for instance by "ensuring parties' procedural rights by requiring filing when there is a case and requiring acceptance where there is a lawsuit" and by punishing "false and malicious litigation"[172] which referred to an intentional and malicious way of handling disputes by courts. So, to prevent procedural mistakes, the ALL needed to be more elaborate. It is not a radical renewal of administrative litigation, for instance by introducing an independent administrative court and more autonomy for judges to decide on the legality of administrative actions. Instead, it sticks to the old frame of the ALL of 1989 and attempts to offer piecemeal solutions to the difficulties identified. In contrast to the ALL of 1989, the revised law provides more details about the court trial and decision procedures. For instance, in twenty-eight

[171] *Xin He* 2012, 705-706; *Li Li* 2014, 7-8.
[172] 18th CCPCC Fourth Plenum Decision 2014, supra n. 4, at: IV. Guarantee judicial fairness and judicial credibility, in Chinese: 加大对虚假诉讼、恶意诉讼、无理缠诉行为的惩治力度.

paragraphs, the ALL of 1989 deals with the hearing and adjudication. The equivalent section of trial and judgment in the revised ALL of 2014 has five sub-sections and fifty-one paragraphs.

After the enactment of the ALL, it was clear that the law could not keep up with the fast-changing society and economy. A period of exploration began in which the SPC specified the ALL and supplemented it through opinions, interpretations, explanations, and notices concerning all significant issues, such as the scope of acceptable cases, jurisdiction, the parties, the hearing, the examination of evidence, the judgment, and its enforcement. The SPC initiated many work conferences to discuss the experiences other judges had made.[173] Moreover, the SPC issued some policies for the courts to deal with international disputes with regard to China's accession of the World Treaty Organization (WTO) in 2001.[174] In 2003, the Standing Committee of the NPC mentioned in its five-year legislative program the preparation of a draft for the amendment of the ALL. In this program, the ALL belonged to the category of "laws and drafts for researching, drafting, and deliberation at a due time".[175] The NPC Standing Committee revived this intention again in 2008 under the category of "laws for litigation and non-litigation" in its five-year schedule.[176] Afterwards, the legislators remained rather passive although they had expressed their willingness to reform the ALL. Meanwhile, the SPC continued with improving the application of the ALL by holding several work conferences and issuing several policies. For instance, in 2007, it published its "Suggestions on Strengthening and Improving Administrative Trial Work" emphasizing the condition that administrative trials must comply with the law.[177]

1. Academic calls for revision (2003 until 2012)

Between the announcement of the revision plan in 2003 and the start of the drafting in 2012, scholars had started elaborating about a revision of the ALL. For instance, representatives of the first group were *YING Songnian* and his student *YANG Weidong*.[178] They analyzed both the institutional arrangements in which judges applied the ALL as well as the provisions of the

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[173] *Li Dayong* 2015, 89-102, 92-93.
[174] Ibid., 96.
[175] In Chinese: 研究起草、成熟时安排审议的法律草案, see Legislative schedule of the 10th National People's Congress Standing Committee (十届全国人大常委会立法规划), available at: People's Daily (人民日报), at: http://www.people.com.cn/GB/14576/14957/2252949.html [April 2, 2018].
[176] Legislative schedule of the 11th National People's Congress Standing Committee (十一届全国人大常委会立法规划), at: http://www.npc.gov.cn/wxzl/gongbao/2008-12/26/content_1467452.htm [April 6, 2020].
[177] *LI Dayong* 2015, 97. Notice of the Supreme People's Court on issuing the Opinions of the Supreme People's Court on strengthening and improving the administrative trial work (最高人民法院印发《最高人民法院关于加强和改进行政审判工作的意见》的通知), issued April 24, 2007, in: Fafa (法发) 2007, No. 19, available at: www.pkulaw.com [November 27, 2023].
[178] *Ying, Yang* 2004.

ALL. They pointed out that the legal system suffered from administrative interference which they identified as the main deficit. For them, the key step towards and the precondition of an effective revision of the ALL was the revision of the Organic Law of the People's Courts and the decoupling of the courts from the administration.[179] They went on with an in-depth analysis of the ALL's provisions demanding, for instance, the extension of both the scope of acceptable cases and of the qualifications of the litigation parties as well as a specification of the provisions concerning evidence. They also suggested incorporating the judicial interpretations concerning the application of the ALL of 1989 into the revision.

YE Yipei's analysis of status quo of the ALL of 1989 and the direction of the revision echoed similar critique on the institutional situation.[180] For him, the scope of acceptable cases suffered from the delimitation of administrative behavior from administrative rights. There was no distinction between abstract and concrete actions, internal and external actions, actions based on a decision that was final or not, or actions affecting personal and property rights or other rights such as labor and educational rights. Since courts could not review abstract administrative actions, administrative agencies used to formulate specific administrative action in an abstract way to avoid judicial consequences. He also argued that the qualifications of plaintiffs were too narrow because it excluded public interests. An administrative action could affect an individual person who has the right to file a complaint. But at the same time, it could affect the entire public that had no right to file a complaint. Therefore, *YE* demanded the introduction of a public interest litigation. Concerning the defendant agency, he disagreed with the prominent concept of "administrative subject". As seen in the current Art. 15 of the Administrative Litigation Law of 2014[181] in conjunction with Art. 15 of the Administrative Reconsideration Law of 2017,[182] the legislators intentionally refused to designate the State Council as the defendant in the administrative litigation. *YE* saw this as a violation of the rule of law principle because the State Council is the highest administrative organ in the PRC and issues the majority of administrative rules and regulations. Furthermore, to exclude mediation in administrative litigation was too

[179] Ibid., 5-6.
[180] *Ye* 2009.
[181] Art. 15 of the ALL of 2014 says: "An Intermediate People's court shall have jurisdiction over the following administrative cases as a court of first instance: (1) A case filed against an administrative action taken by a department of the State Council or by a people's government at or above the county level […]."
[182] Art. 15 of the ARL of 2017 says: "A citizen, legal person, or any other organization, who refuses to accept a specific administrative act of an administrative organ or an organization, except for the administrative organs prescribed in Articles 12, 13, and 14 of this Law, shall apply for administrative reconsideration in accordance with the following provisions: […] (3) an applicant who refuses to accept a specific act of an organization authorized by laws or regulations shall respectively apply for administrative reconsideration to the local people's government, the department under a local people's government, or the department under the State Council, who is directly in charge of the organization […]."

rigid for him as well. With reference to Japan, he pointed out that mediation would be useful to measure interests for a fair outcome of the procedure. Concerning the burden of proof, he recognized the organic combination of "ex officioism" and "partyism". He meant that the administrative organ carried the burden of proof, but it could refuse to submit proof or forge evidence. Hence, it would be essential that the courts followed their right and duty to collect evidence themselves to confirm the real facts of the case.

In another paper, *MA Huaide* focused on the ALL provisions and gave suggestions how to improve the law.[183] For example, he demanded to revise the purpose in Art. 1 of the ALL of 1989 by replacing the term "citizens" with "natural person" because he considered the second term to be broader; and to delete the phrase "to safeguard the exercise of administrative power" since it would weaken the protection of the plaintiffs' lawful rights and interests.[184] Furthermore, he criticized the enumeration principle in Art. 11 as too narrow in defining the scope of acceptable cases. He was in favor of a general clause and to use "administrative dispute" instead of "concrete administrative action" to decide which cases should be eligible for administrative litigation.[185] In his opinion, the types of lawsuits were insufficient and needed an extension. To protect the lawful rights and interests of the plaintiffs and to identify the correct defendant agency, the qualifications of plaintiffs and defendants also needed adjustments. In addition, the jurisdiction system needed revision because it was the main reason for judicial localization.[186]

The handling of the burden of proof was also of controversial debate.[187] Since the types of administrative actions became more complex and diverse compared to the beginning of the ALL of 1989, the burden of proof had to be adapted as well. In the 1990s, the focus was on cases of administrative punishment. But in cases where the plaintiff demands an action, they should submit the evidence for their claim. One group of scholars introduced the distinction between subjective and objective burden of proof.[188] The former means that those who make a claim have to present evidence supporting their claim. The latter refers to the party that has to

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[183] *Ma* 2010, 29-36.
[184] Ibid., 29-30.
[185] Ibid., 30-31.
[186] Ibid., 32-35.
[187] *He Haibo* 2019, 49-50; Summary of the 2012 Annual Meeting of China Administrative Law Research Association (中国行政法学研究会 2012 年年会综述), published January 8, 2013, available at: http://fzzfyjy.cupl.edu.cn/info/1027/1259.htm [January 4, 2023] (henceforth: Summary of the 2012 Annual Meeting of China Administrative Law Research Association). Moreover, to receive insights from foreign experts, the Chinese administrative law scholars invited two American administrative law scholars in 2012. See: International Symposium on the "Revision of the 'Administrative Litigation Law' ("《行政诉讼法》修改" 国际研讨会召开), published December 8, 2012, available at: https://www.chinalaw.org.cn/portal/article/index/id/11154/cid/28.html [January 4, 2023];.
[188] Summary of the 2012 Annual Meeting of China Administrative Law Research Association, supra n. 187.

bear the legal consequences in cases where the court could not determine the truth and the facts of the case but needs to decide.

Tentative ideas concerning public interest litigation found positive response. Since social organizations in China were in a process of maturating, they found the procuratorial organs should be in charge to sue the administration in cases of social harm.[189] Other scholars also believed that the head of the administrative organ appearing in court could demonstrate the image of the administrative organ operating according to law but could also help the person in charge to understand the real situation of the case and the outstanding problems in administrative law enforcement. By appearing in the court hearing, the administrative organ and its head would signal that they reflected upon the rule of law.[190]

But some suggestions were clearly not tenable, for instance, changing the term "administrative action" into "administrative dispute". If *any* administrative dispute between the private party and the administrative organ was eligible, it could have let to chaotic filing of lawsuits because it was too arbitrary. Since the Chinese model relies on an enumeration, a vague concept as "dispute" would be detrimental to standardization. Eventually, the revision extended the scope by more items and refined the concept of an "administrative action."[191] Despite this, the majority of issues, like the appearance of the head of the administrative organ in the hearing, the burden of proof and public interest litigation was already very sophisticated. It proves that the scholars put effort into their suggestions for the revised ALL of 2014.

2. Promotion by the Party after 2012

The CCP paved the way for the revision of the ALL of 1989 as well. *XI Jinping* became General Secretary of the CCP in 2012 and fostered legal reforms: In the course of the celebrations of the 30th anniversary of the Constitution in December 2012, *XI Jinping* demanded to preserve social fairness and justice, and to realize the systematization and legalization of state and society. That is why laws must be the basis for the work and conduct of each institution that must enforce the laws strictly; and investigations must follow violations of the laws. *XI* emphasized the importance of building a socialist rule of law state. Furthermore, he indicated that the NPC and its Standing Committee should increase legislation in key areas; the State Council, the local people's congresses, and their standing committees, which have the power to enact laws, should pay attention to formulating and revising administrative regulations and local

[189] Summary of the 2012 Annual Meeting of China Administrative Law Research Association, supra n. 187.
[190] Ibid.
[191] See Chapter 7, Section I Scope of acceptable cases.

regulations to ensure that they correspond to national laws and to the Constitution. He addressed administrative and judicial authorities, as well as the procuratorate to follow the principles of administration according to law and fair justice in order to foster the building of a rule of law government and to enhance judicial credibility.[192] Seen in this context, *XI*'s speech was a clear signal that all organs and institutions in the state must respect legislation and legal revisions.

In November 2013, the Third Plenary Session of the 18th Central Committee of the Communist Party proclaimed to deepen reform and to build the rule of law in China. This commitment was detailed in October 2014, when the Fourth Plenary Session of the 18th CPC Central Committee decided to "perfect the system and mechanism of administrative litigation, to moderately adjusting the administrative lawsuit jurisdiction system, to effectively solving the prominent problems of difficulty in getting an administrative lawsuit registered, difficulty in adjudicating administrative cases and difficulty in executing court decisions".[193] The CPC Central Committee and the NPC entrusted the Legislative Affairs Committee with preparing the draft amendment by researching and gathering opinions. In December 2013, *ZHANG Dejiang* delivered a speech at the 12th National People's Congress in which he introduced the first draft amendment.[194] The vice chairman of the Legal Affairs Committee of the NPC Standing Committee explained the draft[195] listing the ten main aspects of reform: These consisted of the protection of the people's lawful rights and interests, the incidental review of normative documents, the improvement of the jurisdiction system, the qualifications of the litigation parties, the rules for evidence, the concurrent handling of civil and administrative disputes, the categories of judgments, the summary procedure, the trial supervision by the procuratorate and the responsibility of the administrative agency to enforce the judgment.[196]

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[192] Speech given at the at the 30th Anniversary Conference in Commemoration of the Publication of the Current Constitution in the Capital (在首都各界纪念现行宪法公布施行 30 周年大会上的讲话), speech given by *Xi Jinping(习近平)* on April 4, 2012, available at: http://www.xinhuanet.com/politics/2012-12/04/c_113907206.htm [January 2, 2024].

[193] 18th CCPCC Fourth Plenum Decision 2014, supra n. 4.

[194] Speech given at the 6th Session to the Standing Committee of the 12th National People's Congress (张德江在第十二届全国人民代表大会常务委员会第六次上的讲话), delivered by *ZHANG Dejiang (张德江)* on December 28, 2013, in: http://www.npc.gov.cn/npc/c12487/201403/cdd77300f04144679fcb0e21580ff89f.shtml [March 30, 2020].

[195] The second paragraph of Art. 29 of the Legislation Law determines when a bill is deliberated for the first time at a session of the Standing Committee, an explanation provided by the proposer shall be heard at a plenary meeting, and preliminary deliberation shall be conducted at group meetings; Legislation Law of the People's Republic of China (中华人民共和国立法法), Order No. 20 of the President, issued March 15, 2000; revised March 15, 2015 (henceforth: Legislation Law).

[196] *Xin Chunying* 2012, available at: *Ying Songnian* 2015 a, 387-393.

The NPC drafting showed that the legislators saw the need to solve the three difficulties, but it also reveals how conservative they were in dealing with the revision.[197] They did not think of re-structuring the court system as demanded from outside, for example by designing an administrative court. Rather, the NPC legislators remained in the given framework and followed political decisions. For example, the Fourth Plenary Session of the Eighteenth Central Committee took place at the same time as the Standing Committee of the NPC deliberated the third draft. The SPC drafted its Fourth Five-Year Reform Program (2014-2018),[198] published in 2015, with references to the Third and Fourth Plenary Sessions of the Chinese Communist Party in 2013 and 2014.

3. Discussions about the revision drafts after 2012

After the legislators published the first draft, the public could comment on it. It was online until the end of January 2014 and got more than five thousand comments from 1483 people. Most internet users made comments and suggestions concerning the "three difficulties" and the scope of acceptable cases.[199] Moreover, more than twenty experts contributed to the process of drafting the Administrative Litigation Law.[200] *LI Peilei* analyzed the discourse within the circle of administrative law scholars.[201] According to his findings, the period that started right after the publication of the first draft in December 2013 and lasted until the third deliberation at the end of October 2014 was characterized by an increasing publication rate.[202]

The publication of the first draft also signaled the start of a second round of academic reform suggestions. Renowned experts of administrative law published their reform suggestions in academic journals between 2012 and 2015.[203] Three groups existed within the debate: The first

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[197] *Li Peilei* 2016, 110.
[198] Opinions of the Supreme People's Court on Comprehensively Deepening Judicial Reforms – Outline of the Fourth Five-Year Reform Program of the People's Court (最高人民法院 关于全面深化人民法院改革的意见 - 人民法院第四个五年改革纲要（2014—2018）, issued February 6, 2015, at: Fafa (法发) 2015, No. 3, at: https://www.chinacourt.org/law/detail/2015/02/id/148096.shtml [October 28, 2023] (henceforth: Outline of the Fourth Five-Year Reform Program of the People's Court).
[199] *Liang Fengyun* 2015.
[200] *He Haibo* 2018, 15.
[201] *Li Peilei* 2016, 109-121.
[202] Ibid., 109-110. Whereas in 2009, scholars published around thirty-seven papers on the ALL and its revision, there were about sixty publications in 2013 reaching the peak with 94 papers in 2014.
[203] Among the drafters are Professor *MA Huaide* and Professor *YING Songnian* from the China University of Political Science and Law, Professor *MO Yuchuan* from Renmin University, Assistant Professor *WU Peng* and Professor *HU Jinguang* from Remin University, Professor *JIANG Ming'an* and Professor *ZHAN Zhongle* from Peking University, Professor *ZHANG Jiansheng* from Zhejiang University, and *YU Lingyun* who is currently vice president of the SPC's administrative division. Professor *HE Haibo* published a comprehensive draft proposal titled "Ideal Administrative Procedure Law". He even published a fourth version in 2014 in which many of the scholars listed above supported Professor *HE* in the drafting process, see: *He Haibo et al* 2014, 9-39. See also: *Jiang* 2014; *Ma* 2010; *Mo et al.* 2012, 17-52; *Wu, Hu* 2015; *Ying Songnian* 2015 b; *Zhan* 2015; *Zhang Jiansheng* 2013 b; *Yu Lingyun* 2014.

group demanded an overhaul which by "tearing down the old and building up the new". The supporters wanted to redesign the structure and chapters of the original ALL and wanted to add new provisions or delete those that were outdated.[204] For instance, a research project group submitted a draft consisting of 13 chapters and 160 articles in March 2012.[205] For them, the structural defects they found in the ALL could not be solved through judicial interpretations alone but the law itself needed to be amended.[206] In his draft proposal, Professor *HE* readjusted the structure of the ALL and intended to make the law clearer. His draft proposal consists of 194 articles among which he included provisions of the original ALL. In the end, he rewrote the ALL.

For example, *HE* adds a precise definition of administrative agency (Art. 3). Administrative organs include people‘s governments at all levels, working department of the people‘s governments at or above the county level, branches or dispatched agencies of the people's governments or working departments that can exercise administrative power in their own name, and social organizations that are granted administrative powers. *HE*'s definition of the defendant agency is very clear and straightforward. As this dissertation elaborates in Chapter 4, the ALL of 2014 does not provide a clear definition of the administrative agency, instead the SPC adds relevant information in its 2017 SPC Interpretation. Nevertheless, *HE* does not offer a concise definition of an administrative action but describes the circumstances that present administrative actions: (1) administrative actions involve rights and obligations made by administrative organs to citizens, legal persons or other organizations; (2) administrative organs with statutory responsibilities fail to perform their duties and fail to take corresponding actions; (3) administrative organs sign and perform administrative contracts with citizens, legal persons or other organizations; (4) administrative organs formulate normative documents with universal binding force; (5) other actions taken by administrative organs in exercising their powers and performing their duties. Regarding the definition of the administrative action, the ALL of 2014 also does not provide a clear definition either because Chinese legislators preferred an enumeration of administrative behaviors constituting administrative actions instead of using a generic term. *HE*'s definition of the scope of acceptable administrative actions (Art. 10) is shorter than but with regard to contents similar to the enumeration in the Art. 12 of the ALL of 2014. Unlike the ALL of 2014, *HE* includes the review of normative documents into the scope of acceptable cases (Art. 10, 30, 50, 64) which deviates from the current standard of incidental

[204] *Zhang Jiansheng* 2013 b, 13.
[205] *Mo et al*. 2012, 17, 32.
[206] Ibid.

review.[207] *HE*'s claim was to create the "ideal" Administrative Litigation Law with this contribution. Although his profound proposal offers important definitions of basic terms for the revision of the ALL, it reached too high at some points, as can be seen with the inclusion of normative documents in the scope of acceptable cases. *HE*'s version offers people's court more possibilities to review administrative actions which would strengthen the courts' review power regarding administrative actions. However, the legislators were not willing to go that far with the revision, which Chapter 7 illustrates in detail.

A second group of scholars was in favor of keeping the framework of the original ALL, only deleting those provisions that proved ineffective and replacing them with more effective ones. In his analysis of the draft amendment, *ZHAN Zhongle* called the revised ALL an "overhaul"[208] according to the increased number of provisions. He emphasized that a change within the legal and political system was essential for substantial improvement of the administrative litigation system. The revision of the law was more like a process of "rectification"[209] by including the relevant judicial interpretations which highlighted the conservative and hesitant nature of the revision.[210] In a similar vein, in his analysis, *YU Lingyun* emphasized that the first draft incorporated the relevant judicial interpretations and added innovative provisions. Nevertheless, his overall impression of the first draft was disappointed because he still called it a conservative "small step" being a mere "summary of the mature experience of judicial interpretation".[211] Others also indicated that the revision did not reach far enough. They demand to adjust the relevant judicial interpretations in the revision to avoid contradictions. They suggest allowing courts to review normative documents, such as administrative rules[212] directly without depending on the plaintiffs' request for incidental review according to Art. 53 of the ALL of 2014, or to take further actions to tackle administrative interference.[213] Besides this, some scholars went one step further proposing to establish an independent administrative court.[214]

To sum up, the responses from the academia helped them to refine the draft further revealing which items mattered to the people, like the scope of acceptable cases. The public and academic calls for modernization of the ALL stand in contrast to the conservative revision approach of

[207] Art. 53 and 64 of the ALL of 2014.
[208] In Chinese: 大修.
[209] In Chinese: 正身.
[210] *Zhan* 2015, 26, 30.
[211] *Yu Lingyun* 2014, 14.
[212] In Chinese: 规章.
[213] *Zheng, Xia* 2015.
[214] *LI Peilei* 2016, 111, see also: III. Discussion about a special administrative court, 45.

the NPC and Legislative Affairs Committee. The academic analyses are more courageous in their content, but less consistent in their structure. It could have been a powerful move if they had prepared a joint suggestion combining all their academic and empirical expertise. But it will remain obscure how influential this joint suggestion would have been.

4. Enactment of the revision

Besides the scholarly debates and proposals, the SPC also contributed its opinions on the amendment in 2013.[215] The NPC published the second draft from August to September 2014 that received about 2300 comments from 1586 persons. In comparison to this, only the draft for the amendment of the criminal law received around 51,000 comments made by more than 15,000 interested people between November and December 2014.[216] The main topics dealt with the definition of the defendant agency, the regulations concerning administrative agreements, jurisdiction, and disciplinary actions during the hearing in court and the relationship between the Administrative Litigation Law and the Civil Procedure Law. The third deliberation took place on 28 October 2014, and dealt with some last aspects of review, like the docketing of cases and questions about jurisdiction. Eventually, after the CCP Central Committee signaled its consent to the amendment, the Standing Committee of the 12th NPC adopted the Decision on the Amendment of the Administrative Litigation Law at its 11th session by 152 votes in favor, no vote against and 5 abstentions.[217] The decision of November 2014, prepared and debated by the Legislative Affairs Committee, introduced a "moderate revision" as critics still complain.[218] However, the reform was still profound[219] amending the legal purpose, the scope of acceptable cases, the jurisdiction system, the standing of the litigation parties, the provisions concerning evidence, the docketing of cases, the disciplinary measures, the types of judgments, the summary procedure and the relation to the Civil Procedure Law which all will be elaborate in the following sections.

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215 Opinion about the „Draft of the Amendment of the Administrative Litigation Law of the People's Republic of China" (关于《中华人民共和国行政诉讼法修正案（草案）》的说明), at: http://www.npc.gov.cn/npc/lfzt/2014/2013-12/31/content_1822189.htm [March 29, 2017]

216 Closed comments for draft laws, at: http://www.npc.gov.cn/npc/flcazqyj/node_8195_3.htm [March 29, 2017].

217 First Revision of Administrative Litigation Law: Administrative power is put in the rule of law cage (行诉法首修：把行政权关入法治的笼子), at: http://www.npc.gov.cn/npc/zgrdzz/2014-12/18/content_1889316.htm [January 2, 2024].

218 *Haibo He* 2018, 19.

219 *Liang Fengyun* 2015, 4-6.

5. Interpretations of the SPC of the revised ALL

Judicial interpretations of the SPC serve as an important supplement for explaining the application of national laws. In practice, judges face issues and problems they cannot always solve simply by applying the relevant national law.[220] The introduction of this dissertation mentioned that the ALL of 1989 could not keep up with a fast-changing society and economy that brought to light many new conflicts between the government and its citizens or businesses. According to Art. 18 of the Organic Law of the Courts,[221] the SPC can issue interpretations to specify the application of laws having binding legal effect for the lower-level courts. The SPC applied this authority for the ALL as well.

From the original enactment until the revision, the SPC had published three interpretations of the ALL. In June 1991, the SPC had issued its Opinions on Several Issues for the Implementation of the ALL of 1989 (For Trial Implementation) which became ineffective when the SPC issued a new interpretation in March 2000.[222] The 1991 SPC Interpretation added important explanations on matters which the ALL of 1989 was silent on.[223] Its "trial character" became evident in the debates that surrounded it. For instance, the scope of acceptable cases caused controversies because the administration wanted the scope to be narrow fearing a negative impact on their operations and on their image due to the rising numbers of lawsuits. The same disputes emerged around coercive measures that the court could implement in case a party disturbed the court order. Scholars argued that court must treat the administration differently compared to the other parties because it represented the interests of the state. The dominant opinion, however, emphasized that courts must treat the parties equally. That is why coercive measures applied to all parties with no exception for the defendant administrative agency.[224] For its drafting, the SPC asked all Higher People's court to collect practical problems they had encountered and send them to the SPC. The courts submitted about two hundred issues. The SPC chose Guangdong, Henan, Sichuan, and Tianjin as pilot regions for resolving these issues. After internal discussion and working conferences, they enacted the first trial SPC Interpretation in May 1991.[225]

[220] *Ahl* 2007, 252.
[221] Organic Law of the People's Courts, supra n. 167.
[222] Notice of the Supreme People's Court on its Opinions on Several Issues Concerning the Implementation of the "Administrative Litigation Law of the People's Republic of China" (For Trial Implementation) (最高人民法院关于贯彻执行《中华人民共和国行政诉讼法》若干问题的意见(试行) 的通知), 11 June 1991 (henceforth: 1991 SPC Interpretation).
[223] *Cai* 2019, 42.
[224] *Jiang* 2019.
[225] *Cai* 2019, 44-45.

The 2000 SPC Interpretation[226] declared the 1991 Interpretation to be invalid. In 2015, the SPC published another interpretation[227] right after the publication of the revised ALL. Both interpretations coexisted, and in case of inconsistencies only the 2015 Interpretation would be relevant. Eventually, they were merged into a new one that the SPC issued in November 2017.[228] The comprehensive 2017 SPC Interpretation reveals that the SPC's influence on legal interpretation became both more important and stronger since 2013.[229] Practically, its 2017 SPC Interpretation provides explanations to apply the law uniformly, but it also reveals that the SPC has developed a legislative function that is goes beyond simply providing an interpretation. It is a substantial component in the ALL's revision that fills legal gaps.

The 2017 SPC Interpretation integrated the 2000 SPC Interpretation almost entirely. Both interpretations are systematic and add explanations to almost every provision whereas the 2015 SPC Interpretation remains fragmentary.[230] According to *Susan Finder,* who quotes the former head of the administrative division of the SPC, Judge *LI Guangyu*, the 2015 SPC Interpretation was not meant to be comprehensive but intended to explain major practical issues for lower-level courts.[231] In her opinion, the judicial interpretation fills some blank spots, adds definitions, and inserts a "specific legal infrastructure" into the ALL.[232] The 2015 SPC Interpretation went through internal review. It got comments from judges, the procuratorate, administrative authorities, like the State Council Legislative Affairs Office and its local counterparts, and the NPC Legislative Affairs Commission and its local counterparts but was not published for public comments.[233] It provided some details on the appearance of the head of the administrative

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[226] Interpretation of the Supreme People's Court about Several Issues Concerning the Implementation of the "Administrative Litigation Law of the People's Republic of China" (最高人民法院关于执行《中华人民共和国行政诉讼法》若干问题的解释), issued November 24, 1999, effective March 10, 2000, in: Fashi (法释) 2000, No. 8, available at: www.pkulaw.com [December 26, 2023] (henceforth: 2000 SPC Interpretation). German translation by *Münzel* 2000.
[227] Interpretation of the Supreme People's Court about Several Issues Concerning the Implementation of the "Administrative Litigation Law of the People's Republic of China" (最高人民法院关于执行《中华人民共和国行政诉讼法》若干问题的解释), issued April 20, 2015, in: Fashi (法释) 2015, No. 9, available at: www.pkulaw.com [December 26, 2023] (henceforth: 2015 SPC Interpretation).
[228] Interpretation of the Supreme People's Court about Several Issues Concerning the Application of the "Administrative Litigation Law of the People's Republic of China" (最高人民法院关于适用《中华人民共和国行政诉讼法》若干问题的解释), issued November 13, 2017, in: Fashi (法释) 2018, No. 1, available at: www.pkulaw.com [December 26, 2023] (henceforth: 2017 SPC Interpretation).
[229] *Ahl*, 2019.
[230] *Yang Weidong* 2018 a, 67.
[231] *Finder* 2015 a.
[232] Ibid.
[233] Ibid.

agency or their deputy in court[234], on the handling of the reconsideration agency as co-defendant[235] and on administrative agreements[236].

The 2017 SPC Interpretation elaborates the provisions of the 2000 SPC Interpretation concerning the scope of acceptable cases[237], the jurisdiction[238] and the litigation parties[239]. The same applies to the provisions dealing with the docketing of cases[240], with judgments and rulings[241] as well as the enforcement of judgments[242]. However, the 2017 SPC Interpretation did not include the provisions on administrative agreements that the 2015 SPC Interpretation introduced. *JIANG Bixin*, vice-president of the SPC, announced that the SPC was about to draft a separate interpretation on administrative agreements.[243] In addition, the SPC also published a separate interpretation for public interest litigation in cooperation with the Supreme People's Procuratorate.[244]

Furthermore, the 2017 SPC Interpretation does not fully incorporate the 2015 SPC Interpretation because it was an interim for preparing the implementation of the new ALL. As *JIANG Bixin* explained, the co-existence of the 2000 and 2015 SPC Interpretation made it difficult for lower-level courts to apply the law correctly and uniformly.[245] To reduce such contradictions as well as to specify and to improve the application of the ALL, a comprehensive interpretation was necessary.[246] In 2016, the SPC started the drafting of a new interpretation relying on the opinions and suggestions of the Legal Affairs Committee of the NPC and the State Council, the Supreme People's Procuratorate. More than thirty ministries and commissions, people's courts at the basic level, and the Railway Transportation Court of Inner

[234] Art. 5, 2015 SPC Interpretation.
[235] Art. 6-7, 2015 SPC Interpretation.
[236] Art. 11-16, 2015 SPC Interpretation.
[237] Art. 1-5, 2000 SPC Interpretation.
[238] Art. 6-10, 2000 SPC Interpretation.
[239] Art. 13-25, 2000 SPC Interpretation.
[240] Art. 53-70, 2017 SPC Interpretation and Art. 32-45, 2000 SPC Interpretation.
[241] Art. 71-127, 2017 SPC Interpretation and Art. 45-79, 2000 SPC Interpretation.
[242] Art. 152-161 2017 SPC Interpretation and Art. 83-95, 2000 SPC Interpretation.
[243] *Jiang* 2018.
[244] Opinions of the Supreme People's Court and the Supreme People's Procuratorate concerning Some Questions about Implanting the Law in Procuratorial Public Interest Litigation f 最高人民法院最高人民检察院关于检察公益诉讼案件适用法律若干问题的解释, adopted February 23, 2018, by the Supreme People's court and February 11, 2018, by the Supreme People's Procuratorate, issued March 2, 2018, available at: http://www.spp.gov.cn/spp/zdgz/201803/t20180302_368570.shtml [May 15, 2019].
[245] *Jiang* 2018.
[246] The Interpretation of the Supreme People's Court on the Application of the "Administrative Litigation Law of the People's Republic of China" (最高人民法院关于适用《中华人民共和国行政诉讼法》的解释), article published April 3, 2018, by Zhejiang Zhengbang Law Firm (浙江振邦律师事务所), in: http://zjzhenbang.com/profession_collect/view/id/553.html [January 3, 2024].

Mongolia, Shaanxi, Beijing, Nanjing, Shanghai, Shenyang, and other places also submitted their opinions.[247]

The 2017 SPC Interpretation helps to develop China's theory of administrative law since it specifies legal terms, like administrative action or the right to sue, defines the legal relation between administrative reconsideration and litigation, and establishes a systematization of types of administrative lawsuits.[248] The SPC is still improving the ALL. It announced several new opinions and guidelines on its agenda. The administrative division of the SPC announced to issue and already issued further interpretations, such as its Provisions on Several Issues regarding the Application of Law in Hearing Administrative Cases of Compensation for Rural Collective Land Expropriation, the Provisions on Several Issues regarding the Application of Law in Hearing Cases of Administrative Compensation,[249] and the Provisions on Several Issues on the Application of Law in Cases of Hearing Civil Controversies during Administrative Litigation.[250] The Provisions regarding Several Issues in the Trial Procedures for Administrative Cases, the Provisions on Several Issues regarding the Review of Normative Documents below the Rules Level as part of Administrative Litigation, and the Provisions on Several Issues regarding the Application of Law in Hearing Administrative Cases Involving Higher Education were planned to be discussed in 2021 to react to the increasing numbers of lawsuits.[251]

III. Discussion about a special administrative court

Before the revision of the ALL, basic people's court were responsible for hearing first-instance cases. As explained in the first section, due to their embeddedness, administrative interference was common. Hence, legal scholars, practitioners and legislators had joined forces and discussed diverse ways to solve this problem with regard to guaranteeing justice.

At the beginning of the 2000s, a group of legal experts voted for the establishment of a special administrative court due to the special and technical nature of administrative disputes. In a paper, *MA Huaide* and his colleague *WANG Yibai* identified the general institutional

[247] *Jiang* 2018.
[248] *Zhang Zhiyuan* 2018.
[249] Provisions of the Supreme People's Court on Several Issues regarding the Application of Law in Hearing Cases of Administrative Compensation (最高人民法院关于审理行政赔偿案件若干问题的规定), issued December 6, 2021, in: Fashi (法释) 2022, No. 10, available at: http://gongbao.court.gov.cn/Details/d61ea0884885c0abacf2a2e5b36903.html [April 18, 2024].
[250] Plan of the Supreme People's Court on Issuing Judicial Interpretations in 2020 (最高人民法院 2020 年度司法解释立项计划), issued March 9, 2020, in Faban (法办) 2017; No. 71, available at: http://www.dffyw.com/fazhixinwen/lifa/202003/47436.html [November 6, 2020]; *Finder* 2020.
[251] SPC Plan for issuing judicial interpretation in 2020, supra n. 250; *Finder* 2020.

problems of the judicial system: [252] the "localization of justice" [253] and "judicial administerization"[254]. The courts were set up according to administrative regions which made it easy for the administration to interfere with the judiciary especially at the grassroots. The dependence of the court on the local government in terms of personnel and funding caused what *MA* and *WANG* called "localization of justice". Moreover, courts became some sort of executive branch of the local administration. Cases of non-litigation administrative lawsuits fueled "judicial administerization" because administrative agencies filed requests with the courts to enforce judgments that the plaintiffs refused to enforce.[255] To overcome these problems, the scholars suggested establishing an independent administrative court. This met resistance from the administration. They feared that they would lose their authority and administrative litigation would be an open door for "troublemakers" who just wanted to sue any decision without reason.[256] They also argued that the reform of the Court Organization Law was a precondition.

With drafting the amendment of the ALL in 2014, the discussion revived. In an interview in October 2014,[257] Professor *MA Huaide* repeated his arguments stating that Art. 41 of the Constitution (in the recent version of 2018) provided the legal foundations for establishing administrative courts. It stipulates that a citizen may report, appeal, and sue if any state organ or functionary violated their rights. In addition, the Organic Law of the People's court also allows the establishment of special courts. Professor *MA* also argued that an amendment of Art. 2 of Administrative Litigation Law was easy. It could determine that the people's courts set up a special administrative court to hear administrative cases instead of setting up an administrative division within the courts.[258] Since the legal basis in the laws, the legal expertise and the competent judicial personnel are all given, *MA* was convinced that the impact of establishing specialized courts would not be major in the current system.[259] Rather, he thought that by centrally administering the judiciary under the SPC, administrative courts could be managed in an effective way. Hence, a Chinese administrative court would still function as a separate court system under the SPC's centralized command rather than as a court system on its own.[260]

[252] *Ma, Wang* 2002, 75.
[253] In Chinese: 司法的地方化.
[254] In Chinese: 司法的行政化.
[255] *Ma, Wang* 2002, 76.
[256] *Gu* 2009.
[257] *Ma* 2014.
[258] *Ma* 2013, 8-11.
[259] Ibid.
[260] *Ma, Cheng, He* 2022, 42.

In addition, the transformation of the railway transportation courts into specialized administrative courts was not difficult as well.[261] Professor *MA* refers to a pilot program conducted by the SPC that integrated independent railway courts into the court system.[262] This transfer could be an opportunity for creating administrative courts which would save time and costs. In 2014, the SPC allowed the newly integrated railway transportation courts in Shanghai and Beijing to hear administrative cases.[263] These specialized courts are under the direct administration of the higher people's courts.

Moreover, proponents of a special administrative court also pointed out that the Standing Committee of the 12th NPC had already approved to establish special courts for hearing cases concerning intellectual property rights in Beijing, Shanghai, and Guangzhou in 2014.[264] Setting up an administrative court was reasonable with regard to the experience with intellectual property courts.

However, administrative resistance remained strong. As a compromise, the opposing groups agreed to a compromise. Instead of establishing a special administrative court, the jurisdiction of intermediate people's court would be expanded so that basic people's court were not responsible for all first-instance cases at all.[265] In addition, reformers also referred to a pilot program in Zhejiang Province where one city had introduced a model with jurisdiction across administrative districts in 2002 and another a model with centralized jurisdiction in 2007.[266]

From an outside perspective, a special administrative court would not only concentrate judicial expertise in administrative litigation but would also allow for a clearer separation from the administration. Thus, the introduction of an administrative court could have an impact on the relation between the judiciary and the administration with regard to giving the courts a stronger standpoint. Despite these obvious advantages, administrative objection must have been too strong so far. In the end the legislators opted for the amendment of the ALL of 1989 instead of reforming the whole court system. They considered adjustments to be a better way to improve

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[261] *Ma* 2019.
[262] *MA* refers to the Outline of the Fourth Five-Year Reform Program of the People's where it illustrated the process of transferring railway courts into the regular court system. See also: Outline of the Fourth Five-Year Reform Program of the People's Court, supra n. 198.
[263] *Ma, Cheng, He* 2022.
[264] Decision of the Standing Committee of the National People's Congress concerning Establishing Intellectual Property Courts in Beijing, Shanghai, Guangzhou, (全国人民代表大会常务委员会关于在北京、上海、广州设立知识产权法院的决定), issued August 31, 2014, available at: http://npc.people.com.cn/n/2014/0901/c14576-25581035.html [December 26, 2023] (henceforth: NPC Standing Committee Decision concerning Intellectual Property Courts).
[265] *Liang Fengyun* 2015, 132-136; *Ying Songnian* 2015 a, 39.
[266] *Liang Fengyun* 2015, 136; *Ying Songnian* 2015 a, 47-49.

administrative litigation, like reforming the jurisdiction system or expanding the intermediate people's courts' jurisdiction because these steps infringed the running system less than setting up an entirely new branch of courts. It remains open how they evaluate the performance of the integrated railway transportation courts in terms of their potential to function as special administrative courts.

IV. Analysis

This chapter illustrates the origins of the access to administrative litigation at the end of the imperial era. The experience with the *Pingzheng* court reveals that an idea about how to design administrative litigation as a channel to control administrative actions existed long before the ALL of 1989. The *Pingzhen* court operated in a one-party republican system and combined its supervisory function with dispute resolution in an innovative and practical way. However, the legal reformers of the Reform and Opening did not review the advantages of the *Pingzhen* court when promoting the Administrative Litigation Law in 1989.

To understand the institutional implications of the revision of the ALL, it is essential to look at the party-state. China is a centralized party-state led by the Chinese Communist Party as anchored in the Constitution.[267] Although the legislative, executive, and judicative powers are separate branches, the CCP does not include the separation of powers based on checks and balances as known in Western liberal democracies in this understanding. It rather considers the separation of powers only as a functional instrument and judicial independence not as an end in itself.[268] This functional separation has increased international attention on the performance of courts in authoritarian regimes like China.[269] In general, scholars of comparative law came to acknowledge that courts also "matter to political life" in authoritarian regimes.[270] Courts are not only the extended arm of an authoritarian ruler as which they were long perceived, but their role is much more complex. An effective judiciary supports the credibility of the authoritarian regime in the global economy and attracts international investors. With the help of administrative litigation, courts monitor administrative misbehavior and report administrative and political issues to the political leadership. Hence, courts function as a fire alarm to the top and simultaneously are a platform for solving disputes.[271] This twin role makes courts become

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[267] The Amendment to the Constitution 2018 reaffirmed that the CCP has the highest authority stating in Art. 1 of the Constitution that "[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China.", supra n. 19.
[268] *Henderson* 2010, 35; *Suli Zhu* 2010, 63; *Balme* 2010, 156.
[269] *Ginsburg, Chen (eds.)* 2009.
[270] *Ginsburg, Moustafa (eds.)* 2008, 2.
[271] *Peerenboom* 2009, 187.

a key player in the system and provides them with the opportunity to "self-empowerment".[272] For instance in China, the SPC has become more pro-active in areas where the state empowered it, such as in the realm of court reforms. The SPC's authority to issue judicial interpretations is a sign for its empowerment.[273] Regarding the revision of the ALL, the SPC's influence on the ALL lies in the definitions and guidelines as provided in the 2017 SPC Interpretation. So, the SPC enjoys a privileged position in the system. It can use this position for the benefits of the judiciary in terms of initiating reforms that strengthen the courts towards other state actors, like the administration.

1. The missing of an Administrative Procedure Law

The ALL constitutes the basis for China's administrative law system. In the course of the Reform and Opening Period, the NPC enacted other administrative laws that make administrative work more predictable and enable internal oversight by superiors to make officials comply with political goals. But a comprehensive national administrative procedure law is still missing in China.[274] So far, on the national level, special administrative procedures are only determined in the existing administrative laws. For instance, the Administrative Penalty Law prescribes a hearing and distinguishes between an ordinary and a simplified procedure.[275] At the local level, more than a dozen of provinces and cities have issued regulations on local administrative procedures, such as Hunan, Jiangsu, Shandong, and Inner Mongolia.[276] The courts located in these provinces can take the local regulations as reference. But courts in other provinces suffer from the lack of comprehensive (local and national) regulations on administrative procedure. Hence, a national administrative procedure law is still necessary to avoid courts, citizens and companies having to deal with different rules when contacting different state and provincial authorities. An Administrative Procedure Law constitutes an effective guidance to implement a uniform issuance of administrative actions and standardized administrative operations. Moreover, it can prevent administrative misconduct as long as the development of administrative procedure rules is a joint process. Hence, this could

[272] *Ye Meng* 2021, 112-113.
[273] *Ahl* 2019, 260, 265; and Art. 5 of the Provisions concerning Judicial Interpretation Work 2021, supra n. 48.
[274] *Fang Yu* 2004, 5 and *Wang Wanhua* 2015, 4, 13.
[275] Art. 33-43, Administrative Penalty Law of the People's Republic of China (中华人民共和国行政处罚法), Order No. 70 of the President, issued March 17, 1996; revised August 27, 2009; revised September 1, 2017; revised January 22, 2021 (henceforth: Administrative Penalty Law).
[276] *Ahl* 2022, 259. Also, Administrative Procedure Rules of Hunan Province (湖南省行政程序规定), issued April 9, 2008; Administrative Procedure Rules of Jiangsu Province (江苏省行政程序条例), issued July 29, 2022; Administrative Procedure Rules of Shandong Province (山东省行政程序规定), issued May 25, 2011; and Rules regarding major Administrative Decision-Making Procedures of Inner Mongolia (内蒙古自治区重大行政决策程序规定), issued December 30, 2020.

relieve courts in the handling of administrative disputes and ensure that administrative agency respect and protect the plaintiff's rights and interests effectively.

The academic advocacy for the codification of an administrative procedure law which dates back to the 1980s was strong. The consensus was that an administrative procedure law was necessary to combat corruption, to increase the credibility of administrative authorities among the people and to preserve social stability. The creation of a comprehensive legal codex would enhance administrative efficiency and protect the rights and interests of the people in a transparent process.[277] Ideally, an administration operating according to law follows the principle of administrative legality[278] and of administrative rationality[279].[280] Moreover, such a legal codex constraints administrative discretion and has an educational effect for both the administrative officials and the people who are usually not experienced in legal matters.[281] A Chinese administrative procedural law could be the foundation of an equivalent to what English jurists call *natural justice*,[282] the Americans named the *due process of law* and the German scholars think of as administrative legality.[283]

Although the legislation of a national administrative procedure law was included in the legislative plan of the NPC Standing Committee in 2013, it was categorized as a law whose "conditions are not ripe for legislative review and required further research".[284] The concern is that a comprehensive administrative procedure could cause negative effects for the work of administrative authorities that could operate less flexibly and that would face more costs.[285] As *HE Xin* indicated, "the state seems to have little incentive to develop administrative law as an alternative control mechanism" because alternative mechanisms exist, such as internal forms of administrative control like administrative reconsideration or monitoring by the procuratorate and the media.[286]

Scholars criticized that the NPC and the NPC Standing Committee are following the principle of "attaching importance to substance, disregarding procedure."[287] Without a national Administrative Procedure Law that standardizes administrative proceedings and decision-

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[277] *Heuser*, 2003, 72-73; *Ma* 2006, 301.
[278] In Chinese: 行政合法原则.
[279] In Chinese: 行政合理原则.
[280] *Wu Dexing* 1997, 86; *Ma* 2006, 302; *Heuser* 2003, 75-76.
[281] *Zhan* 2014, 147-148.
[282] *Endicott* 2018, 123-126.
[283] In German: Gesetzmäßigkeit der Verwaltung, see *Wu Dexing* 1997, 85; also: *Ma* 2006, 305.
[284] *Shen* 2018, 79.
[285] *He Xin* 2009,149.
[286] Ibid., 150.
[287] In Chinese: 重实体、轻程序, see: *Yan* 2016, 258.

making, inconsistent application of administrative laws will remain common business of courts. Thus, a national Administrative Procedure Law would also be an essential signal towards procedural administrative justice and the realization of the government's objective to establish an administration according to law at the local *and* at the national level. Eventually, in first five-year "Plan on Building the Rule of Law in China (2020-2025)", the CCP mentioned the drafting of an Administrative Procedure Law.[288]

2. Scholarly influence on the revision of the ALL

We saw that the revision of the ALL of 2014 is carried by scholarly initiative who fostered the process.[289] The state's openness to reforms and progress since 1978 made scholars, and administrative scholars in particular, gain hope that they could offer their specialized legal knowledge again after the Cultural Revolution.[290] They stressed that the ALL needed a standardized procedure to ensure a coherent application that would support the realization of an administration according to law, which *DENG Xiaoping* used to stress as an important feature for the party-state.[291] Since the reformers' first draft offered only cautious changes of the law and revealed a conservative attitude, administrative law scholars were even more eager to advice profound changes like the introduction of an administrative court. The main objective was to guarantee justice for aggrieved private parties. In contrast to the manifold supporters, bureaucrats regarded administrative litigation as a systematic threat to their work.[292] And the political leadership was also more hesitant and started with piecemeal legislation to gather experience first.

The amendment of the ALL was incremental and technical in nature intending to improve the process of dispute resolution and to supervise administrative conduct rather to signal a new step toward judicial independence as viewed in liberal democracies. But the revision clearly signals a maturing understanding of an administration according to law. As the following chapters illustrate, the ALL is still not in its final shape because its area of application is changing fast. To keep up with the socio-economic change, judicial reforms are essential to improve the quality of the laws, the professionalization of judges and the autonomy of courts for independent adjudication.[293]

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[288] Rule of Law Plan 2020-2025, supra n. 20.
[289] *Tanner* 1995, 48.
[290] *Potter* 1994, 273.
[291] *Ge* 2010, 111.
[292] *Li Yanfei* 2017, 69.
[293] *Sun, Fu* 2022, 1-22.

Chapter 3: China's pluralist control system for administrative actions

Pitman B. Potter once wrote in a foreword that "[…] the rule of law will have arrived when the administrative bureaucracy becomes just another actor in a position of relative parity with the subjects of its regulation."[294] The statement points to the currently still strong position of the administration in China compared to the courts and the people. The Chinese central government provides several internal and external means to control administrative actions besides adjudication in court.[295] For the Chinese people, administrative litigation used to be an unfamiliar dispute resolution channel, a new confrontational procedure giving it a controversial role.[296] Traditionally and culturally, people did not bring their conflicts with the state or administration to courts, but chose informal, more paternalistic channels, like mediation and petitioning.[297] This chapter studies China's pluralist control mechanisms as defined in the national strategy to modernize state governance and governance capacity.[298]

The leading question of this chapter is why Chinese rulers still rely on courts in addition to the numerous other ways of controlling administrative actions. People can file a complaint at the administrative agency at the next level that supervises the administrative agency issuing the alleged action. Chapter 5 will deal with this administrative reconsideration in detail. People can also file a petition (*Xinfang*) in special offices. Moreover, the Chinese system has internal control mechanisms as well, such as supervision by the National Supervisory Commission, a higher-level administrative agency (inspections) or by the procuratorate. Alternative dispute resolution in form of mediation is possible as well. If citizens choose mediation to solve their administrative dispute, court can conduct it as part of the administrative litigation procedure as well.

It is essential to compare the different channels with regard to their function and institutional organization to see whether the revised ALL succeeded in strengthening court trials as a method of control. Here, we assume that different control methods serve different means and that the more channels exist, the more flexible the system can react. Their common aim is to allow the central government to pull the lead when deemed necessary. As a consequence, this avoids a relative parity of actors.

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[294] *Corne*, 1997, Foreword, xii.
[295] *Fang Yu* 2004, 5.
[296] *Zhang Taisu* 2009.
[297] *Wang, Chen* 2020, 172; *Zhang Taisu 2009*, 5.
[298] *Wang, Chen* 2020, 175.

I. Internal control of administrative actions

We distinguish internal from external channels of control. Internal channels include internal supervision within the administrative organ itself and inspection by higher administrative organs and monitoring by the procuratorate as discussed in Chapter 3. Whereas internal channels of control start with a reporting process to superiors, external channels of control need private parties for their initiation, for instance, in form of filing petitions, mediation requests, or complaints. Most of them serve as dispute resolution methods. That means that they are ex-post methods that sanction a misconduct. Moreover, there are hybrid types, such as administrative reconsideration. Citizens' requests for reconsideration at the higher-level administrative agency is semi-internal because a citizen initiates it, but the higher administrative agency conducts internally within the apparatus. It includes a hearing of the stakeholders by the reconsideration agency. Moreover, the citizen can file a complaint at court against the reconsideration decision. A court can also conduct mediation, which is the classical external alternative dispute resolution channel, as a part of an administrative litigation trial. The following section looks at the function of internal supervision mechanisms to control administrative actions. It analyzes the methods starting from the central level and going down to the basic level of administration.

The Administrative Supervision Law[299] regulated the supervisory work of the Ministry of Supervision[300] and defined the procedures for internal hierarchical supervision until 2018. After that, the Ministry was merged with party organs to the National Supervisory Commission.[301] The Ministry of Supervision used to supervise departments under the State Council, public servants working in such departments, other persons appointed by the State Council and the departments under it, the governments of provinces, autonomous regions and municipalities directly under the central government, and the leading members of such governments.[302] Its main functions consisted in supervising the law enforcement and efficiency of the supervisory objects.[303] In other words, their jurisdiction focused on anti-corruption fight and sanctioning violations such as political malpractice of officials and administrative

[299] Administrative Supervision Law of the People's Republic of China (中华人民共和国行政监察法), Order No. 31 of the President, issued May 9, 1997; revised June 25, 2010; now expired (henceforth: Administrative Supervision Law).
[300] In Chinese: 检察部.
[301] The Ministry of Supervision was established in 1949 as the People's Supervisory Commission and renamed in 1954 to Ministry of Supervision. In 2018, it was dissolved and entirely merged with the CCP's Discipline and Inspection Commission into the National Supervision Commission (in Chinese: 国家监察委员会) that was added to the Constitution during the 2018 amendment, Art. 123-127. See also: *Thomson* 2017.
[302] Art. 15, Administrative Supervision Law, supra n. 299.
[303] Art. 18, Administrative Supervision Law, supra n. 299.

misconduct like bureaucratism or abuse of power.[304] Before it was merged with the CCP's Discipline and Inspection Commission (CCDI), the Ministry of Supervision shared its supervisory powers with other state organs such as the party's CCDI or the people's procuratorate.[305]

Another example of internal administrative supervision is the appraisal and inspection system.[306] It is a type of ex-post monitoring. Higher authorities regularly send inspection teams down to the subordinate bureaus and evaluate their performance in a particular administrative area.[307] Inspections shall uncover misbehavior and to praise excellent work. For instance, the so-called "one-item veto" is an instrument for a superior authority to reject the promotion of government officials in a lower-level department in case they did not meet a key target at the time of inspection.[308] This type of monitoring originated from practices in late imperial China under the Censorate.[309] Another prominent example is the *Xinfang* responsibility system that the next section below illustrates.

The above-described internal channel for administrative control mainly keeps internal administrative problems away from the public. In contrast to administrative litigation, the internal channel follows a top-down mechanism where the higher-level authority controls their subordinate organs that must comply. If they do not, they might face unfavorable consequences concerning budget or personnel.

As will Chapter 7 will highlight, the revision of the ALL transferred rights to sanction to the courts. They include for instance the publication of the name of the responsible administrative person who did not appear in court for the hearing or sanction for violating the court procedure. These measures demand compliance but they have a limited deterrent effect compared to the possibilities a higher-level administrative agency has. Ideally, it is evident that an independent administrative court, which does not depend on any higher-level administrative authority, could curb administrative opposition more effectively. Whereas internal administrative supervision remains closed, a public hearing in an independent administrative court would put more pressure on the administration as well.

[304] *Thomson* 2017, 447, 451.
[305] Ibid., 451-452.
[306] In Chinese: 评议考核机制.
[307] *Zhou, Ai, Lian* 2012, 82-83, 86.
[308] Ibid, 87.
[309] *Ginsburg* 2008, 61.

II. Alternative channels for controlling administrative actions

Internal administrative procedures usually remain locked from public scrutiny, which the ALL confirms in its scope of unacceptable cases in Art. 13 of the ALL of 2014 and Art. 1 of the 2017 SPC Interpretation. The SPC determines to exclude informal and supervisory actions from the scope because they do not constitute obligations for the counterparty. Therefore, the people might easily assume that superior officials protect their subordinates from outside pressures[310] when sensitive matters are concerned that could lead to a social outburst. To satisfy the people's demand for participation, the government added control channels that externals initiate and that shall signal impartiality as well as the appreciation of public participation and public opinion.

The following sections introduce two other alternative channels with historical significance for China that are related to controlling administrative actions. The following sections investigate how the two alternative channels complement administrative litigation and in what way they control administrative actions effectively. Firstly, the letters and visit offices are popular addresses for citizens to file complaints. In addition, mediation is the second channel chosen for this analysis. During the ALL reform, mediation received more attention for solving disputes in administrative trials as well. Its extended role in administrative litigation is the focus of this section. Both ways are less official compared to a trial in court. But similar to administrative litigation, they aim at holding the administration liable for their actions.

1. Letters and Visits

The Letters and Visits System (*Xinfang* system)[311] is an ex-post supervision measure that allows people to submit letters, phone calls, faxes, emails or just to visit an administrative agency to express their opinions, proposals or accusations.[312] From the perspective of the political elite, it is an essential tool to gather information about the needs and expectations of the people.[313] In what way the people's concerns vary over time, is important for the rulers to know so that they can react accordingly. For instance, after 1978, concerns dealt with appeals to overturn political decisions made during the Cultural Revolution, whereas in the course of the proceeding economic modernization, people expressed their dissatisfaction with corruption,

[310] The phenomenon of covering-up is called in Chinese: 官官相护.

[311] In Chinese: 信访制度.

[312] Art. 2, Regulations of Letters and Visits (信访条例), issued October 28, 1995, by the Order of the State Council No. 185; revised May 1, 2005, by the Order of the State Council No. 431 (henceforth: *Xinfang* Regulations).

[313] *Luehrmann* 2003, 847-848.

taxation, or land expropriation.[314] Hence, petitioning functions as a fire alarm revealing principal-agent problems in the relationship of higher authorities and their subordinates.[315] Simultaneously, the *Xinfang* system should protect the rights and interests of the people and guarantee social stability.[316] As a multipurpose tool, petitioning serves as an institutionalized form of participation that operates at the intersection of law and politics.[317]

1.1. Origin of the petition system

In the Chinese administrative law system, petitioning has a long historical record.[318] The Communists led by *MAO Zedong* adopted the *Xinfang* system after the founding of the PRC in 1949 for three reasons: Firstly, it corresponded with their mass line concept of keeping contact with the masses. Secondly, and related to the first reason, it offered a way "to unify peasants and workers as one mass" and thirdly, it helped to consolidate the Communist leadership which would gather opinions, questions, and demands from the people.[319] In 1951, the Government Administration Council determined that petition offices were to be established at all levels including the Party Central Committee, the State Council, the NPC, the SPC and the Supreme People's Procuratorate (SPP).[320] During the Cultural Revolution, like administrative litigation, complaint work ceased because of the turmoil and was revived in 1979.[321] In 1995, the State Council promulgated the Regulations on Letters and Visits[322] which fostered the institutionalization of the *Xinfang* system. Similar to the resolution issued in 1951, the *Xinfang* Regulations of 1995 determined to provide *Xinfang* offices or special *Xinfang* personnel at each administrative level.[323] As a result, numerous rules, and regulations about *Xinfang* work were issued at different administrative levels. Moreover, in 2000, the Central Committee of the CCP and the State Council merged their *Xinfang* offices to the State Bureau of Letters and Visits.[324] In general, both national and provincial *Xinfang* offices are "joint Party-government organs"

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[314] *Luehrmann* 2003, 855-858.
[315] *Liebman* 2006, 117, 157.
[316] Ibid., 118; Art. 1., *Xinfang* Regulations.
[317] Ibid., 106, 119; *Luehrmann* 2003, 847.
[318] Old folk tales told stories about how innocent persons went "petitioning the emperor" because they suffered a bureaucratic decision they did not accept. For the purpose of controlling administrative decisions, surveillance agencies such as the Censorate (in Chinese: 督察院) and the offices of scrutiny for personnel at the lower levels monitored the behavior of the emperor and his officials. The Censorate was the people's main address for appeals. They went long paths to Beijing to beat a special drum that hung outside its door. See: *Liebman* 2006, 117, 157; *Li, Liu, O'Brien* 2012, 315; *Hucker* 1958, 48-56.
[319] *Luehrmann* 2003, 850; *Liebman* 2006, 115.
[320] *Li, Liu, O'Brien* 2012, 315.
[321] *Luehrmann* 2003, 852-853.
[322] *Xinfang* Regulations, supra n. 312.
[323] Art. 6, *Xinfang* Regulations.
[324] *Li, Liu, O'Brien* 2012, 316.

with several subdivisions, for example, one division handling visits, one handling letters and one responsible for research about trends and laws or for finance.[325]

1.2. *Xinfang* regulations and offices

In 2005, the State Council promulgated a revision of the *Xinfang* Regulations which intended to clarify institutional overlaps and which also broadened the competences of *Xinfang* offices adding measures of "soft" intervention which were absent in the former version of 1995.[326] The *Xinfang* offices should make corrective proposals, for instance (1) to improve an administrative action or urge the responsible administrative organ to act after the time limit expired without response, (2) in case the response is not in accordance with the relevant provision, (3) in case the procedure is violated, responsibilities were shifted or action delayed, (4) in case the prescribed suggestions are not enforced.[327] Moreover, the *Xinfang* Regulations of 2005 stipulate that the offices have to implement the so-called *Xinfang* responsibility system[328] which is used as an internal tool to supervise and reward the performance of *Xinfang* officials or to punish administrative misconduct. For instance, *Xinfang* officials are liable for unfavorable mass petitions that threat social stability.[329]

Xinfang work focuses more on social stability than making legally correct decisions. That is why the purpose of handling complaint letters and visits mainly lies in reaching the petitioner's acceptance.[330] The *Xinfang* Regulations of 2005 reflects this in the finality of decisions: According to Art. 34 and 35 of the *Xinfang* Regulations of 2005, a petitioner who does not accept a settlement can file a request for reexamination[331] at the next higher administrative level. If the reexamination decision is still not to their satisfaction, they can again file a request for review[332] at the level above the organ of administrative reexamination. But they cannot file a complaint several times based on the same facts and reasons. Nevertheless, the regulations allow some kind of continued petitioning since the requirements for reexamination and review are low, and if the petitioners change the reasons for their disagreement, it suffices for filing requests anew.[333] *Xinfang* offices have to accept a broad scope of petitions, for instance, suggestions, opinions, complaints, and requests or

[325] *Liebman* 2006, 146.
[326] Ibid., 135.
[327] Art. 36, *Xinfang* Regulations.
[328] In Chinese: 信访工作责任制.
[329] *Liebman* 2006, 151-154.
[330] Ibid., 129, 147.
[331] In Chinese: 复查.
[332] In Chinese: 复核.
[333] *Liebman* 2006, 130-131.

dissatisfaction with administrative decisions.[334] Their work is determined by legal institutions such as time limits and hearings, as well as judicial principles such as confidentiality, truthfulness, and impartiality.[335]

Xinfang offices were set up in all major state and party institutions, among which are the State Council, the NPC, the courts, and the procuratorates. Twice, in 1987 and 1997, the SPC transformed its *Xinfang* offices into filing divisions[336] which received cases and decided whether to file the case or not.[337] Hence, these filing divisions were in the crucial position of coordinating and transmitting the received petitions.

As it becomes clear in the chart, petitioning used to be more popular in the early 2000s than in the mid-2000s. *Xinfang* was clearly the option preferred to administrative litigation. Before 2012, the total number of petitions always outnumbered the total number of first instance administrative litigation cases,[338] even if one adds administrative second instance cases. This development illustrates two aspects: firstly, in the eyes of the people, petitioning against administrative decisions seemed to be more helpful than administrative litigation. Secondly, from the perspective of the legislators, the Administrative Litigation Law fell short of expectations.[339]

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[334] Art. 14, *Xinfang* Regulations.

[335] Art. 21 and 33 about time limit of handling complaints, Art. 31 about hearings, Art. 23 about judicial principles, *Xinfang* Regulations.

[336] In Chinese: 立案庭.

[337] *Liebman* 2006, 137; *Pelzer* 2015, 374.

[338] Presented are total numbers of cases handled by courts, see China Law Yearbook (中国法律年鉴) 2000 – 2012, China Law Yearbook Press, accessed via: China Data Insights, available at: http://cdi-1cnki-1net-10097dedy04c6.erf.sbb.spk-berlin.de/Titles/SingleNJ?NJCode=N2019030064 [January 3, 2024].

[339] *Liebman* 2006, 162.

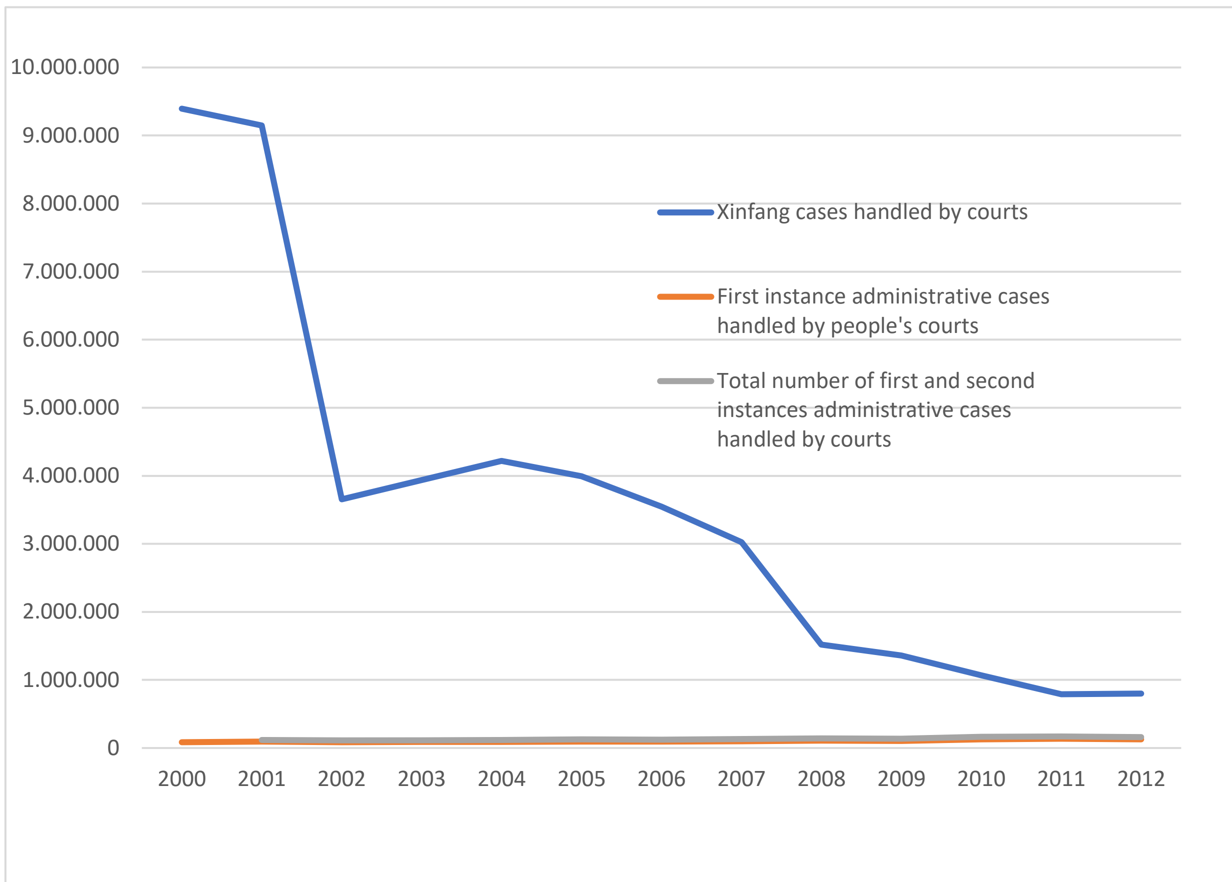

Figure 1 Development of Xinfang cases handled by courts and procuratorates nationwide.

The up-turn in the numbers of petitions between 2002 and 2006 is the result of the populist politics during the *HU Jintao – WEN Jiabao* era who showed themselves receptive to public participation. However, the government soon lost control due to the shortcomings of the *Xinfang* system. The system suffered from a complicated registration process, from the attempts of agencies to avoid or sabotage petitions or simply their inactions.[340] Frustrated people joined together for collective actions which were met by the government's attempt to regain control:[341] The State Council revised the *Xinfang* regulations in 2005 which now authorize the police, after warning, to crackdown collective actions in case petitioners jeopardize state, social or collective interests or the legitimate rights of other citizens.[342] Consequently, the political tightening at the national and local levels caused a decrease in petitions starting in 2002 as mapped in the chart. Overall, the way the courts and the political system incorporated the *Xinfang* system reveals uneasiness because functions overlap and cause further internal problems demanding more control on the *Xinfang* officials' work.

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[340] *Li, Liu, O'Brien* 2012, 320-323; 326-327.
[341] *Li, O'Brien* 2008; *Hurst, Liu, Liu, Tao* 2014.
[342] Art. 20 and 47, *Xinfang* Regulations.

2. Mediation

Because mediation carries a special political, historical, and cultural meaning for China, it has a special role in and outside the litigation procedure. Confucianism influenced the thinking of the ancient public officials and constituted the basis for China's non-confrontational tradition.[343] Mediation received social acceptance because it restored social relationships, was accessible, low in cost and focused on the personal facts of the case.[344] But after the Cultural Revolution and the re-establishment of law and order in the 1980s, the legislators focused on formal channels for dispute resolution at court. Mediation remained dominant only at the remote grassroots. The enactment of the Criminal Procedure Law in 1979 and the Administrative Litigation Law in 1990 confirmed this trend. The political leaders thought that formalized trials enhanced trust in the government and fostered economic growth.[345] Efficiency and justice were the main objectives provided by formal proceedings and legal reasoning.

In the mid-2000s, the SPC's Opinions on Further Displaying the Positive Role of Litigation Mediation[346] resulted from increasing social tensions. People brought their dissatisfaction and grievances about the corruptive government, high taxation or land requisitions and demolitions to authorities in Beijing.[347] The leadership started promoting the use of mediation, like the Secretary of the Political-Legal Committee, *ZHOU Yongkang*, explained that "small issues were not to leave the village, big issues were not to leave the county and contradictions should not be handed over to higher authorities".[348]

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343 Confucius and his disciples preached the importance of harmony (大同) and condemned litigation. So, mediation became a useful tool to "privatize and individualize social problems," although critics stated that mediation was undermining the establishment of general rules for society. Traditional Chinese mediation was a three-tier system distinguishing court mediation, societal mediation, and non-litigious societal mediation. Societal mediation involved grassroots community organizations as mediators and was semi-official. In contrast to this, court mediation led by the magistrate was a formal procedure. The outcome of the people's request was not predictable because the magistrate was in the powerful position to decide to accept, decline or transfer a complaint. This option was the least favourable because the people who seeked the magistrate for help did not only travel a long way to get to the city but also took the risk that their request remained unheard or rejected. For more details on the historical development of mediation in China, see: *Zeng* 2009; *Gerke* 1992; *Ng, He* 2014, 285-312; *Fu, Cullen*, 2011 a, 27, 38.

344 *Fu, Cullen* 2011 a, 26.

345 *Waye, Xiong* 2011, 10, 24; *Minzner* 2011, 941-942; Criminal Procedure Law of the People's Republic of China (中华人民共和国刑事诉讼法), Order No. 10 of the President, issued on July 1, 1979; revised March 17, 1996; revised March 14, 2012, revised October 26, 2018 (henceforth: Criminal Procedure Law).

346 Several Opinions of the Supreme People's Court on Further Displaying the Positive Role of Litigation Mediation in the Building of a Socialist Harmonious Society (最高人民法院关于进一步发挥诉讼调解在构建社会主义和谐社会中积极作用的若干意见), issued January 3, 2007, in: Fafa (法发) 2007, No. 9 (henceforth: SPC Opinions on Further Displaying the Positive Role of Litigation Mediation).

347 *Palmer* 2014, 116.

348 In Chinese: 小事不出村、大事不出乡(镇)、矛盾不上交. *ZHOU* further underlined the importance of the "people as the basis" and the benefit of "grand mediation" (in Chinese: 大调解). "Grand mediation" started in Jiangsu Province in 2003 and described the integration of civil, administrative, and judicial mediation. Its primary

Before the ALL reform, the SPC had already begun to support judicial mediation actively. It issued its opinions on the positive role of mediation in 2007.[349] The SPC considered court mediation as "an important way for the people's courts to exercise their trial power and an important component of harmonious jurisdiction".[350] However, the ALL of 1989 prohibited mediation in Art. 50. In administrative litigation, the plaintiffs and defendants were clearly not equally powerful as in civil litigation. Nevertheless, apart from civil cases, the SPC also referred to the cases concerning administrative actions in which the people's courts may try to persuade the parties to solve their dispute by means of conciliation. The court's main obligation was to ensure that the mediation process was fair and voluntary. It shall examine the outcome and content of the mediation agreement to ensure that it does not violate any other laws or regulations.[351] In 2010, the government established people's mediation committees as self-organized entities that exist besides the courts. It enacted the Law on People's Mediation in 2010 to improve the people's mediation system, regulate the people's mediation activities, and maintain social harmony and stability.[352]

2.1. Mediation in administrative litigation before the revision of the ALL

As said before, Art. 50 of the ALL of 1989 forbids mediation in administrative litigation. Nevertheless, courts still applied mediation in administrative litigation which describes the procedure in which the parties, namely the plaintiff and the defendant agency, conclude an agreement on a voluntary basis under the auspices of the people's court. As a litigation action, the signed agreement becomes legally binding.[353] Mediation at court was usually not voluntary since judges, facing performance evaluation, pressured litigants to approve it. Mediation was more time-consuming than adjudication because judges themselves used to spend much time collecting evidence.[354] However, as a benefit, they could point to an official agreement of the

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purpose lay in resolving disputes at the grassroots level. Mediation teams consisting of representatives of the local Party committees, people's congresses, people's consultative conferences, and administrative agencies go to the grassroot levels. The mechanism worked like a fire alarm for the Party-state that got warnings about social tensions, which might harm its legitimacy. See: Deeply Push Forward the Resolution of Social Conflicts, Social Management Innovation, Fair and Honest Enforcement, as the Guarantee for a Good and Fast Development of a More Powerful Rule of Law for the Economy and Society (深入推进社会矛盾化解、社会管理创新、公正廉洁执法，为经济社会又好又快发展提供更加有力的法治保障), speech delivered by *ZHOU Yongkang (周永康)* on December 18, 2009, in: Seeking Truth (求是) 2010, No. 4, at: http://newspaper.jcrb.com/html/2010-02/20/content_37661.htm [December 29, 2023]; *Hu, Zeng* 2015, 45, 51; *Gu* 2015, 78.

349 SPC Opinions on further displaying the positive roles of litigation mediation 2007, supra n. 346.

350 Ibid., at (2).

351 Ibid., at (8) and (14).

352 People's Mediation Law of the People's Republic of China (中华人民共和国人民调解法), Order No. 34 of the President, issued August 28, 2010 (henceforth: People's Mediation Law); Art. 1.

353 *Huang* 2008, 110.

354 *Fu, Cullen* 2011 a, 44.

parties who were responsible for the outcome themselves.[355] Mediation also offered opportunities for *ex parte* contact between judges and litigants.

The opinion of the opponents of mediation predominated the process of enacting the ALL in 1989. The SPC and the Intermediate People's Courts in Shanghai and Shenzhen stressed that in administrative litigation the disputes differed from civil litigation in their substance. In administrative litigation, a state agency, whose actions the law always binds, is the defendant. Mediating the dispute between an administrative agency and a citizen might affect the rights and interests of a third party. Moreover, the administration is just implementing national laws. These rights and interests can neither be an object of bargain - because a representative of the defendant agency does not possess the authority to make concessions in the name of the state - nor is the administration allowed to punish itself voluntarily or to be punished at all.[356] At the same time, using mediation in administrative litigation would also mean that the judiciary renounces its supervisory rights and duties as stipulated in Art. 1 of the ALL of 1989. The judge should decide whether the impugned administrative action was lawful according to the facts; they should guarantee public rights and interests and must conclude the examination with an official and professional judgment.[357]

In practice, however, the parties and the judges did not comply with the ban of mediation.[358] They preferred mediation as an informal instrument because courts were under pressure to meet the political quotas for mediating cases.[359] As *HUANG Xuexian* points out, the use of mediation in administrative litigation was "an open secret".[360] To avoid an obvious violation of Art. 50 of the ALL of 1989 and to meet political objectives, the judges called it "settlement"[361] or "coordination".[362] During litigation, the parties silently agreed with a settlement, which in its essence was a mediation without an official mediation agreement.[363] The defendant agency agreed to change or revoke the impugned administrative action and in turn, the plaintiff withdrew the complaint. As permitted by Art. 51 of the ALL of 1989, if prior to announcing the judgment or ruling, the plaintiff applies for withdrawal of the case or the

[355] *Fu, Cullen* 2011 a, 30-31.
[356] In Chinese: 公权力不得处分, see: *Yang* 2008, 42; *Palmer* 2010, 260; *Jie* 2012, 2.
[357] *He Haibo* 2016, Chapter XII Handling Methods Beyond Judgment, Section 1 Mediation; *Liang Fengyun* 2015, 336; *Luo* 2011, 158.
[358] *Minzner* 2011, 943-945; *Palmer* 2006, 182-183; *Palmer* 2010, 262-264; *Palmer* 2014, 111-117.
[359] *Minzner* 2011, 943-946; *Liebman* 2014, 99; *Pei* 1997, 843-844.
[360] *Huang* 2007 b, 43.
[361] In Chinese: 和解.
[362] In Chinese: 协调. *Yang* 2008, 41; *Jie* 2012, 22-23; *Huang* 2008, 110.
[363] In Chinese: 没有调解书的调解. See: *Palmer* 2010, 264; *Jie* 2012, 22; *He Haibo* 2016, Chapter XII Handling Methods Beyond Judgment, Section 1, Mediation.

defendant alters its specific administrative act and the applicant agrees and applies for withdrawal of the case, the people's court shall decide to permit it. This was the appropriate cover for the judge, the plaintiffs, and the defendants to use mediation informally. Since the agreement was not an order of the court and not binding for the parties, notarization was necessary. In particular, the defendant agency urged the plaintiff to notarize the agreement to finalize it and prevent them from further complaining.[364] According to the report of the SPC, the withdrawal rate between 2000 and 2009 accounted for about 30 to 42% in the entire country.[365]

To guarantee a proper settlement of administrative disputes and to examine the reasons for withdrawal, the SPC released "Provisions on handling withdrawals of administrative suits" in 2008 (Provisions on Withdrawal).[366] It declares that the people's court can make suggestions to the defendant for changing an illegal or improper action before announcing the judgment, according to Art. 3 of the Provisions on Withdrawal. The agency changes it substantially when changing the main facts and evidence, changing the statutory basis which effects the substance of the case or revoking wholly or partly the results of the action. Art. 4 of the Provisions on Withdrawal provides interpretation guidelines to assess when the defendant has changed the concrete administrative action, i.e., when (1) the defendant performs according to the plaintiff's request, (2) takes remedial measures or pays compensation or (3) recognizes in writing a settlement signed by the party and a third party. In one of these cases, the court interprets the defendant agency's action as a change of the original administrative action. Art. 2 of the Provisions on Withdrawal determines that the people's court enters a ruling to approve the requested withdrawal when they are sure that (1) it is the true intention of the plaintiff, (2) the defendant agency changed the action which does not violate any other prohibitive provisions of the laws and administrative regulations or damages public interests and is consistent with its functions, (3) the agency notifies the court in writing about the decision, and (4) any interest of a third party will not be harmed. Art. 2 and 4 of the Provisions on Withdrawals provide procedural safeguards for the plaintiff. They also underscore that the laws bind the defendant agency when changing the impugned action. The court has to review arbitrary decisions and makes a ruling about the withdrawal request (Art. 5) in which it states the content of the changes

[364] *Palmer* 2006, 183; *Palmer* 2010, 265; *Palmer* 2014, 112.
[365] *Jie* 2012, 4.
[366] Provisions of the Supreme People's Court on Several Issues concerning the Withdrawal of an Administrative Lawsuit (最高人民法院关于行政诉讼撤诉)若干问题的规定), issued January 14, 2008, in: Fashi (法释) 2008, No. 2.

and the performance. It declares that the original administrative action shall no longer be enforced (Art. 6). This ruling is the substitute for an official mediation agreement.

Moreover, the Withdrawal Provisions do not mention mediation explicitly; instead, they refer to settlement as in item (3) of Art. 4. Such indirect language underscores how important a peaceful and substantive resolution of disputes was in the backdrop of the mediation ban in administrative litigation. As Art. 1 stipulates, the court can make suggestions to the defendant agency before making a judgment or ruling which in a broader sense can be a form of pre-trial mediation. Hence, the ambiguous language serves as a protection of the courts to avoid any accusation of violating the ban of mediation in the ALL of 1989.[367] At the same time, judges took advantage of the leeway since the ALL of 1989 did not conceptualize pre-trial issues in administrative litigation in detail.

In addition, the court's active support of withdrawal requests and settlement is due to the pressure that judges faced to meet political targets such as litigation quotas. Their promotion depended on their performance.[368] Secondly, from their perspective, integrating mediation into trial put them in a powerful position to pressure the parties to comply. This is why *Ng* and *He* call it a "judge's show". The judge directs the order of procedure and can urge the parties to settle.[369] There is the risk that the proceedings become arbitrary because urging can turn into coercion of the parties to agree to mediation.[370] The judge can mix all facts up to confuse the parties, use incentives to convince the parties for mediation or protract the formal procedure. In these events, the plaintiffs are the most vulnerable and weak.[371] The main problem is that the same judge acts as both mediator and adjudicator. Hence, mediation becomes more "evaluative and directive" at the expense of confidentiality that mediation shall respect and protect in contrast to adjudication. Hence, many scholars demand a separation of the judge's role as the mediator and adjudicator.[372]

2.2. Mediation in administrative litigation in the revised ALL

At the end of the 1980s, the Intermediate People's Court in Wuhan belonged to one of the leading courts that had been using administrative mediation since 1987. It stressed that mediation was beneficial for a kind of rapprochement of the people and the state.[373] During the

[367] *Palmer* 2010, 263.
[368] *Waye, Xiong* 2011; *Minzner* 2011, 955-957.
[369] *Ng, He* 2014, 296-297; *Palmer* 2010, 266.
[370] *Palmer* 2010, 266.
[371] *Palmer* 2006, 184.
[372] *Waye, Xiong* 2011, 21-22; *Ng, He* 2014, 297.
[373] *Palmer* 2010, 259.

ALL-revision process, proponents of mediation raised their voice.[374] They argued that the socio-economic situation and the operations of administrative agencies have changed and matured so that confrontational adjudication is not necessary anymore. Instead of reviewing the legality of the administrative actions, substantive justice is more important which mediation can achieve in a more effective way. The emergence of administrative contracts for public-private partnerships fuses civil and administrative disputes which are difficult to handle only in administrative litigation.[375] Mediation is also less expensive. In addition to these procedural and substantial benefits, others also argued that it corresponds with China's history of mediation.[376] International examples from Germany, Taiwan or Japan illustrate that mediation is compatible with administrative litigation. Art. 106 of the German Code of Administrative Court Procedure declares that in order to deal with the legal dispute completely or partly, those concerned may reach a settlement for the record of the court or of the commissioned or requested judge as far as they are able to dispose of the subject-matter of the settlement. Those concerned can conclude a judicial settlement by accepting a proposal from the court, of the presiding judge or of the reporting judge issued in the form of an order, in writing vis-à-vis the court. The German way of integrating mediation in administrative litigation shows that the judges occupy an initiative-taking role during the settlement procedure. German administrative law judges can either watch the parties finding an agreement or submit a proposal. In China, judges are also proactively involved in the mediation procedure during (administrative) litigation. They clearly organize the process and the outcome.[377]

As a consequence of the political debates, the SPC had become more supportive of mediation in administrative litigation since 2007. The process of revising the ALL reflects upon these trends as well. In the first deliberation, the reformers allowed courts to use mediation in cases involving compensation or indemnity. In the second and final deliberation, some members of the Standing Committee of the State Council succeeded in including cases of discretionary power in the scope of cases eligible for mediation.[378] Eventually, Art. 60 of the ALL of 2014 reads: "In the trial of an administrative case, a people's court may not conduct mediation, unless the case involves administrative compensation or indemnity or involves an administrative agency's exercise of discretionary power prescribed by any law or regulation." The second

[374] See for instance, *Jie* 2012.
[375] *Palmer* 2014, 114.
[376] *Luo* 2011, 159.
[377] *Jie* 2012, 20.
[378] *Liang Fengyun* 2015, 337.

paragraph highlights the mediation principles, namely "free will, legality, without detriment to the national interest, public interest, or lawful rights and interest of others."

The general ban of mediation in administrative litigation is still valid, but the list of exceptions is longer. The reformers maintained the ban because mediation is not appropriate in all kinds of administrative litigation cases. In addition, bargaining between the administrative agency and the plaintiff over the legality of the impugned administrative action is not objective because there is no gray zone between legal and illegal actions. Hence, mediation would "smooth things over" at the price of legal principles and procedure.[379]

As indicated above, leeway for using mediation exists for cases concerning compensation and indemnity. The extension of cases appropriate for mediation solves the inherent contradiction between the general ban of mediation as declared in Art. 50 of the ALL of 1989, and the exception that mediation is possible in cases concerning compensation, as stipulated in the third paragraph of Art. 67 of the ALL of 1989. Administrative compensation refers to the right to compensation if an administrative organ or its functionaries, in exercising their administrative functions and powers, infringe upon personal and property rights, as defined in Art. 3 and 4 of the State Compensation Law.[380] Art. 13 of the State Compensation Law stipulated that for determining the manner, items and amount of administrative compensation, the organ obligated to make compensation may consult with the claimant. Evidently, consultation allows discretion and bargaining between the two parties. As a consequence, courts can mediate administrative cases brought to them.[381] The administration pays indemnity in cases where the state or administrative agencies for the purpose of public interest cause damage to the personal and property rights of others. For example, Art. 10 of the Constitution, defines urban land as state property, rural and suburban land as property of the collectives. However, according to the third paragraph, the state can expropriate or take over land for public interests. But it must pay indemnity. Similarly, the Administrative License Law protects administrative licenses provided to the recipients according to its Art. 8. [382] Nevertheless, the public interest may demand the administration to modify or withdraw a license. In this event, it has to pay indemnity, as determined in the second paragraph of Art. 8.

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[379] *Liang Fengyun* 2015, 337-338; *Yang* 2008, 41.

[380] State Compensation Law of the People's Republic of China (中华人民共和国国家赔偿法), Order No. 68 of the President, issued May 12, 1994; revised April 29, 2010; revised October 26, 2012 (henceforth: State Compensation Law).

[381] *Xin Chunying* 2015, 161.

[382] Administrative License Law of the People s Republic of China (中华人民共和国行政许可法), Order No. 7 of the President, issued August 27, 2003; effective July 1, 2004; revised April 23, 2019 (henceforth: Administrative License Law).

With reference to Art. 3 of the corresponding SPC Provisions concerning the Trial of Compensation Cases from 1997, Art. 16 of the Provisions of the SPC on several issues concerning the trial of administrative licensing cases declares that the courts may use mediation if the parties agree to it.[383]

The third category of cases allowed for mediation involves discretionary power. Administrative authorities need discretion to deal with the numerous regulations created in and for different policy areas.[384] Discretion can be bound or free. In the case of bound discretion, the law declares the legal consequence based on the facts of the case. The enforcing administrative officials are not supposed to judge independently.[385] In contrast to this, free discretion means that the administrative officials decide a case according to their own factual judgment and can choose from a range of legally prescribed consequences.[386] The corresponding laws declare what kind of administrative discretion the administrative agency can exercise.[387] But this does not prevent the administration from conducting arbitrary or unreasonable actions.

The Public Security Administrative Punishment Law is an example for free discretion. It defines in the third chapter (Art. 23 to Art. 76) those actions that impair public order, public safety, infringe upon personal and property rights and impair social administration. It also prescribes the punishments for such unlawful behavior. The provisions provide a range of options the punishing public security organ can select from. This refers to a fine with a minimum or maximum amount of money or to a detention with a minimum or maximum of days. The enforcing official can decide within the range according to the circumstances. The section on the scope of review highlighted that the ALL restricts the depth of review to the legality of the administrative action. Its appropriateness or rationality usually touch upon administrative discretionary considerations which judges do not review.[388] Using mediation in such cases is convenient to make the defendant agency reflect on their decision and to explain it to the plaintiff.

In Art. 84 to 86 the 2017 SPC Interpretation adds essential information concerning the procedure, the content, and the effect of using mediation in administrative litigation. Art. 84

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[383] Provisions of the Supreme People's Court on Several Issues concerning the Trial of Administrative Licensing Cases (最高人民法院关于审理行政许可案件若干问题的规定), issued December 14, 2009, in: Fashi (法释) 2009, No. 2 (henceforth: SPC Provisions on Trial of Administrative Licensing Cases).
[384] *Chan*, 1992, 137; *Lipsky* 1982, 14.
[385] *Wang* 2008, 47.
[386] *Guan* 2013, 49.
[387] *Liang Fengyun* 2015, 339-340.
[388] *Huang* 2008, 111; *Wang Guisong* 2008, 50.

confirms the three types of cases mentioned in Art. 6 of the ALL of 2014 in which the court can use mediation. It also underlines that mediation is directly possible if the relationship of the parties and the facts of the case are clear. This means that mediation serves as a pre-trial way of dispute resolution.

Furthermore, to Art. 85 captures that the settlement reached through court mediation in administrative litigation is a legally binding decision. The judge prepares a written consent judgment stating the claims, facts of the case and results of the mediation. The judge and the clerk sign the judgment, and they hand it over to the parties for signature. Moreover, mediation is not public according to the first paragraph of Art. 86. Only if the parties agree, the hearing can open to the public. The court must permit if a third party shall participate. The court itself can notify a third party to participate if it deems it necessary. Like the hearing, the written consent is also not public unless the national, social, or public interests need protection. If the parties are unwilling to conduct mediation or mediation is not successful, the judge has to make a judgement in a timely manner. Moreover, according to the fifth paragraph of Art. 86, the court does not permit the request of the parties to prepare a judgment based on a compromise the parties have reached on their own or which they settled on their own. This last paragraph reflects the authoritative role of judges in the process of court mediation in administrative litigation. Unlike in civil procedures and due to the defendant agency's status as a representative of state power, private autonomy is not possible in administrative cases. Hence, the parties cannot independently reach an agreement.[389]

The court only needs the permission of both parties to enter mediation. But after the court received it, they entirely lead the procedure on which they base the binding mediation agreement. If mediation fails, the court transfers the case back to the regular trial procedure.

Some scholars indicated that a failure of mediation would be disadvantageous to the parties because they revealed facts and opinions they would not have revealed in the regular trial.[390] However, the legal practitioners were aware of this risk. Hence, Art. 67 of the SPC Provisions on Evidence in Administrative Litigation, issued in 2002, declares that in the process of litigation, the parties concerned may not use the evidence which the parties have affirmed

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[389] *Jie* 2012, 20, 34; *Huang* 2008, 110.
[390] *Huang* 2008, 111.

through compromise for reaching a mediation agreement or reconciliation, in later litigations as evidence unfavorable to the other party.[391]

A recent example for successful in-trial mediation is a case published in July 2020 that deals with protecting property rights.[392] In that case, a real estate company and an investment company had entered an administrative agreement for constructing an ecological zone with buildings. After they had started the construction, meanwhile, the township government had implementing newly promulgated administrative regulations on water resources and state-owned farms. Hence, these administrative regulations demanded that the two companies canceled the construction. Therefore, the companies sued the township for their losses and demanded the revocation of the administrative agreement. In the second instance, the Fujian Higher People's Court organized multi-party mediation to share and consider all stakeholders' interests. The court ascertained the facts and distinguished the parties' responsibilities, and explained the legal principles, so that they finally reached a consensus and a mediation agreement. According to the SPC, the Fujian Higher People's court resolved a series of questions involved in the case, such as dealing with transfer contracts required due to the termination of the administrative agreement. The SPC points out that all stakeholders participated voluntarily in the mediation procedure.

3. Relationship between administrative litigation and the alternative dispute resolution channels

The two alternative channels analyzed above have a significant role for solving administrative disputes in China because they correspond with the people's cultural and historical attitude refraining from official litigation for the fear of losing their face. Before 2015, petitions reached millions in number, whereas administrative litigation cases remained lower than 100,000 cases. The political and legal leadership actively promoted petitions in the mid-2000s. When they realized that collective actions and mass petitions would get out of their hand, they re-centralized and turned to mediation. But since courts also tried to meet quotas and paid less attention to the quality of the mediation, the need for a more effective administrative

[391] Provisions of the Supreme People's Court on Several Questions concerning Administrative Evidence (关于行政证据若干问题的规定), issued on June 4, 2002, effective October 1, 2002, in: Fashi 2002, No. 21 (法释〔2002〕21 号).

[392] Supreme People's Court releases model cases of administrative litigation for protection of property rights, model case no. 2, Gutian Cuiping Lake Aile Real Estate Co. Ldt, Fujian Aile Investment Co. Ltd vs. Gutian County Government on administrative agreement and compensation (古田翠屏湖爱乐置业有限公司、福建爱乐投资有限公司诉古田县人民政府行政协议及赔偿案), supra n. 1010.

litigation procedure became obvious once more. After 2015, people gained more trust in administrative litigation.

In general, the letters and visit offices are a useful tool for the government in order to learn about the people's needs and grievances and take appropriate actions. Since the scope is broad and unspecific, the *Xinfang* offices face a heavy workload. Moreover, the decision is not legally binding on the stakeholders so that its long-term efficiency is questionable. Moreover, the government's crackdown of collective actions in the mid-2000s is another reason for the people to turn to administrative litigation. Compared to administrative litigation, letters and visits might offer ad hoc relief in individual cases and when there is a collective action, it serves as a fire alarm for the government. The state and the administration remain in the superior position. In contrast to this, in administrative litigation, the court assumes an impartial role in a litigation procedure and depending on the judges' competence, it can be a counterweight towards the administration.

Mediation exists outside and inside administrative litigation. In administrative litigation, mediation is an inherent part of the trial with focus on the parties' interests to find a compromise.[393] That is why SPC approved of mediation despite its ban in the ALL of 1989. Mediation in administrative litigation sends the signal that cooperation between the private party and the state is beneficial. The court acts as the mediator and leads the organization of the mediation process. In its neutral position, the court catalyzes the communication of the parties. Hence, mediation can circumvent enduring procedures. Nevertheless, since mediation becomes part of administrative litigation, the court has to provide the necessary resources in terms of personnel and time. Although it might be beneficial to consider the parties' interests to reach an agreement, some administrative agencies might use it because they fear petitions and try to "buy peace" by entering mediation agreement. Sometimes, judges even urge the parties to agree to mediation because they need to meet quotas.[394] Hence, mediation in court does not guarantee the substantive quality of resolution but can be a mere tool to meet political goals. On top of that, its procedure does not even relieve the court's workload either.

In the five-year plan on establishing the rule of law with Chinese characteristics, published in 2021, the CCP dedicates itself to improve the pluralist dispute resolution system, such as mediation, letters and visits, arbitration, administrative adjudication, administrative reconsideration, and administrative litigation but giving "full play to the role of non-litigation

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[393] *Palmer* 2014, 123.
[394] *Li, Kocken, van* 2018.

dispute resolution mechanisms".[395] Although, undoubtedly, the ALL is an important factor to establish an administration according to law, the CCP confirms that informal channels shall remain essential as well. This allows the Party to make decisions according to the need of ensuring social stability. The CCP is committed to the rule of law with Chinese characteristics and to the pluralist dispute resolution mechanisms since they constitute useful political instruments.

III. Analysis

"Enjoying rights demands having remedies."[396] In China, many channels are available but with the many, the need for clear guidelines concerning the respective roles in the system increases as well. Internally, institutional overlaps constitute the main deficit. The government has been active in correcting it through legislation. For instance, before the NPC enacted the Supervision Law in March 2018, people were free to choose to file their complaint in several places at the same time: The Ministry of Supervision had established an information system where people could file their complaints,[397] or simultaneously, they could also apply to a *Xinfang* office to initiate an investigation. The new Supervision Law centralizes internal supervision work focusing on "the full coverage of national supervision, […] the anti-corruption work in an in-depth manner."[398]

The appraisal and inspection system suffers from a lack of standardization. To ensure a lawful enforcement of administrative laws, the State Council published the Opinions on Pushing Forward the Administrative Law Enforcement Responsibility System in 2005.[399] It served as guidelines for lawful administrative law enforcement which would affect "the image of the government."[400] The Opinions on Pushing Forward the Administrative Law Enforcement Responsibility System indicate that any law enforcement that is not carried out in accordance with the Administrative Penalty Law, the Administrative License Law and other relevant laws, shall be punished.[401] Higher-level departments must supervise their lower-level correspondents using means like self-appraisal and examination, and mutual examination with mutual appraisal. The supervising departments shall look at how lower-level departments use their law

[395] Rule of Law Plan 2020-2025, supra n. 20, section IV.
[396] *Cai, Hua, Zhao,* 2019.
[397] Art. 6. Administrative Supervision Law, supra n. 299.
[398] Art. 1, Supervision Law, supra. 158.
[399] Several Opinions on Pushing Forward the Administrative Law Enforcement Responsibility System (关于推行行政执法责任制的若干意见), issued July 9, 2005, in: Guo Ban Fa (国办发) No. 35.
[400] Ibid., Chapter I.
[401] Ibid., Chapter II, Art. 1,3.

enforcement power, and how they perform legal obligations.[402] In addition to the State Council's Opinions, the above-mentioned Joint Implementation Outline for Building a Government according to Law[403] in 2015 refers to the importance of strengthening law enforcement supervision as well.

The other alternative channels also suffer from deficiencies. The *Xinfang* system is a tool to gather information about the common mood, and control lower-level authorities. It makes people believe that they can contribute to the decision made at the top. However, despite the promising function, the process of decision-making in the *Xinfang* offices is not transparent for the people. Offices can reject their requests as well.[404] Moreover, since *Xinfang* offices exist within all core political institutions at the national and the local level, institutional and functional overlaps is common. In contrast to administrative litigation, the *Xinfang* regulations provide the opportunity to petition constantly, which seems attractive for people. The regular administrative litigation and litigation mediation restrict the scope of acceptable cases and do not allow loop runs in filing cases. However, due to the effect of mass petitions and collective action the political rulers re-defined the limits of petitions. Obviously, full-featured political participation is not the primary purpose of the *Xinfang* system.

Compared with regular administrative litigation, litigation mediation seems to take the parties' interest into consideration based on their voluntariness. The ALL restricts it to only three types of cases in which the damage is tangible, like compensation and indemnity cases or when decisions of administrative discretion are concerned. Ideally, the court solves the dispute based on the parties' compromise, but in practice, the administration and the court might follow their own, usually politically defined goals with mediation. Besides that, leading a litigation mediation procedure demands preparation, expertise, and time.

Overall, the *Xinfang* system and litigation mediation are alternatives to administrative litigation, but they are not necessarily a *better* option. In addition, petitions divert some cases from administrative litigation, but this does not mean that people do not file a complaint when they are unhappy with the outcome of the decision. In the end, diversion does not mean courts are relieved from work. As this chapter illustrates, China's dispute resolution channels serve different ends. Which channel is useful, depends on the nature of the case. In a politically

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[402] Several Opinions on Pushing Forward the Administrative Law Enforcement Responsibility System, Chapter III, Art. 1, 4.

[403] Implementation Outline for Building a Government according to Law (中共中央 国务院印发《法治政府建设实施纲要（2015－2020年）》), issued December 28, 2015, by the CCP Central Committee and the State Council, available at: http://www.gov.cn/xinwen/2015-12/28/content_5028323.htm [January 3, 2024].

[404] *Zhang Taisu* 2009, 13.

sensitive case, the government will make sure the dispute stays inside the administration. A trial at court is rather unlikely in this case. But the complainants can still choose another channel, such as mediation or petitioning. From the conclusions above, we can summarize that since 2015, administrative litigation has become an accepted and even preferred dispute resolution channel. All of the channels suffer from flaws, but each does fit into the jigsaw the Chinese leadership created to control administrative actions.

Chapter 4: Parties of administrative trials

From the imperial times until the enactment of the ALL of 1989, private parties in China were unlikely to go to court to complain against an administrative action. Only a few people had the courage to go public with administrative misconduct to increase the pressure on the government.[405] Even if they filed a complaint, the people were aware of the obstacles they might meet.[406] Judges and administrative organs tried to avoid inconvenient litigation. By intimidation or delay, they tried to impede administrative litigation which caused the plaintiffs' distrust. In addition, filing a complaint was difficult for the people because the complex administrative structure overwhelmed them so that they could not identify the responsible administrative organ.

This chapter investigates how the revision adjusts the access to justice for those affected by an administrative action. In addition, it looks at the procuratorate's role as a plaintiff. As a result of the reform, we will see that the categories for participating as a litigation party are both more comprehensive and specific, now including refined lists of plaintiffs, defendants, third parties and legal representatives. This chapter demonstrates that the definitions of plaintiffs and defendants were necessary to especially help the plaintiffs to be able to name their defendant properly.

I. Plaintiffs

In 2009, the SPC issued the Opinions on Legally Protecting the Right to Sue of the Parties to an Administrative Lawsuit.[407] It reacted to the difficulty of filing administrative lawsuits. Due to the "increasingly diversified and complex structure of social interests, especially, due to the impacts of the international financial crisis, administrative disputes are increasing and becoming more complex and diversified […]", as the SPC acknowledged. It was alarmed by lawsuits that were "characterized by contingency, mass participation and extremeness."[408] To enhance "the understanding and trust between the people and the government", the SPC demanded the courts to smooth the access to courts by not arbitrarily restricting the scope of acceptable cases.[409] Instead, the courts are asked to accept new types of cases on administrative payment, administrative supervision, administrative promise, administrative omission actively.

[405] *Pei* 1997, 833.
[406] *Yang, Liu* 2000, 22-23.
[407] Notice of the Supreme People's Court on Issuing the Opinions on Legally Protecting the Right to Sue of the Parties to an Administrative Lawsuit (最高人民法院印发《关于依法保护行政诉讼当事人诉权的意见》的通知), issued November 9, 2009, in: Fafa (法发) 2009, No. 54.
[408] Ibid., section I.
[409] Ibid.

Cases relevant to people's livelihood such as education, labor, medical treatment, social security are also eligible.[410] The SPC saw the role of the courts as a "judiciary for the people"[411] and emphasized their obligation to serve the major objectives and to administer justice for the people".[412]

Among the three difficulties, the filing of an administrative dispute at court was the first obstacle the plaintiffs had to surmount. Therefore, the SPC urged the judges to offer guidance and interpretation if the complaint was not complete, the complainant listed any defendant in the wrong way or there was any other mistake in the complaint due to the lack of legal knowledge of the complainant. Especially the identification of the right defendant agency was a problem for many plaintiffs.

1. The definition of "having an interest"

Art. 25 of the ALL of 2014 defines the qualification of the plaintiff. Any citizen, legal person or other social organization subjected to an administrative action or that has an interest in the administrative action has the right to file a complaint. It is determined as a procedural right in the first paragraph of Art. 3 of the ALL of 2014. Qualified to file a complaint against an administrative agency is the counterparty that is the direct object of the action, or another party that has an interest. Whereas the first condition is clear and undisputed, the definition of "interest"[413] was interpreted inconsistently.[414] The different understandings of the term can be attributed to the respective legal bases: At the beginning, after the ALL was enacted in 1990, the wording of Art. 24 of the ALL of 1989 simply stated that "citizens, legal persons, and other organizations that institute litigation in accordance with this law are plaintiffs." Art. 41 of the ALL of 1989 determined the standard interpretation of the plaintiff. It defined that the precondition of accepting a complaint was that the "citizen, legal person or other social organization *considers* that a specific administrative act has *infringed on their lawful rights and interests* [emphasis added by the author]." Art. 21 of the 1991 SPC Interpretation defined it as a "relationship of legal rights and obligations".[415] But it depended on the subjective

[410] Notice of the Supreme People's Court on Issuing the Opinions on Legally Protecting the Right to Sue of the Parties to an Administrative Lawsuit, section III.
[411] In Chinese: 为人民司法.
[412] Ibid., section I.
[413] In Chinese: 有利害关系.
[414] *Xin Chunying* 2015, 70.
[415] *Chen Peng* 2017, 1215.

interpretation of the party to file a complaint when they “considered” that the (concrete) administrative action infringed upon their rights and interests.[416]

The 2000 SPC Interpretation specified the term because judicial practice had already revealed a lot of misunderstandings. Art. 12 of the 2000 SPC Interpretation explained “interest” as “legal interest”[417]. However, the wording was still unclear because again, it offered no objective standard for judges to determine if the case met the conditions for docketing. Still, there used to be no common handling of cases.[418] It was criticized that the judges sometimes skipped the interpretation of plaintiff qualification, which is a formal requirement, and jumped over to reviewing the legality of the administrative action because this was easier to be determined than whether the plaintiff’s rights and interests were lawful and infringed upon.[419] But the review of legality should be examined when the parties submit and cross-examine evidence. Moreover, Art. 119 of the Civil Procedure Law refers to “direct interest in the case” which also seemed not appropriate to solve the problem with the filing administrative litigation as well.

Consequently, the reformers of the ALL distinguished between the administrative counterparty as “being subject to an administrative action” and someone with an “interest” in the administrative action. In the revised first paragraph of Art. 25 of the ALL of 2014, the attribute “legal” in the term “legal interest” is deleted and the qualification of plaintiffs is separated from their identity, as Art. 24 of the ALL of 1989 indicated.[420] To be more precise on the meaning of interest, Art. 12 of the 2017 SPC Interpretation absorbed Art. 13 of the 2000 SPC and lists examples for who has an interest in the administrative action: Firstly, contiguous rights and rights to fair competition are acknowledged as admissible to administrative litigation (item 1). Contiguous rights affect mostly rights concerning property such as the right to pass or the right to use. For instance, Art. 291 of the Civil Code stipulates that “the right holder of an immovable shall provide necessary convenience if the right holder of a neighboring immovable has to use the land thereof for passage or any other purpose.”[421] An administrative action affecting the owner of the real property can have a double effect causing both beneficial and burdening influence on the other party that passes that property. In general, this double effect touches upon civil rights so that it was debated whether the holder of contiguous rights is

[416] *Zhang Jiansheng* 2019, 249, 252.
[417] In Chinese: 法律上利害关系.
[418] *Chen Peng* 2017, 1220.
[419] Ibid., 1216-1217.
[420] *Ying Songnian* 2015 a, 60.
[421] Civil Code of the People‘s Republic of China (中华人民共和国民法典), Order No. 45 of the President, issued May 28, 2020 (henceforth: Civil Code).

eligible for administrative or civil litigation.[422] However, civil rights coexist with the rights and interest affected by the administrative action so that the neighbor can seek relief against the administrative action in administrative litigation.[423] Furthermore, the right to fair competition means that the party suffering from an administration's infringement and unequal treatment such as information discrimination and unfair examination or inspection or its non-performance of statutory duties is qualified to file a complaint.[424]

Secondly, a party that participated as the third party in administrative reconsideration or in any other administrative procedure has an interest in the administrative action and can file a complaint (item 2). The party mentioned here acts as the plaintiff and has an interest in the action of the reconsideration agency or in the result of the reconsideration procedure. A typical case could involve an administrative penalty which an injured person requests to be issued by an administrative agency, such as the local public security organ, to issue and to sanction the injuring counterparty. The injuring counterparty can request reconsideration of the administrative penalty by the administrative agency at next higher level. In the reconsideration process, the injured party can also be the third party. In case the reconsideration results in the revocation of the original administrative penalty, the injured party can file a complaint against this decision because the reconsideration agency's decision is a new administrative action. Scholars have argued that it would be sufficient to grant the third party of administrative reconsideration with the right to protest at the next higher level. But in 1997, the SPC had already confirmed in a reply to the Higher People's Court of Guangxi that the third party of an administrative reconsideration was qualified as plaintiff.[425]

Thirdly, and related to the previous aspect is that the victims of an injury can demand from the administrative agency to hold the injuring party liable for their violation according to item 3 of Art. 12 of the 2017 SPC Interpretation. Both the injured as well as the injuring party can proceed against the administrative action. On the one hand, one group of scholars argues that the victim is not the direct counterparty of the administrative penalty. Rather, they can seek redress through civil litigation.[426] For example, Art. 7 of the Administrative Penalty Law determines that those who violate the law and damage other party's rights, and interest must bear civil liability. Moreover, it is a matter of administrative discretion to decide about the extent of the penalty. But the court does not judge the appropriateness of the discretionary

[422] *Liang Fengyun* 2015, 149.
[423] *Chen Peng* 2017, 1223-1224.
[424] *Liang Fengyun* 2015, 151.
[425] Ibid., 155.
[426] *Chen Peng* 2017, 1222.

decision. On the other hand, other scholars acknowledge that the victim's rights to civil compensation coexist with their rights and interests affected by the administrative action. Besides, the administrative agency must protect personal rights and interests as well as the public order. As a consequence, it is the courts' duty to supervise the administration if a dispute occurs.[427]

Fourthly, a party affected by the revocation and modification of an administrative action is qualified to file a complaint as well. Item 5 of Art. 12 of the 2017 SPC Interpretation states that a party that wants to maintain their lawful rights and interests can file a complaint at court if the administrative agency they complained to in the first place, fails to handle the case or handles the case in a way they are not satisfied with. The enumeration of Art. 12 of the 2017 SPC Interpretation is not exhaustive since item 6 acknowledges other interests as well. Hence, the term "interest" now refers to a standard that is easy to extend and adopt to practical needs.[428]

2. The SPC's understanding of plaintiff qualification

In a model case from 2016, the SPC framed the understanding of interest and defined the method of interpretation. In that case, the plaintiff, *LIU Guangming*, sued the Development and Reform Commission of Zhangjiagang Municipality because he had learned from information disclosure that an administrative circular was issued for the Jinshazhou Tourism and Development Company which he considered to be unlawful.[429] He argued the circular affected land that he had contracted to manage. After the court rejected his reconsideration request, the courts of first and second instance dismissed his complaints as well. Eventually, the SPC took on the case and explained the term "interest" and the essential aspects about plaintiff qualification. According to the SPC, an administrative action does not affect all private parties directly, thus the interest at stake should refers to the individual legal interest. In administrative litigation, someone who sees their reflective interests[430] affected cannot qualify as plaintiff. It is common that during administrative operations, actions in the name of the public order can bring certain benefits and even burden for individuals although they are not the direct recipient of the action.[431] Hence, before the administrative agency issues an action, it must

[427] *Liang Fengyun* 2015, 153-154.
[428] *Xin Chunying* 2015, 70.
[429] Supreme People's Court (最高人民法院), *LIU Guangming* v. Zhangjiagang Municipal People's Government, administrative reconsideration case(刘广明诉张家港市人民政府行政复议案中华人民共和国最高人民法院), Administrative Ruling (行 政 裁 定 书) 2017 in: Zui Gao Fa Xing Shen (最高法行申) No. 169, available: http://fzzfyjy.cupl.edu.cn/info/1044/7141.htm [December 26, 2023] (henceforth: *LIU Guangming* v. Zhangjiagang Municipal People's Government); see also: *Zhang Jiansheng,* 2019, 245-246.
[430] In Chinese: 反射性利益.
[431] *Liu, Zhang* 2020, 25.

consider the entire law to grant respect for those interests that are worthy of protection. Otherwise, they would "see trees but not the forest".[432] In words of the SPC that means "applying one law is to apply the entire legal code".[433] For the courts, the key to determine a party's qualification as plaintiff in administrative litigation depends on whether they possess rights and interests that the substantive and procedural administrative laws protect. Since substantive norms do not always specify the rights and interests worthy of protection, the courts shall interpret them by applying fundamental law, namely the Constitution, and the semantic, systemic, historical, and teleological interpretation method.[434] The SPC adheres to the ALL's principle that in administrative litigation, complainants qualify as plaintiffs when the alleged administrative action affects their subjective rights and interests. Only by interpreting substantive law can the court define and even extend the scope of qualification.

In its reasoning, the SPC underscores that individual interests in the area of public law are worthy of protection. This is similar to the German doctrine of impairment of rights.[435] Only if individual public rights are potentially impaired by an administrative action, the person affected by it can bring a lawsuit according to Art. 42 of the German Code of Administrative Court Procedure. Art. 113 confirms that the court shall rescind the administrative act and any ruling on an objection if the administrative act is unlawful and if it *indeed* (emphasis added by the author) violates the plaintiff's rights.[436] The German law excludes reflective rights from the right to file a complaint at court because they are not individual public rights. If through interpretation of the underlying public law, the court concludes that the public law only serves public interests and just happens to affect individual public rights, the individual affected cannot bring a lawsuit.[437] Obviously, the SPC's reasoning reflects these aspects of the German doctrine. But Chinese scholars have criticized that judges lack the required interpretation skills.[438]

[432] *Zhang Jiansheng* 2019, 246.
[433] Ibid.
[434] Ibid., 246.
[435] In German: Schutznormtheorie.
[436] Historically, Prussian legal scholars such as *Rudolf von Gneist* or *Otto Bähr* discussed the recognition of individual public rights directed against the state. The former *von Gneist* argued that the objective order created by the law separated state from society. Administrative litigation corrected wrongful administrative actions and protected the objective public order. The latter *Bähr* regarded the state as the highest entity of society and demanded that the courts protected individual public rights. In a similar vein, *Ottmar Bühler*, another German constitutional scholar, had defined that an objective law could establish individual public rights only when it aimed at their individual interests and not only at the public interest. According to *Bühler*, not all laws and regulations in the field of public law clearly named the individual rights and interests they protected. The legislator's intention was the key to understand which rights and interests need protection. *Bühler*'s doctrine changed throughout the centuries. For instance, *Eberhardt Schmidt-Aßmann* established a canon of interpretation methods to uncover individual public rights, namely by a semantic, systemic, historical, and teleological interpretation. Hence, the legislator's will be not the decisive aspect any more for determining if and what individual public rights the public law must protect. See: *Mangold* 2014. *Bauer* 1988, 587-588; *Kuhla, Hüttenbrink* 2002, at point 63.
[437] *Kuhla, Hüttenbrink* 2002, at point 63.
[438] *Zhang Jiansheng* 2019, 248.

Moreover, the valid methods of interpreting "interest" in administrative actions are outdated and inconsistent. Furthermore, the Chinese Constitution cannot be a reference for individual public rights.[439] The SPC's judgment in the *LIU Guangming* case is a landmark case. Scholars express their hope that this might establish the doctrine of impairment of rights in China's administrative litigation system.[440]

3. Qualification of other persons and social organizations and transfer of qualification

Consistent with the SPC's explanation, Art. 13 of the 2017 SPC Interpretation determines the qualification of a creditor. If an administrative action is in favor of his debtor, the creditor can consider their rights and interests affected. In general, he can only initiate an administrative lawsuit if the law requires the agency to protect their rights or to consider them while making the administrative decision. Otherwise, the creditor has to file a private complaint. This illustrates that the "seemingly narrow conception of the 'individual public right' was broadened".[441] Third parties receive protection if the administrative agency should have considered, respected, and protected their rights and interest.[442]

The second paragraph of Art. 25 of the ALL of 2014 defines the transfer of qualification to a close relative in case the right holder is deceased. Similar to this, the third paragraph transfers the rights to file a complaint to the succeeding legal person in case the legal person or social organization, which originally holds the right, has terminated. The transfer of qualification extends the right to file a complaint from a mere subjective procedural right to an objective one.[443] To protect the legal order, a succeeding legal person, and a close relative, that the first paragraph of Art. 14 of the 2017 SPC Interpretation[444] specifies, can file a complaint in the name of the former right holder. The court must examine the interest of the successor at the time the administrative action affected the rights and interests of the original right holder and shall rule whether they are qualified.[445]

The second paragraph of Art. 14 of the 2017 SPC Interpretation authorizes a close relative to file a complaint in the right holder's name when the right holder cannot file the

[439] *Liu, Zhang* 2020, 25-26.
[440] Ibid.; *Zhang Jiansheng* 2019, 247.
[441] *Mangold* 2014, 232.
[442] *Zhang Jiansheng* 2019, 246.
[443] *Chen Peng* 2017, 1223.
[444] Close relatives include the spouse, parents, children, siblings, paternal and maternal grandparents, paternal and maternal grandchildren, and other relatives.
[445] *Chen Peng* 2017, 1223.

complaint themselves because they are in detention. The close relative shall submit a certificate confirming their authorization. If they cannot submit it before filing the complaint, they can still hand it in during the trial. Art. 15 to Art. 18 define the plaintiffs of different corporate constellation. In cases involving partnership enterprises, the enterprise whose name is confirmed and registered shall be the plaintiff. The other partners can be joint plaintiffs, or they can send a representative with authorization (first paragraph of Art. 15). The proprietor of an individual commercial household is the plaintiff if the business license states his name. The commercial household itself is the plaintiff if its name is in the register (second paragraph of Art. 15). Joint-stock enterprises, jointly operated enterprises, Chinese-foreign equity joint ventures or Chinese-foreign contractual joint ventures can file a complaint in their own name (first and second paragraph of Art. 16). If an administrative agency rules to deregister, revoke, consolidate, compel, merge, sell or split a non-state-owned enterprise, the enterprise or its legal representative can file a complaint (third paragraph of Art. 16). If the founder or investor of a public institution, social group or foundation, social service institution or non-profit organization deems that an administrative action infringes upon their lawful rights and interests, they can file a complaint in the name of their entity (Art. 17). The owner committee of property can file a complaint in its name when an administrative action affects their interests. The proprietors can also partly file a complaint if the committee fails to do so and if their portions represent the majority of the total property (Art. 18).

II. Procuratorial public interest litigation

The fourth paragraph of Art. 25 of the ALL of 2014 allows the people's procuratorate to file a complaint at court if the alleged administrative action affects public interests.[446] By adding the fourth paragraph to the ALL in 2017 as a legal basis for a new type of objective litigation, the NPC, firstly, expanded the procuratorial supervision power concerning administrative conduct and judicial adjudication, and secondly, it extended the protection of the lawful rights and interests from the individual to the collective level that shall benefit the individual people as well.

[446] Art. 25 (4), Administrative Litigation Law 2014 reads: "Where the people's procuratorate finds in the performance of functions that any administrative authority assuming supervision and administration functions in such fields as the protection of the ecological environment and resources, food and drug safety, protection of state-owned property, and the assignment of the right to use state-owned land exercises functions in violation of any law or conducts nonfeasance, which infringes upon national interest or public interest, it shall offer procuratorial recommendations to the administrative authority, and urge it to perform functions in accordance with the law. If the administrative authority fails to perform functions in accordance with the law, the people's procuratorate shall file a complaint with the people's court in accordance with the law."

Regarding the first outcome of this innovation, the Chinese procuratorate now supervises both the administration and the courts. The legal basis can be found in Art. 11 in connection with Art. 93 of the ALL of 2014 that describes procuratorial monitoring of the courts in form of a protest[447], and the final paragraph of Art. 25 of the ALL of 2014 that determines the procuratorate's function as plaintiff in administrative litigation. Why does the Party-state invest in the interlacing of the procuratorate with the judiciary and the administration?

As a Socialist country, the PRC adopted Soviet strategies of supervision, such as the so-called "general supervision" by the procuratorate, which supervised the legality of government actions and the enforcement of laws.[448] The historical model of the Soviet system served as a model to define the nature of the procuratorate's power in China. Art. 6 of the People's Procurators Law addresses the functions of the procuracy as defined in the Constitution: Besides the supervision of the lawful enforcement of laws, the procurators' functions consist in the public prosecution on behalf of the State and in the investigation of criminal cases directly accepted by the People's Procuratorates as provided by law.[449] They are responsible for "guarding the guardians," which means that they address violations of criminal and administrative statutes and pursue complaints concerning official misconduct.[450] In other words, the procuratorate ensures government accountability.

However, to avoid that the procuratorate supervises as it pleases or according to its own opinion, the legally prescribed procedure of supervision binds the procuratorate. It shall respect the judicial and administrative authority with their respective functions in the system: The administration is the main actor in protecting national and public interests,[451] the judiciary dispenses justice, and the PP monitors the legality of administrative actions and launches a judicial process, or protests against erroneous judicial decisions when deemed necessary, i.e. based on evidence.[452] Thus, the relation between the courts, the administration and the PP are

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[447] In Chinese: 抗诉. For more details see: Chapter 8, Section IV, Procuratorial protest, 301.

[448] The Soviet procuratorate was set up in 1922 as a product of the revolution in 1917 and the subsequent proletarian dictatorship. In the beginning, its main obligation was to "curb the discretionary power of local authorities, their bureaucratic abuses of decreeing and ordinating beyond their jurisdiction […]." It was not meant to conduct preventive control, but to investigate violations of the law. After the consolidation of the Soviet regime, the procuracy's functions shifted from being the "guardian of the law" to being the official supervisor of the "correct execution of the laws." Hence, the procurators mainly dealt with criminal law. Gradually, the organ turned into a party tool that had to support the achievement of the party's goals. See: *Ginsburgs* 1959; *Ginsburg* 2008, 62.

[449] Public Procurators Law of the People's Republic of China (中华人民共和国检察官法), Order No. 28 of the President, issued February 2, 1995; revised June 30, 2001; revised September 1, 2017; revised April 23, 2019 (henceforth: Public Procurators Law).

[450] *Hand* 2000, 96.

[451] *Lin* 2018 62.

[452] *Sun, Qi, Guo* 2018, 73-74; Research on Improving the Procuratorate's Work in Administrative Public Interest Litigation (完善检察机关行政公益诉讼工作机制研究), by the Key Task Force of the People's Procuratorate of

set forth: The PP can only express dissent against unlawful administrative operation and illegal judicial adjudication,[453] but they are not empowered to make a judgment or implement sanctions. In contrast to this, the Soviet procuracy had had substantive power to discipline administrative organs and were only accountable to higher-level authorities.

Regarding the second consequence, administrative litigation is a form of subjective litigation demanding the plaintiff to prove that the alleged administrative act directly affects their lawful rights and interests.[454] However, in cases where administrative misconduct infringes upon broader public interests, for instance concerning environmental pollution and the expulsion of state-owned assets, citizens or companies would not be eligible to file a complaint at court or they would find it difficult mobilize and coordinate a lawsuit. Nevertheless, they suffer from the consequences of the administrative action. Hence, empowering the procuratorate to initiate lawsuits against harmful administrative actions can satisfy the people's demand for justice because it functions as the agent of the central state that wants to protect pre-defined objective interests.

1. Public interest litigation

Procuratorial public interest litigation (PIL) was at first a bottom-up phenomenon in China.[455] PIL is defined as "the use of forms, procedures and substance of public law to redress two types of wrongs: (1) generalized grievances (e.g. pollution, where the public wrong is suffered by members of society in general) and (2) specific grievances, where the wrong is suffered by a specific segment of society, but remedying the wrong advances broader socio-political change among the public at large (e.g. cases addressing unjustified discrimination against stigmatized social groups)".[456]

One of the first cases of PIL in China occurred in Fangcheng County in Henan Province in 1997. The people informed local prosecutors that the Administrative Bureau of Industry and Commerce in the town of Dushu had sold its ground floor less than fair value to a private person. This violated the official policy to combat loss of state assets. The local prosecutors investigated the case and wondered how to prosecute the violation. They researched international equivalents and concluded that the prosecutors in France and Germany could represent the state in public interest litigation cases. They decided to file a private complaint against both the

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Beichen District in Tianjin (天津市北辰区人民检察院重点课题组), in: The Chinese Procurators (中国检察官) 2019 Vol. 1, No. 307, 73-76, 73.

[453] *Zhang Wenxiang* 2016, 42.

[454] *Pappano* 2021, 8.

[455] *Peter* 2020, 6.

[456] *Yap, Lau (eds.)* 2011, 1-8, 2.

bureau and the private buyer. But the key obstacle for the prosecutors was their standing as plaintiffs. They underscored their function as legal supervisors according to Art. 129 of the Constitution in the version of 1993. In context with Art. 14 of the Civil Procedure Law, which repeated the original function, the local prosecutors also argued that Art. 15 of the CPL would allow them to initiate a lawsuit because it says: "For conduct which infringes upon the civil rights and interests of the state, a collective or an individual, a *state organ* [emphasis added by the author], a social group, an enterprise or a public institution *may support* [emphasis added by the author] the entity or individual which suffers infringement in instituting an action in a people's court."[457] But opponents argued that there was a literal difference between the prosecution supporting the victimized plaintiff and it filing a complaint itself.[458] Nevertheless, the responsible court accepted the lawsuit and even issued a judgment in favor of the prosecutors' claims and declared the purchase contract to be invalid. The President of the NPC Standing Committee, *LI Peng*, supported the prosecutors' measures.[459] Nevertheless, the process initiated a fundamental debate about the Constitution serving as a legal basis for lawsuits and about the qualification of the prosecutors as plaintiffs.

In Henan Province, the procuratorates were the pioneers to use PIL as a supervision method. For instance, in the city of Nanyang and Haibin, procuratorial recommendation and public interest litigation were common measures in cases against administrative misconduct concerning environmental pollution, waste of natural resources as well as public health and benefit.[460] However, the practice of procuratorial PIL soon came to a halt. In an official reply to the Higher People's Court in Hubei in 2004, the SPC confirmed that the procuratorate lacked legal authorization for being the plaintiff in public interest litigation to protect state-owned assets.[461] As a reaction, legal scholars started debating about the role of the procuratorate as plaintiff in PIL. Renowned professors such as *MA Huaide* from the Chinese University of Politics and Law, *SHEN Kaiju* from Zhengzhou University supported procuratorial PIL but

[457] *Xin, Li* 2005, 32.
[458] Reply of Supreme People's Court concerning the Case of the City of Enshi v. Zhang Suwen about Returning State-Owned Assets (最高人民法院关于恩施市人民检察院诉张苏文返还国有资产一案的复函), issued June 17, 2004, file number: [2002] 民立他字第 53 号, available at: https://cn.oversea.cnki.net/law/detail/detail.aspx?dbcode=CLKLP&dbname=&filename=la20071213002053 [December 26, 2023] (henceforth: SPC Reply Concerning the Case of the City of Enshi v. Zhang Suwen).
[459] *Xin, Li* 2005, 32.
[460] Exploration of the development of the three models of legal supervision of administrative enforcement of Henan's procuratorate (河南省检察机关对行政执法行为开展法律监督的三种模式初探), by Henan Province Procuratorate Public Affairs Department (河南省检察院民行处), in: Procuratorial Practice (检察实践) 2005, No 6, 5-7; *Xin, Li* 2005, 33.
[461] SPC Reply concerning the Case of the City of Enshi v. Zhang Suwen, supra n. 458.

indicated that the Constitution, the Civil Procedure Law, and the Administrative Litigation Law needed another amendment at first to create an acceptable legal basis for it.[462]

2. Establishing the legal basis for procuratorial PIL in administrative litigation

The SPC had stopped the bottom-up attempt. But ten years later, the CCP initiated a top-down process at the Fourth Plenum Decision of the 18th Central Committee of the CPP in October 2014. In the decision, the Communist Party emphasized the importance of public interest litigation for legal reforms and stipulated: "Where procuratorate organs discover, in the course of performing their duties, that administrative organs have unlawfully implemented their duties or have not performed their duties, should supervise the matter and urge them to correct." This was the initiation to explore the system of procuratorial PIL.[463]

As a consequence, the Standing Committee of the NPC started some pilot work: At the 15th session of the 12th NPC in July 2015, the Standing Committee decided that the Supreme People's Procuratorate may set up a pilot program to initiate public interest actions in order "to strengthen the protection of the national interest and the public interest" (henceforth: Decision of July 2015).[464] According to this Decision of July 2015, 13 areas were chosen, such as Beijing, Inner Mongolia, Jilin, Jiangsu, Anhui, Fujian, Shandong, Hubei, Guangdong, Guizhou, Yunnan, Shaanxi, and Gansu. From July 2015 until May 2017, the People's Procuratorate launched the pilot program to test the feasibility of public interest litigation in administrative and civil litigation.

Administrative PIL differs from civil PIL in the nature of the defendant: In civil PIL, usually private parties act against other private parties to restore interests that affect the country as a whole, such as environmental pollution. The private parties enjoy autonomy. Originally, the procuratorate did not have dispositional rights concerning the actions of a private actor in civil PIL but needed a legal basis for that. The Decision of July 2015 is the official authorization for the procuratorate to engage in private litigation to protect national interests. In contrast to this, administrative agencies are the representative of public interests of the society and have the power and duty to protect them from violations of other (private) parties. Therefore, the

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[462] *Xin, Li* 2005, 33.
[463] 18th CCPCC Fourth Plenum Decision 2014, supra n. 4, at section 4, no. 2.
[464] Decision of the Standing Committee of the National People's Congress on Authorizing the Supreme People's Procuratorate to Launch the Pilot Program of Initiating Public Interest Actions in Certain Areas (全国人大常委会关于授权最高人民检察院在部分地区开展公益诉讼试点工作的决定), issued July 1, 2015 (henceforth: Decision of July 2015).

procuratorate can only initiate civil public interest litigation when there is no administrative agency responsible for granting such protection. In contrast to this, in administrative PIL, the procuratorate acts against administrative organs to restore the legal order and protect public interests.[465]

3. The SPP's Pilot Plan

The NPC Standing Committee's announcement of the pilot program remained vague in content so that the Supreme People's Procuratorate and the Supreme People's Court needed to specify the concept and procedure of procuratorial public interest litigation. One day after the Standing Committee's decision, on July 2, 2015, the SPP issued a plan (Pilot Plan) for the pilot project.[466] According to the Pilot Plan, the pilot work shall grasp the conditions, scope, and procedures of PIL to strengthen the protection of public interest effectively. Procuratorial PIL must be in accordance with the relevant provisions of the Civil Procedure Law and the Administrative Litigation Law.

In the main part, the Pilot Plan briefly introduces the initiation of civil and administrative public interest litigations. Concerning administrative PIL, it stipulates those cases dealing with ecological environment and resources, state-owned assets, and the transfer of the right to use state-owned land and other fields shall be within the scope of acceptable cases. The procuratorate acts as a litigant if citizens, legal persons, or other social organizations fail to file a complaint because they cannot prove to have a direct legal interest in the matter. The people or social organizations accuse the defendant agency of violation of the law or of nonfeasance. The Pilot Plan further points out that in the pre-litigation procedure, the procuratorate shall issue recommendations to the relevant administrative agency and urge them to rectify their illegal administrative action or to perform their duties. The agency shall reply to the written recommendation within a month. If it fails to do so or refuses to comply with the recommendations, the procuratorate may initiate a lawsuit at court and claim a revocation on whole or in part of the administrative action, the performance of duties or the confirmation of the illegality or nullity of the action. The Pilot Plan underlines that the focus of administrative public interest litigation in the pilot work is on cases about the protection of the environment and resources. In the fourth part, it defines the work requirements such as coordination and cooperation between the procuratorate and the people's governments, relevant departments, and

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[465] *Lin* 2018, 56-60.
[466] Plan for the Pilot Program of the Reform of Instituting Public Interest Litigations by the Procuratorial Organs (检察机关提起公益诉讼改革试点方案)，issued July 2, 2015, in: Working Document of the Supreme People's Court and the Supreme People's Procuratorate (henceforth: Pilot Plan).

the people's court. Moreover, the procuratorates shall report and publish outcomes of the pilot work for further guidance. The Pilot Plan also highlights that the top-level design is to be adhered to. This indicates that the top leadership coordinates the pilot work downwards to ensure a synchronized and effective implementation.[467]

4. The SPP's Implementation Measures

Yet, besides providing a general outline, the plan remains vague on aspects like the process within the procuratorate, the contents of the recommendations, and the hearing at court. So, following the Pilot Plan, the SPP filed implementation measures (henceforth: SPP Implementation Measures) in December 2015 that specified the pilot work and the respective procedures for civil and administrative public interest litigation.[468] The SPP Implementation Measures contain fifty-eight articles in four chapters. The first chapter deals with civil public interest litigation (Art. 1-27), the second illustrates the process for administrative public interest litigation (Art. 28-52), the third (Art. 53-56) and forth (Art. 57-58) chapters add further and supplementary provisions. The first two chapters have a similar structure providing details about the jurisdiction, the responsible procuratorial organ, the internal procedure of decision-making within the procuratorate, the pre-trial procedure, the filing of the complaint with the respective duties in court, and the appeal process.

To shed more light on the administrative public interest litigation, Art. 28 lists the scope of acceptable cases for procuratorial administrative PIL, namely - as mentioned in the Pilot Plan before - cases of administrative violation or nonfeasance concerning the protection of the environment and resources, the protection of state-owned assets, and the transfer of state-owned land use rights. The second paragraph of Art. 28 defines the duties of the procuratorate, such as investigation in duty-related crimes, approval or decision of requests, examination before prosecution, charge and prosecution, and litigation supervision. These obligations correspond to the respective provisions in the Constitution that defines the procuratorate as the legal supervisor in Art. 134, and demands cooperation between the procuratorates, the courts and public security organs while handling criminal cases according to Art. 140 of the Constitution.

In administrative PIL, basic people's procuratorates have jurisdiction at the place where the administration exercises its power (Art. 29 of the SPP Implementation Measures). If the

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[467] For more information on the top-level design, see: *Yang, Yan* 2018; *Noesselt, Gansen, Miller, Seyferth* 2019.

[468] Measures for the Implementation of the Pilot Program of Initiating Public Interest Actions by the People's Procuratorate (人民检察院提起公益诉讼试点实施办法), issued December 24, 2014, in: Interpretation No. 6 (henceforth: SPP Implementation Measures).

government at or above the county level is the defendant, the procuratorate at the city or prefecture level shall be responsible (Art. 29, paragraph 2). Transfer of jurisdiction in administrative cases is also possible when there are concerns about responsibilities (Art. 29, paragraph 3 and 4). Internally, the division of civil and administrative affairs can handle PIL cases. All other administrative divisions of courts shall transfer relevant materials if they find some hints of violation of laws or nonfeasance (Art. 30 and 31). The SPP Implementation Measures also determine that during group discussions to collect different ideas and proposals, the responsible prosecutors shall decide about the filing of a PIL (Art. 36). If they decide to register the case at the administrative department, they shall ask for the approval of the chief prosecutor and prepare a written decision (Art. 32). According to Art. 33, the procuratorate may investigate and verify relevant evidence in different manners, such as consulting and duplicating case file materials, conducting inquiries with administrative personnel, collecting documents or audio-visual materials, consulting with experts, authorizing appraisal and evaluation, and inspections. The administration must cooperate with the prosecutors. After examination, they shall draft a report giving reasons for the decision (Art. 35) and must also decide either to conclude the examination, to submit procuratorial recommendations or to file an administrative PIL (Art. 37). Depending on the decision made according to Art. 37, the procuratorate must conclude the case handling within three months when they decide to close the examination or to submit recommendations. They must conclude within six months when they decide to file a complaint (Art. 38). Art. 39 lists three circumstances when the procuratorate shall conclude the examination, i.e., when there is no evidence for the illegal action or nonfeasance of the administrative agency, when the agency has corrected its illegal action or performed its duties in the meantime of examination or in any other circumstance. Art. 40 stipulates that the procuratorial recommendations are the precondition for filing a complaint against the impugned administrative agency. The agency must reply within a month and prove its compliance. If it does not react to the recommendations in any way, the procuratorate may initiate a lawsuit (Art. 41).

The section from Art. 42 to 52 of the SPP Implementation Measures deals with the procedure at court. The procuratorate acts as a public interest litigant, the accused administrative agency is the defendant (Art. 42). Acceptable claims made by the procuratorate include the revocation in whole or in part of the illegal action, the performance of duties within a prescribed period of time, the confirmation of illegality or nullity of the administrative action (Art. 43). For initiating the lawsuit, the procuratorate must submit a written complaint and preliminary evidence materials proving the damage to state interests or public interests (Art. 44).

They have the burden to prove that their complaint meets the requirements and that they followed the pre-trial procedure of sending recommendations to the agency urging it to restore state or public interests (Art. 45). It is mandatory to send procuratorial personnel to court (Art. 46) to read the written complaint, to present and cross-examine evidence, to participate in court debate and other litigation actions (Art. 47). Art. 48 determines to ban mediation in administrative PIL. If the administrative agency restores state or public interests during the hearing and satisfies the procuratorate's claims, the procuratorate may change its claims and request the court to confirm the illegality of the former action or it can request withdrawal (Art. 49). If the judgment which is not yet final proves to be erroneous, the procuratorate can file a protest in written to the higher-level court. They shall send the protest to the court of first instance and to the higher-level procuratorate for approval (Art. 50 and 51). When the trial at second instance takes place, again, the procuratorate must appear in court (Art. 52).

The People's Procuratorate's Measures explain the implementation of PIL in civil and administrative cases in great detail. As a reaction, the SPC issued a Notice for the Implementation of the Pilot Program of Trial by the People's Court in procuratorial PIL cases in February 2016 (henceforth: SPC Notice).[469] Its structure is similar to the SPP Implementation Measures, but half as long as the Measures. The second chapter deals with administrative PIL. The provisions on the scope of acceptable cases (Art. 11), the relevant materials for initiating a lawsuit (Art. 12), the types of claims (Art. 13) and the standing of the parties (Art. 14) are identical with the SPP Implementation Measures. Corresponding to the jurisdiction for basic-level procuratorate, basic-level people's court shall hear first instance cases (Art. 15). Local jurisdiction depends on the place of the accused administrative agency, so that the intermediate people's court adjudicates lawsuits against a department of the State Council or the local government at or above the county level as well as major and complex cases. The SPC Notice determines that a collegial bench shall be set up to hear the case (Art. 16). Mediation is not applicable in administrative PIL, as the SPC Notice repeats. The court shall review and rule upon any request filed by the procuratorate (Art. 18). For the procedure of appeal or procuratorial protest, Art. 19 refers to the respective ALL provisions.

[469] Notice of the Supreme People's Court on Issuing the Measures of the Implementation of the Pilot Program of Trial by the People's Court of Public Interest Litigation Cases Instituted by People's Procuratorate (最高人民法院关于印发《人民法院审理人民检察院提起公益诉讼案件试点工作实施办法》的通知)， in: Fafa (法发) 2016, No. 6.

5. The SPP's Opinions on deepening the pilot program

During the pilot program, SPP und SPC undertook constant review of the pilot work looking for improvement. For instance, in December 2016, the SPP published further Opinions on deepening the pilot program (henceforth: SPP Opinions).[470] It urges the procuratorates to increase the intensity of handling cases, to standardize procedures and to strictly enforce approval standards. It refers to the initial decision of the NPC from July 2015, the SPP's Pilot Plan from 2015, and the SPP Implementation Measures from 2015 that are the basic guidelines of the pilot work. In case there is no applicable provision in the three documents, the provisions of the Civil Procedure Law and the Administrative Litigation Law apply. The third part of the SPP Opinions add further details for the process of administrative litigation. The procuratorate can refer to the local documents to determine the defendant agency, their responsibilities and authority in the case (Art. 8). The recommendations sent in the pre-trial phase shall contain the facts of and reasons for the violation of the law or the nonfeasance, the legal basis, and the proposal for restoration of state or public interest. It shall urge the agency to perform according to law (Art. 9). In a case in which more administrative agencies have jointly caused the damage, the responsible procuratorate shall send their recommendation separately to each agency. When an administrative agency causes damages due to multiple illegal facts of the same kind, it is sufficient to submit the procuratorial recommendations once for all illegal facts. The procuratorate shall focus on the main and typical facts (Art. 10). The SPP Opinion's highlight that the procuratorate must actively review the agency's compliance with their recommendations. The written reply of the agency is not sufficient to judge whether the administrative agency's measures restore state or public interests. If the agency does not fully perform according to the recommendations, the procuratorate files a complaint (Art. 11). If the investigation results in violations of both administrative law, rules, and regulations as well as criminal laws, and the responsible public security organ has the case for further criminal investigation, the responsible procuratorate shall supervise the public security organ and can file a PIL (Art. 12). According to Art. 13, if the procuratorate requests in the recommendations that the agency must restore the damage in whole or in part or to perform according to its statutory duties, the litigation complaint shall be of the same content. If the procuratorate finds

[470] Notice of the General Office of the Supreme People's Procuratorate on Issuing the "Opinions on Questions Concerning the Deepening of the Pilot Program of Public Interest Litigation" (最高人民检察院办公厅关于印发《关于深入开展公益诉讼试点工作有关问题的意见》的通知), issued December 22, 2016, available at: http://www.sanmenxia.jcy.gov.cn/llyj/201706/t20170627_2016661.shtml [December 26, 2023] (henceforth: SPP Opinions).

out the citizens, legal persons or other social organizations collude with the accused administrative agency, they can file a concurrent civil PIL at the court (Art. 14).

Art. 15 stipulates that procuratorates in non-pilot regions can transfer any clues for public interest damage to the procuratorates participating in the pilot program. The higher-level procuratorate solves conflicts of jurisdiction (Art. 16). When they file a complaint, the procuratorate shall submit the PIL indictments, preliminary evidence on the infringement or nonfeasance and evidence on conducting the pre-trial procedure. The procuratorate does not need to hand in their organization code or their personnel's identification. But after receiving the court's subpoena, they shall state the names and the position of their representatives (Art. 17 and 18). The prosecutors must explain the reasons why they request a modification of the claims (Art. 19), and the court must approve. After the court's approval they shall report to the chief prosecutor for his approval. The SPP reviews requests for withdrawal and issues a written decision that it will send back to the responsible court (Art. 20).

By the end of May 2017, the prosecutors had initiated 934 administrative lawsuits nationwide. In 222 cases, judges ruled in favor of the procuratorate. The pilot program focused on issues "the people care the most" which is why the procuratorate engaged in a pre-selection of cases.[471] The majority of cases is related to disputes concerning the ecosystem and natural resources, the transfer of state-owned land, state-owned assets, and food and drug safety.[472] The various experiences made in the pilot regions not only helped to constantly improve public interest litigation in civil and administrative cases, but also served as the groundwork for finalizing the amendment of the Civil Procedure Law and the Administrative Litigation Law.

6. The SPC and SPP's Joint Interpretation

Eventually, in June 2017, the Standing Committee of the National People's Congress officially incorporated public interest litigation in the Civil Procedure Law (Art. 55, paragraph 2) and in the Administrative Litigation Law (Art. 25, paragraph 4).[473] In March 2018, the People's Procuratorate and the Supreme People's Court issued a joint explanation of 27 articles in which they specified the procedure in both administrative and civil litigation

[471] *Hualing Fu* 2017.

[472] Ibid.

[473] Decision of the Standing Committee of the National People's Congress on Amending the Civil Procedure Law of the People's Republic of China and the Administrative Procedure Law of the People's Republic of China (全国人民代表大会常务委员会关于修改《中华人民共和国民事诉讼法》和《中华人民共和国行政诉讼法》的决定), decision issued June 27, 2017, available at: http://www.xj.jcy.gov.cn/jcyw/dbjcb/gzzd6/202008/t20200822_2920004.shtml [January 4, 2024].

(henceforth: Joint Interpretation).[474] As *JIANG Bixin* and his colleagues emphasize, the procuratorate's core function consists in legal supervision and in ensuring that administrative agencies comply with the law. Having an effective judgment at the end of a trial is essential to preserve national and public interest in a suitable way.[475]

Administrative public interest litigation deals with cases in which administrative agencies with supervisory and managerial responsibilities in the fields of protection of the ecological environment and resources, food and drug safety, protection of state-owned assets, transfer of state-owned land-use rights, and other areas illegally performed their duties or did not perform at all so that they infringed upon national interests or social public interests. Consequently, the procuratorate shall send their recommendations to the administrative agency and urge it to perform its duties according to law. Where an administrative agency does not perform its duties according to the law, the People's Procuratorate shall file a complaint at the people's court according to law.

The Joint Interpretation adds further details about the procedure. It stipulates that the procuratorate that discovered clues about administrative malfeasance infringing upon national and public interests shall first send procuratorial recommendations to the respective administrative agency which shall reply within two months (Art. 21). Where the circumstances are urgent because there could be more damage to national and public interests, the agency must reply within 15 days. In case it refuses to reply, the procuratorate can file a complaint at court. In contrast to this, the Pilot Plan of 2015 and the SPP Implementation Measures of 2015 had demanded that the accused administrative agency replied within a month. The pilot program made the legislators realize that the time limit of one month for the agency to prepare and send a reply is too short. Two months are more convenient to check the facts and plan the implementation of the recommendations. Another difference is that the SPP Implementation Measures of 2015 made filing a complaint with a people's court optional for the procuratorate: Art. 41 stipulates that the procuratorate "may"[476] institute an administrative public interest

[474] Interpretation of the Supreme People's Court and Supreme People's Procuratorate Concerning Some Questions about Implementing the Law in Procuratorial Public Interest Litigation Cases (最高人民法院最高人民检察院关于检察公益诉讼案件适用法律若干问题的解释), issued on February 23, 2018 by the Supreme People's Court and on February 11, 2018 by the Supreme People's Procuratorate, effective March 2, 2018, available at: http://www.spp.gov.cn/spp/zdgz/201803/t20180302_368570.shtml [December 26, 2023] (henceforth: Joint Interpretation).
[475] *Jiang* 2018; Understanding and implementing the "Opinions of the Supreme People's Court and Supreme People's Procuratorate Concerning Some Questions about Implementing the Law of Public Interest Litigation Cases" (《最高人民法院最高人民检察院关于检察公益诉讼案件适用法律若干问题的解释》的理解与适用), article issued March 16, 2018, in: http://www.spp.gov.cn/spp/tt/201803/t20180316_371107.shtml [January 4, 2024].
[476] In Chinese: 可以.

litigation. The Joint Interpretation underlines that filing a complaint with a people's court is a mandatory consequence when the administrative agency fails to perform its duties after it received recommendations. The difference in the wording illustrates that the pre-litigation procedure functions as the key stage for resolving the dispute and for restoring national and public interests. The SPP's work report from October 2019 shows that follow-up supervision is necessary. The procuratorates must continuously supervise the administrative agency to evaluate the implementation of the recommendations. Otherwise, the administrative agency could ignore the recommendations and continue to damage state and national interests.[477] In the two years from 2017 to 2019, the reply rate reached 97 percent.[478]

In case a basic people's procuratorate files a complaint according to paragraph 4 of Art. 25 and item 2 to 4 of Art. 49 of the ALL of 2014, the basic people's court at the place of the defendant agency handles the hearing of the first instance and shall docket it.[479] The basic people's court has jurisdiction because firstly, procuratorial public interest litigation shall correspond to the regulations of the ALL. Hence, in general, basic people's courts hear first instance cases according to Art. 14 of the ALL of 2014. The ALL stipulates in the second paragraph of Art. 24 that a basic people's court can seek help form a higher-level court when a basic people's court, responsible for the hearing, believes that it is necessary for a people's court at a higher level to try the administrative case over which it has jurisdiction. It may report the case to the people's court at a higher level for decision. In general, if a public interest litigation is too complicated, the respective organs at the next higher level can support the lower-level procuratorate or a lower-level court. Secondly, the focus of the pilot program was at the grassroots and that is why it seems to be consequent to have the basic people's procuratorates and the basic people's courts responsible. Thirdly, basic people's court can handle investigations easier than higher-level courts. Lastly, provincial management can guarantee the independent work of basic people's court and prevent administrative interference.[480]

Art. 22 of the Joint Interpretation enlists the necessary materials for filing the case: (1) the written complaint with a copy for each defendant, (2) the pieces of evidence proving that national and public interests were damaged due to the defendant's misconduct; (3) pieces of

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[477] *Wang Wanhua* 2018, 104.
[478] Report of the Supreme People's Procuratorate Regarding the Work Situation of Launching Public Interest Litigation (最高人民检察院关于开展公益诉讼检察工作情况的报告), report issued October 24, 2019, available at: https://www.spp.gov.cn/spp/tt/201910/t20191024_435925.shtml [December 26, 2023] (henceforth: SPP's Work Report).
[479] Art. 5 (2) and Art. 23, Joint Opinions, supra n. 474.
[480] *Song, Wang* 2018, 70, 72.

evidence proving that the procuratorate has performed the pre-trial procedure, and that the administrative organ did not comply. According to *ZHOU Hao*, a prosecutor from Zhejiang, the consideration of evidence during administrative public interest litigation should focus on the legality of the pieces of evidence presented, on their logical consistency and on the verification by all parties. He argues that it is right to lower evidence standards for cases in which countermeasures are urgent, such as cases of environmental protection. In his view, the procuratorate is in the best position to send the necessary and convincing evidence compared to the administrative organs.[481]

The Joint Interpretation is also clear about judicial decisions, judgments, and rulings that the judges must issue. If the defendant agency corrects its illegal action or performs and the procuratorate requests withdrawal, the court shall allow the withdrawal of the lawsuit. When the procuratorate alters its claims and requests the court to consider the original administrative action as illegal, the court shall decide to confirm the illegality, according to Art. 24 of the Joint Opinions. Art. 25 lists the types of judgments possible in administrative PIL: First, the court shall confirm the illegality and invalidity of the administrative action according to Art. 74 and Art. 75 of the ALL of 2014 and rule the administrative organ to take remedial measure. Secondly, the court rules to revoke or partially revoke the administrative action according to Art. 70 of the ALL of 2014 and demands that the administrative agency makes a new administrative action. Thirdly, the court makes a judgment of performance according to Art. 72 and Art. 78 of the ALL of 2014 ordering the agency to perform its duties. Fourthly, for an administrative penalty that is obviously improper or other administrative actions are erroneous that involve the determination and recognition of a payment, the court shall rule to alter the penalty or the other wrongful decision. Lastly, the court dismisses the claim of the procuratorate when evidence for the administrative action is conclusive, the administration has applied the laws and regulations correctly and there is neither a procedural violation, abuse of power, obvious inappropriateness nor omission of statutory duties on the side of the administrative organ. The court can notify the government or other relevant department of the results of judgment.

7. Analysis

The ALL regulations illustrate the role of the procuratorate as general supervisor.[482] The fourth paragraph of Art. 25 of the ALL of 2014 allows the procuratorate at any level to

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[481] *Zhou Hao* 2018, 75.
[482] *Fu, Cullen* 2011 b, 8.

initiate public interest litigation against administrative organs when national interests or social interests are at stake due to unlawful administrative conduct or omission of duty.

The SPC and the SPP considered the test period to be successful so that the procuratorate can now officially participate in the trial as a plaintiff. However, practitioners criticize that the jurisdiction of basic-level people's court as found in the Joint Interpretation may be too general and does not actually correspond to the provisions of the ALL which strengthens the jurisdiction of intermediate people's court to prevent administrative interference. Some argue that the departments for administrative public interest litigation suffer from lack of personnel compared to the criminal and civil departments within the basic procuratorates. They handle both the trial supervision and the public interest litigation facing an increasing workload. Moreover, in the fragmented administrative system, basic-level administrative organs tend to violate the law more often either because of ignorance or because of local protectionism.[483] Others also argue that some cases might be too complicated and complex for the basic procuratorates to deal with. If a damage or an administrative misconduct are specific, or the case involves an external organization, it is difficult to find the responsible procuratorate. It could also be difficult to distinguish between the place where the administration conducted the illegal action, and the place where the damage occurred. The Joint Interpretation does not define a differentiation of local jurisdiction and competence for such special cases. Usually, the city level PP handles the initiation of the trial supervision procedure. According to the work report about the pilot program in Gansu, for instance, the procuratorates faced difficulties defining the responsible agencies in cases of cross-regional administrative actions.[484]

In addition to this, in the current PIL jurisdiction system, the responsible basic procuratorate and the responsible basic court are determined according to administrative districts and the level of the impugned administrative organs. However, it would be more effective to link the jurisdiction of PIL closer to all the provisions of jurisdiction in the ALL of 2014 or even to the new cross-jurisdiction system to curb administrative interference.[485] The arguments of the scholars point to the lack of experience of courts when handling PIL. Although the SPC's and SPP's implementation regulations provide a specific scope of acceptable cases and clear standards for the litigation procedure, the reformed jurisdiction system is useful for procuratorial PIL to strengthen the court's autonomy towards the administration. Cross-jurisdiction can reduce external interference, which is important, especially in cases where

[483] *Liu Yi* 2020.
[484] *Huang, Fu* 2017, 44.
[485] *Sun, Qi, Guo* 2018, 74.

administrative misconduct is very extensive, affects the general public and increases the likeliness of administrative interference with the court.

Interestingly, it becomes clear that administrative litigation is a secondary measure because the majority of cases stops at the stage of pre-litigation investigations in which the prosecutors send recommendations.[486] According to the SPP's work report in 2019, from July 2017 to September 2019, the procuratorates filed a total of 214,740 public interest litigation cases and handled 187,565 pre-litigation proceedings. The SPP was proud that year by year, the pre-litigation cases increased so that on average about 85 percent of cases end as pre-litigation investigations of the procuratorate. They clearly are an effective filter before the courts file cases. The statistics of the years 2019 and 2020 confirm the effectiveness of the pre-litigation procedure:

Type of dispute	**2019**			**2020**		
	Total	**pre-litigation recommendations**	**Percentage**	**Total**	**pre-litigation recommendations**	**Percentage**
Total number of cases	119,787	103,076	86 %	136,996	117,573	85,8 %
Ecological environment	50,263	45,090	89,7 %	58,220	50,067	85,9 %
Food safety	30,809	24,490	79,5 %	20,851	18,042	86,5 %
Resource protection	13,935	12,091	86,7 %	14,734	12,797	86,8 %

This highlights the effectiveness of procuratorial recommendations that asked the administration to start corrective measures. It also sheds light on how serious administrative misconduct still is and that the administration needs guidance for which the pre-litigation investigations are decisive. Moreover, the SPP is aware that there are still problems concerning

[486] In March 2018, the SPP launched a conference entitled "Public interest litigation, for your happy life" at which it introduced ten cases collected during the pilot program. In another document published in December 2018, the SPP also released ten model cases that distinguish between cases concerning pre-litigation and litigation procedure. The SPP summarized the key points, the basic facts, and the process of investigation and supervision of the case as well as why they serve as a model for similar cases; see: Model Cases of Procuratorial Public Interest Litigation (检察公益诉讼典型案例), issued March 2, 2018, available at: https://www.spp.gov.cn/spp/zdgz/201803/t20180303_368651.shtml [December 26, 2023]; Supreme People's Procuratorate issues 10 model cases concerning procuratorial public interest litigation (最高人民检察院发布检察公益诉讼十大典型案例), issued December 25, 2018.

the quality and efficiency of handling cases in different regions because in grassroots procuratorates, specialized team members are missing.[487]

To give an example of pre-litigation investigation, the Shizu County People's Procuratorate in Chongqing sent their recommendations to the county government to protect a natural reserve. The case became a model case because of the significant role the chief procurator played in sending procuratorial recommendations since he had made it a "principal's project". Hence, the procuratorate wanted to underscore that PIL is meant to be supervisory as well as contributory. A second example worth mentioning happened in Ningbo and involved nuisance calls. The local procuratorate had investigated the matter through public surveys and legal consultation. They reported to the party committees and to the higher-level procuratorate for approval of their steps. In their recommendations, they asked the respective administrative agency to improve their measures for telecommunications services. This was a good example for a "people-oriented approach" meaning that the procuratorate tried to understand the people's needs and desires. These cases exemplify that procuratorial PIL in administrative litigation – even though there are no lawsuits in the end – expands the protection of the citizens lawful rights and interests in cases that affect an indefinite number of people who cannot organize the lawsuit themselves.[488]

The revision strengthened the PP's supervision power over the administration by stipulating that a recommendation is only the first step to correct misconduct. Before the reform of the ALL, procuratorial recommendations lacked the deterrent force towards the administration that simply ignored them. With the risk of being the defendant in a public interest litigation, administrative organs are now more inclined to comply. In addition, public interest litigation follows common procedural standards: Procuratorial supervision must be appropriate which means that the procurators must choose those measure that interfere the least and that save resources, litigation time and costs. Public interest litigation includes the concept of open trial which increases the deterring effect for administrative organs to interfere in an unlawful way and to ensure legal protection for the people. At the same time, it has an educational effect for the affected parties and for the general public.

Although administrative litigation is subjective litigation in its nature, administrative PIL is an innovative way to protect the lawful rights and interests of society at large. In general, individual citizens are not eligible for filing a complaint when the administrative action affects

[487] SPP's work report, supra n. 478.
[488] The Supreme People's Procuratorate issues ten model cases concerning procuratorial public interest litigation, supra n. 486.

objective interests of the state. But the state uses the procuratorate as their centralized agent that can become the plaintiff in administrative PIL. In the name of public interests, the procuratorate can ensure government accountability and protect the people's lawful rights and interests.

III. Defendants

According to item 2 of Art. 49 of the ALL of 2014, when citizens, legal persons or social organizations file a complaint with a court, they must name a distinct agency as the defendant. Art. 67 of the 2017 SPC Interpretation adds that the plaintiff shall provide the name and other relevant information to distinguish the agencies. In case the court cannot identify the defendant agency according to the information provided in the statement, it can demand the plaintiff to correct it. If the correction is insufficient, the court will not accept the case. As the general rule,[489] the first paragraph of Art. 26 stipulates that the administrative agency that took the impugned administrative action shall be the defendant. To protect the plaintiff's lawful rights and interests, it was important for the revision of the ALL to make it easier for the people to find the right defendant. This section introduces the administrative defendants in administrative litigations referring to the scholarly discussions that took place in the background.

1. Administrative subject theory

The clear identification of the defendant agency used to constitute an impediment for many plaintiffs. To resolve this, the literature and the 2000 SPC Interpretation had defined characteristics that qualifies administrative agencies or organizations as defendants in administrative litigation: (1) they possess authority of state administration and (2) can independently assume legal liability; in case (3) they infringed upon the lawful rights and interests of a citizen or legal person during their operation, (4) the courts inform them about the lawsuit.[490] The four requirements refer to the concept of "administrative subject" which was translated by *WANG Mingyang* in his book about the French administrative law in 1988.[491] According to *WANG*'s understanding, an administrative organ had three characteristics, namely, authority, title and liability, which are similar to the definition of a legal person within civil law.[492] In Chinese administrative law circles, transplanting the French concept to China caused controversy because it suggested that only an administrative subject, namely an administrative

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[489] *Ying Songnian* 2015 a, 68.
[490] Art. 20-21, SPC Interpretation 2000, surpa n. 226; *Ying Songnian* 2015 a, 68.
[491] *Wang Mingyang* 1988; *Zhang Xiaoli* 2015, 120, 124.
[492] The Chinese Civil Code defines "legal person" in the same vein in Art. 57: "A legal person is an organization with capacity for civil rights and capacity for civil conduct which independently enjoys civil rights and assumes civil obligations in accordance with the law." Civil Code, supra n. 421.

agency empowered by the law, regulations and rules, could become defendant.[493] They argued that the concept of administrative subject and the qualification of defendant in administrative litigation were too narrow.[494] At the time the ALL was promulgated, adopting the French concept of "administrative subject" offered a convenient solution for the defendant qualification. Nonetheless, Chinese legal scholars soon realized that the concept was insufficient to keep up with the constant administrative restructuring and reallocation of administrative functions demanded during China's economic modernization.

The SPC tried to solve this problem by adding single qualified defendants in administrative litigation in its 2000 SPC Interpretation. Administrative law scholars criticized that this measure merely treated the symptoms but not the root.[495] Professor *ZHANG Jiansheng* proposed the concept of separation of powers for the structure of administration. He reasoned that public associations like the postal service, civil aviation companies, consumer associations, universities and libraries should also be entities empowered and organized by state organs. Eventually, this would separate the qualification as defendant in administrative litigation from the concept of administrative subject.[496]

In a similar vein, the Open Government Information Regulations (henceforth: ROGI)[497] underline in Art. 55 that institutions or enterprises of education, hygiene and health, water supply, power supply, gas supply, heat supply, environmental protection, public transportation, and other public organizations shall disclose the information compiled or obtained in the process of providing social and public services. It would be consequent to assume that these institutions and enterprises are qualified as being the defendant in administrative litigation. However, Art. 51 of the ROGI and also Art. 26 of the ALL of 2014 negate a broad understanding and constrain it to administrative agencies. Hence, the Chinese reformers adhered to the conception of "administrative subject".

In general, in Art. 19 of the 2017 SPC Interpretation, the SPC stipulates that the administrative agency that signed an administrative action, giving it external legal effect, shall be the defendant. If an administrative agency acts in its name and signs an action, it is responsible even if a higher-level agency authorized it. The authorization by a higher-level agency can occur in two circumstances: firstly, the law, regulations and rules require approval

[493] *Zhang Jiansheng* 2008, 68-69.
[494] *Ying Songnian* 2015 a, 69.
[495] Ibid., 68.
[496] Ibid., 74-75.
[497] Open Government Information Regulations (中华人民共和国政府信息公开条例), issued April 5, 2007, and revised April 3, 2019, by the Order of the State Council No. 492 (henceforth: ROGI).

by a higher-level agency as part of the legal procedure, or the lower-level agency requests advice by its superior.[498] Art. 20 of the 2017 SPC Interpretation traces the responsibility to the agency which established an organ and transferred administrative functions but not legal liability to it. The second paragraph of Art. 20 underlines that an internal organ or dispatched organ of an administrative agency authorized by the law, regulations, or rules to exercise administrative powers and violates them, shall be the defendant. The third paragraph refers back to Art. 26 of the ALL of 2014 as the general clause for determining the defendant if the law, other regulations, or rules are silent on the authorization of an administrative agency's organ or dispatched organ. Usually, the administrative agency that issued the administrative action shall be the defendant. The organ or dispatched organ that must perform, shall regard this as a delegation without legal liability.[499]

Even though the two provisions cited above shed some light on the right defendant, in practice, it is still difficult to identify the defendant because of the complex structure of the administrative apparatus.[500] The complexity is further illustrated by the extensive catalog of potential defendant agencies in the 2017 SPC Interpretation.[501] In general, it stipulates that functional departments, organs, and any other entities that are directly authorized by the law, the relevant administrative rules and regulations shall be the defendant in administrative litigation, unless they are only authorized by an administrative agency and not by the law.

2. Special economic zones as defendants

Cases involving administrative organs of special economic zones (henceforth: SEZ)[502] used to be difficult to handle in court.[503] The problem started with identifying the right defendant among the many agencies within a SEZ. This affected citizens who suffered from expropriation decisions to use the land for building in a SEZ, but also foreign investors and companies that experienced unlawful modification of their contracts by the local administration or administrative interference in their business operations.[504]

Since the reforms from 1978, the central government established SEZs and decentralized law-making to allow the local governments to introduce experimental rules to

[498] *Ying Songnian* 2015 a, 72-73.
[499] Ibid., 75.
[500] Ibid., 68-69.
[501] Art. 19-26, SPC Interpretation 2018, supra n. 228.
[502] In Chinese: 开发区管理机构.
[503] *Wang* 2014, 85.
[504] *Weller* 1998, 1238-1282.

foster modernization and economic growth.[505] The first economic zones started in Shenzhen, Zhuhai and Shantou in Guangdong, Xiamen, and Fujian in 1980, followed by Shanghai in 2013. So far, there are 2,543 development zones among which are 552 zones on the national level and 1,991 ones on the provincial level. However, there is no national law regulating the establishment and operations of development zones. It is criticized that the focus is more on innovation rather than standardization which leads to an arbitrary establishment of development zones and an incoherent and thus fuzzy scope of authority.[506] Before the 2017 SPC Interpretation came into effect, most judges recognized the management organ to be qualified as the defendant by either applying the administrative subject principle or by applying what was called "the one who acts is the defendant".[507]

Art. 21 of the 2017 SPC Interpretation defines the defendant agency where a SEZ is concerned. In general, the defendant is the administrative agency of the SEZ that the provincial people's government or the State Council established by permission, or the functional department[508] of an administrative agency of the SEZ that the provincial people's government or the State Council established by permission as well. When a functional department of any other administrative agency of the SEZ is concerned that the provincial government or State Council did not directly establish, the administrative agency is the defendant. If an agency identified as defendant is not qualified, the local government shall be the defendant. Evidently, Art. 21 excludes development zones below the provincial level from being qualified as the defendant in administrative litigation. This regulation is a reaction to practical problems.

For example, *WANG Hui* illustrates the complexity of the administrative apparatus referring to the China (Shanghai) Pilot Free Trade Zone (SHFTZ) which is located in Pudong New Area. The management committee of the SHFTZ functions as its direct leadership. The academia discussed whether it is a dispatched organ[509] of the Shanghai Municipality or a dispatched agency.[510] The main difference lies within the scope of authority. Unlike a dispatched agency, a working department establishes a dispatched organ and restricts its authority to a certain task. In contrast to this, a dispatched agency has the status of an independent administrative subject. Art. 8 of the Regulations of the China (Shanghai) Pilot Free Trade Zone, issued in 2014, refers to the management committee as a dispatched organ of the

[505] *Martinek* 2014, 41, 47.
[506] *Lü* 2019, 54-55.
[507] Ibid., 55.
[508] In Chinese: 职能部门.
[509] In Chinese: 派出机构.
[510] In Chinese: 派出机关; see: *Wang* 2014, 85.

municipal government and adds a list of duties, such as the set-up of the relevant administrative management for, among others, affairs of investment, trade, financial services, land planning, construction, transportation, environmental protection, human resources, intellectual property, statistics, housing, civil defense, water affairs, municipal administration and information disclosure.[511] Hence, the status of the management committee of the SHFTZ as dispatched organ confines their qualification as defendant only to the actions within the scope of their authorization. For any other action, they issue outside their legal authorization, the municipal government is responsible. They can simply evade their legal liability.[512]

Moreover, some local governments established development zones without the approval of the State Council or the provincial people's government. In this process, they illegally transferred land and damaged the lawful rights and interests of farmers and residents.[513] Other development zones illegally expanded the geographic area. In such a case, a management organ of a development zone just bestows other agencies outside their jurisdiction with administrative powers or they take charge of a new area, like a neighboring street or village which does not affect the name of the development zone. Nevertheless, the action is illegal due to the missing authorization. Some development zones established areas within their area, or parks within the park. This led to multiple subordinate functional management organs each possessing internal and functional departments. Their qualification as defendant in administrative litigation depends on the approval of the State Council or the provincial people's government.[514] They can evade legal liability according to the Organization Law for local people's congresses at all levels and local people's governments at all levels. It stipulates in Art. 68 that establishing district offices as county agencies and neighborhood offices as city or municipal agencies need the approval of the people's government at the next higher level.

Evidently, Art. 21 of the 2017 SPC Interpretation does not cover and solve all practical problems. In the State Council's Provisions on Promoting the Reform and Innovative Development of Development Zones from 2017, it calls for administrative streamlining through the reduction of departments and for the integration of all the dispatched organs of the development zone. It also underlines that the scope of authority is based on economic management and investment services and not social management and public services which is

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[511] Regulations on the China (Shanghai) Pilot Free Trade Zone (《中国（上海）自由贸易试验区条例》), Announcement No. 14 of the Standing Committee of the Shanghai Municipal People's Congress (上海市人民代表大会常务委员会公告第 14 号), issued July 25, 2014, available at: https://www.zjsfq.gov.cn/html/1/169/181/182/246/619.html [January 5, 2024].
[512] *Lü* 2019, 56; *Wang* 2014, 87.
[513] *Lü* 2019, 56.
[514] Ibid., 57.

at the disposition of the local people's government. It further emphasizes that if regional cooperation projects jointly build development zones, the two parties should straighten out the management, investment, and distribution mechanisms. They should adhere to the separation of administration from enterprises, separation of government and capital, and separation of management agencies from development and operation enterprises.[515] This provision clarifies two aspects: Firstly, when an organ of a development zone engages in public affairs, it exceeds its power. Scholars demand that, in cases where people file a complaint against an action of that organ, the people's courts shall accept them as the defendant and should not complicate the situation by denying the qualification due to an internal problem of administrative authority which the superior management organ should solve. Secondly, if two superior organs jointly built a development zone, the defendant qualification should be determined by the principle of signature.[516]

Overall, due to the complexity of the development zones, the provisions in the ALL and the 2017 SPC Interpretation attempt to offer guidance and definition to find the right defendant for litigation among agencies in development zones. But in practice, the provisions clearly lag behind the complex structures so that management zones can easily shrink their legal liability and avoid court trials.

3. Other types of defendants

Art. 25 of the 2017 SPC Interpretation regulates the responsible defendant agency in cases of expropriation. An expropriation agency shall be the defendant when the municipal or county people's government designate it to organize and implement the expropriation and compensation of a building. If the expropriation agency entitles another organ with the implementation and the person affected by such action files a complaint, the expropriation agency shall still be the defendant.

The first paragraph of Art. 24 of the 2017 SPC Interpretation defines another defendant. It adds that a villager's committee or neighborhood committee, which fulfills administrative duties as authorized by the law, the relevant administrative rules, or regulations, shall be the defendant if a plaintiff files a complaint. If an administrative agency authorized the committee, the authorizing agency shall be the responsible defendant. In the third paragraph, the SPC clarifies the status for institutions, like institutions of higher education, lawyers' association, an

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[515] Art 11 of Several Opinions of the General Office of the State Council on Promoting the Reform and Innovative Development of Development Zones (国务院办公厅关于促进开发区改革和创新发展的若干意见), issued February 6, 2017, in: Guo Ban Fa (国办发) 2017, No. 7.
[516] *Lü* 2019, 58.

association of certified public accountants or other industry associations when the law the relevant administrative rules, and regulations authorize them. If an administrative agency authorizes them, the authorizing agency is the correct defendant.

A decisive influence had the so-called *TIAN Yong*-case.[517] In 1999, *TIAN Yong* sued the University of Science and Technology in Beijing for refusing to give him his certificate. After the first and second instance the courts involved had dismissed the case and denied the university's qualification as defendant, but the SPC ruled in favor of the plaintiff. It argued that although a university is not an administrative agency, the law authorizes it to fulfill administrative duties. Hence, the university was a qualified defendant in that case. But in other cases, the courts were still reluctant to accept the university or institute of higher education as the defendant.[518] This inconsistent handling of similar cases made scholars demand to acknowledge the role of universities as institutions of public services. The difference between state administration and institutions lies in the state's privilege to apply coercive power.[519] The scholars justify their perspective with reference to international examples: Due to failures of the government and the market, non-profit organizations emerged in the USA in the 1970s and shortly afterwards also in Europe.[520] The USA calls social organizations the "third sector" that acts between the state and profit-seeking enterprises. The "third sector" pursues non-profit objectives in a professional manner. German academia distinguishes between subjects of private law and subjects of public law (*Subjekttheorie*). The law authorizes public authorities such as the central government, the provinces and the municipalities or institutions which makes them subjects of public law (*Beliehene*). Parties that meet on the level playing field are subjects of private law. Hence, public law is the privilege or the special law of the state. Provisions affecting anyone (*Jedermann*) belong to the private law.[521] According to this understanding, an action is a public action if an authority acts unilaterally based on a legal authorization. So, in correspondence with the SPC's judgment in the *TIAN Yong* case, the law authorized the university to issue the certificate. It clearly fulfilled a task of public service in a professional

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[517] Beijing Haidian District's People's Court (北京市海淀区人民法院), *TIAN Yong* v. University of Science and Technology of Beijing, Administrative Lawsuit on Refusal to Issue the Graduation Certificate and the Academic Degree Certificate (田永诉北京科技大学拒绝颁发毕业证、学位证案), February 14, 1999, in: Hai Xing Chu Zi No. 00142 (海行初字第 00142 号). The case belongs to the guiding cases as guiding case No. 38, in: Notice of the Supreme People's Court on the Ninth Group of Guiding Cases (最高人民法院关于发布第九批指导 性案例的通知) issued December 24, 2014, in: Fa (法) 2014, No. 37 (henceforth: *TIAN Yong* case).
[518] *Zhao, Liu* 2013, 51.
[519] Ibid., 49.
[520] *Anheier, Seibel (eds.),* 1990, 7-8.
[521] *Fehling, Kastner, Störmer (eds.)* 2016, at points 95-97.

and unilateral way.[522] To solve similar disputes involving higher education, the SPC had announced for the first half of 2021 to issue provisions on several issues regarding the application of law in hearing administrative cases involving higher education.[523] As of August 2023, a final clarification is still pending with the SPC.

In March 2021, the SPC added new Provisions on Several Issues Concerning Correctly Determining the Qualifications of Defendants in Administrative Litigation of Local People's Governments at or above the County Level[524] in which it clarifies that the functional departments of local people's governments at or above the county level that are authorized by their laws, rules, and regulations to implement administrative actions shall be the defendants in administrative litigation. For instance, Art. 2 determines that the right defendant in a lawsuit against compulsory demolition of an illegal building is the administrative organ that made the decision according to the Urban and Rural Planning Law. But in case there is no written decision, the functional department implementing the demolition is the right defendant.

The same applies in cases where the local people's governments at or above the county level must perform statutory duties or payment obligations but delegates the authority to a lower-level people's government or a functional department (Art. 4). The designated organs are the right defendants when the people, legal persons or other organizations file an administrative law complaint suit. For lawsuits concerning real estate, the right defendant is the real estate registration agency designated by the local people's government at or above the county level or other functional departments that actually perform the duties in accordance with the provisions of the "Interim Regulations on Real Estate Registration" (Art. 5), and so are the designated specific institutions that are in charge of the daily work of government information disclosure (Art. 6). The courts' obligation is to provide guidance to the plaintiffs to name the right defendant (Art. 7).

In addition to the above identified defendants, the fourth paragraph of Art. 26 of the ALL of 2014 illustrates that two or more agencies that cooperated and jointly decided the impugned administrative action, shall be co-defendants. This is a regular joinder of proceedings to save judicial and administrative resources and avoid conflicts caused by different

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[522] *Zhao, Liu* 2013, 51.

[523] Plan of the Supreme People's Court on Issuing Judicial Interpretations in 2020 (最高人民法院 2020 年度司法解释立项计划), issued March 9, 2020, in Faban (法办) 2020, No. 71.

[524] Provisions of the Supreme People's Court on Several Issues Concerning Correctly Determining the Qualifications of Defendants in Administrative Litigation of Local People's Governments at or above the County Level (最高人民法院关于正确确定县级以上地方人民政府行政诉讼被告资格若干问题的规定), issued March 25, 2021, in: Fashi (法释) 2021, No. 5.

judgments.[525] Similar to the ALL provision, Art. 26 of the License Law states in its second paragraph that the local people's government shall organize "the relevant departments to handle the applications jointly and intensively." A concentrated and centralized exercise of administrative powers should serve the convenience of the people.[526] The fifth paragraph refers to administrative agencies authorized by another administrative agency to issue an action in the authorizing agency's name. Hence, the authorizing agency is the right defendant. The sixth paragraph of Art. 26 of the ALL of 2014 involves the transfer of qualification to the agency that succeeds an agency that was abolished or whose powers were modified. Art. 23 of the 2017 SPC Interpretation specifies the case where the dissolution or the modification of an agency leaves a void because no other agency continues to exercise the original functions, either the people's government to which the agency was affiliated or according to the vertical chain of command the higher-level agency shall be the defendant.

It becomes clear that the SPC is aware that naming the right defendant is a hurdle for many plaintiffs. Therefore, the courts must guide the plaintiffs when they have difficulties naming the right defendant.[527] The 2017 SPC Interpretation and the additional SPC Provisions of 2021 are meant to shed light on who is the right defendant, but it is also obvious that the Chinese bureaucracy is still a black box making it difficult for common people to identify the actual decision makers. As the SPC Provisions issued in March 2021 reveal, not all administrative actions are issued in writing. Hence, it is consequent and more tangible for the people that the authority that implements an administrative action is the defendant. Since in the future, the administration will remain diverse and complex, the people will continue to depend on the courts' guidance and the SPC's definitions of single qualification.

4. Cases involving a reconsideration agency

Citizens can request reconsideration at the higher-level administrative agency when they do not agree with an administrative action. Administrative reconsideration is an internal procedure within the administrative apparatus and includes a hearing of the stakeholders by the reconsideration agency. The affected party can take the reconsideration decision to court as well (Art. 5 Administrative Reconsideration Law).[528]

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[525] *Liang Junyu* 2019, 79.
[526] *Ying Songnian* 2015 a, 72.
[527] Art. 7, Provisions of the Supreme People's Court on Several Issues Concerning Correctly Determining the Qualifications of Defendants in Administrative Litigation of Local People's Governments at or above the County Level, supra n. 524.
[528] For more details see: Chapter 4 Initiation of administrative trials after 2014, at I. Administrative Reconsideration, 125.

The role of the reconsideration agency as sole defendant or co-defendant in court was controversial. The reconsideration agency tended to sustain the original administrative action to avoid a trial in court. According to one academic view, the reconsideration decision is the second decision issued by the higher-level agency. Hence, the reconsideration agency shall be the sole defendant.[529] A second opinion argued that the reconsideration has a quasi-judicial nature because it intends to correct wrong administrative actions. These proponents believe that reconsideration is judicialized.[530] A third view states that in certain, undefined circumstances, the reconsideration agency shall be the object of independent judicial scrutiny.[531] Eventually, the reformers wanted to prevent reconsideration to become a mere formality and to increase the reconsideration agency's responsibility. They demanded that it fulfills it functions professionally.[532] What is more, according to the new ALL and the 2017 SPC Interpretation, it is now likely that the court summons the reconsideration agency. There are four scenarios concerning the outcome of the reconsideration decision and the subsequent judicial scrutiny:

Firstly, the second paragraph of Art. 26 of the ALL of 2014 determines that both the administrative agency that originally issued the action and the reconsideration agency, in case it sustains the original action, shall be co-defendants. The reconsideration agency makes a so-called maintenance decision on the basis of five conditions, namely clear facts, conclusive evidence, correct application basis, legal procedures, and appropriate content, according to item 1 of Art. 28 of the Administrative Reconsideration Law. By affirming the original administrative action, the reconsideration agency does not cause any new legal restrictions for the counterparty. It issues a decision that constitutes a new administrative action and simultaneously, is equal in content to the original action.[533] The SPC followed the methods of applying a legal fiction with regard to both the original action and the reconsideration decision as an entity.[534] Art. 134 of the 2017 SPC Interpretation elaborates that the administrative agency of the original action and the reconsideration agency *must* be co-defendants.[535] If the plaintiffs do not name one or the other, the court must notify them and add the other agency as co-defendant, even if the plaintiff does not approve. The new co-defendant provisions deprive the plaintiffs of their disposition right.[536]

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[529] *Liang Fengyun* 2016, 124
[530] Ibid.
[531] Ibid., 123-124.
[532] *Liang Junyu* 2019, 74.
[533] *Liang Fengyun* 2015, 163; *Ying Songnian* 2015 a, 71.
[534] *Liang Junyu* 2019, 79.
[535] *Ying Songnian* 2015 a, 79.
[536] *Liang Junyu* 2019, 79.

Secondly, if the reconsideration agency modifies the impugned action, it will be the sole defendant according to the second clause of the second paragraph of Art. 26 of the ALL of 2014. As said before, this confirms the understanding that the reconsideration agency's decision is an independent administrative action. To be more precise, Art. 22 of the 2017 SPC Interpretation provides details on the meaning of "modification of the original administrative action". According to the first paragraph, a modification concerns the disposition results of the original administrative action. Secondly, if the reconsideration agency modifies principal facts or evidence or the legal basis but the result of its decision remains the same, the reconsideration agency sustained the original administrative action. If the reconsideration results in determining that the original action is invalid or illegal, this decision is a modification of the original action. The third paragraph excludes violations of statutory procedure which are not a reason for modification of the original administrative action. The original administrative agency can heal violations of statutory procedure afterwards. But the healing does not necessarily change the legal consequences of the original act.[537] In contrast to Art. 22 of the 2017 SPC Interpretation, Art. 7 of the 2000 SPC Interpretation used to be broader. It understood the modification of the original action not only in terms of changing or partly changing the result of the original agency's disposition but also when the reconsideration agency changed the principal facts and evidence as well as the normative basis of the decision. This reflects the process of composing an administrative action which consists of several steps such as collecting evidence, determining facts, and applying norms on whose ground the effectiveness and legality of the administrative action is based. If the reconsideration agency changed one of these elements, it should be the sole defendant. On this backdrop, the reconsideration agency would try to avoid such disadvantage and would rather not act at all. Hence, to correct this shortcoming, the 2017 SPC Interpretation specified the "modification of the original action" as the modification of the disposition result which has actual impact on the rights and interests of the counterparty.[538]

Thirdly, if the reconsideration agency dismisses a request or claim, Art. 133 of the 2017 SPC Interpretation points out that a rejection also belongs to the category of "maintaining the original action". If the reconsideration agency dismisses the request because the conditions for filing a reconsideration request are not satisfied, the reconsideration agency shall be the sole defendant.[539] This also underlines that its decision is identical to the impugned original action.

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[537] *Liang Fengyun* 2016, 126.
[538] Ibid.
[539] Ibid., 129-130.

The legal fiction of handling both the original action and the reconsideration decision as a procedural unity finds an equivalent in Art. 79 of the German Code of Administrative Court Procedure. Item 1 of the first paragraph concerns a rescissory action whose subject-matter is the original administrative action "in the shape it has assumed through the ruling on an objection (i.e., the reconsideration decision)." The Code of Administrative Court Procedure fictionally assumes the procedural unity of both actions.[540] However, the literature discusses whether the court can handle the decision of the reconsideration agency as the sole subject matter or reviews it incidentally. The German legislators determined that the reconsideration decision can be the sole subject-matter if it contains either a grievance for the first time (item 2 of the first paragraph of Art. 79 of the Code of Administrative Court Procedure) or if it contains a separate grievance (the second paragraph of Art. 79).[541] In contrast to the Chinese administrative litigation procedure, a reconsideration agency in Germany must not necessarily participate in court because the reconsideration decision is not enforceable as long as the original action is pending in court.[542]

In China, the rejection of a reconsideration request automatically renders it as the co-defendant, and so does its inaction.[543] That is because the third paragraph of Art. 26 of the ALL of 2014 stipulates that if the reconsideration agency did not decide during the prescribed period and the complaint is directed against the original action, the administrative agency originally issuing the action shall be the defendant. In case the complaint refers to the reconsideration agency's decision or inaction, the reconsideration shall be the sole defendant. The ALL of 1989 was silent on such a scenario.[544] The revised Art. 26 of the ALL of 2014 absorbed and upgraded Art. 22 of the 2000 SPC Interpretation. Lastly, if the reconsideration agency partly sustains the original action or partly changes the content or partly rejects the request, both the original agency and the reconsideration agency shall be co-defendants, as stipulated by the second paragraph of Art. 134 of the 2017 SPC Interpretation.

In addition, the third paragraph of Art. 134 stipulates that hierarchical jurisdiction over the case shall be determined according to the administrative agency taking the original administrative action, which also includes basic people's courts. This rule might conflict with Art. 18 of the ALL of 2014 which states that the court of the place of the reconsideration agency *may* also hear a case that entered reconsideration. Intermediate people's courts handle cases

[540] *Sodan, Ziekow (eds.)* 2018, at points 18-21.
[541] Ibid., at points 19-21.
[542] Ibid., at point 18.
[543] *Liang Junyu* 2019, 80.
[544] *Liang Fengyun* 2015, 167.

involving an agency at or above the county level according to Art. 15 of the ALL of 2014. In a draft version, it said that the intermediate people's courts shall hear "cases involving administrative actions *other than administrative reconsideration decisions* made by departments of the State Council or local people's governments at or above the county level". Eventually, the legislators deleted this qualifier arguing that it was too cumbersome. An interpretation should solve it instead. Here is also potential for the protection of the rights and interests of the people: If a conflict in jurisdiction occurs, the people have the possibility to choose the responsible court according to their convenience, according to the first sentence of Art. 21 of the ALL of 2014.

The administrative law community in China assessed the reform to be a relative success.[545] In his research, *YU Qi* collected data about administrative reconsideration agencies' rate of correcting original administrative actions. He concluded that between 2011 and 2016 the correction rate was about 30 percent on average whereas the courts' rate of correcting the original action in administrative litigation was less constant. It dropped from about sixty percent in 2011 to less than forty percent in 2015, which was about as high as the correction rate in administrative reconsideration at the same time.[546] In his opinion, the correction rate is a sign for the improvement that the administrative reconsideration system has been undergoing since the reform. Since the co-defendant system increased the workload and the risk of losing in court (which affects the annual assessment of the agency), the reconsideration agency feels pressure to review the original action more profoundly. He also concludes that if the reconsideration is more profound and the agency corrects the flawed original action, the reconsideration agency has to appear in court as co-defendant less likely.[547]

However, other administrative law scholars believe that the co-defendant system did not meet all expectations. For instance, they see the fact that the reconsideration agency's maintenance rate of the original action still accounts for about sixty to sixty-three percent since the ALL's revision as a sign for not fearing the risk of being defendant in court when sustaining the impugned action.[548] The average rate of maintaining the original action was about fifty percent between 2003 and 2017. Moreover, they criticized that the co-defendant system is not practical because it has a costly and negative impact on the operations of reconsideration

[545] *Yu Qi* 2018, 215.
[546] Ibid., 199.
[547] Ibid., 211.
[548] *Ge, Ding* 2019, 85-86. The authors divide the cases won by the administration by the total number of cases that a judgment terminated. This leads to different results than taking the total number of all administrative cases filed as dividend. They argue that the total number of all administrative cases filed at court was misleading because the numbers were less high.

agencies. It pressures the reconsideration agency because it has to travel and prepare for the trial in court. A moderate position states that the shortcomings of the co-defendant system are only temporary and need more practice.[549] However, eight years after the reform, we can conclude that the co-defendant system did not bring profound changes. The reconsideration agency is still keen to maintain the original action although it is likely to attend the trial as defendant agency.[550]

IV. Third Party

According to the first paragraph of Art. 29 ALL of 2014, a third party is a citizen, legal person or other social organization who has an interest in the administrative action but did not file a complaint against the impugned administrative action or who has an interest in the outcome of the case. When they request it, they can participate in the trial as the third party, or the people's court notifies them to participate. They participate in a pending trial before its termination and enjoy the same rights and obligations as the plaintiff and the defendant.[551] The difference between the third party and the plaintiff is that the third party did not file a complaint and is not the direct counterparty of the action.

At the beginning, an example were the regulations of the Civil Procedure Law concerning the third party.[552] Art. 56 of the CPL distinguishes between an independent claim of the third party (first paragraph) and a claim that depends on the subject-matter of an action between two parties at trial (second paragraph). In case of the former, the third party can file a complaint, whereas in the latter case the third party usually has an interest in the outcome of the trial and can either request to participate or the court can notify them to participate.

The legislators of administrative litigation did not copy the provisions of the CPL but modified the standing of the third party in administrative litigation to meet the specific requirements of that type of trial. The ALL of 1989 determined in Art. 27 that the citizen, legal person, or other organization that "has interests in a specific administrative act under litigation may as a third party file a request to participate in the proceedings or may participate in them when so notified by the people's court." According to the original legislators' intention, the participation of the third party serves to protect their own lawful rights and interests, to improve the court's fact-checking, to facilitate the litigation process and to save judicial resources and

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549 *Deng* 2020, 61-62; *Wang Qingbin* 2019, 127.
550 For more information see Chapter 5, I. Administrative reconsideration, 2. Relationship between administrative reconsideration and administrative litigation, 131.
551 *Liang Fengyun* 2015, 181; *Ying Songnian* 2015 a, 81.
552 Ibid., 81.

time.[553] However, judicial practice revealed many shortcomings of this provision, such as questions whether another agency could be third party, the court can or must notify a third party to participate or how the third party can seek relief for their own rights and interests.[554]

Before the issuance of the 2000 SPC Interpretation, scholars had different opinions about the qualification of an administrative agency as third party. Some argued that firstly, there was no general legal basis for adding another agency to the hearing. Secondly, the judiciary had no authority to order an agency to participate. If another agency had an interest, the court could still send its recommendations to the superior authority to handle the matter. Thirdly, the purpose of administrative litigation was to provide private parties with a channel to seek redress against a state organ and not to have two state organs in court whose functions and authority might overlap and cause tensions.[555] Others retorted that sometimes more than one administrative agency was involved in handling the same case. But the actions they issue concerning that case could be contradictory. Hence, to understand all facts and review the legality of the impugned action the court should hear the other agency as the third party. Eventually, the 2000 SPC Interpretation specified in the second paragraph of Art. 23 that the court must notify another administrative agency to participate as third party if this agency must be another defendant, but the plaintiff disagrees. This provision did not only solve the problem by providing a legal basis but also guaranteed the protection of the parties' disposition rights and the supervision of administrative actions at the same time.[556] The 2017 SPC Interpretation absorbed this solution in the second paragraph of Art. 26.

Furthermore, the first paragraph of Art. 24 of the 2000 SPC Interpretation states that the court must notify those parties who have an interest in the same impugned administrative action but do not file a complaint, to participate as the third party. This indicates that the court must check formally whether there is a third party with an interest in the trial.[557] This obligation caused another debate about *who* is a party that the court *must* notify. One can distinguish third parties according to their interest and standing:[558] An administrative action can affect a third party either directly or indirectly, either positively or negatively, either by the administrative action itself or by the judicial judgment concerning that administrative action. So, the impact affecting the third party refers to losing or reducing the party's rights, or to levying their legal

[553] *Yan* 2017 b, 53, 58-59.
[554] *Huang* 2020 a, 118.
[555] *Liang Fengyun* 2015, 185.
[556] *Huang* 2020 a, 119, 121; *Liang Fengyun* 2015, 184, 186.
[557] *Huang* 2020 a, 119, 121.
[558] *Ying Songnian* 2015 a, 81-82.

obligations. Besides this, the third party can also have a factual interest concerning the dispute solved in the trial.[559] The so-called "plaintiff-type" third party[560] participates in administrative litigation to protect their own lawful rights and interests. The so-called "defendant-type" third party[561] refers to third parties that enjoy the same rights or carry the same burden as the defendant party. This is another administrative organ that co-issued the impugned administrative action with the defendant agency or a higher-level agency that approved the action of its subordinate agency. This differentiation reveals that the scope of third parties is broad. In contrast to civil litigation, the third party of administrative litigation has an independent standing with a personal interest. But this does not necessarily mean that the court must notify all private or legal persons or social organizations that have an interest in the impugned action or in the outcome of the case or that they will participate in the hearing.[562] The first paragraph of Art. 30 of the 2017 SPC Interpretation, absorbing the first paragraph of Art. 24 of the 2000 SPC Interpretation, states that in cases where the administrative action affects two or more interested parties but not all file a complaint, the court must notify the others to participate as third parties. In such a scenario, the parties must participate. In contrast to this, the second paragraph of Art. 30 states that the court *may* notify a party who has an interest in the outcome of the case, or this party *may* request their participation. Hence, these parties must not necessarily participate.

1. Independent standing of the third party

The independent standing of the third party becomes evident in the second paragraph of Art. 24 of the 2000 SPC Interpretation. It provides that the third party can submit relevant materials and make statements. Art. 28 and 29 of the 2000 SPC Interpretation add further details. For instance, they can submit evidence concerning a dismissal that they did not submit during the enforcement of the administrative action, or they can apply to the court to collect evidence they cannot collect themselves. Similar to the former regulations, the second paragraph of Art. 34 of the ALL of 2014 confirms the procedural right of submitting evidence. Art. 41 of the ALL of 2014 provides the right to request the collection of certain evidence. Art. 35 of the ALL of 2014 protects the third party from the administrative agency's attempts to collect evidence from them.

[559] *Liang Fengyun* 2015, 181; *Ying Songnian* 2015 a, 82.
[560] In Chinese: 原告型第三人.
[561] In Chinese: 被告型第三人.
[562] *Huang* 2020 a, 119.

A third party affected by a court judgment that imposes an obligation or impairs their rights and interests can file an appeal.[563] In this context, *HUANG Xuexian* points out that the law is not consistent.[564] Art. 89 of the ALL of 2014 determines in item 4 that the court of appeal shall rule to revoke the original judgment and remand the case for retrial if the original judgment omits *a party*. It does not specify the party any further. Thus, it should rather state "a party that is required to participate" because the third paragraph of Art. 109 of the 2017 SPC Interpretation[565] refers to omitting a party "that must participate in the proceedings". Nevertheless, the legal consequences of the omittance of a party remain the same. It constitutes a procedural violation which demands revocation and retrial. The third paragraph of Art. 30 of the 2017 SPC Interpretation stipulates that a third party fulfilling the requirements of Art. 29 of the ALL of 2014 can directly file a request for retrial within six months from the day when they know or should have known about the administrative action that affected their rights and interests under the condition that they are not responsible for not being present.

That a third party can participate at any time of the trial procedure before the judgment becomes final is also in accordance with their right to relief.[566] Some scholars argued that the point of participation refers to the judgment of first instance, whereas others indicated that the first and second instance should be one entity. The second opinion also pointed out that the court can restore the third party's rights fully when they have the right to participate before the second-instance judgment becomes final. If the court of appeal finds that the hearing of first instance omitted the third party, it shall revoke the judgment of first instance due to procedural violation according to item 4 of Art. 89 of the ALL of 2014. The court shall send the case back for retrial. This relief system guarantees the protection of the rights and interest of the third party.[567]

The revised provisions concerning the third party in China's administrative litigation reveal many similarities to the provisions of the German Code of Administrative Court Procedure. In terms of the purpose, both legal systems pursue the protection of the lawful rights and interests of the third party, the full investigation of the facts of the case and the saving of judicial resources.[568] The German Code of Administrative Court Procedure distinguishes explicitly an ordinary third party that can participate from a third party that must participate.

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[563] The ALL added the second paragraph of Art. 29 and specified it by the second sentence of the second paragraph of Art. 30 of the 2017 SPC Interpretation.
[564] *Huang* 2020 a, 120.
[565] Also stated in the first paragraph of Art. 71 of the 2000 SPC Interpretation.
[566] *Huang* 2020 b, 52.
[567] Ibid., 53.
[568] *Schoch, Schneider (eds.)* 2020, at points 4-6.

According to the first paragraph of Art. 65, "as long as the proceedings have not yet been finally concluded or are pending at a higher instance, the court *may* subpoena others ex officio or on request whose legal interests are affected by the ruling". The second paragraph introduces the necessary subpoena. In cases that involve third parties in the contentious legal relationship so that the court must impose the ruling on them uniformly, the court shall subpoena them. Art. 66 explains the procedural rights of the third party which consist of the right to independently assert means of attack and defense and the right to implement all procedural acts effectively within the requests of the person concerned. Compared to the Chinese provision concerning the third party, the wording of the German provisions is more concise and clearer.

2. Missing standards for third party qualification

It is consequent to add the third party to ensure that the courts can protect their interests as well. However, in China, there is still no consistent standard of reviewing the qualification of the third party. The diversity of administrative litigation types further complicates circumstances of third-party participation in administrative litigation.[569] Scholars criticize that it is difficult to determine whether the third party must participate when they are party to a civil contract. One prominent case involved a construction company that had entered an administrative contract with the township's highway bureau to build a road. The construction company signed another civil contract with an asphalt plant to deliver two thousand tons of asphalt of type A. But the highway bureau disagreed with the company's choice and wanted asphalt of type B, instead, which the company did not approve of. Hence, the highway bureau unilaterally cancelled the administrative contract. Consequently, the construction company filed an administrative complaint. At the same time, it could not fulfill its obligation from the civil contract with the asphalt plant which requested to participate as the third party. The court reasoned that the outcome of the case affected the civil contract and thus, the asphalt plant is qualified as the third party.[570] The opponents of that judgment argued that the administrative agency is not obliged to consider that their contract partner has another debtor or how the lawsuits reflect upon the third party's rights and interests.[571] Besides this, it is also not clear which administrative agency is a legitimate third party or better suits as co-defendant, like in cases concerning administrative reconsideration.[572] Against the backdrop of ongoing debates, the improvements given in the ALL of 2014 can but be the beginning of refining the institution

[569] *Huang* 2020 a, 124.
[570] *Ying Songnian* 2015 a, 83.
[571] *Yan* 2017 b, 57-58.
[572] Ibid., 60-61.

of third party participation in China’s administrative litigation. Courts still need more experience and guidance to apply the law uniformly.

V. Legal representative and agent ad litem in administrative litigation

As a support for the plaintiffs and the protection of their lawful rights and interests, the agent ad litem functions as an agent appointed by one of the parties and represents only the lawful rights and interests of their principal. Hence, they can only act within their authorization. As agent ad litem, the final judgment or ruling does not affect them themselves.[573] Art. 30 of the ALL of 2014 determines that a citizen without the capacity to litigate shall have a legal representative as agent to litigate on their behalf. If the agents of such a citizen try to shift their responsibilities onto one another, the court shall designate one of them. Art. 31 of the ALL of 2014 states that a legal representative can entrust one or two persons as agent ad litem. The representation by a lawyer in administrative litigation is not compulsory in China. Item 2 and 3 of the second paragraph of Art. 31 refer to citizens.[574] Firstly, as mentioned in item 1, lawyers usually bring special legal knowledge and litigation experience. Legal service workers are based at the frontline and assist the people in legal matters. Secondly, item 2 refers to close relatives that are eligible as agent ad litem because they have the plaintiff’s trust and know what they wish for. For example, staff members of a company are usually familiar with the issues concerning their entity. Thirdly, according to item 3 the party’s community, an employer or a relevant social group can send an agent to represent their lawful rights and interests, such as The China Consumer Association, the All China’s Women Federation, trade unions, the Red Cross.[575]

The Civil Procedure Law cannot serve as reference concerning agents ad litem since Art. 101 does not name “litigation participants”.[576] That is why, the SPC provided further explanations. Art. 32 of the 2017 SPC Interpretation clarifies that an employee who has a labor relationship with a party can be a litigation representative and shall submit the following evidence: acknowledgement of contribution of social insurance, payments of salaries and any other evidence of an employee. Art. 33 of the 2017 SPC Interpretation specifies the conditions for a citizen who is recommended as litigation representative by a relevant social group which is adopted from the second paragraph of Art. 87 of the 2015 SPC Interpretation of the Civil

[573] *Liang Fengyun* 2015, 187.
[574] *Wang, Shan* 2016.
[575] *Liang Fengyun* 2015, 189.
[576] *Wang, Shan* 2016.

Procedure Law.[577] The attribute "relevant" means that their work is related to the affairs they represent.[578] The social group must be a non-profit organization that is legally registered and formed or lawfully exempted from registration; the represented party is a member of the social group, or the place of domicile of either party is within the activity area of the social group; the matter is within the scope of business as indicated in the bylaws of the social group and the recommended citizen is either the person in charge of the social group or an employee of it with a legal labor relationship with the social group.

The second paragraph mentions that a patent agent may represent in an intellectual property case if the All-China Patent Attorney Association (henceforth: ACPAA) specifically recommends it. The highlighting of patent administrative disputes underlines that a professional expert must represent the specialty of these cases. In a similar vein, the ACPAA requires its patent agents to prove special qualification and working experience in relevant matters. The ACPAA publishes a list of litigation attorneys which it updates quarterly.[579] In this context, The SPC issued a notice stating that the SPC will no longer review the litigation qualification of patent agents itself but will rely on the ACPAA's recommendations.[580]

According to Art. 31 of the 2017 SPC Interpretation, if a party seeks to appoint the agent ad litem, they shall submit a power of attorney which lists the authorized matters and specific authority of the agent. For plaintiffs who cannot submit in writing, the court will accept if another person submits on their behalf proved by the plaintiff's seal or other means. The court shall verify and file the appointment. In case the personal freedom of the plaintiff is confined, the people's court shall deem the appointment of a litigation representative as effective even though the agency refuses to verify the identity. The plaintiff must submit any modification or termination of representation in writing to the court.

Moreover, lawyers have the right to consult, to copy materials related to the case, and the right to investigate and collect evidence from the relevant organizations and citizens.

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[577] Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (最高人民法院关于适用《中华人民共和国民事诉讼法》的解释), issued December 18, 2014, in: Fashi (法释) 2015, No. 5 (henceforth: 2015 SPC Interpretation of the Civil Procedure Law).

[578] 2015 SPC Interpretation of the Civil Procedure Law, supra n. 577.

[579] Art. 9 and Art. 15, Measures for the Administration of Litigation Agent by the All-China Patent Attorneys Association (中华全国专利代理人协会诉讼代理管理办法), issued October 1, 2015, revised March 2018, published in: Publication of the All-China Patent Attorneys Association 2018 No. 4 (全专协发字〔2018〕004号), available at: http://www.acpaa.cn/upload/file/201803/fa7c4670-c0cb-410d-8104-b4dd0f57b6bc.pdf [January 29, 2021].

[580] Notice of the Supreme People's Court Concerning Adjusting the Identification Method of Patent Agents Representing Patent Litigation (最高法院发出通知调整专利代理人代理专利诉讼的身份确认方式), issued March 6, 2016, available at: http://www.court.gov.cn/zixun-xiangqing-17352.html [December 26, 2023].

Materials involving state secrets, trade secrets and privacy are confidential (Art. 32 of the ALL of 2014). The right to obtain the relevant materials also include those related to the court trial except for state and trade secrets and individual privacy issues. Art. 30 of the ALL of 1989 stated that the lawyers "can" consult materials. The ALL of 2014 changed that to "have the right" which is more definite. In case the plaintiff is unable to obtain certain evidence, they can request the court to collect (Art. 39 of the ALL of 2014), and their lawyer can consult the materials. In contrast to lawyers, other entrusted agents have the right to consult and copy materials, but state and trade secrets and individual privacy matters are not accessible to them.

Overall, refining the role of an agent ad litem is important considering the ALL's purpose of protecting the lawful rights and interests of the plaintiffs. If plaintiffs have no experience with litigation and the law, they are happy to receive assistance by someone who has (more) expertise or they can trust.

VI. Joinder of proceedings

To protect the lawful rights and interests of the people in an effective way, a fast, efficient, and flexible handling of disputes is an important feature. Art. 26 of the ALL of 1989 had allowed courts to handle cases concerning the same administrative action or similar administrative action in a joinder of proceedings. The 2000 SPC Interpretation had defined such cases as "a major and complicated case" that an intermediate people's court should hear. During the reform process, the legislators realized that Art. 26 of the ALL of 1989 was too vague for judges to apply it consistently. Hence, they discussed foreign models concerning disputes involving large numbers of plaintiffs.[581] For instance, in Germany, the court may carry out one or several suitable sets of proceedings in advance (model proceedings) and suspend the other sets of proceedings, if the lawfulness of an official measure is the subject-matter of more than twenty sets of proceedings. Those concerned shall make a statement in advance. The order shall be incontestable, according to Art. 93 a of the Code of Administrative Court Procedure.

In China, according to Art. 27 of the ALL 2014 and Art. 73 of the 2017 SPC Interpretation, a joinder of proceedings can be arranged if there are two or more parties separately filing a complaint against the same action, two or more administrative agencies separately issuing an action with respect to the same fact, or the party files another complaint against the accused defendant agency at the same court handling the first complaint. In such a regular joinder of proceedings, it is at the court's disposition to handle the same types of

[581] *Liang Fengyun* 2015, 176.

administrative actions concurrently or separately. The court can decide to join cases if the impugned administrative actions are similar, the parties agree, the same court has jurisdiction and can conduct the same trial procedure. The court can separate the trial any time because the parties do not share rights.[582]

Art. 28 of the ALL of 2014 acknowledges that a joinder of proceedings is possible with the consent of all parties if they consist of a considerable number. Art. 29 of the 2017 SPC Interpretation defines "large number of parties" as ten or more persons. Its second paragraph specifies that the parties may elect one or more representatives from among them. If they fail to do so, the court shall appoint representatives from the parties that file the complaint. The wording of Art. 28 of the ALL of 2014 and the second paragraph of Art. 29 of the 2017 SPC Interpretation indicate that the litigation representative must be among the persons concerned and cannot be an outside party. But the decision whether or not to appoint representatives is both at the plaintiffs' and at the court's disposition. Art. 14 of the 2000 SPC Interpretation already followed that line in its third paragraph. In cases where an administrative action affects many persons, such as land expropriation or urban construction, to allow the court to choose representatives helps to save resources and keep administrative litigation timely and efficient. The third paragraph of Art. 29 of the 2017 SPC Interpretation underlines that there shall be two to five litigation representatives which may appoint one or two legal representatives to litigate in court. The difference between the litigation representative[583] and the entrusted agents[584] lies in their standing: whereas the former participates in their own name to protect their own lawful rights and interests, the latter acts as an agent authorized by a party concerned.[585] Art. 28 of the ALL of 2014 stipulates further that the representatives are bound by the will of the parties and any modification or withdrawal of claims or concession to the other party must be approved by the parties represented. This is meant to prevent any abuse of the will.

There is also a mandatory joinder of proceedings. The wording "must be a joinder of proceedings"[586] in the first paragraph of Art. 27 of the 2017 SPC Interpretation underscores that it is mandatory for the court to notify the party who fails to participate. The third paragraph emphasizes that it is obligatory to add two or more parties who are involved in the same administrative dispute which arose from the same administrative action. The court must handle their cases concurrently. Such a party can also apply to the court to participate. The court will

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[582] *Liang Fengyun* 2015, 172.
[583] In Chinese: 诉讼代表人.
[584] In Chinese: 委托代理人.
[585] *Liang Fengyun* 2015, 173.
[586] In Chinese: 必须共同进行诉讼.

review the application and decide whether to grant participation if the reasons are convincing. If the application is unfounded the court will reject it. According to Art. 28 of the 2017 SPC Interpretation, the court must notify the other parties if it adds another party to the joinder, except if the prospective party has expressively renounced its substantial rights. If a party that must participate refuses to do so and renounces their substantial rights, the court shall add them as the third party that will neither participate nor obstruct the trial and judgment.

VII. Analysis

Compared to the original ALL, the revised ALL provides specific definitions concerning who can file a complaint and who is the right defendant, which establishes more certainty for all stakeholders. This step was important because the administrative apparatus grew as well as society became more complex during the last 20 years. With such definitions of the litigation parties, the SPC acknowledges that individual interests in the area of public law are important to protect.

1. Standardization of the qualifications of the litigation parties

From a "rule of law" point of view, the revision made important, and positives changes towards more certainty about the parties of litigation. At first glance, the reformers extended the concept of interest. This measure is an important signal for citizens, legal persons and social organizations affected by an administrative action that they should feel encouraged to turn towards the courts to seek relief. However, since the Constitution is not part of the review, plaintiffs cannot file a complaint to protect their constitutional rights and interests in a dispute. If the case is not among the scope of acceptable cases, the claim is not eligible (see Chapter 6). Hence, although the definition of the plaintiffs and the concept of interest are broader, in the end, the narrow scope of acceptable cases in Art. 12 of the ALL of 2014 undermines their rights and interests.

The procuratorial PIL is a strong signal that the state fights against unlawful administrative actions. This is a good instrument to educate the administration and also has a deterrent effect. As the first cases illustrate, the responsible administrative agency wants to avoid exposure to public critique. So, sending recommendations suffices to reach administrative compliance. Hopefully, this might prevent administrative misconduct in the future. But it also reveals that the leadership does not trust the lower-level courts to cope with bigger disputes and that it does not want to delegate such power to social organizations. For the leaders, the internal supervision system can solve an administrative misconduct which causes severe damage

without risking public outrage. It is a deficit of the reform that the standing of non-government organizations as plaintiffs in the name of the public is not possible in administrative litigation, only in civil litigation. This renders the announcement of "all administrative agencies must serve the people, be responsible to the people, and be supervised by the people" a vague and void political goal. Another positive aspect of the reform is the legal fiction of handling both the original action and the reconsideration decision as a unity. Since the original action and the reconsideration decision are a continued action, it is consequent to hold the reconsideration agency liable.

To combine proceedings when the group of plaintiffs is big complaining about the same subject matter is pragmatic and should ensure an efficient and fair process to protect the lawful rights and interest. A clear definition of the third party having an interest in the lawsuit also fulfills that aim. However, there is still the risk that people underestimate their standing as a third party. For example, in a case concerning environmental protection, a third party could claim in court that the responsible administrative agency neglected its obligation of fining a factory for pollution and can simultaneously initiate a civil lawsuit against that factory for pollution. In this scenario, the party must prove how the pollution affects their rights and interests, which can be difficult for them. In this scenario, they would not be eligible to participate in the lawsuits as third party.

2. The complexity of the administration

A deficit is that many dispatched organs or authorized organs fall out of the concept of "administrative subject" because they lack legal liability for their actions but are active in issuing rules and regulations. The SPC takes countermeasures by issuing more provisions with definitions of defendant agencies. Instead of providing a definition that is clear on the defendant qualifications, this piecemeal undertaking will always lag behind. Liable administrative agencies can easily find excuses for not being responsible. It is a gateway for agencies to avoid trials. The German Administrative Procedures Act could serve as a model: It defines administrative authority as a body which performs tasks of public administration, according to Art. 1. This functional understanding is broad and extensive compared to Art. 26 of the ALL of 2014. Organic laws or regulations, i.e., the German Basic Law, establish an authority that can act in its own name in place of the federal government as the legal entity. The main task consists of the issuance of administrative actions. Entities that are entrusted are usually private entities that are authorized by law or regulation to perform tasks of public administration.[587] The first

[587] *Schoch, Schneider (eds.)* 2020; *Meissner, Schenk*, VwGO § 78, at point 27-30.

paragraph of Art. 78 of the German Code of Administrative Court Procedure demands that a complaint shall be addressed against the Federation, the *Land* (i.e. state) or the body whose authority has issued the impugned administrative act or omitted the requested administrative act; designating the authority is sufficient to state the defendant (item 1). The second clause underlines that for filing the complaint, the claimant must not name the "right defendant". It is sufficient to name the authority that issued the administrative act. The court must identify the right defendant, namely the responsible legal entity (*Rechtsträgerprinzip*),[588] which is either the federal government, the governments of the *Länder* (states) and public law entities, institutions and foundations operated by the Federal Government or the government of the *Länder*. They bear legal liability. However, item 2 of the first paragraph of Art. 78 grants that if a *Land* (state) law so determines, the complainant can file a complaint against the authority itself which has issued the impugned administrative act or omitted the requested administrative act (*Behördenprinzip*). According to the German Administrative Court Procedure, the courts carry the burden of identification. Hence, for the people it is not an obstacle to file a complaint. Similar to the German conception, Art. 2 of the ALL of 2014 defines broadly that the law, regulations, or rules empower an *organization* to issue administrative actions. So, the ALL provides the right basis for a general identification but levers it out by the special provisions of Art. 26.

Another shortcoming is that the concept of the doctrine of impairment might not fully evolve due to the lack of legal interpretation skills. Interpretation is a risky undertaking for judges because an unfavorable interpretation could cause protest. So, most judges are likely to avoid using the impairment of neighboring rights for their reasoning in the judgment. In Chapter 7, this dissertation highlights how difficult it is for courts, when dealing with evidence, to interpret the facts with illegal evidence. Hence, judges might act hesitantly.

To solve problems concerning legal interpretation of substantive aspects, judges can consult with higher-level courts and ask for instructions[589]. These inquiries should help courts to interpret the law correctly. But they must not cite them in the judgment.[590] This dissertation cannot assess the effect such consultation offers have on the interpretation skill of judges. However, the intertwining of judicial training and judicial reforms becomes obvious again. The revised ALL is a manual for judges about how to conduct a fair and just administrative trial

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[588] *Meissner, Schenk*, VwGO § 78, at point 40.
[589] In Chinese: 批复.
[590] Provisions concerning Judicial Interpretation Work 2021, supra n. 48.

procedure. It is not a manual for legal interpretation. In the end, we are unable to measure to what extent judges are able to interpret the law facing a sheer number of cases.

However, we can also see the SPC's judicial interpretations as an additional manual concerning procedural and substantive issues in litigation, such as the 2017 SPC Interpretation of the ALL of 2014. Moreover, the SPC introduced the guiding cases system that serves as a source of authority for statutory interpretation as well.[591] The SPC acknowledged that the lack of specificity and clarity of the legal provisions make it difficult to understand and enforce the law correctly and uniformly. It promises that "for legal issues of typical significance and great influence in economic and social activities, or hot issues that widely concern people, guiding cases are released in a timely manner; a correct value orientation is established, correct judicial concepts are disseminated, and judicial adjudication activities are standardized." [592] Both judicial interpretations and the guiding cases have a key role in standardizing the application of laws. They summarize trial experience intending to improve trial quality and to maintain judicial impartiality. In addition, judges are under public scrutiny as well. In 2013, for the sake of transparency, the SPC had issued that all judgments must be online. In 2023, the SPC decided to establish an internal court database for referencing.[593] Thus, the online databases shall support judges to gain information about similar cases by researching through the online databases.

[591] Notice of the Supreme People's Court on the "Detailed Rules for the Implementation of the Provisions of the Supreme People's Court on Case Guidance" (最高人民法院印发《〈关于案例指导工作的规定〉实施细则》的通知), issued May 13, 2015, in: Fa (法) 2015, No. 130.

[592] Opinions of the Supreme People's Court on Improving the Working Mechanism for Unifying the Standards for the Application of Laws 最高人民法院关于完善统一法律适用标准工作机制的意见, in: Fafa 2020, No. 35 (法发〔2020〕35 号).

[593] For more details, see Chapter 7, I General principles of administrative litigation.

Chapter 5: Initiation of administrative trials in court after 2014

After we learned about the access and the eligible parties to trial, this chapter analyzes how courts ensure, initiate, and realize a fair and timely trial of administrative cases. It looks at formal conditions of administrative litigation. First, we will look at the function and effectiveness of administrative reconsideration, as an option prior to administrative litigation. In addition, the revision of the ALL came along with a new round of institutional reforms in terms of accessibility to courts including the jurisdiction system and the case registration system for docketing lawsuits. These reforms outlined the process of registering lawsuits, which is important to have a secure access to justice and to guarantee impartiality. The remodeled jurisdiction system, for example, allows courts from a different administrative district to hear cases to reduce administrative interference. In this chapter, we will also see how the system follows the technical approach of "practice ahead of the law". This approach is common for the development of administrative laws in China. The legislators reflect upon practical experiences at the local levels and adjust the legal texts according to the empirical values.[594] The system learns through local experiments as well as through adaptive policies. The practical insights they gained in context of the revision of the ALL were essential to adopt its application effectively to the social, political, and economic circumstances and expectations of the people. For instance, the legislators conducted several pre-legislative pilot projects to explore the re-modeling of the jurisdiction system. The drafting process included some pilot projects conducted by some local courts, such as Zhejiang Province that revised its jurisdiction system and introduced cross-district jurisdiction.

Secondly, this chapter introduces two sub-procedures. The summary procedure is not a new type of litigation, but it is new for administrative litigation. It allows judges to accelerate the procedure when the facts and circumstances of the administrative dispute are clear, and the parties agree to it. The concurrent trial of relevant civil disputes in administrative litigation is another type of procedure allowing a more flexible litigation of lawsuits concerning civil claims in an administrative procedure. After the docketing of a case, it is possible to decide with the consent of the parties to switch to these pragmatic litigation procedures. They intend to save time, resources, and money which is beneficial for the courts and the protection of the parties' lawful rights and interests. These two sub-procedures shall satisfy the promise of a timely trial.

[594] *Wei, Jie, Wiesner* 2019.

I. Administrative reconsideration

This section pays special attention to administrative reconsideration[595] as another option for seeking redress without filing a case at court. Its function is controversial because of its special relation to administrative litigation. On the one hand, it is a channel for internal supervision of higher authorities, on the other hand, it can be a preliminary procedure prior to administrative litigation to solve an administrative dispute. Its hybrid nature as a measure of internal supervision and as a preliminary quasi-legal remedy is object of many debates which this section summarizes as well.

1. Promulgation and function of the Administrative Reconsideration Law

The drafting of the Administrative Reconsideration Law (henceforth: ARL)[596] was closely related to the Administrative Litigation Law of 1989 being the foundation of the ARL.[597] In Art. 37, the ALL of 1989 allowed citizens, legal persons, or other organizations unsatisfied with a concrete administrative action to choose whether they wanted to apply for administrative reconsideration or to file a complaint with a court directly. As a response to this regulation, the State Council promulgated the Administrative Reconsideration Regulations[598] in December 1990, which came into effect in January 1991. In January 1996, the State Council published a research report pointing out that administrative reconsideration had not fully evolved its functions compared to administrative petitions and administrative litigation. The cases filed for administrative litigation outnumbered those for reconsideration.[599] The report was the initiation for drafting the Administrative Reconsideration Law.

The drafting process reached a temporary halt in August 1996 when the legislators entered a controversial debate about the purpose of administrative reconsideration.[600] Scholars of administrative law had discussed whether administrative reconsideration was either a tool for internal supervision, a quasi-legal remedy to protect the rights and interests of the people or a tool for dispute resolution.[601] A counterview pointed out that it is rather the interplay of its characteristics, purposes, and functions that constitute the nature of administrative

[595] In Chinese: 行政复议.
[596] Administrative Reconsideration Law of the People's Republic of China (中华人民共和国复议法), Order No. 9 of the President, issued April 29, 1999; revised August 27, 2009; revised September 1, 2017; revised September 1, 2023 (henceforth: ARL).
[597] *Yang Weidong* 2012, 71; *Xin He,* 2014 a, 255.
[598] Administrative Reconsideration Regulations (行政复议条例), by Oder of the State Council No. 70 on December 24, 1990, effective January 1, 1991, and revised on October 9, 1994, available at: http://dangshi.people.com.cn/GB/146570/198300/200214/200218/12454874.html [April 5, 2019].
[599] *Fang Jun* 2020, 13.
[600] Ibid., 14.
[601] *Zhan* 2013, 31.

reconsideration: Internal supervision is a guarantee for protecting the rights and interests of the people because administrative actions are constrained when necessary. Regarding administrative reconsideration as a quasi-legal remedy would serve the same objective of preventing any infringement of rights and solving any underlying administrative dispute.[602]

However, the Legislative Affairs Office of the State Council put particular emphasis on its function as an internal supervision mechanism to foster administrative self-correction.[603] Judicial procedures of handling cases would not be appropriate in administrative reconsideration, otherwise, it would be "judicialized".[604] Some scholars agreed with the position of the Legislative Affairs Office. They stressed that the decision of an administrative reconsideration agency was an administrative and not a judicial decision.[605] However, they admitted that the administrative reconsideration procedure indeed had a quasi-judicial function.[606]

Still, the majority of scholars argued that the Legislative Affairs Office's stance rejecting the "judicialization" of administrative reconsideration would cause some innate defects.[607] According to this opinion, administrative reconsideration should follow judicial principles of independence, neutrality, fairness, and equality.[608] They warned that administrative reconsideration agencies depended on their superior agency's opinions and influence. Since administrative agencies at the next higher or a local people's government at the same level check administrative actions of their subordinate administrative organs,[609] the risks remain that the procedure of administrative reconsideration becomes a mere formality.[610]

In October 1998, the head of the Legislative Affairs Office of the State Council, *YANG Jingyu*, reported to the Standing Committee of the NPC about the drafting of the Administrative Reconsideration Law.[611] He referred to it as an internal supervision mechanism to correct errors of administrative operations. This view prevailed in the final version of the Administrative Reconsideration Law which was enacted by the NPC on April 29, 1999.[612] Art. 1 of the ARL

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602 *Zhan* 2013, 32.
603 Explanations about the Draft of the Administrative Reconsideration Law of the People's Republic of China (关于《中华人民共和国行政复议法（草案）》的说明), speech delivered by *YANG Jingyu (杨景宇),* at the 5th Meeting of the Standing Committee of the 9th National People's Congress on October 27, 1989, available at: http://www.npc.gov.cn/wxzl/gongbao/2000-12/06/content_5007101.html [November 23, 2023].
604 Ibid.
605 *Qing, Zhang* 2013, 13.
606 *Wang* 2017, 166.
607 *Fang Jun* 2020, 15; *Yang Weidong* 2017, 39.
608 *Xu* 2012, 63-64; *YANG Weidong* 2018 b, 115-116; *Zhan* 2013 36.
609 Art. 12-14 ARL.
610 *Xu* 2012, 63.
611 Explanations about the Draft of the Administrative Reconsideration Law on October 27, 1989.
612 *Fang Jun* 2020, 14.

defines the purpose as: "preventing and correcting any illegal or improper specific administrative acts, protecting the lawful rights and interests of citizens, legal persons, and other organizations, safeguarding and supervising the exercise of functions and powers by administrative organs in accordance with law." Compared to the functions of the ALL of 1989,[613] the ARL emphasizes the self-corrective function within the administration but aligns with the ALL in protecting the lawful rights and interests of the people, legal persons, and other organizations.

The discussion about the function of administrative reconsideration continued beyond its promulgation.[614] In 2006, the CCP Central Committee's General Office and the State Council General Office published their Joint Opinions in which they declared that administrative reconsideration was a major channel for resolving administrative disputes.[615] In December 2006, the State Council hold a working meeting to discuss and review the ARL. This resulted in the promulgation of the Regulations on the Implementation of the Administrative Reconsideration Law in August 2007.[616] According to Art. 1 of the ARL Implementation Regulations the purpose of administrative reconsideration lies in giving full effect to the settling of administrative disputes and to structuring a "harmonious society". The regulations provide further details concerning the process of administrative reconsideration. Whereas the original Administrative Reconsideration Law contains forty-three articles, the ARL Implementation Regulations have sixty-six articles. The ARL Implementation Regulations complete and specify rules concerning the participation of third parties, the identification of the respondent agency and the time limit for and the procedure of written and oral applications, its acceptance and the agency's decision.[617]

In addition, the ARL Implementation Regulations clarify matters of guidance for and supervision of the administrative reconsideration agency. Higher-level agencies offer guidance

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[613] As stated in Art. 1, the purposes of the ALL of 1989 were to safeguard correct and timely adjudication of administrative cases, to protect the lawful rights and interests of citizens, legal persons and other organizations, and to safeguard and inspect the exercise of administrative power in accordance with law by administrative organs.
[614] Ibid., 15.
[615] Opinions of the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council on Preventing and Resolving Administrative Disputes and Improving Administrative Dispute Resolution Mechanisms (中共中央办公厅国务院办公厅关于预防和化解行政争议健全行政争议解决机制的意见》), in: Release of the General Office 2006, No. 27 (中办发〔2006〕27 号), in: *Fang Jun* 2020, 15.
[616] Regulations on the Implementation of the Administrative Reconsideration Law of the People's Republic of China (中华人民共和国行政复议法实施条例), issued May 29, 2007, effective August 1, 2007, by the Order of the State Council No. 499, (henceforth: ARL Implementation Regulations).
[617] Art. 9, 11-14, 15, 18-20, 27-52, ARL Implementation Regulations, supra n. 616.

in the form of opinions, reports, and through training. Apart from this, they supervise through inspections and the target accountability system.[618]

In 2008, the State Council established administrative reconsideration committees in several pilot projects.[619] They are meant to be a neutral adjudicator provided with special knowledge on the matter.[620] In 2010, the State Council included a plan for revising the ARL on its legislative agenda, and consequently, its Legislative Affairs Office consulted with legal experts for the drafting of an amendment. The 10th NPC adopted the revision of the ARL officially on its agenda in 2014 and the Standing Committee of the NPC followed shortly. Since the 3rd Plenum of the 18th CPC Central Committee, the legislators mentioned the revision of the ARL as an important reform project. In February 2020, the 6th Plenum of the Standing Committee of the 13th NPC had added it on its legislative plan in the class of "draft laws for which the conditions are relatively mature". The NPC asked relevant government departments and relevant organizations to submit their opinions and suggestions to draft a new ARL throughout 2020.[621] Administrative law scholars had already published their suggestions, such as Professor *YING Songnian*.[622] For instance, Professor *YING* looked at international equivalents of administrative reconsideration and indicated that one core concern is the impartiality of the administrative reconsideration agency. The revision of the ARL should include mechanisms that ensure the neutral and objective position of the reconsideration agency because it lacks the nature of a third party. For that matter, he suggested a reviewing body that advises and has a certain degree of independence from the reconsideration agency. He acknowledged the administrative review committees, that the government has been establishing since 2008, and advised the reformers to carefully summarize the role and experience of the review committees to improve their functions.[623]

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[618] Art. 53-61, ARL Implementation Regulations, supra n. 616.
[619] Notification about the Trial Work of Administrative Reconsideration Committees in Some Provinces and Municipalities 《关于在部分省、直辖市开展行政复议委员会试点工作的通知》issued by the Legislative Affairs Office of the State Council, available at: http://fgs.ndrc.gov.cn/xzfy/200904/t20090417_273029.html [April 5, 2019].
[620] *Zhan* 2013, 33.
[621] Public comments on the "Administrative Reconsideration Law (Revision) (Draft for Soliciting Comments)" (《行政复议法（修订）（征求意见稿）》公开征求意见), draft on China Law Review (中国法律评论), published November 25, 2020, available at: https://www.ilawpress.com/material/detail/566876489832727040 [January 3, 2024].
[622] For an overview of opinions, see among others: *Mo* 2019, 4. *Geng, Yin* 2020, 19-29; *Yang Weidong* 2017, 38; *Yang Weidong* 2018 b, 134-136; *Ying Songnian* 2019.
[623] *Ying Songnian* 2019.

In November 2020 and in June 2023, the Ministry of Justice published drafts open for public comments.[624] The draft of November 2020 released for public comments consisted of 102 articles which made it a comprehensive overhaul of the original ARL.[625] The second draft[626] focused on the role of the administrative reconsideration committee that the next section will introduce in greater detail. The ARL drafts revealed that administrative reconsideration shall be a solid dispute resolution channel and shall emancipate itself further from administrative litigation. Therefore, both administrative reconsideration and administrative litigation should become more alike.

In January 2024, the revised ARL became effective. It strengthens the administrative reconsideration committees in the weight that their advisory opinion is to play in the administrative reconsideration decision. They consist of relevant government departments, experts, and scholars (Art. 52 of the revised ARL). The State Council's administrative reconsideration institution decides about the specific composition of the administrative reconsideration committee. Demanding the responsible person of the administrative agency to attend the hearing fosters an in-person adjudication (Art. 51 of the revised ARL). Besides the mandatory appearance of the responsible person, the revised ARL also transferred several other regulations of the ALL of 2014, like the summary procedure (Art. 53) and the types and the collection of evidence (Art. 43-47). Interestingly, the revised ARL strengthens the incidental review of normative documents (Art. 13), like so-called "red-headed documents"[627] of the local governments that tend to contradict national laws and regulations. These new regulations reinforce internal supervision by higher administrative agencies. To match the new socio-economic circumstances, Art. 11 of the revised ARL increases the scope of cases in which administrative reconsideration must be applied for before administrative litigation. Among those cases are disputes concerning ownership and rights to use natural resources or minimum living guarantees. In addition, the scope of acceptable cases also incorporates new types of administrative disputes, such as government information disclosure or dissatisfaction with an

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[624] Administrative Reconsideration Law of the People's Republic of China (Revision) (Draft for Soliciting Comments) (中华人民共和国行政复议法（修订）（征求意见稿））, published November 24, 2020; available at: https://npcobserver.com/wp-content/uploads/2020/11/Administrative-Reconsideration-Law-2020-Draft-Revision.pdf [November 11, 2023] and Administrative Reconsideration Law of the People's Republic of China (Revision) (Second Draft for Soliciting Comments) (中华人民共和国行政复议法（修订草案二次审议稿）（征求意见）), published June 28, 2023; available at: https://www.chinalawtranslate.com/en/arldraft2/ [November 12, 2023].

[625] *Horsley* 2023.

[626] Administrative Reconsideration Law of the People's Republic of China (Revision) (Second Draft for Soliciting Comments), published June 28, 2023, supra n. 624.

[627] In Chinese: 红头文件.

administrative ruling. The latter example seems to serve as a gateway for people to request administrative reconsideration and to ease the pressure of courts in handling open government information disputes. Furthermore, Art. 27 determines that in cases involving taxes, customs and foreign exchange, the administrative reconsideration shall take place in the department at a next higher level.

So far, administrative reconsideration has not given full play to its advantages because of its lack of independence and fairness as well as the people's distrust in administrative reconsideration.[628] The people assume that superior officials protect their subordinates from outside pressures.[629] The disillusionment of the people originates from the administrative reconsideration agencies' behavior. They used to refrain from changing the original decision in their favor, simply because they wanted to avoid being the defendant in administrative litigation, according to the second paragraph Art. 25 of the ALL of 1989. The maintenance rate used to be particularly high: Between 2008 and 2013, in on average about 60 percent of administrative reconsideration cases, the original decision was maintained.[630] After the promulgation of the original ARL, the winning rate of the applicants was about 25 percent, but it constantly decreased and dropped below ten percent between 2008 and 2011.[631] Correspondingly, in 2012, administrative reconsideration agencies affirmed more than half of the administrative decision, and less than ten percent were declared invalid.[632] In 2018, about half the reconsideration decisions maintained the original administrative action (50.8%) and in twelve percent of the cases, the application was rejected. Only in about ten percent of the cases filed for reconsideration, the responsible agency revoked the original action.[633] Evidently, the people developed distrust and found that the reconsideration agencies did not solve their underlying administrative conflict at all.

Furthermore, although reconsideration should be convenient, it turned out that many people found it hard to identify the corresponding administrative reconsideration agency when they want to apply for reconsideration. As indicated before, usually the superior authority checks the decision of the administrative agency that issued the administrative action originally. However, due to the complex structure of the Chinese administrative apparatus, there is a specific hierarchy:[634] In case a government below the provincial government has issued the

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628 *Yang Weidong* 2012, 74; *Yang Weidong* 2018 b, 112-113.
629 *Ying Songnian* 2010, 50; *Zhan* 2013, 32; *Xu* 2012, 63.
630 *Wang* 2017, 165.
631 *Bao* 2013, 51.
632 *Xin He* 2014, 259.
633 *Wang Wanhua* 2019, 108.
634 *Yang Weidong* 2018 b, 109.

impugned administrative action, the government at the next higher level is responsible. Where a department of government is concerned, the government at the same level or the corresponding department at the next higher level is responsible. An authority at the very same level of the State Council and of the provincial governments will check their decisions.[635] For citizens, it is difficult to address the right superior agency when they have to identify it within the complex apparatus.

Overall, the revision of the ARL is promising the objective to "substantially solve administrative disputes"[636], as emphasized by the first paragraph of the revised ARL. Its content follows the ALL of 2014 in several aspects so that both laws will be more similar. This resemblance can have the potential to make administrative reconsideration more attractive to people and strengthen its position as a dispute resolution channel. Future studies should observe the effects.

2. Relationship between administrative reconsideration and administrative litigation

Art. 3 of the ARL determines that administrative reconsideration shall be lawful, fair, open, timely, and convenient to the people. In contrast to administrative litigation, ideally, convenience[637] is provided by a fast and free administrative reconsideration procedure.[638] Before the ALL's revision in 2015, administrative reconsideration offered also other advantages over administrative litigation: its scope of acceptable cases used to be broader because it was not constrained to *concrete* administrative actions; its review was deeper because it considered the legality and reasonableness of administrative actions whereas in administrative litigation, the judge can only review the legality.[639] For certain disputes, the reconsideration procedure is preferred to litigation in court because the nature of these disputes is politically sensitive, like cases involving public security, land resources, labor, and social welfare.[640]

However, the Chinese legal academia has long observed that "in the course of the development of administrative rule of law, every step in the development of administrative reconsideration is closely related to administrative litigation."[641] In other words, the relationship between administrative reconsideration and administrative litigation is one of

[635] Art. 12-14, Administrative Reconsideration Law.
[636] *Wang Wanhua* 2019, 106, 108.
[637] In Chinese: 便民原则.
[638] *Ying Songnian* 2010, 50; *Yang Weidong* 2018 b, 110-111.
[639] Art. 4, 28, Administrative Reconsideration Law; *Xin He* 2014, 256.
[640] *Xin He* 2014, 263.
[641] *Wang* 2017, 166.

dependence. That is why, scholars called administrative reconsideration “a vassal”[642] to administrative litigation.[643] One function of administrative reconsideration is to serve as a filter that should keep “trivial” disputes from courtrooms. But it is difficult to find evidence that administrative reconsideration really relieves the burden of courts because both the ALL and ARL do not determine exhaustion of remedies:[644] Art. 37 of the ALL of 1989, and correspondingly, Art. 44 of the ALL 2015 underline that administrative reconsideration is optional.[645] Nevertheless, before the revision of the ARL, only six national laws, 24 administrative regulations, and several rules prescribed administrative reconsideration before administrative litigation. For instance, Art. 46 of the Customs Law, § 88 of the Tax Revenue and Levy Administration Law and Art. 32 of the Trademark Law determine administrative reconsideration as a prior remedy.[646]

Some scholars argue that making administrative reconsideration a compulsory procedure would even underscore its advantages referring to convenience and the professional procedure for resolving disputes.[647] In addition, many foreign systems also have compulsory administrative reconsideration, such as the USA and Germany.[648] The German administrative law regards administrative reconsideration either as a preliminary procedure before administrative litigation or as an internal administrative procedure. In the first case, administrative reconsideration is compulsory. When the reconsideration decision is not favorable for the applicants, they can bring the case to court, as specified in Art. 68 of the German Code of Administrative Court Procedure. This preliminary procedure serves to filter cases and allow administrative agencies to review the legality and appropriateness of their decisions.[649] However, many German federal states determined exceptions from the preliminary administrative reconsideration in their implementation rules of the German Code of Administrative Court Procedure. That is why administrative reconsideration actually became an exceptional case.[650] The second function refers to the general purpose of administrative reconsideration as an administrative procedure, which inherently is also a legal remedy. Evidently, all three functions are intertwined, which Art. 79 of the German Administrative

[642] In Chinese: 附庸.
[643] *Wang* 2017, 167.
[644] *Yang Weidong* 2018 b, 110.
[645] *Yang Weidong* 2017, 40, 43.
[646] *Yang Weidong* 2012, 72.
[647] Ibid., 73.
[648] Ibid.
[649] *Detterbeck* 2017, 557.
[650] Ibid., 557.

Procedure Act also underlines, and which refers to administrative reconsideration as a legal remedy according to the Administrative Court Act.[651]

Although many Chinese scholars are in favor of compulsory administrative reconsideration, another opinion prefers the "free choice model" because it corresponds to the rules of the ALL and also supports the people in their right to initiate the procedure of their preference.[652] Administrative reconsideration is more than just a precondition of administrative litigation, but equal in rank. Thus, there would be no need for any direct connection between administrative reconsideration and administrative litigation.[653]

2.1. Effectiveness of administrative reconsideration

After the promulgation of the ARL in 1999, it soon became clear that administrative reconsideration did not meet the expectations.[654] The rate of cases entering administrative reconsideration was below the rate of cases directly entering administrative litigation.[655] For instance, in 2009, administrative reconsideration cases accounted for 64,000 whereas 120,000 cases were filed for trials in courts.[656] Surprisingly in 2014, administrative reconsideration cases eventually slightly outnumbered administrative litigation cases (149,000 cases in contrast to 142,000 cases).[657] The development of administrative litigation and administrative reconsideration cases is summarized in detail in Figure 2 and 3.[658]

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[651] *Detterbeck* 2017, 557-559.
[652] *Yang Weidong* 2012, 71, 75; *Yang Weidong* 2018 b, 110.
[653] *Yang Weidong* 2012, 75.
[654] *Xin He* 2014, 256.
[655] *Bao* 2013, 50-51.
[656] This refers to all cases filed and does not distinguish between rejected cases or cases not finished. See: *Xin He* 2014, 260.
[657] *Yang Weidong* 2017, 40.
[658] The respective China Law Yearbook (中国法律年鉴) in the period 2003-2017 provide the relevant numbers, China Law Yearbook Press, accessed via: China Data Insights, available at: http://cdi-1cnki-1net-10097dedy04c6.erf.sbb.spk-berlin.de/Titles/SingleNJ?NJCode=N2019030064 [January 3, 2024]. Due to lack of access for 2018 to 2020, the numbers only show the development until 2017. "Winning rate" refers to the rate of judgments revoking, modifying the original action, or confirming the illegality or demanding the performance of an administrative duty. Mediation or settlement is not considered. See also: *Bao* 2013, 51.

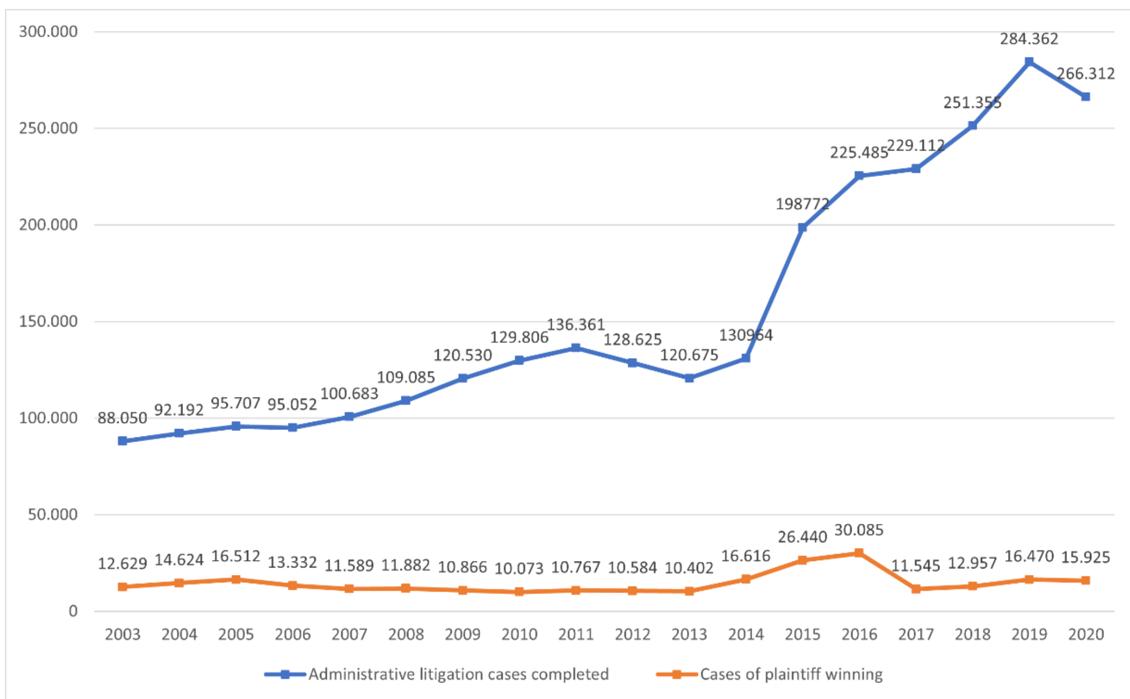

Figure 2 Development of administrative litigation cases and number of cases that plaintiffs win, 2003-2020.

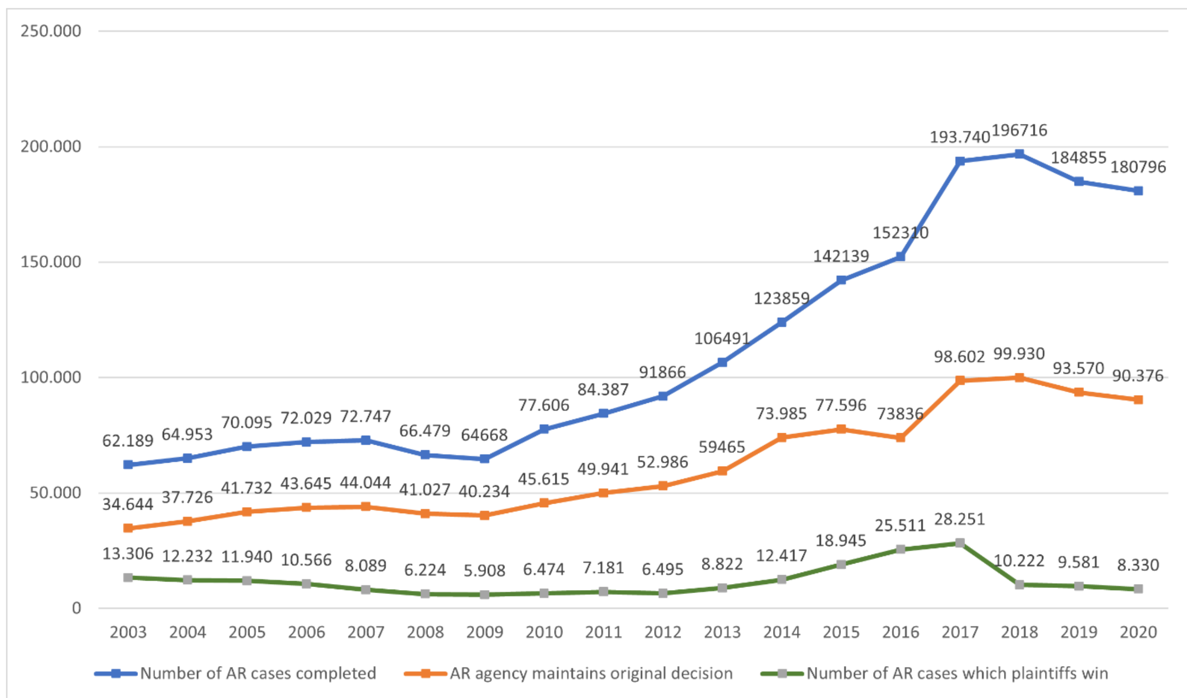

Figure 3 Development of administrative reconsideration cases and the types of decision, 2003-2020.

The numbers and statistics that are available in publications such as the annual China Law Yearbook are incoherent and incomplete since some ministries and local governments have not provided their data.[659] Moreover, it is hard to find a comparative group from other systems. For instance, in Germany, statistics about administrative reconsideration are scattered, narrow-focused and mostly of older dates.[660] Hence, the numbers presented here have only a limited

[659] *Xin He* 2014, 258.
[660] *Heins* 2010, 163.

explanatory power. Nonetheless, despite their statistical shortcomings, they still allow important conclusions: one can assume that until 2020, administrative reconsideration did not serve as the main channel for resolving administrative disputes. Between 2003 and 2020, courts completed on average 165,000 administrative litigation suits indicating with a significant increase after the revision got effective in 2015. In the same period, courts concluded about 118,000 administrative reconsideration cases. Whereas courts handle the majority of cases, "a large number of disputes never move into administrative litigation once they are reconsidered." [661] On average, complainants transferred only seventeen percent of administrative reconsideration cases to administrative litigation between 2003 and 2009. In contrast to this, they brought about 70 percent of disputes directly to courts even though on average administrative reconsideration cases seemed to promise slightly better winning prospects for plaintiffs than administrative litigation did in the years 2003 to 2020.[662] This underscores that administrative reconsideration did not take enough effect as a dispute resolution mechanism.

The revised ALL and the ARL also indicate a rather complex relationship between their procedures. The reconsideration agency can make three decisions: it can either affirm the original decision, it can modify, i.e. reverse or alter the original decision, or it chooses not to decide or to refuse the application for reconsideration.[663] Whereas the ALL of 1989 stipulated that the reconsideration agency is not added as a defendant when it confirms the original decision, the revised ALL determines the reconsideration agency to be the co-defendant in case of confirmation of the original administrative decision. When it modifies the original decision, refuses to accept the application, or makes no decision, it becomes the sole defendant.

Art. 135 of the 2017 SPC Interpretation states that the object of court review are both the original administrative action and the reconsideration decision if they act as co-defendants. The court shall concurrently review their legality which includes the substantive review of the legality of the original action, the facts, evidence, and normative basis on which the reconsideration decision is based, and the reconsideration procedure, namely the steps of acceptance, hearing, and decision.[664] The second paragraph of Art. 135 points out that both agencies bear the burden of proof so that both can submit evidence. The reconsideration agency shall proof the legality of its decision. The evidence submitted by the reconsideration agency may help to recognize the legality of both the reconsideration action and the original action.

[661] *Xin He* 2014, 261.
[662] *Wang* 2017, 165.
[663] Art. 26 paragraph 2 and 3, ALL of 2014; *Yang Weidong* 2018 b, 132.
[664] Ibid., 130.

This reflects the unity of both actions and the joint responsibility of both agencies. Hence, some scholars warned that this might lead to an unclear burden of proof between the two parties and to mutual excuses, but the warning turned out to be unfounded.[665] As a consequence, Art. 79 of the ALL of 2014 in connection with Art. 136 of the 2017 SPC Interpretation determine that both actions be adjudicated concurrently.[666] The SPC regulates the major scenarios of decisions made by the reconsideration agency. Evidently, the reconsideration agency shares more responsibility because it participates either as the sole defendant or as the co-defendant.

From the perspective of administrative reconsideration agencies, the ALL reform made their work more complicated because "[t]he reviewing agency is either in the courtroom for answering the administrative litigation case or on the way to court in order to prepare for answering the administrative litigation case."[667] Furthermore, the revised ALL increases the responsibility of the administrative reconsideration agencies significantly and puts more pressure on them to prepare documents. In addition, the jurisdiction is determined according to the location of the agency that issued the original decision (Art. 18 ALL of 2014) which increases the effort to attend hearings in courts that might be located in another jurisdiction than the reviewing agency.[668] Furthermore, according to Art. 135 and 136 of the 2017 SPC Interpretation concerning the application of the ALL of 2014, the courts have to decide about both the original and the reconsideration decision which augments the workload of courts as well.

2.2. Administrative reconsideration committee

To ensure that the reconsideration agency decides according to the law, the legislators introduced administrative reconsideration committees. In September 2008, the State Council Legislative Affairs Office announced the "Notice on Trial Experimentation of Administrative Reconsideration Committees in some Provinces and Municipalities directly under the central government".[669] The pilot projects were set up first in Guizhou in 2008 and Beijing in 2009. Heilongjiang, Jiangsu, Guangzhou, Henan, Shandong, and Hainan province also followed. In 2011, twelve provinces and autonomous regions provided about 108 units for administrative

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[665] *Yang Weidong* 2018 b, 132.
[666] Chapter 5 discusses the details of such judgments dealing with the types of judgments.
[667] *Yang Weidong* 2018 b, 134.
[668] *Yang Weidong* 2017, 41-42.
[669] Legislative Affairs Office of the State Council's Notice on Trial Experimentation of Administrative Reconsideration Committees in Some Provinces and Municipalities directly under the Central Government (国务院法制办公室关于在部分省、直辖市开展行政复议委员会试点工作的通知), issued September 16, 2008, available at: http://fgs.ndrc.gov.cn/xzfy/200904/t20090417_273029.html [April 8, 2024].

reconsideration.[670] However, administrative reconsideration committees (henceforth: ARC) were not consistent because the pilot projects set up two different models of ARCs. The unified model[671], which was set up in Heilongjiang for example, received all reconsideration cases on a certain level and made the final decision. Hence, it acted like a "true adjudicator".[672] In contrast to this, the "panel discussion" model[673] included legal experts for deliberations and suggestions. This type of ARC functioned as a consultative body.[674]

Since administrative reconsideration agencies are part of the regular administrative apparatus, superior departments usually influence their operations. But ARCs are supportive for administrative reconsideration agencies to act more impartially, more professionally and more independently because they include professional bureaucrats and even members of the academia.[675] Hence, it became easier to resist outside pressure and to improve the quality of decisions.[676] The people's response to ARCs was also positive. The numbers of administrative reconsideration cases rose remarkably: In 2013, people filed 128,000 cases for administrative reconsideration in contrast to 123,000 administrative litigation cases, and in 2014, complainants filed 149,000 administrative reconsideration cases in contrast to 141,000 administrative litigation disputes.[677]

Despite the positive development, the operation of ARCs also revealed some problems: A first problem lay in the incoherent implementation of the State Council's notice. The two model ARCs had different powers that also created gaps for external interference.[678] Moreover, the cooperation between bureaucrats and legal scholars in the "panel discussion" model also led to conflicts about the decision due to the diverse backgrounds of the members. Whereas the bureaucrats prefer pragmatic solutions, a legal scholar might emphasize the legal context with a less favorable decision.[679] It might also be problematic to decide which agency is the right defendant in administrative litigation since the ARC now acts as the actual decision-maker. Again, some scholars argued that the ARC is an impartial decision-maker with quasi-judicial qualifications. That is why it should not be part of administrative litigation.[680] Conversely,

[670] *Zhan* 2013, 33; *Yang Weidong* 2018 b, 118.
[671] In Chinese: 集中.
[672] *Yang Weidong* 2018 b, 119, 125.
[673] In Chinese: 合议.
[674] *Yang Weidong* 2018 b, 120, 125.
[675] *Qing, Zhang* 2013, 13.
[676] *Yang Weidong* 2018 b, 117, 121.
[677] *Yang Weidong* 2017, 40; *Yang Weidong* 2018 b, 123.
[678] *Xu* 2012, 64.
[679] Ibid.
[680] *Qing, Zhang* 2013, 13-14.

another view concluded that the regulation of former Art. 25 of the ALL of 1989 clarifies their relationship. It should remain the core regulation for determining when administrative reconsideration agencies are to appear as a defendant in court.[681]

Overall, ARCs are a tool to prevent administrative reconsideration from corroding.[682] Nevertheless, the different interests in the reform process constitute the major obstacle in realizing a nationwide and uniform administrative reconsideration system.[683] Inevitably, due to the persisting problems, people look for alternative ways to solve their disputes with the administration. Therefore, the revised ARL pays special attention to the function and authority of the ARCs. The revision follows the model of the panel discussion because it integrates relevant government departments, experts, and scholars in the ARC.[684] According to Art. 52 of the revised ARL, administrative reconsideration offices should request administrative reconsideration committees to put forward advisory opinions in cases involving the following circumstances: (1) the case is major, difficult or complicated; (2) its professional or technical nature is relatively strong; (3) the local people's governments at or above the county level shall have jurisdiction because the applicant refuses to accept an administrative action taken by a people's government at a next lower level (Art. 24, item 2 of the revised ARL); (4) administrative reconsideration offices consider that it is necessary to get advice from the ARC. In these cases, the recommendation of the ARC should serve as an "important reference" for the decision, according to Art. 61 of the revised ARL.

3. Analysis

Administrative reconsideration does not function as a filter, but rather as a diversion of administrative disputes. As a hybrid method of control, the private party initiates and the superior administrative agency concludes the reconsideration procedure. This combines public participation with administrative control of its own actions. With the innovation of becoming the co-defendant, the revised ALL urges the reconsideration agency to reconsider the alleged administrative action thoroughly because it can be liable as well.

The statistical data reveals that since the revision of the ALL, the reconsideration agencies have indeed tended more to change the original action in favor of the plaintiff. Despite its current shortcomings, the State Council and the CCP Central Committee underline the importance of administrative reconsideration as one main channel for resolving administrative

[681] *Zhao Yun* 2009, 156.
[682] *Zhan* 2013, 33.
[683] *Yang Weidong* 2018 b, 136.
[684] Art. 52 of the revised ARL, supra n. 596.

disputes.[685] Therefore, the revision of the ARL allows to expect the role of the ARCs will be more important and will probably lead to reconsideration decisions that administrative law experts can support with their expertise. The quality of administrative reconsideration is likely to increase noticeably.

Before the revision of the ALL, the people's preference of choosing their remedies used to be "a high rate of petitioning, a middle rate of litigation and a low rate of reconsideration."[686] The reformers were worried about decreasing public confidence in the legal system, which is why easy access to courts was a key reform measure.[687] The effectiveness of administrative reconsideration as a dispute resolution method still needs to be observed with respect to the revision of the ARL because so far, many people still file a complaint after a reconsideration decision. It is possible that the people believe that the administrative agencies protect one another. However, the revision of the ARL aims at strengthening administrative reconsideration committees to tighten control and enhance its credibility. Moreover, the responsible person issuing the original administrative action must attend the hearing of the reconsideration agency. This is in alignment with the ALL's rule that the responsible person of the administrative agency is to attend the hearing. This alignment signals that administrative reconsideration shall be an equal remedy where people can directly debate with the relevant administrative agency. The measure increases the responsibility of the administrative reconsideration agencies significantly and puts more pressure on the administrative agency that originally issued the administrative action as well. It remains unknown so far whether the revised ARL will have the intended effect of strengthening administrative reconsideration in the future.

II. Case registration system

The weak protection of the people's right to sue was the major cause for the difficulty of filing cases. The right to sue is a fundamental procedural right which the ALL of 2014 adds to its general principles.[688] The first and second paragraphs of Art. 3 ALL of 2014 stipulate that the people's courts must protect the right to file a complaint which strengthens the plaintiffs'

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[685] Implementation Outline for Building a Government according to Law (中共中央 国务院印发《法治政府建设实施纲要（2021－2025年）》), issued August 11, 2021, by the CCP Central Committee and the State Council, available at: http://www.gov.cn/zhengce/2021-08/11/content_5630802.htm [January 3, 2024] (henceforth: Implementation Outline for Building a Government according to Law (2021-2025)).

[686] *Wang* 2017, 164, see also: *Zhang Taisu* 2009, 11.

[687] Let the people bring cases before the authorities with less impediments - Highlights of the second deliberation on the draft amendment to the Administrative Litigation Law (让"民告官"渠道更畅通 - 行政诉讼法修正案草案二次审议亮点聚焦), Xinhua News article (新华网), August 25, 2014, available at: https://www.yybnet.net/qingdao/pingdu/201610/2983139.html [January 3, 2024].

[688] Art. 3.

access to courts and protection of lawful rights and interests. The administrative agencies and their employees must not interfere with or impede the acceptance of an administrative lawsuit. The explicit ban of administrative interference highlights how much pressure administrative agencies had put on courts behind the scenes.

The case filing division of the courts felt this pressure especially. Each court has a case filing division that reviews the cases brought to court and decides whether they fulfill all requirements for the trial. The courts gradually established case filing divisions nationwide between 1986 and 1999.[689] Before 2015, case registration was called case review.[690] The case filing division is located at the entry stage and involves judges who review formal elements such as the form of the complaint and the identity information of the plaintiffs and defendant. The responsible judge must also review if the plaintiffs were qualified, they named the right responsible court and they had an interest in the lawsuit, or other substantive elements. In complicated cases, the responsible judge can consult with a collegiate bench that consists of other judges in the case filing division. If they deem further consultation necessary, they could turn to the court meeting[691] that involves judges from different divisions, or they could ask the court's adjudicative committee at the top.[692]

This process mixed formal and substantive reviewing of cases and raised the threshold of initiating administrative lawsuits.[693] It gave courts discretion to filter cases. Since the case filing division could assess the political problems behind some cases, they could indicate that it was beyond the courts' ability to solve the problems.[694] Or they realized that the cases could cause social and political unrest due to discrepancies between the legal norms applicable in a case and the expectations of the stakeholders. Therefore, although the right to sue determines that courts must accept the complaints, many courts used to ignore or reject cases they considered inconvenient, or they delayed the filing of cases that should have been accepted and heard.[695] The decision was delivered to the claimants in a court order that referred to the relevant sections in the ALL to explain the decision to accept or refuse the case.[696]

While the case review system had put the case filing division at the central position and impeded the people's access to court, the case registration system of 2015 – as the name already

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[689] *Zhang Jiajun* 2018, 219-220.
[690] *Ni* 2022, 7.
[691] In Chinese: 庭务大会.
[692] *Liu, Liu* 2011, 299.
[693] *Shi* 2018, 127.
[694] *Yu* 2019, 25.
[695] *Xin Chunying* 2015, 11; *ZHANG Zhiyuan* 2018, 46.
[696] *Liu, Liu* 2011, 299.

indicates – distinguishes formal requirements for registration from substantive review of cases and thus, lowers the threshold for the plaintiffs to get access to justice.

1. The SPC's Case Registration Regulations

In April 2015, the SPC announced a national case registration system that came into force together with the revised ALL on May 1, 2015.[697] The case registration system ensures that the case filing divisions file complaints uniformly. The preamble of the SPC Case Registration Regulations (henceforth: CRR) explicitly points out that the purpose of the case registration system lies in protecting the people's right to sue and in enabling the people's court to accept cases in a timely manner. It is applicable to all three procedural laws. The courts must accept cases by issuing a written document marked with the date of receipt and to docket them on the spot if they fulfill all the requirements of the corresponding legal provisions, according to Art. 2 CRR. If the complaint is erroneous the court shall provide explanations. Art. 3 of the CRR also guarantees the possibility of filing the complaint viva voce if it is difficult for the complainant to do it in writing. Art. 4 CRR enlists the documents and information that are necessary for filing both a civil and an administrative complaint, namely: (1) all relevant personal information of the complainant; (2) all relevant information of the defendant; (3) claims and supporting facts and reasons; (4) evidence, and sources of evidence; and (5) the name and domicile of the witness if there is a witness. If the documents submitted are incomplete or erroneous, the court shall give explanations and provide a certain period for the complainants to correct. However, if they fail to comply with the requirements, the courts shall not accept and docket the case, according to Art. 7 CRR. If the complainant does not pay the litigation costs in time and there is no other legal exemption, the court rules that the parties have withdrawn the case (Art. 11 CRR).

If the complainant provides all necessary information and the courts accepts and dockets the case, the court shall transfer it to a tribunal in a timely manner (Art. 12 CRR). If the court violates any of these provisions, like not handing out a confirmation of receipt or not giving explanations, the parties can complain at that court or at the court at the next higher level (Art. 13 CRR). Art. 14 CRR stipulates that the people's courts provide litigation services including the online docketing of cases, reserved docketing of cases, and circuit docketing of cases for the convenience of the parties. In addition, it also determines that the people's courts

[697] Regulations of the Supreme People's Court on Several Questions Concerning the Registration of Cases by the People's Courts (最高人民法院关于人民法院登记立案若干问题的规定), Art. 3, April 25, 2015, in: Fafa (法发) 2015, No. 8 (henceforth: CRR); *Finder* 2015 b.

shall respect that the parties may resolve the disputes by various means, like the people's mediation, administrative mediation, industry mediation and arbitration, according to Art. 15.

2. Case registration in administrative litigation

In addition to and aligned to the SPC's CRR, in 2017, the SPC issued another "Opinion about Further Protecting and Regulating the Legal Exercise of Administrative Litigation Rights by the Parties".[698] The SPC Opinions on Protecting and Regulating the Administrative Litigation Rights is a comment on the practices in the trial of administrative cases. The SPC points out that although the courts have enhanced docketing of cases since the enactment of the case registration system, the phenomenon that the parties are obstructed from exercising administrative litigation rights has not been completely eliminated. Moreover, the SPC underscores that they are aware of the increasing phenomenon that some parties abuse their administrative litigation rights and waste judicial resources. The SPC Opinions on Protecting and Regulating the Administrative Litigation Rights offers some concrete instructions for the courts on how to guarantee the right to action for the parties, for instance by strictly adhering to the provisions of the ALL of 2014 and of the CRR. The courts are meant to provide "convenient and effective litigation guidance and services for the legal exercise of litigation rights by the people" by applying recent technologies offered by big data and artificial intelligence as well as serving those parties that need support.[699] The SPC underlines that courts do not accept if plaintiffs repeatedly file the same case. It also points out that the courts must fully understand the meaning of "having an interest" as mentioned in paragraph 1 of Art. 25 of the ALL of 2014. Therefore, the courts must strictly determine cases of abuse of litigation rights and of malicious litigation that they do not docket.[700]

The original ALL of 1989 did not regulate the specific way of filing a complaint with a court. Only the 2000 SPC Interpretation acknowledged in the second paragraph of Art. 11 that people whose personal freedom is restricted can file a complaint viva voce or entrust a relative. During the reform process, the legislators agreed that filing a complaint can be in written or viva voce. In general, the time limit for filing is six months according to Art. 46 of the ALL of 2014. The administrative agency must inform the counterparty of the time limit for filing a complaint against the action, according to Art. 64 of the 2017 SPC Interpretation. If it fails to

[698] Opinion of the Supreme People's Court's about Further Protecting and Regulating the Legal Exercise of Administrative Litigation Rights by the Parties (高人民法院关于进一步保护和规范当事人依法行使行政诉权的若干意见), issued August 31, 2017, in: Fafa (法发) 2017, No. 25 (henceforth: SPC Opinions on Protecting and Regulating the Administrative Litigation Rights).
[699] Ibid, section 1, no. 6 and 7.
[700] Ibid, section 2, no. 10, 11 and 17.

inform, it must count the time limit from the date when the counterparty knows or should have known the content of the action. The time limit shall not exceed one year after the date when the counterparty knew or should have known the content. The same applies when a reconsideration decision is involved. Art. 65 of the 2017 SPC Interpretation emphasizes that the time limit is counted in the same way even if the counterparty does not know about the content of the administrative action. Nevertheless, the time limit must not exceed the time limit prescribed in the second paragraph of Art. 46 of the ALL of 2014. In Art. 39 of the ALL of 1989, the time limit was three months. Compared to the ALL of 1989 with a three-months' time limit, the extension to six months was meant to guarantee enough time for the people to claim their right to sue.[701] According to the second paragraph of Art. 46 of the ALL of 2014, the time limit for cases involving real property is twenty years and for any other dispute, it is five years after the administrative action was taken. The reformers chose this lengthy period because sometimes an administrative agency issued an action without notifying the citizen, legal person or social organization affected by it.[702]

In case personal rights, property rights, and other lawful rights and interests are concerned, and the complainant requires the agency to perform its duties and responsibilities, the agency must act within two months. If it fails to act, the complainant can file a complaint within six months after the time limit of two months has expired, as added by Art. 66 of the 2017 SPC Interpretation. However, in case of emergency the complainant does not have to wait for the two months to expire. They can file a complaint directly, as is determined in the second paragraph of Art. 47 of the ALL of 2014. This emergency clause shall meet the special needs of the complainant in such circumstances.[703] Also, force majeure or any other reason beyond the complainants' influence, are an exception from the legally prescribed time limit for filing, according to Art. 48 of the ALL of 2014. If the complainant needs more time for filing, they can apply for an extension of ten days if there is an obstacle that must be eliminated. The people's court shall decide whether to allow the extension, as regulated in the second paragraph of Art. 48.

The SPC introduced the case registration system to end the judge's discretion of case selection and to curb administrative interference.[704] Some scholars believed that the case registration system made registering equal to docketing.[705] However, the first paragraph of

[701] *Xin Chunying* 2015, 122.
[702] Ibid., 123-124.
[703] *Xin Chunying* 2015, 124-125.
[704] *Huang* 2016, 23.
[705] *Liu Liming* 2015, 217.

Art. 51 of the ALL of 2014 distinguishes between registering and docketing. First, a court registers a complaint and when it meets the conditions for filing according to Art. 49, the court dockets it with a case number. Hence, at first judges review the formality of a case filed at court and after the docketing, engage in substantial review during trial.[706] According to the first paragraph of Art. 51 of the ALL of 2014 and of the first paragraph of Art. 53 of the 2017 SPC Interpretation, the court must docket any case that meets the conditions for filing and must preserve the parties' litigation rights. Art. 49 of the ALL of 2014 lists the conditions for filing and defines that (1) the plaintiff must be a citizen, legal person or any other organization as mentioned in Art. 25 of the ALL 2015; (2) the defendant must be specific and (3) there must be a specific claim and a factual basis for the complaint. (4) The complaint must fall within the scope of acceptable cases and must be under the jurisdiction of the court that receives the complaint. These items correspond with the list of Art. 4 of the Case Registration Regulations of 2015. In addition, the 2017 SPC Interpretation defines the conditions listed in Art. 49 of the ALL of 2014: For instance, Art. 67 of the 2017 SPC Interpretation defines that the complainant fulfills the requirement of a "specific defendant" when the name or other information of the defendant are sufficient to distinguish the defendant from any other administrative agency. Art. 68 specifies the meaning of "specific claim", listing eight special types of claims: (1) to revoke of modify an action; (2) to require the agency to fulfill its legal duties or payment obligation; (3) to recognize that an action is illegal; (4) to recognize that an action is void; (5) to require the agency to make compensation or reimbursement; (6) to settle a dispute over an administrative agreement; (7) to review a normative document concurrently; (8) to settle a concurrent civil dispute; (9) or any other claim. In addition, the second paragraph specifies that when making the claim for compensation or reimbursement, the plaintiff shall name the matter and the amount; when making the claim for the review of a normative document, the specific name of the document shall be provided, and when making a claim for the settlement of a concurrent civil dispute, the civil claim shall be named as well. If the party fails to express their claims correctly, the court shall require them to specify them, according to the third paragraph.

Art. 50 of the ALL of 2014 stipulates that the plaintiff must submit their complaint in written and provide copies for the defendant. Only when it is difficult for the plaintiff to write a complaint, they can do it viva voce which the court shall transcribe with a dated certification to notify the defendant. Whereas Art. 4 of the CRR remains general in listing the requirements for filing, Art. 54 of the 2017 SPC Interpretation determines the required documents that must be submitted to the court: (1) identity and contact information; (2) materials proving the

[706] *Huang* 2016, 21.

existence of the administrative action, or the omission of action; (3) materials of the interests of the plaintiff; (4) other materials the people's courts ask for. If the plaintiff entrusts a legal representative, they shall prove their identity and authority of representation. If the court is not able to determine on the spot whether they must docket the case, they register it and mark it with the date of receipt and must decide within seven days, according to the second paragraph of Art. 51 of the ALL of 2014. If they conclude that the case does not meet the conditions, they enter into a written ruling to dismiss the case and state the corresponding reasons. The complainant can appeal against this ruling. The third paragraph of Art. 51 of the ALL of 2014 stipulates that parties must have the chance to correct mistakes or make supplements. If the court fails to offer explanations or guidance to the plaintiff, the court may not reject the complaint arguing the case does not meet the conditions. According to the fourth paragraph, the party can report to the people's court at the higher level if the court refuses to comply with any of its obligations concerning the registering and docketing of the case. The higher-level people's court shall order its subordinate court to correct and can take disciplinary actions against the personally liable official or other liable official according to law.

Additionally, Art. 55 of the 2017 SPC Interpretation underlines that the court must review the submitted documents and check whether they are complete and fulfill the conditions. If they are incomplete or incorrect, the court must notify the plaintiff and offer them guidance and explanations. It must notify the party to send the supplements within a certain period. If the plaintiff fulfills the new requirements, the court will docket the case; if they refuse, the court will send the written complaint back and make an entry in the file. If the party insists on filing the case, although they do not fulfil the conditions, the court will enter a ruling to not docket the case. In addition, Art. 56 of the 2017 SPC Interpretation refers in its first paragraph to mandatory reconsideration which, if the people failed to request it, is a reason to refuse to accept their complaint. If instead the reconsideration agency does not accept the request or fails to decide, the court must docket the plaintiff's complaint as stipulated in Art. 45 of the ALL of 2014.

After the court docketed case formally, the court must send a copy of the written complaint to the defendant within five days.[707] The defendant agency must within 15 days after receiving the complaint submit the evidence for taking the impugned administrative action and all the corresponding normative documents. After the court has received the defendant's statement, it transfers a copy to the plaintiff. It does not affect the trial if the defendant fails to

[707] Art. 67 of the ALL 2015.

submit the required documents. If, however, the court neither dockets the case nor enters a ruling to dismiss the case, the people can file a complaint with the court at the next higher level. After the higher-level court has formally reviewed the case and deems it fulfills all the conditions, it shall docket the case and try it. It can also designate another people's court at the lower level to docket and try the case.

Art. 60 of the 2017 SPC Interpretation bans repeat complaints based on the same facts and reasons. People oftentimes withdrew their complaint to file it again hoping to have better chances to reach their preferred result which was wasting judicial resources.[708] However, if the court's ruling against repeat complaints turns out to be erroneous, and the plaintiff has requested a retrial, the court shall reverse the original ruling by initiating a trial supervision procedure and the responsible court should retry the case. In contrast to this, Art. 62 of the 2017 SPC Interpretation stipulates that the complainant can file a case against another action taken by the same administrative agency after the court has already revoked the original action of that agency, the court shall docket this as a new case. Furthermore, as long as the plaintiff can prove the existence of an administrative action and files the complaint within the prescribed period, the court shall docket the case even if the administrative agency did not issue any legal document, as determined in Art. 63.

The case filing division is in charge not only of the formal review of the complaint but also of collecting the litigation fees. According to Art. 61 of the 2017 SPC Interpretation, the complainant must pay the litigation fee in advance within a prescribed time. If the plaintiff or appellant neither pays nor requests postponing the payment or its reduction or exemption, the court shall consider it as a withdrawal. The plaintiff or appellant can solve this by filing the complaint again within the time limit and paying the litigation fee. Some scholars argued that the filing of the same complaint constituted a repeat complaint that according to Art. 69 of the 2017 SPC Interpretation is a reason to dismiss the complaint. They say that if the complainants do not comply, they do not accept the law and hence shall not have a second chance. In contrast to this, the majority emphasizes that administrative litigation is meant to solve an administrative dispute between the parties. Thus, the complainant can easily solve the procedural shortcoming by paying administrative fees.[709]

The court can enter a ruling to dismiss the complaint after it has been docketed according to Art. 69 of the 2017 SPC Interpretation under one of the following circumstances: (1) when

[708] *Zhang Jiajun* 2018, 219.
[709] *Liang Fengyun* 2015, 325.

the requirement of Art. 49 of the ALL are not fulfilled; (2) when the time limit for filing a complaint is exceeded, except the plaintiff is delayed due to force majeure or any other reason not caused by themselves as stipulated in Art. 48; (3) when they have named the wrong defendant and are not willing to correct; (4) when they fail to have a legal representative or designated representative or when the representative fails to act according to law; (5) when they fail to request mandatory reconsideration before they can file a complaint; (6) when they file a repeat complaint; (7) when they file a new complaint without good reason after they have withdrawn a complaint; (8) when the administrative action evidently has no impact on the lawful rights and interests of the party; (9) when the subject matter has been bound by an effective judgment or consent; (10) when other statutory conditions for filing a complaint are not met. The second paragraph determines that the people's right to action shall be preserved and that, if possible, they should have the chance to correct any of the circumstances within a certain period. The third paragraph allows the court to directly enter a ruling to dismiss the complaint when they deem it unnecessary after they reviewed the files, investigated, or asked the parties.

The ten-item list in the first paragraph illustrates some common practical problems with filing a complaint before the revision of the ALL. Repeatedly filing the same complaint was the plaintiff's attempt to reach their preferred result. Whereas the second paragraph ensures the people's right to sue and to participate in the procedure, the third paragraph intends to save the court's resources by allowing the judge to directly dismiss a complaint for any of the circumstances listed in the first paragraph. In a similar vein, Art. 70 of the 2017 SPC Interpretation says that if the plaintiff raises another claim after the court sent a copy of their claim to the defendant, the court will only accept it when they provide a good reason but otherwise it will reject the new claim. After the formal docketing, a collegial bench of three or more judges will hold the hearing in public, as stipulated by Art. 7 of the ALL of 2014 to ensure public participation and control.

3. Analysis

In a press conference, held in June 2015, the SPC presented the first results of the implementation of the case registration system.[710] The spokesperson concluded that the acceptance rate increased significantly. Although this is a positive trend, it simultaneously

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[710] Spokesperson of the Supreme People's Courts informs the country about the progress concerning the implementation of the case registration system (最高法院新闻发言人通报全国法院实施立案登记制度进展情况), held on June 9, 2015, available at: http://www.dffyw.com/fazhixinwen/sifa/201506/38659.html [December 26, 2023].

revealed unfamiliar problems. For instance, courts have more pressure to solve the dispute during the trial. Many people misinterpreted the new case registration system as a gateway for any claim possible. Abuse of the right to sue is also more frequently.[711] A judgement issued in 2016 by the Nantong Intermediate People's court in Jiangsu illustrates that the people's right to sue is not indefinite.[712] *LU Hongxia* sued the Nantong Development and Reform Commission for open government information disclosure. From 2013 until January 2015, the plaintiff *LU* had sent about ninety-four similar requests for government information to different agencies and departments in Nantong. Because he and his parents were not satisfied with the responses, they filed forty-nine reconsideration requests with the corresponding agencies at the next higher provincial level. After the reconsideration procedure, the plaintiff *LU* was still not satisfied and initiated altogether thirty-six lawsuits at the Nantong Intermediate People's Court, at the Rudong County's People's Court and at the Gangzha District's People's Court. The Gangzha District's People's Court concluded that all the requests aimed at the same claims and were meant to put pressure on the government. The actual dispute concerned the plaintiff's relocation and house demolition. But instead of initiating a lawsuit against their housing demolition, they filed complaints against the local government for far-fetched reasons. The first-instance court rejected the lawsuit arguing that the filing was excessive and malicious which neither the Open Government Information Regulations[713] nor Art. 3 of the ALL of 2014 supported. The plaintiff's interests were not directly at stake with regard to the required information. The Intermediate People's Court of Nantong rejected the appeal pointing out that the plaintiff forfeited their rights to sue due to their malicious intention.

Overall, the CRR as the general reference and the relevant provisions in the ALL of 2014 and the 2017 SPC Interpretation regulate the possible scenarios that could occur while filing a complaint. Thus, the legislators weighed the people's right to sue and their lawful rights and interest with the court's resources. On the one hand, abuse of the right to sue should lead to dismissal. On the other hand, the respect for the people's right to sue is a serious concern of the Party and the SPC. That is why people must have the chance to correct or to supplement in case there is a mistake in their complaint.[714] From the political point of view, the case registration system proved to be effective. In 2016, about 300,000 administrative cases were

[711] Ibid.
[712] City of Nantong Intermediate People's Court (南通市中级人民法院), *LU Hongxia* v. Nantong City Development and Reform Commission Open Government Information Case （陆红霞诉南通市发展和改革委员会政府信息公开答复案）, issued April 6, 2016, available at: http://fzzfyjy.cupl.edu.cn/info/1070/5076.htm [April 15, 2020].
[713] Art. 1 ROGI, supra n. 497.
[714] *Huang* 2016, 21.

already pending, a remarkable increase of 55 percent compared to 2014.[715] In November 2021, the SPC held a press conference announcing that on the spot, courts at all levels registered on average 95 percent of all cases filed.[716] From the point of view of the plaintiffs, the case registration system provides a clear list of requirements and materials for filing cases. It enhances the access to courts and enables people to predict the consequences of their requests.

However, a negative side effect of the case registration lies within the increased workload of the courts and the pressure judges are facing consequently. The SPC identified that courts succeeded in circumventing case registration at the end of a year when they are particularly under pressure to finish the pending trials on time. The SPC assumed that the phenomenon originates from an "inadequate ideological understanding, an incomplete supervision of the implementation, and an imperfect evaluation system."[717] The SPC also indicated that judges avoid case registration because they do not understand the importance of the right to sue. But besides their lack of knowledge and of competences in the assessment of the complaints, this also reveals that there might be problems concerning sufficient personnel in the case registration divisions handling the workload. However, the SPC's transparency initiatives,[718] like China Judicial Process Information Online and the recently introduced National Court Adjudication Documents Database demand courts to publish judgments and judicial decision about lawsuits. Thus, for the SPC, it is easy to find out which courts underperform and harm the protection of the people's lawful rights and interests.

III. Jurisdiction

Jurisdiction refers to the court that is responsible for hearing a case. Before the revision of the ALL, the jurisdiction system was flawed, especially due to the dependence of the courts on the administration. Although the Constitution guarantees that judicial work shall be free from administrative interference, de facto, the judiciary is one branch of the state bureaucracy. Local governments used to decide upon the courts' budget. The funding of courts included the judges' salaries, office supplies, and the maintenance of the court building.[719] However, local governments usually did not think much of court funding since "courts do not build highways

[715] *Finder* 2016.
[716] Press conference of the Supreme People's court about not filing a case at the end of the year for national court remediation (最高法举行全国法院整治年底不立案新闻发布会), published November 23, 2021; on the Website of the Supreme People's court (最高人民法院网), available at: https://www.chinacourt.org/article/detail/2021/11/id/6385118.shtml [October 26, 2023].
[717] Ibid.
[718] See Chapter 6: The organization of the administrative trial, I. General principles of administrative litigation.
[719] *WANG* 2013, 44-45 and 48.

or suspension bridges."[720] In 1998, a so-called "dual-track" system[721] for court finance was introduced.[722] This "dual-track" system separated court revenues from court expenditures to free courts from their financial burdens and relieve litigants from high litigation fees. Each year, the courts transmitted their estimated income from litigation fees and other fines to the government together with a budget plan. Then, the government decided, according to their financial situation, how much money they can grant to the courts. This had put courts at the mercy of local governments.[723]

The financial dependence of courts made them weak and opened the door for administrative agencies to interfere with trials. Therefore, long before the CCP actively supported the revision of the ALL, scholars had pointed to “the important idea […] to separate judicial jurisdiction from administrative jurisdiction […].”[724] The aim was to protect basic people’s courts from interference of local governments which caused the major difficulty of unsuccessful case filing. In this context, the CCP’s Third Plenum Decision held in November 2013 mentioned the objective to “separate the jurisdiction of courts from administrative divisions”.[725] This decision fueled the reform process that was continued by the CCP’s decision at the Fourth Plenum in October 2014 that also adhered to tackling local protectionism.[726] The Party strived for more vertical integration of the judicial system, i.e., the centralization of court financing and a more dominant role for higher-level courts and provincial governments. The literature calls it “soft centralization”.[727] These political decisions paved the way for some major reforms concerning the jurisdiction of Chinese courts in administrative litigation. Among the key issues of revision, two aspects gained a lot of attention, namely the expansion of the jurisdiction of intermediate people’s courts[728] and the introduction of a jurisdiction system crossing administrative districts.[729]

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[720] *Ng, He* 2017, 168.
[721] In Chinese: 收支两条线.
[722] SPC Circular on Implementing “Dual Track“ Regulation, supra n. 149.
[723] *Ng, He* 2017, 170.
[724] *Chen Xiumin* 2003, 63.
[725] Decision of the Central Committee of the Communist Party of China on Some Major Questions Concerning Comprehensively Deepening the Reform (中共中央关于全面深化改革若干重大问题的决定), issued at the Third Plenum of the 18th CCP Central Committee on November 12, 2013, available from: http://lawprofessors.typepad.com/files/131112-third-plenum-decision---official-english-translation.pdf [November 22, 2023] (henceforth: 18th CCPCC Third Plenum Decision 2013), section 32.
[726] 18th CCPCC Fourth Plenum Decision 2014, supra n. 4, section 4.
[727] *Yu* 2021, 29-58, 45; in: *Ahl (ed.)* 2021.
[728] Art. 15 ALL of 2014; *HE* 2016, 176.
[729] In Chinese: 跨行政区划的法院, see: second paragraph of Art. 18 of the ALL of 2014, *Liang Fengyun* 2015, 125.

The jurisdiction system distinguishes between "jurisdiction according to hierarchy" and territorial jurisdiction. The former determines which court at which level is competent for hearing cases at first instance according to Art. 14 to 17 of the ALL of 2014 whereas the latter specifies the venue of the court according to Art. 18 to 20 of the ALL of 2014. If jurisdiction is unclear, the competent court will be determined according to its administrative level and in a second step according to its location.[730] We look at the merits of such changes. Is the strengthening of intermediate people's court a useful tool to overcome institutional deficits? What are the disadvantages of this reform?

1. Hierarchical jurisdiction

Art. 14 of the ALL of 2014 stipulates that basic people's courts are responsible for hearing administrative cases of first instance. More than three thousand basic courts in China are located at the county level in cities, development zones or in autonomous regions as well as on the municipal level. Scholars argued that for both the parties and the courts it is convenient that basic people's courts have jurisdiction over first-instance administrative cases because the parties can access these courts easily, and the courts are familiar with the local circumstances.[731]

Against the backdrop of the centralization of court management at the provincial level, the reformers expanded the jurisdiction of intermediate people's court to hear first-instance cases. They specified it in Art. 15 of the ALL of 2014 and in Art. 5 of the 2017 SPC Interpretation. According to Art. 15 of the ALL of 2014, intermediate people's courts hear cases which (1) are filed against administrative actions taken by a department of the State Council or by a people's congress at or above the county level; (2) are handled by the customs; (3) are major or complicated within its territorial jurisdiction and (4) are under the jurisdiction of intermediate people's court as prescribed by other laws.

The first item of Art. 15 refers to administrative agencies led directly or indirectly by the State Council, among them are its ministries or commissions and institutions like the State-owned Assets Supervision and Administration Commission (SASAC) as well as tax or food and drug safety bureaus and bureaus managed by its commissions like the Letters and Visits Offices, and the customs. Cases involving these agencies are usually complicated and have a greater social impact than cases involving agencies at lower levels. So, by expanding the jurisdiction of intermediate people's courts the reformers attempted to improve judicial

[730] *Xin Chunying* 2015, 56, 61; *Ying Songnian* 2015 a, 46.
[731] *Xin Chunying* 2015, 49.

autonomy and fairness.[732] Art. 5 of the 2017 SPC Interpretation defines "major or complicated cases within its territorial jurisdiction". This refers to collective or class actions with a material social impact, cases that involve foreign parties or which are related to Hong Kong, Macao, and Taiwan or any other major or complicated cases. For instance, cases involving land or forest usage are usually a major or complicated case because they involve many stakeholders and views so that adjudication is more complex and difficult.[733] The last item determines that other laws can prescribe that intermediate people's court hear first-instance cases. This serves as a catch-all clause because it allows the legislators to be more flexible in determining the jurisdiction of new cases resulting from economic and social changes. For instance, in 2002, the SPC had already decided that ordinary intermediate people's courts instead of maritime courts try cases involving customs, such as tax collection or administrative punishments.[734]

The 2017 SPC Interpretation adds two more circumstances according to which intermediate people's courts can decide to try the filed case. According to Art. 6, a party can file their case directly with the intermediate people's court when they believe that the case is major and complicated and not appropriate for the basic people's court to hear or when the responsible basic people's court neither dockets the case nor enters a ruling (Art. 52 of the ALL of 2014). In this case the intermediate people's court has discretion and shall decide (1) to try the case itself; (2) to appoint another lower-level court within its territorial jurisdiction and (3) to notify the party in writing to file the case with a responsible basic people's court. Art. 6 of the 2017 SPC Interpretation is meant to guarantee the people the right to sue and to protect their rights and interests.[735] Moreover, Art. 7 of the 2017 SPC Interpretation illustrates that basic people's courts can approach intermediate people's courts when they deem it necessary for an intermediate people's court to try a case or designate jurisdiction. The intermediate people's court shall decide within seven days (1) to try the case itself; (2) to appoint another lower-level court within its territorial jurisdiction and (3) to have the requesting people's court to try the case.

To further improve the jurisdiction system, unify the application of the laws, facilitate internal operations among courts, the SPC announced the "Pilot Implementation Measures for Improving the Trial Levels and Functional Orientations of Courts Structured in a Four-Tier

[732] *Liang Fengyun* 2015, 127; *Ying Songnian* 2015 a, 41.
[733] *Liang Fengyun* 2015, 129.
[734] *Ying Songnian* 2015 a, 43.
[735] Ibid., 131.

System" in September 2021.[736] In twelve provinces and municipalities such as Beijing, Tianjin, Liaoning, Shanghai, Jiangsu, Zhejiang, Shandong, Henan, Guangdong, Sichuan, Chongqing, and Shaanxi, the jurisdiction system in civil and administrative cases should be reformed over a period of two years. For the ALL, the focus was set on Art. 15 (jurisdiction) and Art. 90 (retrial) of the ALL of 2014.

Concerning jurisdiction, the aim was to re-define the functions of basic, intermediate, high people's courts and the SPC, and determine that basic people's courts should focus on ascertaining facts, whereas intermediate people's courts should oversee the final decision in second instance cases. The high people's courts hear major and complicated administrative cases within their local jurisdiction, the SPC hears them nationwide in the first instance (Art. 16 and 17 of the ALL of 2014). The pilot determined that high people's courts' main obligation lied in retrials and the SPC should supervise the courts' operations. If the legislators amended the ALL, new Art. 15 of the ALL of 2014 would have determined that cases involving government information disclosure, cases in which the administrative organs do not perform statutory duties, in which the administrative reconsideration authority does not accept or procedurally rejects the application for reconsideration, and administrative adjudication cases on disputes over the ownership of natural resources such as land, mountains and forests, shall be handed over to the basic people's court for trial.

In July 2023, the SPC issued the "Guiding Opinions on Strengthening and Standardizing the Elevated Jurisdiction and Retrial Work" (henceforth: SPC Guiding Opinions 2023).[737] "Elevated jurisdiction"[738] means that a people's court at a lower level transfers a case of first instance under its jurisdiction to a people's court at a higher level for trial in accordance with Art. 24 of the ALL of 2014, which also stipulates that elevated jurisdiction is limited to first-instance cases.

In the SPC Guiding Opinions 2023, the SPC also summarizes the experiences gained during the pilot work that had started in 2021. During the pilot period, intermediate and high people's courts across the country accumulated more than 1,700 cases of which ninety became model cases and three became reference cases. The SPC has retried eight hundred cases and

[736] Notice of the Supreme People's Court on the "Pilot reform of Improving the Positioning of Four Level of Courts in terms of Adjudication Levels and Functions" (最高人民法院关于印发《关于完善四级法院审级职能定位改革试点的实施办法》的通知), issued September 9, 2021, in: Fa (法) 2021, No. 242.
[737] Guiding Opinions of the Supreme People's Court on Strengthening and Standardizing the Elevated Jurisdiction and Retrial Work (最高人民法院印发《关于加强和规范案件提级管辖和再审提审工作的指导意见》), issued July 28, 2023, in: Fafa (法发) 2023, No. 13 (henceforth: SPC Guiding Opinions 2023).
[738] In Chinese: 提级管辖.

sorted out more than 2,000 key points of judgments in various trial areas. The SPC reflected upon problems that the pilot exposed as well: For instance, the procedures for applying for promotion of a case to a higher-level jurisdiction were cumbersome and lengthy. The approval requirements were too strict, which constrained flexibility and operability. In addition, judges at high people's courts gave feedback that they preferred giving instructions to lower-level courts rather than hearing the cases. They reported that they lacked resources for the follow-up work like discovering special types of cases, monitoring and screening the cases heard. In addition, the relevant litigation documents lacked format as well. Overall, they were too unfamiliar with elevated jurisdiction.[739]

The idea of elevating jurisdiction is meant to ensure a better resolution of cases that the lower-level courts cannot resolve or cannot resolve satisfactorily. The SPC underlines that elevation of jurisdiction should consider the complexity of the dispute depending on the interests of the parties involved, like cases concerning people's livelihood, pollution, and land acquisition. For administrative litigation, it states that disputes involving land acquisition and demolition for large-scale projects can easily lead to mass incidents. Therefore, it would be more appropriate for a basic people's court to hand the case over to the higher-level court to ensure the substantive resolution of the dispute "with the cooperation and support of the local party committee and government".[740] If similar cases have been adjudicated and have been designated as reference, basic people's court can refer to these cases in their judgment and do not need to hand it over to a higher-level court. Art. 2 of the SPC Guiding Opinions 2023 states that elevation of jurisdiction is possible upon request by the lower-level court to its high people's court, and when a high people's court elevates jurisdiction based on its ex officio power.

Art. 4 of the SPC Guiding Opinions 2023 lists cases that are suitable for elevated jurisdiction. The first type of cases involves major national interests and public interests. Secondly, the cases are a new type in the jurisdiction system and are difficult and complex. Cases that fall under the category of "new types within the jurisdiction and difficult and complex" must fulfill the two conditions of "new type" and "difficult and complex" at the same time. Art. 5 of the SPC Guiding Opinions 2023 defines that such a case might be the first of its type or is rare in the jurisdiction. Hence, the SPC intends to differentiate between uncommon, simple cases and uncommon, difficult cases. Only in the latter case, elevated jurisdiction would fulfill its educational effect for lower-level courts and society. Thirdly, there is an effect for

[739] *He, Li, Chen* 2023, Part 1: Drafting background.
[740] Ibid., Part 3: Main contents of the SPC Guiding Opinions 2023, supra n. 737.

litigation, which is conducive to forming an exemplary judgment and promoting unified, efficient, and appropriate resolution of similar disputes. Cases that fall under this category have an "exemplary leading value" and might develop normative guidelines for handling similar disputes in a systematic way. Fourthly, there is guiding significance for the application of the law. This means that the judgments of such model cases must specify the application of the relevant laws because the laws, regulations and judicial interpretations themselves do not include a specific guideline for their application or their application has changed. Fifthly, the people's court at a next higher level and the people's court within the original jurisdiction have different judgments over similar cases that have come into force within the recent years. Lastly, the first-instance trial of a people's court at a next higher level is more conducive to grant a fair trial. This category refers to cases in which external interference is likely so that their elevation to a higher-level people's court ensures fairness.

In its statement, the SPC concluded that the new system of elevating cases is still not complete and needs adjustment to overcome the shortcomings. In Art. 21 of the SPC Guiding Opinions 2023, the SPC demands the people's courts at higher levels to engage in monitoring and screening for unusual cases and to pay attention to cases and circumstances that are eligible for elevated jurisdiction. They should handle requests from lower-level courts regarding the application of the laws, to supervise trials, conduct judicial inspections and case evaluation, to handle procuratorial supervision opinions and issues that concern deputies of the NPC and members of the Central Committee of the CPC. In addition, petitions and letters, requests for retrials by the people and public opinion can give further hints towards exceptional cases. As of September 2023, the intermediate and basic people's courts within the jurisdiction of Beijing, Tianjin, Liaoning, Shanghai, Jiangsu, Zhejiang, Shandong, Henan, Guangdong, Chongqing, Sichuan, and Shaanxi provinces (municipalities) have resumed the implementation of Art. 15 of the ALL of 2014 regarding the jurisdiction of intermediate people's courts.[741]

2. Local jurisdiction

The first paragraph of Art. 18 of the ALL of 2014 defines the principle for determining local jurisdiction, namely that the court at the place of the defendant agency is responsible for hearing the case.[742] The 2017 SPC Interpretation adds in Art. 4 that a change of the place of the domicile of either party, by adding any defendant or modifying any facts will not affect the

[741] *He, Li, Chen* 2023, see: Part 1: Drafting background (一、起草背景).

[742] In Chinese: 原告就被告, see: *Xin Chunying* 2015, 55; *Ying Songnian* 2015 a, 45.

jurisdiction of the people's court that has docketed the case. As soon as a court accepts a case and dockets it, which means the case officially receives a record,[743] jurisdiction will be fixed.

The principle of jurisdiction at the location of defendant is particularly important when there are two or more courts that have jurisdiction over the same case. Some cases may involve reconsideration agencies. When natural or legal persons or social organizations do not accept an administrative action, they can choose to go through a reconsideration procedure before they file a complaint, or they file it directly at court according to Art. 44 of the ALL of 2014. When the reconsideration agency maintains the original administrative action, both the original agency and the reconsideration agency are co-defendants according to the second paragraph of Art. 26 of the ALL of 2014. If the reconsideration agency modifies the original action, it shall be the sole defendant when the party files a complaint against its decision. When the reconsideration agency does not decide at all, the party can file a complaint for nonfeasance, according to the third paragraph. So, in case a reconsideration agency is involved, the principle of local jurisdiction applies according to whether the reconsideration agency is a co-defendant or the sole defendant. When both original and reconsideration agency are co-defendants and are not located at the same place, the plaintiffs can decide in which competent court they want to file their complaint. When they have filed at both courts, the court that first dockets the case shall have jurisdiction according to Art. 21 of the ALL of 2014. Like Art. 6 of the 2017 SPC Interpretation this provision grants the plaintiffs the right to choose from competent courts which underlines the intention of protecting their rights and interests.

If people file a complaint against an administrative compulsory measure that restricts personal freedom, the court located at the place of the defendant, or the plaintiff shall hear the case according to Art. 19 ALL of 2014. The plaintiffs can choose the court that shall have jurisdiction which the conjunction "or" indicates. The place of the plaintiff can be the place of their household registration, of their permanent residence or the place where their personal freedom was restricted by the defendant agency, according to Art. 8 of the 2017 SPC Interpretation. According to its second paragraph, the plaintiff can file a complaint against the defendant agency for restricting their freedom and for other reasons directed against the same administrative action at the court located at the place of the defendant or of the plaintiff. For instance, when an agency decided to detain a citizen and also fined them for the same reason, there are two administrative actions related to one another. The enforcement of the administrative action, i.e., the restriction of freedom, will only be suspended under certain

[743] *Ying Songnian* 2015 a, 45-46, 52.

circumstances listed in Art. 56 of the ALL of 2014[744] and Art. 39 of the Administrative Compulsion Law[745]. To make it convenient for them to attend, the plaintiffs have the right to choose between courts to guarantee the protection of their rights and interests. For the defendant agency, the costs of attending a hearing in a court located in a different administrative district are still relatively low compared to the effort for citizens. Typical disputes concerning detention dealt with reeducation through labor until the government abolished it in 2013.[746]

In contrast to the people's right to choose their court of jurisdiction, Art. 20 of the ALL of 2014 determines local jurisdiction for cases involving real property, such as registration or demolition of buildings. It constitutes a special type of jurisdiction because it stipulates that the court at the place of the real property shall have jurisdiction. This is an internationally accepted principle to make it easier for courts to collect and verify evidence or to enforce the judgment.[747] The complaint must affect a change of the real right in real property caused by an administrative action, as stipulated in the Art. 9 of the 2017 SPC Interpretation. The second paragraph specifies the location, i.e., the location recorded in the real property register. In case the real property is unregistered, the actual place of the real property shall be its location.

The ALL also acknowledges the transfer of the jurisdiction from one court to another one. Art. 22 of the ALL of 2014 determines that a court can transfer the case under three conditions: (1) It has already docketed the case when (2) it finds that the case is not under its jurisdiction. (3) The court that receives the case must accept it. However, when the receiving court also deems that it is not responsible it shall report to the higher-level court requesting it to designate jurisdiction. But the provision is clear that the receiving court cannot transfer the case to a third court on its own initiative. This provision constitutes a single-sided action of one court towards another one with the purpose to correct a procedural mistake. But a court can only transfer a case once to keep the people's rights and interests protected and to avoid an

[744] Art. 56 of the ALL of 2014 refers to the following reason for suspending the enforcement of the impugned administrative action: (1) The defendant deems it necessary to suspend execution. (2) The plaintiff or an interested party files a motion for suspending execution, and the people's court deems that the execution of the impugned administrative action will result in irreparable losses and that its suspension will not damage the national interest or public interest. (3) The people's court deems that the execution of the impugned administrative action will cause any major damage to the national interest or public interest. (4) The suspension is required by any law or regulation.
[745] Art. 39 of the Administrative Compulsion Law lists the following circumstances under which enforcement shall be suspended: (1) The party concerned has real difficulty in performing, or temporarily has no ability to perform, the administrative decision; (2) A third party claims right to the subject matter of enforcement with a justifiable reason; (3) The enforcement may cause any irreparable loss, and a suspension of enforcement does not damage the public interests; or (4) The administrative organ otherwise deems a suspension of enforcement necessary; Administrative Compulsion Law of the People's Republic of China (中华人民共和国行政强制法), Order No. 49 of the President, issued June 30, 2011, effective January 1, 2012 (henceforth: Administrative Compulsion Law).
[746] *Xin Chunying* 2015, 59-61.
[747] Ibid., 61-62.

infinite loop of transferring the case.[748] The ALL of 2014 also recognizes cases in which a court is unable to exercise its jurisdiction for legal or material reasons, the higher-level court shall designate another court to hear the case. Local laws and regulations give legal reasons, like centralized jurisdiction that only appoints certain courts to hear administrative cases. Material reasons involve force majeure, i.e., circumstances that are beyond a court's influence.[749]

It is possible that courts disagree on the jurisdiction of a case. The second paragraph of Art. 23 of the ALL of 2014 stipulates that these courts must consult each other first. If consultation is unsuccessful, they shall report to their common higher-level court and request it to designate the jurisdiction. Usually the lower-level court approaches its higher-level court to request a decision concerning the jurisdiction in a case. The second paragraph of Art. 24 of the ALL of 2014 follows this rule. However, the first paragraph of Art. 24 grants the higher-level court the power to try administrative cases of first instance that are under the jurisdiction of a lower-level court. The lower-level court must send the case to the higher-level court. The opposite direction of sending cases down used to cause problems because it led to judicial bias towards their local government and harmed judicial credibility. Some higher-level courts tried to prevent calling attention to cases that had a public impact and that they could send to a different administrative district for trial. That is why they deliberately appointed a lower-level court to hear the case although they themselves had jurisdiction over it. As a result, the revision deleted the power to send cases down. The ALL of 2014 only recognizes the higher-level court's discretion to take up a case form the lower level.[750] These provisions show parallels to Art. 53 of the German Code of Administrative Court Procedure which stipulates that the higher-level court decides which court is responsible when (1) the basic court cannot try itself due to legal or external reasons; (2) when it is not clear which lower-level court is responsible due to the distinction between administrative districts; (3) when more than one court can have territorial jurisdiction; (4) when different courts claim to be responsible; (5) when different courts claim to be not responsible but one of them has jurisdiction. This reveals that consultation among courts is common to solve conflicts of jurisdiction.

The 2017 SPC Interpretation specifies the case of objection to jurisdiction in Art. 10. According to the first paragraph, plaintiffs can only raise an objection within fifteen days after they received the copy of the record of their case which the court has docketed. The court must review the objection and must rule whether they transfer the case to the court that is responsible

[748] *Xin Chunying* 2015, 64-65; *Ying Songnian* 2015 a, 52-54.
[749] *Xin Chunying* 2015, 66.
[750] *Xin Chunying* 2015, 68.

or otherwise overrule the objection, as stipulated in the second paragraph. The last paragraph confirms that after reviewing, adding or modifying claims do not affect the jurisdiction unless such a change would affect the hierarchical and exclusive jurisdiction. Moreover, Art. 11 of the 2017 SPC Interpretation bans the review of an objection to jurisdiction for cases that are meant (1) for retrial or review of the procedure of first instance and (2) to enter the procedure of second instance but the plaintiff does not file the objection according to time limit and form. The purpose Art. 11 of the 2017 SPC Interpretation is to prevent the right of appeal or review of judgements to become void because plaintiffs abuse their right to sue.[751]

3. Jurisdiction crossing administrative districts

Scholars and legislators also paid much attention to the innovation of jurisdiction crossing administrative districts.[752] Some courts are designated to deal with disputes that are transferred from another administrative district to reduce local protectionism and administrative interference.[753] According to the second paragraph of Art. 18 of the ALL of 2014, a higher people's court may determine several people's courts that have jurisdiction over administrative cases across administrative districts with the approval of the Supreme People's Court. The 2017 SPC Interpretation mentions in the second paragraph of Art. 3 railway transportation courts[754] that hear cases from different administrative districts. The reform seemed necessary because railway transportation courts only dealt with few cases compared to the many cases of ordinary courts whose judicial personnel were suffering from the high workload. The SPC launched a reform program in 2012 integrating the 17 intermediate railway transportation courts and the 58 lower-level railway transportation courts into the national court system by transferring their management to the respective local administration.[755] Before the reform, the Ministry of Railway was responsible for all railway transportation courts and disputes.[756] After the integration, the railway transportation courts are now under the auspices of the provincial high

[751] *Ca, Hua, Zhao* 2019, section 4.
[752] In Chinese: 跨行政区划法院管辖.
[753] Notice on the fourth Five-Year Reform Program for the People's Courts (2014 - 2018) (人民法院第四个五年改革纲要（2014－2018）的通知) by the Supreme People's Court, issued February 6, 2015, at: Law Release 2015, No. 3 (法发〔2015〕3 号), at: http://he.people.com.cn/n/2014/0710/c197043-21624195.html [December 27, 2017].
[754] In Chinese: 铁路运输法院.
[755] National railway courts have been all reformed and transferred to the localities (全国铁路法院全部改制移交地方), issued July 31, 2012, available at: http://www.court.gov.cn/zixun-xiangqing-4349.html [February 2, 2024].
[756] *Cao* 2018, 152.

courts, and not under the supervision of the local governments.[757] Therefore, there are hopes that the railway transportation courts would function as quasi-administrative courts in China.[758]

In October 2014, the SPC had announced the pilot program giving railway transportation courts centralized jurisdiction over first and second-instance administrative cases. Seven provinces and cities such as Guangdong, Beijing, Shanghai, Jilin, Jiangsu, Liaoning, and Shaanxi should reform the work of railway transportation courts to hear first-instance administrative cases. In its Fourth Five-Year Reform Program, published in 2015, the SPC stipulated in the third section to "reform the railway transportation courts as cross-administrative region courts, primarily handling cases that cross administrative regions, major administrative cases, environmental resource protection cases, enterprise bankruptcy cases , food/drug safety cases, and other cases which could easily be influenced by local factors […]".[759] As a result, Shanghai transformed its railway transportation court into its third intermediate people's court and Beijing transformed its railway transportation court into the fourth intermediate people's court.[760] At the end, the pilot program was widely regarded as successful and as an effective means to curb local government's intervention in the independent work of courts.[761] As of 2019, ten intermediate and 29 primary railway transportation courts were hearing administrative cases.[762] Depending on their location and the local regulations, railway transportation courts do not hear every administrative case. For example, Shanghai's third intermediate people's court only dockets cases in which the people's government of Shanghai is involved.[763]

There were also other pilot programs experimenting with jurisdiction crossing administrative regions, such as Taizhou in Zhejiang Province. In 2002, a pilot started with cases that involved more than ten plaintiffs and the local government as defendant. The so-called "Taizhou experience" made other provinces follow that example. Henan Province introduced this model in 2014. According to Art. 2 of the Henan High Court Decision, all cases of first instance under the jurisdiction of a basic people's court shall be appointed to a basic people's court in a different administrative district than the place of the defendant government except

[757] *Ma, Cheng, He* 2022, 13.
[758] Ibid.
[759] Outline of the Fourth Five-Year Reform Program of the People's Court, supra n. 198.
[760] *Cao Yeru* 2018, 152, 155.
[761] A good lubricant and booster - Records of the first cases under the jurisdiction of Nanchang's railway transportation court (当好"润滑剂" 做好"助推器" ——南昌铁路运输两级法院强化行政审判工作纪实, article published on June 3, 2019, available at: https://www.chinacourt.org/article/detail/2019/06/id/3988793.shtml [January 7, 2024].
[762] *Ma, Cheng, He* 2022, 13.
[763] Ibid., 14.

for first-instance cases that are directly under the jurisdiction of intermediate people's courts. This is also relevant for intermediate people's courts when the government at the same level is the defendant and when they hear administrative cases concerning environmental protection.[764] Art. 3 of the Henan High Court Decision adds that intermediate people's courts shall appoint the basic courts of their administrative territory to hear administrative cases from different administrative districts. Plaintiffs can file their complaints directly at the responsible court at a different location, otherwise the court at that location must notify them or transfer the case to the responsible court (Art. 4 of the Henan High Court Decision). Art. 5 specifies the appointment of the responsible court: the higher-level court can transfer a case to a responsible lower-level court when the plaintiff wrongly filed the case. The lower-level court can request the higher-level court to decide about the jurisdiction when it deems itself not suitable or the plaintiff can express their doubts with the responsible court after filing the case. The court must consult with the higher-level court within three days for a decision. Henan divided its eighteen intermediate people's courts into six groups to organize the new jurisdiction system. The model became called the "rolling model" because Henan intends to adjust it every two years.[765]

In 2010, the intermediate people's court in Lishui in Zhejiang Province centralized the jurisdiction over administrative cases from nine lower-level courts to three. It was meant to strengthen the uniformity of adjudication. In 2013, the SPC initiated a pilot program requiring higher-level courts to name one or two intermediate people's court to determine two or three basic-level courts to exercise centralized jurisdiction over administrative cases. The administrative divisions of courts that do not exercise centralized jurisdiction must assist the other divisions with regular administrative work. Moreover, the SPC also urged the courts responsible for the appointment to consider the location and traffic conditions of the court so that it is convenient for the parties to attend the hearing.[766] However, the pilot program revealed some problems and shortcomings that came along with centralized jurisdiction. Compared to jurisdiction crossing administrative districts, centralized jurisdiction turned out to be less flexible and more expensive for the plaintiffs and third parties who have longer distances to get to the court and consequently, must spend more money and time. The impact is less grave for

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[764] Henan High People's Court Decision Concerning Questions about the Jurisdiction of Administrative Cases in Different Locations (For Trial) (河南省高级人民法院关于行政案件异地管辖问题的规定（试行）), issued: May 27, 2014, available at: http://www.hncourt.gov.cn/public/detail.php?id=146744 [December 26, 2023] (henceforth: Henan High Court Decision).
[765] *Cao Yeru* 2018, 154.
[766] Notice of the Supreme People's Court on Launching the Pilot Program about Centralized Jurisdiction of Administrative Cases (最高人民法院关于开展行政案件相对集中管辖试点工作的通知), issued January 14, 2013, in: Fa (法) 2013, No. 3, available at: http://rmfyb.chinacourt.org/paper/html/2013-01/14/content_56584.htm [November 27, 2023].

the defendant agency that has enough resources and money. Moreover, the centralization of jurisdiction does not prevent administrative agencies from interfering within the court through different means and ways. Judges are not at all free from administrative meddling, they face trouble collecting evidence and enforcing the judgment because most of the time agencies are unwilling to cooperate.[767]

According to scholarly debates, jurisdiction that crosses administrative regions is but another type of centralized jurisdiction.[768] As already mentioned, centralized jurisdiction refers to a system where a higher-level people's court appoints several lower-level courts within its territorial jurisdiction to hear administrative cases. The appointment process shall be more practical by saving judicial resources because cases are not appointed one by one to the corresponding competent courts. Higher-level courts predetermine which courts are competent in hearing administrative cases of first instance.[769] The new model should promote judicial credibility because people used to mistrust judges to handle their cases in a fair and just manner. They prefer other ways to seek remedy such as filing their complaint at a letters and visits office or by filing a request for reconsideration. Hence, the new model shall separate court districts from administrative districts. Court districts usually overlapped with administrative districts which is a gateway for administrative interference.[770]

4. Analysis

Overall, the reform of the jurisdiction system was technical in nature. It distinguishes cases according to difficulty and complexity more clearly than the ALL of 1989. The reformers made two major changes in the jurisdiction over administrative cases: Firstly, they expanded the jurisdiction of intermediate people's courts and secondly, they introduced jurisdiction crossing administrative districts nationwide after a trial period. Both reform elements are a variation of central jurisdiction.[771]

Local jurisdiction is the "stem" with "branches" of jurisdiction that is either called centralized or appointed, selective or exclusive or that is crossing administrative districts. The value of this revision lies in the restriction of loop runs in filing cases and in the separation of administrative and judicial power aiming at curbing local protectionism and administrative

[767] *Cao Yeru* 2018, 155; *Qiu* 2018.
[768] *Cao Yeru* 2018, 155; *Qiu* 2018.
[769] *Qiu* 2018.
[770] *Cao Yeru* 2018, 151.
[771] In Chinese: 提高审级的集中管辖 / 跨区的集中管辖, see: *Qiu* 2018.

interference with judicial work.[772] Interestingly, the integration of railway transportation courts into the regular court system hearing administrative disputes would have been a good opportunity to establish special administrative courts. But as an empirical study revealed, the railway transportation courts also face "various sources of external intervention", be it implicitly or explicitly.[773] Hence, the scholars suggest placing the railway transportation courts under the direct supervision of the SPC to avoid local and provincial governments from interfering with judicial work. However, so far, the political leadership refrains from expanding the power of the SPC towards an independent command on the courts in China.

IV. Summary procedure

The ALL of 2014 newly implemented the summary procedure. The former legislators did not introduce the summary procedure for administrative litigation because they believed that the ordinary procedure granted legality and fairness best. The legislators argued that administrative cases "were not minor", but rather complex and special which is why only a collegial bench was suitable for assessing the facts and factors for making a fair judgment.[774] In its nature, the summary procedure is a compact procedure, which allows judges to act more flexibly compared to the ordinary procedure. This option is important because it helps to ensure an effective protection of the lawful rights and interests of the people.

Realizing that the ordinary procedure wasted resources and efficiency, the SPC published a notice concerning a three-year pilot program for implementing the summary procedure in 2010 (henceforth: SPC Pilot Program Notice).[775] Wenzhou in Zhejiang Province was the first city to launch the summary procedure following the SPC Pilot Program Notice. In general, it determined that first-instance administrative cases where the basic facts are clear, the legal relationship is simple, and the rights and obligations are clear, are eligible for the summary procedure. The SPC Pilot Program Notice specifies the types further: (1) cases involving a small amount of property or administrative collection, administrative punishment, administrative payment, administrative permit, administrative coercion, etc., which are decided on the spot by the administrative organ; (2) cases of administrative inaction; (3) cases in which the parties voluntarily choose to apply the summary procedure and have been examined and approved by the people's courts. Nevertheless, cases of second-instance, supervision of a trial and retrial are

[772] *Song; Wang* 2018, 73.
[773] *Ma, Cheng, He* 2022, 33.
[774] *Ying Songnian* 2015 a, 258, 261-262.
[775] Notice of the Supreme People's Court on the Pilot Work concerning Launching the Summary Procedure of Administrative Litigation (最高院关于开展行政诉讼简易程序试点工作的通知)， issued December 11, 2010, in: Fa (法) 2010, No. 446 (henceforth: SPC Pilot Program Notice).

exempt from summary procedure. The SPC Pilot Program Notice determines that courts can use convenient methods such as emails, fax, and telephone during summary procedure. Courts can conduct investigations and debates around major disputed issues and can appropriately simplify or merge trial sessions. The time period for summary procedure is 45 days. If the parties object or the court realizes that the case is not suitable for it, the court transfers the case to the ordinary procedure. The pilot work and the SPC Pilot Program Notice clearly served as references for the revision of the ALL which added provisions concerning summary procedure for administrative cases.[776]

During the reform process, scholars, legal reformers, and practitioners recommended[777] a formal introduction of the summary procedure into the ALL because it would correspond to the summary procedure as stipulated in the two other procedural laws.[778] Secondly, it would save judicial resources and reduce the workload of the judicial personnel. Administrative litigation cases increased particularly since the enactment of Open Government Information Regulation in 2008.[779] Moreover, it should encourage the people to approach administrative litigation as an effective legal remedy for their complaints.[780]

According to Art. 82 of the ALL of 2014, a case must fulfill three preconditions to be eligible for the summary procedure: the facts of the case as well as the rights and obligations of the parties must be clear, and the dispute must be minor. The first sentence Art. 102 of the 2017 SPC Interpretation specifies the first precondition. The facts are clear means that the statements of the parties and the evidence they provide are consistent so that there is no need for collecting more pieces of evidence by the court. The administrative action and its legal basis are enough to decide and make a judgment. Secondly, the rights and obligations of the parties are clear when the court can distinguish them according to the second sentence of Art. 102 of the 2017 SPC Interpretation. In other words, the administrative action is simple and its implementation not complicated. Thirdly, the dispute is minor, which means that plaintiff and defendant do not have any discrepancies concerning their legal relationship, their rights and obligations and the course of enforcement of the administrative action, as stipulated in the third sentence of Art. 102 of the 2017 SPC Interpretation. The reason for the dispute is clear to all parties.[781] The literature

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[776] *Xin Chunying* 2015, 209-216.
[777] Considering setting up the rotation of the simplified procedure (可考虑设立简易程序回转程序), article issued March 26, 2014, available at: http://www.npc.gov.cn/zgrdw/npc/cwhhy/12jcwh/2014-03/26/content_1857673.htm [January 3, 2024].
[778] Art. 157-163 of the Civil Procedure Law, supra n. 91; Art. 214-221 of the Criminal Procedure Law, supra n. 935.
[779] *Ying Songnian* 2015 a, 265.
[780] *Liang Fengyun* 2015, 373; *Ying Songnian* 2015 a, 266.
[781] *Liang Fengyun* 2015, 375; *Xin Chunying* 2015, 211; *Ying Songnian* 2015 a, 268.

agrees that both basic and intermediate people's courts can choose the summary procedure. Since the reform expanded the jurisdiction of intermediate people's courts for first-instance cases, they are responsible for more first-instance cases. It is likely that they accept cases that fulfill the three preconditions mentioned in Art. 82 of the ALL of 2014.

The first paragraph of Art. 82 of the ALL of 2014 lists three types of cases: (1) administrative actions that were taken on the spot; (2) the amount involved does not exceed 2000 RMB and (3) cases involving open government information disclosure. On-spot administrative actions are common in the daily work of administrative agencies: Art. 33 of the Administrative Penalty Law stipulates an administrative penalty may be decided on the spot if the facts of the violation of law are well-attested and there is a legal basis and if, the citizen is to be fined not more than 50 yuan, or the legal person or other organization is to be fined not more than 1,000 yuan or a disciplinary warning is to be given.[782] Moreover, the Art. 34 of Administrative License Law allows a written decision about the administrative license on the spot where the application materials are complete and tally with the statutory form.[783] The Public Security Administrative Punishment Law determines on-spot actions in Art. 100 in a similar way: For a violation of public security administration with clear facts and exact evidence to which a warning or a fine of not more than 200 yuan shall apply, a public security punishment decision may be made on the spot.[784] Hence, applying the summary procedure in such cases relieves the courts from the workload demanded by the ordinary procedure and reduces litigation costs.

The second type refers to cases where the administrative agency charges a certain amount of money, for instance in Art. 33 of the Administrative Penalty Law. The ALL of 2014 determined that the administrative agency may not charge more than 2000 RMB in cases eligible for the summary procedure. This can affect the sealing up, seizure and freezing of money or other fines. Whereas the first and second draft of the revised ALL mentioned an amount of 1000 RMB,[785] some members persuaded the NPC that this was too little so that they eventually agreed on the amount of 2000 RMB.[786] The literature criticized that the legally

[782] Administrative Penalty Law, supra n. 275.
[783] Administrative License Law, supra n. 382.
[784] Public Security Administration Punishments Law of the People's Republic of China (中华人民共和国治安管理处罚法), Order No. 67 of the President, issued August 28, 2005; revised October 26, 2012 (henceforth: Public Security Administration Punishments Law).
[785] Amendment of the Administrative Litigation Law of the People's Republic of China (Draft) (Manuscript of Second Deliberation) (中华人民共和国行政诉讼法修正案（草案）（二次审议稿）), published by the National People's Congress on August 31, 2014, available at: http://www.npc.gov.cn/zgrdw/npc/lfzt/2014/2014-08/31/content_1876865.htm [December 23, 2023].
[786] *Liang Fengyun* 2015, 376.

determined amount of 2000 RMB does not correspond to the different economic development of the regions in China. Therefore, depending on their location and finances, the limit of 2000 RMB might not affect legal persons or social organizations as much as it might affect citizens.[787] The third type mentions open government information disclosure. Since the enactment of the Open Government Information Regulations in 2008,[788] complaints against the administration refusing to disclose information usually accounted for about 20 percent of all first instance administrative cases nationwide.[789] Mostly, the courts dealt with questions whether the administrative agency must disclose the document. This is now a minor dispute.

The revision gave the plaintiffs more rights and autonomy concerning the resolution of their disputes which starts with the right to choose the remedy, i.e., reconsideration or litigation. Consequently, the parties can also choose the summary procedure for any case if all litigation parties alike agree with it. Similar to the Criminal and Civil Procedure Law, the parties must express their consent to the summary procedure in administrative litigation. The second paragraph of Art. 82 of the ALL of 2014 stipulates that, provided the consent among all parties, the court can handle other cases than those mentioned in the first paragraph in the summary procedure. Scholars suggested that the leeway provided by the second paragraph of Art. 82 is useful to solve trademark disputes whose number has noticeably increased in the last few years, for instance trademark cases in Beijing grew to 144,200 administrative actions concerning trademarks in 2013. The first intermediate people's court in Beijing accepted 7,000 cases until August 2014. Thus, the workload for judges at the special courts for intellectual property cases was remarkably high. The summary procedure would help to ease the situation.[790]

Due to the clarity of matters, a single judge can preside over a summary procedure according to Art. 83. This is an exemption to the general rule that a collegial bench hears administrative cases in the first instance. Moreover, in accordance with the 2010 SPC Notice on the summary procedure, the revised ALL adopts a time limit for the hearing of 45 days in Art. 83. Some practical experiences with the summary procedure revealed that 30 days were too short for the entire procedure. The pilot program in Zhejiang that applied the summary procedure in 2011 came to comparable results.[791] The judge cannot extend time period of 45 days because Art. 84 stipulates that the judge has to rule to transfer the case to the ordinary procedure when they realize that it is not appropriate for the summary procedure. The transfer

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[787] *Ying Songnian* 2015 a, 272.
[788] ROGI, supra n. 497.
[789] *Ying Songnian* 2015 a, 270.
[790] *Liang Fengyun* 2015, 377.
[791] Ibid.,374; *Ying Songnian* 2015 a, 274; *Xin Chunying* 2015, 214.

of a case according to Art. 84 was only added throughout the deliberation process following the suggestion of some members of the NPC Standing Committee.[792] In this context, the SPC underscores in Art. 105 of the 2017 SPC Interpretation that the court shall enter a ruling before the time period of the trial expires, i.e., before the end of the summary procedure, if the complexity of the case demands a transfer into the ordinary procedure. It should notify the parties in writing about the members of the collegial bench and other relevant matters. The trial period for the ordinary procedure starts from the day of docketing the case, according to the second paragraph of Art. 105 of the 2017 SPC Interpretation. Besides cases of first instance that are not suitable for summary procedure because they are complex, the third paragraph of Art. 82 underlines that cases dealing with more complex problems concerning substantive or procedural rights, like cases that are sent to retrial or that are reviewed by the president or a higher-level court due to errors in the judicial decision or the trial procedure, are also not suitable for the summary procedure.[793]

The 2017 SPC Interpretation adds further details on the process of the summary procedure. Art. 103 of the 2017 SPC Interpretation, corresponding with the regulation of the SPC Pilot Program Notice of 2010, stipulates that the court may summon the parties, notify witnesses viva voce, by phone, sort text message, fax, email, or any other means other than formal letter. As underlined in the second paragraph of Art. 103 of the 2017 SPC Interpretation, the court must not make a default judgment when there is no other evidence that acknowledges or proves the receipt of the notice. The people's court has discretion to determine the time limit for submitting evidence, or the parties consult with the court and determine the time limit, as stipulated by Art. 104 of the 2017 SPC Interpretation. But the limit may not exceed 15 days. The defendant agency can ask for a written defense for which the court may fix a reasonable time. In general, the court shall notify the parties about the time limit for submitting evidence and about the consequences if they fail to submit in time or they do not appear in court, according to the second paragraph of Art. 104. The third paragraph stipulates that the parties can agree on immediate commencement or a shorter time limit for submitting evidence. The court can either directly start the hearing or determine a time.

Concisely, the summary procedure is beneficial because it can save judicial resources, preserve administrative effectiveness and satisfy the people's demand for justice. Thus, the introduction of the summary procedure is a significant supplement to realize the purpose of the ALL, in particular the protection of the lawful rights and interests of the people and the

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[792] *Liang Fengyun* 2015, 379.
[793] *Xin Chunying* 2015, 210, 213; *Ying Songnian* 2015 a, 267-268.

guarantee of a fair and timely trial. In the new ALL, it follows a so-called “mixed model”[794] that combines provisions of the Criminal and Civil Procedure Law and considers other administrative laws to adapt and specify the summary procedure according to the needs of administrative litigation.

V. Concurrent trial of relevant civil disputes

For an effective protection, the lawful rights and interests of the people, a fast, efficient, and flexible handling of disputes is an important feature. Another special procedure within administrative litigation is the concurrent trial of a relevant civil dispute. When in a public spot, one person wounds another in a fight, the public security organs or the responsible administration can fine the offender. The offender can file a complaint against the administrative fine issued for violating public order. At the same time, the injured person can participate as a third person in the administrative litigation trial. In case the administrative ruling concerning the concurrent civil dispute has not been issued, the third person can also file a complaint for solving the civil dispute. Another example can concern traffic congestion for which the police fine the responsible road user. The road user can file a complaint against the administrative fine and at the same time, third parties can sue the person responsible for the traffic congestion in a civil process. [795] The reverse is possible as well: A third party who believes that an administrative fine is not appropriate can file an administrative complaint against the administrative action as well as a concurrent civil dispute. In another scenario, the third party can file an administrative complaint to demand the administrative agency to perform its statutory duties. Since in all these circumstances both lawsuits are obviously connected, the court can only act when knowing the result of either of the disputes. Hence, it is appropriate to link both cases in one trial. Moreover, connecting two lawsuits in one also has economic benefits in saving court costs and personnel.[796]

The scholarly opinions about how to handle administrative litigation including civil litigation[797] used to be manifold before the 2017 SPC Interpretation because legal specification was missing.[798] Among a group of skeptical scholars, a consent on how to initiate such a special litigation process was clearly missing: Should the parties request it or was the court responsible to initiate a civil procedure during the review process of the administrative dispute? How or in

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[794] *Ying Songnian* 2015 a, 269.
[795] *Xiang Xin* 2011, 630.
[796] Ibid., 612.
[797] In Chinese: 行政附带民事诉讼.
[798] *Xiang Xin* 2011, 605-606*; Liang Fengyun* 2015, 343.

what order shall the parties present their pieces of evidence? In contrast to this, the majority, supporting the combination of administrative and civil disputes, refers to five relevant requirements for it. Firstly, the administrative lawsuit must be well-founded. Secondly, the administrative dispute must be the core of the trial, and the civil dispute must be subordinate. Concurrently, these two disputes need to be clearly connected. Thirdly, the parties must bring the civil dispute to court during the administrative trial to underscore this interconnection. Fourthly, the same court needs to have jurisdiction in both cases to try them in the same procedure. But the court must hear separately from one another. Fifthly, it suffices when one party requests the combination of administrative litigation with a civil one as a signal of the parties' autonomy which civil litigation protects.[799]

The 2000 SPC Interpretation determined in Art. 61 that the people's court handling an administrative dispute can handle a concurrent civil dispute upon request formally. It established the combination of an administrative with a civil procedure. The legislators took this into account and defined the scope of combing administrative with civil litigation in the revised law in a definite enumeration. According to Art. 61 of the ALL of 2014, the plaintiffs can request to settle a concurrent civil dispute in cases where administrative licenses, registration, expropriation, requisition, or an administrative agency's ruling are involved, the court may try the relevant civil dispute concurrently. As far as administrative licenses are concerned, the administrative agency can issue a license whose implementation reveals that it affects the rights and interests of third parties who, in turn, can initiate a concurrent civil lawsuit. In the same vein, the SPC's Interpretation of the Trial of Administrative Licensing Cases stipulated in Art. 13 that any party can request the court to solve a concurrent civil compensation dispute if an administrative agency and a third party have infringed upon the lawful rights and interests in collusion in a malicious way.[800] Cases of administrative registration can involve business, land, building, household, and marriage registration. For instance, the SPC's Provisions on Several Issues Concerning the Trial of Building Registration Cases contains a provision concerning malicious infringement of an agency and a third party in collusion upon the plaintiff's lawful rights and interests, equivalent to the one concerning administrative license.[801]

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[799] *Xiang Xin* 2011, 632; *Liang Fengyun* 2015, 346-347.

[800] SPC Provisions on Trial of Administrative Licensing Cases, supra n. 383. See also: *Liang Fengyun* 2015, 348, and Administrative License Law, supra n. 783.

[801] Art. 13, Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Building Registration Cases (最高人民法院关于审理房屋登记案件若干问题的规定), issued November 5, 2010, in: Fashi (法释) 2010, No. 15.

The last item listed in Art. 61 of the ALL of 2014 is concerned with administrative rulings which are issued by an administrative agency in the scope of its legal authority for solving a civil dispute between two parties. In other words, an administrative ruling is an administrative action having judicial characteristics.[802] There are controversial opinions concerning the handling of administrative rulings in trials where administrative and civil disputes are combined. According to one group, administrative rulings constitute a major reason for circumstances in which an administrative action also leads to a civil dispute. In contrast to this, a second group argues that an administrative ruling constitutes a new administrative action and thus, the court must try it in an independent administrative litigation process. A final consent has not been reached yet.[803] For instance, the Trademark Law stipulates a very specific procedure in Art. 60 saying that disputes over registered trademarks shall be resolved through negotiations first.[804] If the parties refuse to participate in or fail in negotiations, the trademark registrant or an interested party may institute an action in a people's court or request the administrative department for industry and commerce to handle the dispute. In case of an infringement, the second paragraph of Art. 60 of the Trademark Law prescribes how the administrative department for industry and commerce shall rule, for instance by issuing a fine or by confiscating and destroying infringing goods. The third paragraph stresses that after administrative mediation failed, parties can claim any damages according to the Civil Procedure Law.

In addition to the exhaustive scope of cases, the second paragraph of Art. 61 of the ALL of 2014 includes a suspensive effect saying that the court of administrative litigation can wait for adjudication in a relevant civil procedure when necessary. This suspensive effect is based on item 6 of Art. 51 of the 2000 SPC Interpretation. From a comparative perspective, the legislators of the revision looked at the French, German, and Taiwanese provisions about the handling of administrative disputes with concurrent civil disputes. Eventually, they changed the formerly prescribed obligation of the judges to suspend the administrative litigation and provided them with the discretion to decide about the matter. The wording of Art. 94 of the German Code of Administrative Court Procedure influenced the legislator's decision.[805]

[802] *Liang Fengyun* 2015, 344.
[803] Ibid., 351.
[804] Trademark Law of the People's Republic of China (中华人民共和国商标法), issued August 23, 1982, revised February 22, 1993; revised October 27, 2001; revised August 30, 2013; revised April 23, 2019 (henceforth: Trademark Law).
[805] Ibid., 357. Art. 94 of the German Code of Administrative Court Procedure states: "If the ruling on the dispute depends completely or partly on the existence or non-existence of a legal relationship which forms the subject-matter of another pending dispute or is to be established by an administrative authority, the court may order that

Art. 137 to 144 of the 2017 SPC Interpretation describe the procedure in detail. Parties shall request the concurrent trial before the administrative trial at first instance starts and before the court completes it, according to Art. 137 of the 2017 SPC Interpretation. It shall be under the jurisdiction of the court accepting the administrative litigation. As the previous section analyzed, Art. 18 ALL of 2014 stipulates that the court at the place where the administrative agency takes the administrative action has jurisdiction. In a civil dispute, the court at the place of the defendant has jurisdiction. Since a civil dispute is subordinate to the administrative dispute, the 2017 SPC Interpretation determines that the jurisdiction according to the ALL is decisive to avoid conflicts of law. The parties shall initiate the civil lawsuit separately, but the same adjudicative organ tries it, also when the legally determined time limit for the administrative lawsuit has expired, as stated in the third paragraph of Art. 138 and Art. 140 of the 2017 SPC Interpretation. When the accepting court has already docketed the civil dispute, the court shall proceed with the civil trial. The court can notify the parties to request the settlement of a concurrent civil dispute, as determined in the second paragraph of Art. 138 of the 2017 SPC Interpretation. This refers to the different regulations of time limit for filing a complaint. Whereas, in civil procedure, the parties are not bound by a certain time limit, in administrative litigation, they have six months to file a complaint after receiving an administrative action or knowing about it. Moreover, a court shall not accept a complaint for a dispute involving real property after 20 years or for any other dispute after five years after the administrative action, according to Art. 46 of the ALL of 2014. Apart from that, a docketed civil dispute suspends the trial of the administrative dispute but does not affect the legally prescribed time limit for hearing the administrative dispute. Like the separate docketing, the court also issues two separate judgments, according to Art. 142 of the 2017 SPC Interpretation. It collects separate court costs according to the respective fees, as stipulated in Art. 144 of the 2017 SPC Interpretation. These provisions clearly ban a mixed[806] hearing and a mixed judgment in the same procedure.[807]

Art. 139 of the 2017 SPC Interpretation lists four circumstances in which a concurrent trial of a civil dispute is not permitted: firstly, when the law requires the administrative agency to act beforehand; secondly, when the Civil Procedure Law prescribes civil jurisdiction exclusively or when an agreement on consent jurisdiction is violated; thirdly, when the parties agree upon arbitration or they have initiated a civil lawsuit; and lastly, when there are other

the hearing is to be suspended until the other dispute has been settled, or until the decision by the administrative authority."

[806] In Chinese: 混合.

[807] *XIANG Xin* 2011, 638.

reasons why a concurrent civil dispute is inappropriate. In such cases, reconsideration is only possible once. When trying an administrative and a concurrent civil dispute, the court shall consider the relevant provisions of civil laws, as determined in Art. 141 of the 2017 SPC Interpretation. However, the handling of civil rights by the parties in mediation is not a basis for reviewing the legality of the impugned administrative action, according to the second paragraph of Art. 141 of the 2017 SPC Interpretation. Again, this underlines the importance of two separate trials in one process.

A party can file an appeal against either the administrative or the civil judgment or ruling but the other one becomes final when the time limit for appeal expires. The administrative division of the court of second instance shall receive all necessary files. When the court of second instance realizes that the effective decision, which is not part of the appeal is erroneous, it shall hand it over to the trial supervision procedure, according to the second paragraph of Art. 142 of the 2017 SPC Interpretation. If a party applies for withdrawal of the case before the judgment has been issued, the court must decide. If the court permits the withdrawal, but the party does not withdraw the concurrent trial of civil dispute, the court shall proceed, as determined in Art. 143 of the 2017 SPC Interpretation.

Overall, the 2017 SPC Interpretation adds important instructions for judges to deal with a complex set of questions und emphasized that the courts shall treat both disputes separately. This illustrates how much emphasis the legislators put on proceduralization to ensure that courts apply the ALL in a uniform way.

VI. Analysis

This chapter looked at the initiation of the litigation procedure and its relationship to institutional reforms. The reforms underline how serious the leadership is about guaranteeing justice and social order. Without doubt, the institutional reforms enhance administrative litigation procedures in a pragmatic way and also support a uniform application of the ALL.

Administrative reconsideration is an internal supervision by higher administrative agencies for the administration to correct itself that people can choose before entering administrative litigation. The analysis of their relationship revealed that administrative reconsideration had not been an effective filter of disputes. It diverted cases at first, but the people still brought them to court because they doubted that administrative reconsideration was impartial. Therefore, the government revised the ARL. The alignment of the revised ARL with the ALL reveals that the reformers believe in the effectiveness of the innovations the ALL of 2014 introduced. These innovations include the mandatory appearance of the responsible administration agent, the

summary procedure and the ways for collecting evidence. In the future, we can observe whether administrative reconsideration can truly emancipate itself from administrative litigation. It seems that the reformers laid the groundwork for this emancipation. If people realize that administrative reconsideration and administrative litigation include similar steps and guarantee the same protection of their rights and interests, they will also realize the advantages administrative reconsideration offers compared to administrative litigation: it is cheaper than administrative litigation, it has a broader scope of acceptable cases, it is fair and professional because there is an administrative review committee acting as an external reviewer and advisory body, and besides the review of legality of an administrative action, it allows the review of its appropriateness.

With regard to gaining people's trust, courts shall take their requests seriously. Case registration is not equivalent with a guarantee that the courts will register their lawsuit by all means. The pre-review of formal criterions which the revision pointed out clearly is a filter to register those cases that meet the legal requirements. The rich body of rules and regulations that surround these reform measures aim at providing an efficient and inclusive way for case filing as well as transparency and predictability for the people. For them, it is easier to assess their chances which, ideally, increases their faith in the legal system. Beforehand, the trial judges usually dominated and coordinated the entire procedure, they decided about the docketing, the order of speakers, and the overall tempo of trial. In the end, this caused incoherent adjudication results because procedural standards used to be low.[808] Hence, the filing of a case must be separate from its adjudication and the enforcement of the judgment to prevent concentration of power.

The possibility to initiate a summary procedure that simplifies the process of administrative litigation or a concurrent trial of civil and administrative disputes to reduce litigation costs and resources will be attractive for those plaintiffs who want justice but cannot afford a time-consuming trial. It is also appealing for judges who are facing more workload as well. However, the legislators did not consider that judges of the administrative division of the responsible court might feel uncomfortable dealing with civil disputes because they are not familiar with the subject matter. In such a case, the judge might delay the trial or avoid it altogether.

Another focus was on the jurisdiction system which is decisive to guarantee legal certainty for the parties as well. The precise rules to distinguish local and hierarchical jurisdiction help to develop uniform standards because people need to know which court at which level and

[808] *Liebman* 2007, 625; *Ng, He* 2017, 296.

venue will adjudicate their complaint. The distinction of cases according to their difficulty and complexity is an effective tool. However, it needs experienced judges to classify the nature of cases correctly. The SPC supports this process with detailed rules. The strengthening of the adjudicative power of intermediate people's courts attempts to curb administrative interference at the grassroots which seems to be an effective measure. But the concentration on intermediate people's courts increased their workload and exposed them to more adjudication pressure which they were not prepared to handle. In addition, the jurisdiction crossing administrative regions is another innovative step to avoid administrative interference. But this could cause inconvenience to the plaintiffs in terms of mobility and extra costs for travelling. Besides that, centralized jurisdiction that determines one court in a region to hear all first-instances cases is also less flexible and from the point of view of the people, more expensive and less convenient. Centralized jurisdiction is also not a guarantee to overcome administrative interference because the administration can contact the administration at the venue and ask for support in their course. All three models (empowering intermediate people's courts, strictly separating overlapping administrative and judicial districts, or centralizing jurisdiction) intend to solve the problem of administrative interference but their effects are certainly limited. An ideal way to get to the roots of the problem could be the establishment of independent administrative courts at all levels that do not depend on administrative funding and whose judges are experts in administrative litigation. However, the political leadership does not seem to be willing to take this step so far – even though the railway transportation courts could serve as model courts to gain more experience with judicial independence that is detached from being accountable to people's governments at the respective level.

Chapter 6: The organization of the administrative trial

This chapter looks at the ordinary procedure asking how courts conduct the hearing to settle the dispute, following that purpose proclaimed in Art. 1 of the ALL of 2014. It will show how the hearing in court becomes the centerpiece of the litigation procedure. It is a platform for the parties to exchange and debate, and for judges it is the stage where they must handle the dispute in an authoritative way. Thus, we ask in what way the revision has an impact on the relation between the judiciary and the administration. Moreover, in this chapter, we can see the comprehensive standardization of administrative litigation.[809] It illustrates the organization of the administrative trial and the steps taken during the ordinary hearing starting with general principles, such as public trials and the time limit. The reformers refined the consideration of evidence and focused more on a dialogical exchange between the parties. These findings serve as the foundation for analyzing what administrative action courts can review and in what way courts can review them, as will be set out in Chapter 7.

I. General principles of administrative litigation

Like its original version, the revised ALL refers to several procedural principles for the ordinary procedure throughout the legal text. In general, the ALL of 2014 lists as its main principles the public hearing, the non-suspension of the impugned administrative action, the formation of a collegial bench with impartial and neutral personnel, and the proceeding carried out in a timely manner to save resources. The section dealing with the general rules offers important guidance and standards for judges.[810]

1. Public trial

The hearing is open for the public as stipulated in Art. 54 of the ALL of 2014 unless state secrets or individual privacy are affected. If trade secrets are concerned and a party files a request not to try in public, the court can decide not to try in public. The court must announce the details of the trial in advance and allow the related parties and other interested parties, like journalists, to attend.[811] Putting the administrative dispute on open display follows Art. 130 of the Constitution that defines transparency as a constitutional duty. It determines that “except in special circumstances as specified by law, all cases in the people’s courts are heard in public.” In contrast to the general rule of public hearings, Art. 86 of the 2017 SPC Interpretation

[809] *Liang Fengyun* 2015, 239-241.
[810] *Ying Songnian* 2015 a, 1.
[811] Ibid., 176.

underlines that mediation in administrative litigation is not public unless the parties agree to the disclosure. The result of the mediation is also not public unless national or public interests are concerned. Art. 65 of the ALL of 2014 completes the principle of public trial by determining that the court shall publish the effective judgment or ruling for public inspection as long as its protects state or trade secrets or individual privacy.

The principle of a public trial also refers to the accessibility to the courtroom in a physical, personal way. During the last decade, court hearings and decisions also got gradually digitalized through online livestreaming, which expands the "physical" accessibility of the courtroom to trials detaching them from time and space.[812] So far, the promotion of transparency and digitalization was achieved by the opening of several internet platforms that intend to create a *sunshine judiciary*[813], a term President *HU Jintao* officially introduced in his report for the national congress of the Communist Party in 2007.[814] The primary concern was to strengthen the people's confidence in the government and its organs.[815] *Sunshine judiciary* refers to public and transparent judicial work that is under the scrutiny of the Party, the people's congresses and the media.[816] The core intentions are to prevent corruption, enhance fairness, and fulfill the people's right to know what is happening.[817] Thus, the term *sunshine judiciary* reflects the tensions between substantive demands concerning rights and interests as well as procedural demands, which mainly encircle questions of control, fairness, and efficiency.

An intensified call for judicial transparency[818] started in the third Five-Year Reform Program (2009-2013) and under the SPC presidency of *WANG Shengjun* (term from 2008 until 2013). Judicial disclosure was re-emphasized in the decision of the Third Plenum of the 18th Central Committee of the CCP in November 2013.[819] Both documents promised more transparency of judicial work, particularly to curb judicial wrongdoings.[820] In 2013, the SPC first launched its "Provisions of the Supreme People's Court on the Issuance of Judgments on

[812] *Ahl, Sprick* 2017, 11-12.
[813] In Chinese: 阳光司法.
[814] *Hou, Keith* 2012, 66.
[815] Hold high the banner of socialism with Chinese characteristics and strive for new victories in building a moderately prosperous society in all respects (高举中国特色社会主义伟大旗帜, 为夺取全面建设小康社会新胜利而奋斗), speech delivered by *HU Jintao (胡锦涛)* at the 17th National Congress of the Communist Party in China. October 15, 2007, at: http://www.chinadaily.com.cn/china/19thcpcnationalcongress/2010-09/07/content_29578561_5.htm [December 26, 2023], VI. Unswervingly developing socialist democracy, paragraph 6.
[816] *Zheng Guofeng* 2004, 11.
[817] *Hou, Keith* 2012, 62.
[818] A comprehensive overview of the beginnings and aims of judicial disclosure in China is in: *Liebman, Roberts, Stern, Wang* 2018.
[819] In Section 33 of the Decision, it points out: "We will have more open trials, make the procuratorial work more transparent, and record and keep all court files." See: 18th CCPCC Third Plenum Decision 2013, supra n. 725.
[820] *Liebman, Roberts, Stern, Wang* 2018, 7.

the Internet by the People's Courts" (henceforth: Provisions on the Issuance of Judgments)[821] and its "Opinions for Promoting the Building of Three Platforms for the Transparency of the Judiciary" (henceforth: Opinions for Promoting the Building of Three Platforms).[822] The Provisions on the Issuance of Judgments is a binding release of the SPC and has its roots in an earlier announcement of 2010. It aims at promoting judicial fairness and increasing public confidence in the judiciary.[823] According to Art. 2 of the Provisions on the Issuance of Judgments, the SPC is responsible for providing a nationwide network for courts to upload their judgments which have been online since July 1st, 2013. In 2016, the SPC revised and extended the Provisions on the Issuance of Judgments, which now demand to publish "any document that reflects the termination of a case […] unless it falls into a specific excluded category."[824] They contain, among others, the release of state compensation proceedings, enforcement decisions, and mediated administrative cases.[825] Excluded cases deal with state secrets, crimes committed by minors, most of the mediated cases that do not affect or concern public or state interests, and divorce cases. The courts have the discretionary right to decide whether they consider other types of cases as inappropriate for release.[826]

In contrast to the Provisions on the Issuance of Judgments, the Opinions for Promoting the Building of Three Platforms represent a political decision because they are meant to realize the "spirit of the Third Plenum of the 18th CCP Central Committee". The three internet platforms are *China Judicial Process Information Online*[827], *China Judgements Online*[828], and *China Enforcement Information Online*[829] which were launched in 2013 and were completed with the *China Court Hearings Online*[830] in 2016.[831] *China Judicial Process Information Online* supports litigants to see the status of their cases and tells them how they can proceed. Due to confidential information, users must register to access these websites. On *China*

[821] Provisions of the Supreme People's Court on the Issuance of Judgments on the Internet by the People's Courts (最高人民法院关于人民法院在互联网公布裁判文书的规定), issued November 13, 2013, in: Fashi (法释) 2013, No. 26 (henceforth: SPC Provision on Issuance of Judgments 2013).
[822] Several Opinions for Promoting the Building of Three Platforms for the Transparency of the Judiciary (最高人民法院关于推进司法公开三大平台建设的若干意见), issued November 21, 2013, in: Fashi (法释) 2013, No. 13 (henceforth: Opinions for Promoting the Building of Three Platforms).
[823] *Ahl, Sprick, Czoske* 2014, 199-200.
[824] *Liebman, Roberts, Stern, Wang* 2018, 6.
[825] Art. 3, Provisions of the Supreme People's Court on the Issuance of Judgments on the Internet by the People's Courts (最高人民法院关于人民法院在互联网公布裁判文书的规定), issued July 25, 2016, at: Fashi (法释) 2016, No. 19 (henceforth: SPC Provision on Issuance of Judgments 2016).
[826] Art. 4, SPC Provision on Issuance of Judgments 2016.
[827] In Chinese: 中国审判流程信息公开网.
[828] In Chinese: 中国裁判文书网.
[829] In Chinese: 中国执行信息公开网.
[830] In Chinese: 中国庭审公开网.
[831] *Wang Xiaomei* 2017, 63-66.

Judgments Online, litigants and interested citizens could get access to judgments and court announcements. The latest website, *China Court Hearings Online,* provides freely accessible recorded court trials on the internet.

This reform of judicial transparency was considered to be the “most significant change” for the overall political objective of creating a professional judiciary.[832] The political transparency strategy used to put pressure on administrative personnel to attend court hearings because the online platforms expose their misbehavior easily. It also impacted the accountability of judges, and the communication between the judges, the parties, and the media.[833] That fostered the hearing significant role as a platform where the parties meet as adversaries that want to resolve their dispute.

However, regional disparities in the uploading of cases on the databases made the database incomplete.[834] For 2014 and 2015, scholars found out that on average, about 50 percent of judgments were published online. Some provinces are even more active, like Shandong and Zhejiang that published 65 percent of their judgments, or Anhui with 78 percent, whereas other lag behind, such as Jiangxi, Heilongjiang, or Tibet with a rate less than 25 percent each.[835] It can be assumed that the SPC does not intend to achieve full transparency but aims at monitoring lower-level courts and their performance in terms of a professional and fair handling of disputes.[836] This seems to be confirmed by a recent decline of uploads or disappearance of judicial documents on the existing platforms.[837] The number of disclosed effective judgments on the China Judgments Online platform or live broadcasts have been declining noticeably since August 2023.

Moreover, in August 2023, the SPC hast started to reverse the trend of judicial transparency by introducing the National Court Adjudication Documents Database[838] which is for an internal use within the court system.[839] When courts hear cases and make judgments, they shall consult the database for reference to similar cases. A newspaper reported that the

[832] *Ahl, Sprick* 2017, 2.
[833] Ibid.
[834] Ibid., 8.
[835] Ibid.
[836] *Ahl, Sprick* 2017, 12; *Liebman, Roberts, Stern, Wang* 2018, 9.
[837] *Liebman, Stern, Wu, Roberts* 2023; *Zichen Wang, Peiyu Li, Jia Yuxuan*, Tsinghua law professors call for renewing open access to China's court judgments, published December 13, 2023, available at: https://www.pekingnology.com/ [April 15, 2024].
[838] In Chinese: 全国法院裁判文书库.
[839] Notice of the Supreme People's Court on Establishing a National Court Adjudication Documents Database (《关于建设全国法院裁判文书库的通知》), issued November 21, 2023, in: Faban (法办) 2023, No. 551.

public shall have access to an open case library or archive.[840] To broaden the collection of that case library, the SPC asked relevant public agencies, social organizations, law schools and scientific research units, as well as experts and scholars, lawyers, and individual citizens to recommend cases for the library and database.[841] Whether the case library and the database are connected or the same is still unknown. However, by the end of November 2023, the database had more than 2,000 reference cases, among which were approximately five hundred criminal cases, two hundred administrative cases and more than 1,200 civil cases. Setting up the new national database, Chinese law scholars became concerned about the negative effects of the stricter disclosure of court judgments on judicial transparency and the rule of law.[842]

2. Non-suspension of the administrative action

The non-suspension of the administrative action is another principle of administrative litigation. Art. 56 of the ALL of 2014 stipulates that the execution of the impugned administrative action shall continue during litigation.[843] The non-suspension rule seems to favor the administrative decision and the administration's efficiency, which impacts the way courts can protect the lawful rights and interests of the plaintiffs.[844] Chinese legislators and scholars argued that administrative actions possess an authoritative force and effectiveness which should not be questioned by the people.[845] Its authoritative character demands enforcement before a counterparty seeks relief, which might result in the change, revocation, or invalidity of the administrative action.[846] The concern is that some people might abuse the suspensive effect for their own benefit and hamper the administration from realizing their higher goals.[847] These

[840] *Cao Yin*, China's top court announces new library to improve public knowledge of the law, China Daily, issued December 22, 2023, at: https://www.mylawcn.com/p/4b5f7f5511fc3 [April 15, 2024].
[841] SPC's Announcement on collection of reference cases from the People's Court Case Database (关于征集人民法院案例库参考案例的公告), issued December 22, 2023, at: https://www.chinacourt.org/article/detail/2023/12/id/7722133.shtml [April 15, 2024].
[842] Sichuan University Professor Han Xu: Calls on the Supreme Court to urgently stop the transfer of judgment documents to the intranet (川大教授韩旭：吁请最高法院紧急叫停裁判文书转内网的做法), published December 16, 2023, at: https://chinadigitaltimes.net/chinese/703319.html [April 15, 2024].
[843] The Chinese legislators had reviewed different models as well. Whereas Taiwan, Japan and Spain follow the non-suspension principle, in Germany, Art. 80 of the Code of Administrative Court Procedure stipulates that an objection (i.e., reconsideration request) and a rescissory action shall have suspensive effect. This suspensive effect also applies to constitutive and declaratory administrative acts, as well as to administrative acts with a double effect. The second paragraph lists the exceptions. The suspensive effect shall only fail to apply (1.) if public charges and costs are called for, (2.) with non-postponable orders and measures by police enforcement officers, (3.) in other cases prescribed by a federal statute or for Land law by Land statute, in particular for objections and actions on the part of third parties against administrative acts relating to investments or job creation, (4.) in cases in which immediate execution is separately ordered by the authority which has issued the administrative act or has to decide on the objection in the public interest or in the overriding interest of a party concerned, see second paragraph, Art. 80 of the Code of Administrative Court Procedure.
[844] *Zhang Yingying* 2019, 29.
[845] Ibid., 30.
[846] Ibid., 31.
[847] *Xin Chunying* 2015, 147; *Ying Songnian* 2015 a, 181.

higher goals refer to the protection of public interests. The administration must weigh up public interests with individual interests and in a case of conflict, it must prioritize and protect public interests. Another line of argumentation is that administrative actions must be enforced because their continuous execution ensures stability and order.[848]

It is important to note that the non-suspension rule has exceptions as well. Art. 56 of the ALL of 2014 integrates four scenarios where suspension is possible: When (1) the defendant finds it necessary to suspend the execution; (2) the party or interested party filed a request for suspension and the people's court accepted it because it would cause irreparable losses to the party but not to state and public interests; (3) if the court deems that execution will cause damage to state and public interest, or (4) when suspension is required by any law or regulation. In the second and third scenario, the courts can decide following their discretion regarding the irreparable losses and the damage to state and public interests. These terms are vague, which demands interpretation and weighing up by courts.

The second paragraph of Art. 56 of the ALL of 2014 stipulates that the parties can file a reconsideration request against the court's ruling to suspend or not to suspend. In addition, Art. 57 of the ALL of 2014 concerns payment in advance. The legislators constrained it to four circumstances in which the people urgently need money, namely consolation money, minimum subsistence, or social insurance benefits for work-related injuries or medical treatment. If the people's livelihood is seriously affected and the rights and obligations of the parties are clear, the court can rule to grant advance payment. The party can file a reconsideration request against the court's decision, but the execution of the court's ruling is not suspended. They shall file a reconsideration request with the same court that ruled to save judicial resources if the advance payment is only for a temporary relief. Eventually, the court still must enter a judgment.[849]

However, as administrative law scholar *YANG Weidong* had pointed out in 1997, not all effective administrative actions are enforceable per se.[850] For those administrative actions that are subject to compulsory execution by the people's courts, execution will inevitably cease once they enter administrative litigation. This is determined in Art. 97 of the ALL of 2014. In connection with Art. 156 of the 2017 SPC Interpretation, it refers to the so-called non-litigation enforcement requested by administrative agencies that have no power to enforce an administrative action and must apply to courts.[851] Art. 156 of the 2017 SPC Interpretation

[848] *Zhang Yingying* 2019, 31-32.
[849] *Xin Chunying* 2015, 151-152; *Ying Songnian* 2015 a, 184.
[850] *Yang, Zhang* 1997.
[851] Art. 97 of the ALL of 2014 states: Where during the statutory period, a citizen, a legal person, or any other

stipulates that the law must authorize agencies to enforce. But as soon as the counterparty files a complaint, the courts cannot enforce the administrative action anymore. Hence, due to Art. 97 of the ALL of 2014, the non-suspension rule is restricted in its effect and in fact, might even render the suspension of the execution to be the standard and not the exception. Thus, this regulation highlights the distinction between the effect of issuance and the effect of enforcement of an administrative action.

The main problem with the non-suspension rule lies in a possible irreversible damage done to either public or private interests. That is why, it is important that Chinese judges assess the consequences of suspension or of non-suspension, the possible damage, and the legality of the administrative action and the possibility that the plaintiff wins the lawsuit. Moreover, judges must also know how to balance public and private interests or even interests of third parties. Although the review of these aspects is already very comprehensive, the responsible judge does not engage in substantive review of the administrative action at this point during administrative litigation. The assessment is only concerned with the non-suspension rule. Judges examine how appropriate it would be to rule for suspension or to refuse it and must apply their discretionary power in a reasonable way.

Overall, the view that an administrative action's public authority and power are the bases for its legality and effectiveness is flawed and not convincing because it presumes that an administrative action is legal and valid upon its issuance, not with reference to its content. Linking the presumed public authority of administrative actions with their mandatory enforcement undermines the protection of the people's lawful rights and interests and hampers the purpose of the ALL to be a channel for legal relief. Nowadays, the Chinese administration is more than just the executor of public interests and guardian of social stability. It has become a service provider as well so that the prioritization of public interests is questionable. Art. 57 of the ALL of 2014 refers to payments to plaintiffs. Today, public interests stand alongside private interests, and both have to be weighed up against one another to realize the purposes defined in Art. 1 of the ALL of 2014.

3. Collegial bench of judges

Before the trial starts, the administrative division of the court forms a collegial bench according to Art. 7 and Art. 68 of the ALL of 2014. The ALL of 1989 had also recognized the

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organization *neither files a complaint* against an administrative action *nor complies with an administrative action*, the administrative agency may apply to a people's court for enforcement or *conduct enforcement* according to the law. (Emphasis added by author.)

collegial bench, according to its Art. 6 and Art. 46. In general, three or more judges or three or more judges and assessors lead the hearing according to Art. 68 of the ALL of 2014 and Art. 30 of the Organic Law of the People's Courts. Art. 2 of the SPC's Provision on Further Strengthening the Functions of Collegial Panels adds that a collegial panel shall be composed of judges (including deputy judges) or composed of judges (including deputy judges) and *randomly* selected people's assessors.[852] The bench must always consist of an odd number of members which makes it easier to find a majority in the deliberations concerning the case and controversial decisions.

Because the ALL remains silent about the details regarding case assignment and designation of the responsible judges, other laws and regulations apply. Art. 29 of the Organic Law of the People's Courts stipulates in the first paragraph that the law shall prescribe the scope of cases that a collegial bench or sole judge shall try. Cases are assigned randomly and the judges that shall handle a case are assigned randomly as well, as stipulated by the SPC's Opinions on Improving the Judicial Accountability System of People's Courts.[853] In the second section about reforming the trial power operation mechanism, the SPC defines that for summary procedures, people's court may form trial teams consisting of judges, assistants, clerks, and other supporting members. For cases in the ordinary procedure, the courts form collegial benches composed of judges and people's assessors, as mentioned in the ALL of 2014 as well. Cases are allocated randomly. For basic people's courts that face a large number of cases, they may form "relatively fixed collegial benches and implement a flat management mode."[854]

All members of the bench enjoy equal rights and obligations concerning the investigation and decision-making. Art. 55 of the ALL stipulates that if a party deems that a judge has a personal interest in or is otherwise related to the case, which affects their impartiality, they can request the disqualification of the judge. The judge who realizes that they have personal interest or are related to the case, can ask for disqualification themselves. To ensure an encompassing impartiality, the disqualification rules also apply to court clerks, interpreters, experts of identification and evaluation and surveyors. The president of the people's courts decides the requests for disqualification of judges, the presiding judge decides the requests of

[852] Provisions of the Supreme People's Court on Further Strengthening the Functions of Collegial Panels (最高人民法院关于进一步加强合议庭职责的若干规定), issued January 11, 2010, in: Fashi (法释) 2010, No. 1.
[853] Opinions of the Supreme People's Court on Improving the Judicial Accountability System of People's Courts (最高人民法院关于完善人民法院司法责任制的若干意见), effective September 21, 2015, in: Fafa (法发) 2015, No. 13.
[854] Ibid., at II. Reforming the Trial Power Operation Mechanism (改革审判权力运行机制), 1. The sole-judge trial system and the collegiate bench operation mechanism (（一）独任制与合议庭运行机制).

disqualification of other personnel. If this affects the president of a court, the court adjudication committee (CAC) decides over their disqualification.

In particular, the random case assignment and the random designation of the judges are appropriate to ensure a fair and impartial hearing supplemented by the people's right to object a judge under the condition that they can give reasons. To ensure impartiality of the judges, the judge who dockets a case during the case registration procedure must not be part of the collegial bench hearing the case.[855] This shall protect the people's rights and interests.

II. Appearance in court of the responsible person of the administrative organ

The revised ALL determines in the third paragraph of Art. 3 that the responsible person of an administrative agency shall appear in court to respond to a complaint. If they cannot attend personally, they shall authorize a relevant employee to appear instead. Many reformers supported the appearance of the responsible person of the administrative agency. They regarded it as a sign of respect towards the judiciary and to be an effective way to improve the official's legal knowledge and consciousness. In 2009, the Supreme People's Court had published its opinions concerning good trial work in which it suggested in section 8 establishing a system for coordinating the appearance of the legal representatives of the administrative agency in court.[856] Moreover, as *JIANG Bixin* emphasized in 2011, it is an effective means to resolve the dispute between the people and the government and to filter the mood and emotions of the people.[857] Hence, attending the hearing can constitute a good lesson for the official and is a positive signal towards the people whose trust in the rule of law will be strengthened. It can also be an effective means to improve the mutual understanding of the litigation parties.[858] In this context, the attendance of the person in charge or the relevant employee sent by the defendant administrative agency can also ensure that the parties cross-examine the pieces of evidence and accept them as a reference for the facts of the case.[859]

Nonetheless, others doubted that there were only positive effects of the introduction of mandatory attendance. They pointed out that administrative efficiency could be affected because the daily routine would be disturbed.[860] Before the revision, the administrative officials

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[855] *Liu, Liu* 2011, 294.
[856] Notice of the Supreme People's Court on Certain Opinions concerning good Trial Work under the current Circumstances (最高人民法院印发《关于当前形势下做好行政审判工作的若干意见》的通知), issued June 16, 2009, in: Fafa (法发) 2009, No. 38.
[857] *Jiang* 2011.
[858] *Xin Chunying* 2015, 15.
[859] *Song* 2013, 492.
[860] *Chen Huanhuan* 2017, 97.

usually refused to appear in court and only sent their lawyers as representatives.[861] Even after 2015, the enthusiasm for appearing in court was not shared by the administrative personnel because they consider attending administrative trials to be a further burden regarding their limited resources.

The political and legal support fueled the enforcement of the appearance of the responsible person in court.[862] In several documents published between 2004 and 2010, the State Council underlined its support for monitoring the lawful actions of the administration. In an outline issued in 2004, it recognized that courts acted as the legitimate supervisory authority. In case an administrative organ was involved in a lawsuit, it was obliged to attend, reply to the court, and enforce the effective judgment.[863] In 2010, the State Council issued its Opinions on Strengthening the Building of a Rule of Law Government.[864] In section 8, it stipulated that the administration should support the work of the courts in administrative litigation, should cooperate during trial by not interfering with the court's work and providing evidence and other relevant materials. The responsible official should appear in court in major cases and should respect the judgment, decision or judicial recommendations issued at the end of the trial. In 2016, after the revision of the ALL became effective, the State Council again published some Opinions on Strengthening and Improving Administrative Responses because it complains that "problems such as negative treatment of administrative responses, interference in the acceptance and trial of administrative cases by the people's court, inadequate enforcement of effective judgments of the people's court, and weak administrative response ability still exist".[865] The State Council urges all the administrations to respect the work of the people's courts in administrative litigation to protect the lawful rights and interests of the people. It also asks the responsible person of the administrative agency to support the hearing proactively and professionally by preparing a defense statement and submitting evidence. They shall not only entrust a lawyer to appear in court. The administrative agency must accept and enforce the court's judgment, ruling or mediation agreement. Moreover, rationally arranging staff, and

[861] *Xin Chunying* 2015, 13.
[862] *Zhang Zhiyuan* 2013, 96.
[863] Notice of the State Council about the Outline concerning Comprehensively Pushing Forward the Implementation of an Administration According to Law (国务院关于全面推进依法行政实施纲要的通知), issued March 22, 2004, in: Guofa (国发) 2004, No. 10.
[864] Opinions of the State Council concerning the Strengthening of Building a Rule of Law Government (国务院关于加强法治政府建设的意见) issued October 10, 2010, in: Guofa (国发) No. 33.
[865] Opinions of the General Office of the State Council on Strengthening and Improving Administrative Responses (国务院办公厅关于加强和改进行政应诉工作的意见), issued June 27, 2016, in: Guo Ban Fa (国办发) 2016, No. 54.

actively developing the function of government legal advisers and public lawyers shall ensure that the work force of administrative response is compatible with the work tasks.

The ALL does not provide more details on the defendant agency's duty to appear in court, neither defines the "responsible person" nor the "relevant employee". Thus, Art. 128 of the 2017 SPC Interpretation specifies the "responsible person of an administrative agency" as either the head or their deputy or even a person charged with special responsibilities. The second paragraph of Art. 128 stipulates that besides the responsible person, one or two litigation representatives can respond in court. But the head or their deputy has to appear unless they have a good reason and authorize a relevant employee to attend. But they must not only send a lawyer to attend the trial. Art. 130 of the 2017 SPC Interpretation defines in its first paragraph who is meant by "relevant employee", namely an employee of the national administrative staff or any other employee who fulfill their duties of an agency in accordance with the law. At a local people's government, the relevant employee usually comes from the department for legal affairs or from the department responsible for the administrative action. Art. 131 adds that the agency shall provide the relevant materials to prove the post of the person in charge or in case of a relevant employee shall provide a power of attorney that contains the name, position, and authority of the employee.

Moreover, Art. 129 determines that the people's court can propose in writing to the agency that the responsible person is to appear in court when the case involves significant public interest, generates enormous publicity or is likely to cause a mass incident. The court is supposed to indicate that attendance is mandatory in the part of basic information in which they also name the parties, litigation representatives and the cause of complaint. In case the person in charge cannot attend the hearing, they shall name a good reason and shall submit a statement either sealed or signed by them. In case the person in charge refuses to appear without any good reason, the court can send judicial recommendations to the supervisory or the higher-level authority. In addition to this, Art. 132 stipulates that the court shall document any misconduct in the ruling and send a recommendation to the relevant agency if the responsible person or the relevant employee refuse or fail to attend the hearing themselves and only authorize a lawyer to attend. This is also in accordance with Art. 58 and the second paragraph of Art. 66 of the ALL of 2014. The former stipulates that the people's court can enter a default judgment if the defendant (or the plaintiff) refuses to appear in court. Art. 66 determines that the people's court can sanction the defendant in case they refuse to appear without any good reason or leave the courtroom during the hearing without permission. The court can publish this misconduct, send its judicial recommendations to the administrative agency at the next higher level or to the

supervisory authority providing suggestions concerning possible disciplinary actions against the responsible person.

The ALL leaves open in which cases the head of the impugned agency is to attend the hearing. In his analysis, *LI Huai* analyzed some regional differences in the attendance of the responsible person in 2016. He looked at the relevant normative documents of about fifty-one local governments that specify in which cases the head of the administrative agency should or must attend the trial. For instance, according to fifteen of the normative documents, the head of the agency is to attend in all first instance cases. Moreover, according to forty-five documents they have to attend major and complicated cases that concern environmental protection and labor rights, administrative penalties, and licenses; or mass complaints although the understanding of "mass administrative cases" varies according to either the number of plaintiffs, the number of cases merged or the expected impact of the case. It also refers to cases of high public interest involving food and drug safety or public security. In twenty-eight normative documents, it is possible that the higher-level authority recommends its subordinate administrative agency to attend the trial or that the court sends its recommendation. Eighteen local governments consider it necessary for the responsible administrative staff to attend trials concerning compensation complaints; fourteen documents require that the head attends trials of appeal.[866] Some local governments even introduced attendance rates for the administrative staff. For example, the Fengxian District of Shanghai determines in its Implementation Rules that the head of an agency must attend two thirds of all administrative cases.[867] *LI* criticized that the local rules for attendance are usually issued in cooperation between judicial, administrative and even party organs so that they could undermine judicial impartiality.[868] Besides that, *LI* examined more than 200 written judgments that dealt with the attendance of the head of the administrative agency or their deputy in court. He concluded that the attendance rate decreased the higher the rank of the accused agency.

1. Examples of implementation

Nevertheless, there are also exceptions to that finding: One case received a lot of attention because the deputy governor of the Province of Guizhou attended the trial to make a statement himself. The plaintiff, *DING Jiaqiang*, sued the government of Zunyi City because it

[866] *Li Huai* 2016, 116-117.
[867] Ibid., 119., referring to the Implementation Means of the Fengxian District of the City of Shanghai concerning the Head of the Administrative Agency Attending Administrative Lawsuits (上海市奉贤区行政机关负责人行政诉讼出庭应诉和旁听审理实施办法).
[868] *Li Huai* 2016, 121.

had rejected his reconsideration request. In June 2015, the government of Zunyi City had issued the Notice on Land Requisition and Resettlement Compensation Plan for the Construction Project of Baiqian Highway. *DING* applied to the provincial government in Guizhou for administrative reconsideration requesting that the administrative agency concerned revokes the notice. But the provincial government considered the notice to be an internal administrative document. Because it was still in procedural work within the administrative organs, it did not directly affect the rights and obligations of the expropriated person. Therefore, the government rejected the reconsideration request. *DING* initiated an administrative lawsuit with the intermediate people's court in Guiyang. During the court trial, the plaintiff presented the reasons and evidence for revoking the provincial government's reconsideration decision. Guizhou's deputy governor, *CHEN Mingming* directly responded to the claims in court. The entire exchange in trial lasted for an hour.[869] The deputy governor attended the trial himself to signal that the government respected the people's rights and interests. He also emphasized that the government accepted public and judicial control.[870]

CHEN Mingming's statement reflected the official thinking among the judges of the SPC. Vice-president *JIANG Bixin* emphasized in his introduction of the 2017 SPC Interpretation that the appearance in court was essential to reach a substantive resolution of the dispute between the administration and the people.[871] However, statistics by local courts between 2015 and 2019 illustrate that the system misses consolidation so far. For example, the government in Hangzhou indicated that the rate of appearance in 2017 was still about 37.7%, whereas in 2018, it increased to about 69.8% because the Standing Committee of the Hangzhou Municipal People's Congress introduced stricter supervision mechanisms. Their aim was to foster a change of thinking from "I have to appear in court" towards "I want to appear in court".[872] In their study about the appearance rate at the intermediate people's court in Mudanjiang City in Heilongjiang, judges *LIU* and *JIANG* conducted surveys and concluded that the appearance rate reached 100%, but the rate to make a statement in court was lower. For instance, in 474 administrative cases filed in 2017, the appearance rate was 100%, but only

[869] Deputy governor appears in court – Guizhou ate the first "crab" (副省长出庭应诉，贵州吃了第一只"螃蟹"), article published April 11, 2016; available at: http://www.gov.cn/xinwen/2016-04/11/content_5063062.htm [November 18, 2023].
[870] *Li Huai* 2016, 122.
[871] *Jiang* 2018.
[872] Delegate Yu Yuemin talks about improving the ability of the responsible person of the administrative agency to appear in court – Promoting more prominently the head of administrative agency to appear in court (于跃敏代表谈提升行政机关负责人应诉能力 – 促行政领导出庭出声更出彩), article in Legal Daily (法制日报), published March 15, 2019, available at: http://www.npc.gov.cn/npc/c30834/201903/20b975ca99c54fe19a3cc30efc042f75.shtml [January 2, 2024].

sixty-nine representatives of the administrative agency made a personal statement, which account for 14,6%. They assume that the administrative representatives are afraid of making mistakes when they express their opinion. They do not want to be responsible for negative legal consequences or even losing the lawsuit.[873] Henan recorded a continuous increase of the attendance rate of senior officials between 2015 and 2019. In 2016, officials appeared in 23.5% of the about 13,239 administrative cases tried in the entire province, and in 2017, in 26.3% of 14,863 cases. In 2018, the attendance rate was about 29.3% and crossed 30% in 2019.[874] The researchers also asked for subjective effects by the appearance of senior officials and concluded that the perceived effects were not significant. That is why they demand stricter mechanisms for judicial control. Qingdao experienced how effective judicial control can be because the government introduced measures such as court observation and reporting for administrative misbehavior. Their aim was to reach an attendance rate of 100% by senior officials. Party and government leaders supported the undertaking. Until October 2019, the attendance rate in the entire city was 72.5% which was an increase by 40% compared to 2018. After October 2019, they reached 100% up until the first half of 2020. In March 2020, the intermediate people's court of Qingdao and the Bureau of Justice released implementation opinions on promoting the senior officials of administrative agencies to appear in court, make a statement, and solve the dispute.[875] Besides that, the political leaders of Qingdao also emphasized pre-trial litigation which is why they opened an administrative dispute pre-trial settlement center in 2018.[876]

Although the statistics about the appearance rate allow to assume that it is a successful innovation of the revised ALL, the recent study of *Tianhao Chen, Wei Xu and Xiaohong Yu* reveals that the system only has a "mediocre performance"[877] and does not accomplish its intended goals, namely a better resolution of the administrative dispute and an educational effect for the administrative agents regarding the correct enforcement of the law.[878] They observed that the administrative officials attending the hearing were indifferent and only presented a prepared statement.[879] Moreover, they also found that the officials appeared at the

[873] *Liu, Jiang* 2018, 22-25.
[874] *Wang, Li, Ji, Lu, Wang* 2020.
[875] Thoroughly pushing forward the appearance of the responsible person in court, comprehensively promoting the substantive settlement of disputes, Qingdao's double-wing undertaking displays the function of administrative trial (深入推进负责人出庭应诉 全面推动争议实质化解 青岛法院"两翼并举"发挥行政审判职能作用), by the Intermediate People's Court of Qingdao (青岛中院), in: Administrative enforcement and administrative trial (行政执法与行政审判), issued July 13, 2020, available at: https://mp.weixin.qq.com/s/pOXCepSXDM3Hf7lAcnxdGA [January 2, 2024].
[876] *Shi, Lü, Gao* 2019.
[877] *Chen, Xu, Yu* 2024, 14.
[878] Ibid., 4.
[879] Ibid., 10.

end of the year before their performance evaluation.[880] They perceived plaintiffs as enthusiastic but pragmatic regarding the appearance of the senior official of the alleged administrative agency. It was a chance to communicate with officials directly, but it did not stop them from claiming their lawful rights and interests.[881]

2. SPC Provisions on the Appearance in Court

Although the regulations in the 2017 SPC Interpretation illustrate how to deal with the responsible person's attendance, the implementation is still not coherent throughout China. Chinese provinces have been issuing special implementation opinions concerning the appearance of the responsible person in court. To name a few, Hunan and Yunnan published their Implementation Opinions in 2017,[882] the Autonomous Region of Inner Mongolia issued them in February 2020,[883] and Zhejiang in December 2020.[884] They all refer to the State Council's Opinions of 2016[885] and emphasize the importance of the new system to strengthen the realization of an administration according to law. A more distinctive judicial interpretation was necessary to foster coherence in the application. As of July 1, 2020, the SPC's Provisions on Several Issues concerning the Responsible Person of the Administrative Agency Appearing in Court (henceforth: SPC Provisions on the Appearance in Court) became effective.[886]

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[880] *Chen, Xu, Yu* 2024, 11.

[881] Ibid., 9.

[882] Implementation Opinions of the General Office of the People's Government of Hunan Province on Strengthening and Improving Administrative Responses (湖南省人民政府办公厅关于加强和改进行政应诉工作的实施意见), issued February 16, 2016, in: Hunan Government Release (湘政办发) 2017, No. 9, available at: http://www.miluo.gov.cn/25308/41173/41184/41185/content_1240537.html [January3, 2024]; Implementation Opinions of the General Office of the People's Government of Yunnan Province on Strengthening and Improving Administrative Responses (云南省人民政府办公厅关于加强和改进行政应诉工作的实施意见), issued December 15, 2016, in: Yunnan Government Release (云政办发) 2016, No. 138, available at: http://www.yn.gov.cn/zwgk/zcwj/zxwj/201911/t20191101_184143.html [January 5, 2024].

[883] Implementation Opinions of the General Office of the People's Government of Inner Mongolia Autonomous Region on Strengthening and Improving Administrative Responses (内蒙古自治区人民政府办公厅关于加强和改进行政应诉工作的实施意见), issued February 28, 2020, by the Regulatory Office (法规处), available at: http://audit.nmg.gov.cn/doc/2020/02/28/34083.shtml [January 5, 2024].

[884] Notice of the Zhejiang Provincial Committee of the Communist Party of China Forwarding to the Provincial Court and the Provincial Department of Justice "Several Opinions on Comprehensively and Deeply Promoting the Appearance of Responsible Persons in Court" to Comprehensively Administer the Province According to the Law (中共浙江省委全面依法治省委员会转发省法院省司法厅《关于全面深入推进行政机关负责人出庭应诉工作的若干意见》的通知), published in Letter of Legal Affairs Office of Zhejiang Committee (浙委法办函〔2020〕20 号) on December 10, 2020, available at: https://mp.weixin.qq.com/s/aqvjxRnvgMjAeomdSr_B3Q [January 2, 2024].

[885] State Council's Opinions, supra n. 865.

[886] The SPC's General Office's plan about the initiation of judicial interpretations in the category due at the end of 2019 listed this before, see: Notice by the General Office of the Supreme People's Court on Issuing the Plan of the Supreme People's Court for Initiation of Judicial Interpretations in 2019 (最高人民法院办公厅关于印发《最高人民法院 2019 年度司法解释立项计划》的通知), issued April 29, 2019, in: Faban (法办) 2019, No. 39.

Beforehand, twelve previous drafts were discussed and constantly revised. The SPC had conducted pilot work in Beijing, Shanxi, Chongqing, Jilin, Fujian, Hubei, and other places. It collected opinions of the high courts, and suggestions of some front-line judges of the basic and intermediate people's courts. The SPC Provisions on the Appearance in Court consist of fifteen articles that complement the third paragraph of Art. 3 of the ALL and the respective articles of the 2017 SPC Interpretation.[887] According to the first paragraph of Art. 1 of the SPC Provisions on the Appearance in Court, the responsible person must attend first, second and retrial proceedings. The second paragraph underlines that the same rule applies for the responsible person of a dispatched agency or an internal administrative organ with authority to exercise administrative functions independently. The responsible person standing for an agency that appears as the third person has the same obligation, according to the third paragraph. The definition of the responsible person in Art. 2 follows Art. 128 of the 2017 SPC Interpretation. However, the second paragraph of Art. 2 of the SPC Provisions on the Appearance in Court adds that the responsible person of an entrusted organization and a lower-level administrative agency *may not* appear in court. When administrative agencies are co-defendants, they can determine a responsible person of either of the agencies or can let the court decide (Art. 3). The SPC Provisions on the Appearance in Court provide in Art. 4 a detailed distinction between cases in which the court *must* notify the responsible person to participate in the trial and those in which the court *may* notify the responsible person. The former cases constitute those involving significant public interest such as food and drug safety, the protection of the ecological environment and resources and public health safety, or those generating enormous publicity leading to mass incidents. The attendance of the responsible person is meant to have a calming effect. The latter cases concern significant personal and property rights of the plaintiff, administrative PIL, the requirement of attendance stipulated in a normative document of a higher-level agency and other circumstances in which the court deems it necessary. The notification of the court shall inform the responsible person about their rights and obligations and shall arrive three days before the hearing starts. The agency can request that another relevant employee replaces the responsible person (Art. 5). Art. 10 defines the relevant employee as a member of administrative staff fulfilling administrative functions. Employees of an entrusted agency which fulfils administrative functions can also attend. Art. 6 determines that the responsible person must submit identification materials which the court must check. If

[887] Provisions of the Supreme People's Court on Several Issues concerning the Responsible Person of the Administrative Agency Appearing in Court (最高人民法院关于行政机关负责人出庭应诉若干问题的规定), issued June 22, 2020, in: Fashi (法释) 2020, No. 3.

the person that submitted their document does not meet the conditions, the court notifies the agency to make corrections. The SPC acknowledges that administrative officials have limited time resources. That is why Art. 7 indicates that it is enough if the responsible person appears in the first hearing of the case although the case requires multiple hearings. However, the second paragraph points out that the responsible person must appear in court in another case. Nevertheless, as Art. 8 stipulates, in circumstances that the responsible person cannot control such as force majeure or accidents, they cannot appear in court. In all other cases, they must have a proper reason, according to Art. 9. The court examines the reason and may approve postponing the hearing. Art. 11 of the SPC Provisions on the Appearance in Court guarantees that the litigation participants exercise their litigation rights and demands that they perform their litigation obligation. The second paragraph underscores that the responsible person shall make a statement, participate in the debate, and explain any normative document on which the impugned administrative action is based. The third paragraph adds another substantive condition, namely that they shall express an opinion on the substantive settlement of the dispute. The last paragraph allows the court to sanction misbehavior according to Art. 59 of the ALL.[888]

Moreover, Art. 12 determines that the court can issue judicial recommendations, for instance when the responsible person fails to appear in court without proper reason, when the reasons for absence are unfounded, when they withdraw from the courtroom without permission, or when they do not respond during the hearing. Art. 13 adds that if any party contradicts that any of the circumstances of Art. 12 occurred, the court may specify it in the transcript of the hearing. This should not affect the regular hearing and is not an interruption. Besides that, if the plaintiff also refuses to appear because of any circumstance listed in Art. 12, the court shall treat it as if the plaintiff withdrew the complaint. When the plaintiff refuses to make a statement reasoning that there is a circumstance described in Art. 12, the court shall treat it like renouncing the right to make a statement. Art. 14 points out that the court can inform the public about the situation of the responsible person. The second paragraph calls on the judges to collect statistical data of the appearance rate and to send the results to the local people's congress and government at the same level of the defendant administrative agency. Both the disclosure of information and the collection of empirical data allow the public and political organs to exercise control on administrative conduct and to make them abide by the laws.

Overall, the attendance of the responsible person of the impugned administrative agency signals that administrative litigation takes the grievances of the people seriously. The

[888] For further information on court sanction, see Chapter 6, IV. Violation of court procedure.

mandatory attendance serves to solve the underlying dispute by offering a platform to enter into an active dialogue and to preserve social order.[889] The opposing parties confront one another, which is meant to solve their disputes in a substantive way finally. With this innovation, the ALL fulfills an educational task for the administration and the people. Moreover, it demands that the responsible person, their deputy, or other relevant employees *must* be committed to genuinely solving the dispute. Hence, procedural justice is linked with substantive justice. At the same time, it signals the reformers' commitment to provide judges with supervisory means during the hearing procedure and to raise the agency's risk of losing the trial.[890]

III. Evidence

As this chapter asks in what way is the hearing conducted to settle the dispute and to protect the people's lawful rights and interest, the ALL's section about evidence (Art. 33 to Art. 43 of the ALL of 2014) is important to understand how the ALL ensures procedural and substantive justice. The hearing focuses on evidence provided by the parties. The way the parties submit and examine evidence in court reflects procedural justice. The following subsections present the types of evidence, the process of who can present evidence in what way and lastly, it looks at the circumstances under which courts exclude evidence as a basis for proving the facts of the case.

1. Definition of evidence

Art. 5 of the ALL of 2014 determines that the people's court shall try administrative cases based on facts according to the law. In this context, the second paragraph of Art. 33 of the ALL of 2014 provides a finalized list of pieces of evidence that the parties can present in court that must verify the pieces before the courts can use them as a basis for determining the facts of the case. Courts must verify evidence as objective, relevant and legal. The verification process is based on the standards of the judicial profession, just as professional ethics, logical reasoning, life experience, and common sense.[891] Using the phrase "evidence includes"[892] instead of the former "evidence has the following types"[893] is meant to signal that besides these items in the list, there can be other forms of evidence and materials.[894] Compared to Art. 32 of the ALL of 1989, two differences are evident: Electronic data were added as evidence in Art. 33

[889] *Gao* 2020.
[890] *Xin Chunying* 2015, 179.
[891] *Xin Chunying* 2015, 90; see also: third paragraph of Art. 47 of the ALL of 2014.
[892] In Chinese: 证据包括.
[893] In Chinese: 证据有下列种.
[894] *Liang Fengyun* 2015, 195.

of the ALL of 2014. Parties can present case related emails, online chats, and electronic signature. Moreover, this also includes, for instance computer discs and USB or data from MSN, QQ, and Taobao. During the reform process, experts argued about how to categorize electronic data. One group suggested considering electronic data as documentary evidence because it consists of words, numbers, and pictures. Others preferred counting it as audio and video recordings because people can listen to and see electronic data. A third group understood electronic data as an independent category. Due to the distinctive features of electronic data, the reformers adopted the third group's suggestion and added electronic data as a form of evidence, still leaving problems of collection, examination, and verification unsolved.[895] Secondly, the reformers replaced "expert conclusion" with "expert opinion". Whereas "conclusion" indicates that it is final and hard to question, "opinion" is considered to be more scientific and accurate because it highlights the personal knowledge of the expert consulted. Judges are more comfortable with questioning opinions than conclusions.[896]

2. Burden of proof

Usually, the plaintiffs are in an inferior position compared to the administrative agency during trial.[897] That is why the ALL of 2014 stipulates in Art. 34 that in general, the administrative agency carries the burden of proof since it is easier for it to collect evidence, such as providing the relevant normative documents on which the action in question is based.[898] If it does not submit (because it rejects to do so) or fails to submit evidence within the prescribed period of time of 15 days, the agency loses its right to submit evidence, as determined in Art. 67 of the ALL of 2014. As another consequence, the court will deem that evidence does not exist at all unless a third party involved can submit evidence. The reason for deeming there is no relevant evidence lies in punishing the administrative defendant. However, a third party affected by the administrative action shall not suffer from such punishment and therefore and can submit evidence. This is in accordance with Art. 29 of the ALL of 2014, as this dissertation mentioned in the section introducing the parties: A citizen, legal person, or other social organization with interest in either the administrative action or the outcome of the case can participate as a third party. In the first scenario, the third party can participate because they either failed to file a complaint themselves or the court rejected their request. *LIANG Fengyun* indicates that an administrative agency can also be interested as a third party. He criticizes the wording of Art. 34

[895] *Liang Fengyun* 2015, 199.
[896] Ibid., 202; *Xin Chunying* 2015, 88.
[897] *Jiang* 2018; *Xin Chunying* 2015, 90.
[898] *Xin Chunying* 2015, 91.

of the ALL of 2014 to be too vague since it only mentions a third party's interest which opens the way for an administrative agency to act as a third party. He believes that this was not the original intention of the legislators and suggests replacing "third party" by "citizens, legal person or other social organizations".[899]

In general, the defendant or its litigation representative should not hand in any evidence taken directly from the counterparts, such as the plaintiff, a third party or a witness according to Art. 35 of the ALL of 2014. There are two novelties in this provision: Firstly, the legislators extended the protection to third parties, which Art. 33 of the ALL of 1989 did not acknowledge. Secondly, the new ALL added the litigation representative of the administrative agency, as mentioned in Art. 30 of the 2000 SPC Interpretation, to highlight that they enjoy the same rights and obligations as the agency they represent within the scope of their authority. Moreover, this provision intends to capture the principle of "collect evidence first, then judge", which will be introduced in more details below.[900] In general, the agency has to collect evidence during its administrative procedure before it issues its action as the final decision, which becomes clear from the first sentence of the first paragraph of Art. 36 of the ALL of 2014 stating: "Where the defendant had collected evidence *when taking* the administrative action […]".

It is important to distinguish between administrative evidence[901] and administrative litigation evidence[902]. However, Chinese legal scholars have no consent on how to define administrative evidence because three different opinions exist:[903] Firstly, one group of scholars believes that administrative evidence is an administrative action that is following the content of the request of the counterparty and complies with the statutory procedure. So, according to this argument, a license that a citizen requests functions as a document of evidence when the administration approves the request. In contrast to this, scholars advocating the form rather than the content argue that administrative actions are diverse and flexible to meet the expectations of the people. Hence, any confirmation or rejection, any license or restriction concerning a specific request issued by an administrative agency can be administrative evidence. The third group of scholars defines evidence according to its predetermined legal effects. They follow a similar argumentation as we saw regarding the non-suspension rule in the first section of this

[899] *Liang Fengyun* 2015, 206.
[900] In Chinese: 先取证，后裁判, see: *Liang Fengyun* 2015, 209; *Xin Chunying* 2015, 94-95.
[901] In Chinese: 行政证据.
[902] In Chinese: 行政诉讼证据.
[903] *Song* 2013, 487-488.

chapter. They argue that administrative evidence has predetermined effectiveness because of its authoritative character.[904]

Despite the discussions, in the essence, administrative evidence is the result of an administrative action with which the agency, within its scope of authority, proves the relevant legal position and legal relationship between the applicant and itself and with which it refers to the legally relevant facts.[905] So, administrative evidence is a specific set of materials which serve to make an administrative decision. Eventually, the administration should enforce its decision in accordance with national laws and regulations.[906]

In contrast to this, in administrative litigation, the administration refers to pieces of evidence in the court's hearing to prove the legality of the administrative action in question as stipulated by Art. 6 of the ALL of 2014. Citizens usually present the same documents in both procedures: When citizens request a certain action from the administration, they present documents indicating a favorable position for themselves. The same is true in administrative litigation where they hope to win the case and to get to the position they hoped for. Hence, the administration re-uses the administrative evidence it created during an administrative procedure in administrative litigation. Despite these clear differences in the nature and purpose of evidence in each of the processes, both administrative evidence and administrative litigation evidence have to be objective, relevant, and legal. Evidence is relevant when it is related to the facts and it is legal when the administration collected according to statutory provisions.[907] In general, hypotheses are insufficient for proving the facts. Overall, evidence refers to all materials and pieces of information that explain the facts of a case.[908]

3. Principle of "collect evidence first, then judge"

During the long reform process of the ALL, legislators put emphasis on the adherence to the principle of "collect evidence first, then judge" to solve the widespread problem in the 1990s when the administrative agencies used to submit evidence just at the opening of the hearing and continued to present new evidence throughout the entire trial process. Such behavior not only prolonged the trial process, but it also simultaneously impaired its effectiveness. Art. 26 of the 2000 SPC Interpretation was already meant to restrict an endless

[904] *Song* 2013, 488.
[905] Ibid., 489.
[906] *Zhang, Zhang* 2004, 28-29.
[907] *Liang Fengyun* 2015, 202; *Xin Chunying* 2015, 85-86.
[908] *Zhang, Zhang* 2004, 29-30.

consideration of evidence during the trial.[909] It stipulated that the agency was obliged to hand in their evidence collected during the administrative procedure within ten days after receiving a copy of the written complaint together with their written statement of defense.[910] Similar to Art. 28 of the 2000 SPC Interpretation, the first paragraph of Art. 36 of the ALL of 2014 recognizes exemptions allowing the defendant agency to submit evidence with extra time during trial for a good reason such as force majeure. Likewise, the second paragraph of Art. 36 stipulates that when the plaintiff or the third party provides evidence which they did not provide to the defendant during its administrative procedure, the court may allow the defendant agency to refute the plaintiff's facts by providing additional evidence. However, the ALL bans them from using such evidence to prove the legality of their actions.[911]

Administrative scholars criticized that the plaintiffs and the third party are not subject to any time limit for presenting evidence. It is likely that they believe that they can add evidence at any time during the trial. This could lead to a violation of the principle of "collect evidence first, then judge". Therefore, the 2017 SPC Interpretation determines in Art. 45 that the court does not accept evidence that the plaintiff deliberately withholds, hoping for an advantage at a later stage. Furthermore, scholars indicate that "force majeure" seems not appropriate for administrative litigation fearing unlawful administrative conduct, such as giving excuses for not providing evidence on time or at all. Hence, the plaintiffs have a right to know and should be allowed to give their view in writing.[912] In this context, Art. 34 of the 2017 SPC Interpretation stipulates that the defendant must request extra time for presenting evidence in writing within 15 days after receiving the complaint. If the court permits this request, the defendant agency has to provide evidence within 15 days after the elimination of the good reason due to which it received the extension. When the time has expired and the defendant has not yet provided evidence, the court deems that the evidence does not exist.

The second paragraph of Art. 36 of the ALL of 2014 recognizes an exemption of the principle "collect evidence first, then judge": The defendant may submit additional evidence which is not part of the record when the plaintiff presents new evidence before the court. The judge has to review why the plaintiffs submit evidence they did not present during the administrative procedure to make sure that the plaintiff did not withhold evidence intentionally

[909] *Liang Fengyun* 2015, 210.
[910] See also: Art. 1 of the Provision of the Supreme People's Court on Several Questions Concerning Administrative Evidence (关于行政证据若干问题的规定), issued June 4, 2002, effective October 1, 2002, in: Fashi (法释) 2002, No. 21 (henceforth: SPC Provisions on Administrative Evidence). The revised ALL added this provision, see Art. 67 of the ALL of 2014 which extended the time for response from ten to 15 days.
[911] *Liang Fengyun* 2015, 209-210, 217-218, *Xin Chunying* 2015, 96.
[912] *Liang Fengyun* 2015, 211-212, 215.

to harm their counterparty and to guarantee the exact facts of the case.[913] This corresponds to the procedural requirements of other administrative laws which demand that the agency's counterparty is given a chance to state their view and defend themselves, such as cases of administrative penalty and administrative compulsion. The agency is obliged to listen to their statement fully and shall reexamine the facts, reasons, and evidence given in the statement.[914] Hence, according to scholarly opinion, it seems only fair that the defendant agency is allowed to defend itself when the parties submit new evidence but ignored their right of statement during the administrative procedure.[915] Again, that is why the SPC added Art. 45 in 2017 SPC Interpretation which clearly determines that the court does not admit evidence which the plaintiff or third party submits in the hearing at court but which they did not present during the administrative procedure. The defendant, in turn, has to prove that they asked the plaintiff or third party to submit, as legally required during the administrative procedure. Moreover, the 2017 SPC Interpretation ensures in Art. 46 that the plaintiff or the third party can send a written request to the court when they have evidence that the defendant holds evidence in favor of them and want to submit it for examination. If the court admits it because the request is tenable, the plaintiff or third party has to pay the expenses for the submission. If the administrative agency refuses to submit without good reason, the courts assume that the facts are tenable. In the same vein, the court assumes that the facts are tenable if the agency destroys the evidence or obstructs its use and can punish the agency according to Art. 59 of the ALL of 2014. In this context, Art. 42 of the ALL of 2014 offers special preservation for evidence taken by the court when it suspects that the parties might extinguish evidence, or it is hard to obtain it later. The plaintiff, third party or defendant can send a written request to the court, or it can even take the initiative of its own. These preservation measures, being a prerogative of the court alone, underscore the importance of ensuring that the facts to determine the case are clear.[916]

4. Reverse burden of proof

According to Art. 37 of the ALL of 2014, the plaintiff may provide evidence to prove that the impugned administrative action violates the law. Regardless of whether that evidence turns out to be inadmissible, the administrative agency still carries the burden of proof. This clearly reveals that in administrative litigation, the agency must prove the legality of its action.[917] The purpose of this provision lies in giving the plaintiffs a chance to proactively

[913] *Liang Fengyun* 2015, 221-222.
[914] See: Art. 36, Administrative Compulsion Law, supra n. 745; Art. 45, Administrative Penalty Law, supra n. 275.
[915] *Liang Fengyun* 2015, 222, *Xin Chunying* 2015, 97.
[916] *Xin Chunying* 2015, 109.
[917] *Liang Fengyun* 2015, 223.

protect their personal rights and interests by providing evidence, to assist the court with the consideration of the facts, and to guarantee an objective process for obtaining justice. The plaintiffs present their evidence usually in cases where they request the court to revoke or change an administrative action and not in cases of administrative nonfeasance.[918]

However, the ALL recognized that the plaintiffs carry the burden of proof in cases where they request the agency to perform their statutory duty (Art. 38). Similar to civil procedure, this reflects the principle of "the one who claims must prove"[919]. This principle is, for example, also reflected in the State Compensation Law where the claimant and the agency shall both provide evidence on their respective claims.[920] In administrative litigation, plaintiffs have to prove that they filed a request with the responsible agency for performance, except for two reasons: Firstly, the defendant is obliged to actively perform its statutory duties and responsibilities as required by law. A typical example would be a beating in public, but the police do not act according to their legal duties.[921] The second reason is that the plaintiff is unable to prove for a good reason. For instance, the defendant agency refuses to state any reason for not performing. The agency also does not send back the request.[922] This regulation intends to prevent arbitrary lawsuits from being filed.

Besides this, the purpose of transferring the burden of proof to the plaintiffs consists in the review of the eligibility of the case for docketing it on the basis of certain evidence. It is not necessary for the plaintiff to prove that they can win the case with their evidence because, at that point, the review by the court is not as intensive as compared to the review later for making the judgment.[923] In fact, it intends to check if the complaint corresponds to the requirements as listed in Art. 49 of the ALL of 2014. If it does, the court has to docket the case, according to the first paragraph of Art. 51. In a similar vein, the first paragraph of Art. 35 of the 2017 SPC Interpretation[924] stipulates that the plaintiff or a third party shall provide evidence before the court hearing or before the date of exchange of evidence. The court only accepts written requests for postponing the presentation of evidence with a good reason. Given a good reason, the court permits it and informs the other parties, as stated in Art. 36 of the 2017 SPC Interpretation. In this context, the second paragraph of Art. 35 of the 2017 SPC Interpretation

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918 *Liang Fengyun* 2015, 224; *Xin Chunying* 2015, 98.
919 In Chinese: 谁主张谁举证.
920 Art. 15, State Compensation Law, supra n. 380.
921 *Xin Chunying* 2015, 100.
922 Ibid.
923 *Liang Fengyun* 2015, 225.
924 See also Art. 4 of SPC Provisions on Administrative Evidence, supra n. 910.

intends to guarantee procedural justice because the court does not admit evidence which the plaintiffs withheld in the first instance and present in the second instance.

In addition, according to the second paragraph of Art. 38 of the ALL of 2014, the plaintiff has to provide evidence on the damage in cases of administrative compensation or indemnity. If the defendant caused the plaintiff to be unable to provide evidence of the damage, the burden of proof is again on the defendant. For instance, the administrative agency decides to tear down a building, but the affected persons believe that the time limit has expired. However, in the meantime, their house was torn down so that the plaintiffs cannot provide evidence of the damage anymore.[925] In addition to that, Art. 47 of the 2017 SPC Interpretation confirms the reverse of the burden for proving the damage back to the defendant in cases concerning administrative compensation and reimbursement. Furthermore, the party must appraise the value of the damage, according to the second paragraph of Art. 47 if the 2017 SPC Interpretation. If the party having the burden of proof refuses to appraise, it shall bear the adverse legal consequences. However, if it is not possible for the party to appraise the value, it shall apply for appraisal at court unless the law requires the administrative agency to assess the value when taking the administrative action. If no one can assess for objective reasons, the court determines the amount of compensation following professional ethics, logical reasoning, life experience, and common sense, as listed in the third paragraph of Art. 47 of the 2017 SPC Interpretation.

5. Submitting additional evidence

So far, we saw that the defendant agency usually carries the burden of proof and under certain conditions, the plaintiff carries it as well. Moreover, according to Art. 39 of the ALL of 2014, the court can require a party to provide evidence or additional evidence. Art. 37 of the 2017 SPC Interpretation adds that the court can demand any fact that is beyond dispute among the parties and that effects national and public interests or interests of a third party. This provision is meant to ensure that the parties and the court consider those pieces of evidence which might not be purely beneficial for one of the parties or which they ignored beforehand.[926] However, the court is supposed to remain neutral and cannot collect evidence that is one-sided and discriminates against the counterparty. In addition to Art. 39 ALL of 2014, Art. 40 expands the court's rights to collecting evidence from the relevant administrative agency, other organizations, and citizens. But again, the court has to remain neutral and cannot collect

[925] *Xin Chunying* 2015, 101-102.
[926] Ibid., 103.

evidence which had not been collected during the administrative procedure to prove the legality of the administrative action. Only evidence listed in the case file is eligible. The court's right is limited to collecting additional evidence to check the objectivity of the facts and not to solely rely on the parties' evidence to guarantee a fair procedure.[927]

As another additional right, Art. 41 of the ALL of 2014 allows plaintiffs or third parties to apply to court to collect three specific types of evidence: (1) evidence obtained by a state organ, such as the so-called *dang' an* file[928]; (2) evidence involving state secrets, business secrets or individual privacy, like information about a company's science and technology development and (3) other evidence that cannot be collected by the plaintiffs or third parties, for instance military files.[929] When the court reviews the application and if it approves, it has the discretion to decide how to collect the evidence, for instance with an on-site examination, collecting records or copies or by interviewing witnesses.[930] Nevertheless, the 2017 SPC Interpretation underscores in Art. 39 that when it turns out that the evidence is irrelevant or meaningless to prove the facts of the case or otherwise unnecessary, the court does not permit it.

Apart from that, according to Art. 41 of the 2017 SPC Interpretation, the plaintiff and third party can also request that administrative law enforcement personnel make a statement in court when there is reason to doubt (1) the lawfulness and authenticity of on-site transcripts, (2) the types and quantity of impounded property; (3) the sampling or preservation of things; (4) the lawfulness of the identities of law enforcement personnel and (5) other statements. In this context, the 2017 SPC Interpretation determines in Art. 44 that the court can also take the initiative and require a person or administrative law enforcement employee to appear in court for inquiry. Both Art. 40 and Art. 44 of the 2017 SPC Interpretation refer to the court's duty to inform both witnesses and the administrative law enforcement personnel before their testimony or statements to tell the truth and when otherwise, they have to bear negative legal consequences. But since administrative law enforcement personnel make statements in their official role, they have to sign an undertaking accepting punishments for false statements, prescribed in the

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[927] *Xin Chunying* 2015, 104-105. In contrast to the Chinese model, in Germany, the Code of Administrative Court Procedure stipulates in the first paragraph of Art. 86 that the court shall investigate the facts ex officio. The aim is to obtain a complete picture of the case and its facts. But since the courts have only limited time and inquisitorial resources, they shall consult with those concerned. Besides this cooperation, the courts are not bound to the submissions and to the motions for the taking of evidence of those concerned. In this context, the first paragraph of Art. 108 underlines that the court is not restricted to any statement or presented piece of evidence. It can collect any piece it considers necessary following their conviction. See: *Bernhardt* 1966, 326.
[928] In Chinese: 档案材料.
[929] *Liang Fengyun* 2015, 236; *Xin Chunying* 2015, 107.
[930] *Liang Fengyun* 2015, 238-239.

second paragraph of Art. 44 of the 2017 SPC Interpretation. So, when administrative employees refuse to appear in court or refuse inquiry, the court shall not affirm the facts the party claims and can also reprimand the personnel for misconduct according to Art. 59 of the ALL, determined in the third paragraph of Art. 44 of the 2017 SPC Interpretation. In contrast to the strict rules concerning the statements of official administrative personnel, the requirements and consequences for ordinary witnesses seem more moderate: In fact, to make testifying attractive, all the cost that arise concerning the testimony like accommodation, travel expenses, loss of missed work, will be borne by the party of the losing side, stipulated in the second paragraph of Art. 44 of the 2017 SPC Interpretation.

Overall, these new provisions show that the plaintiffs and third parties enjoy special protection and support if they struggle with collecting evidence. They are usually in the inferior position compared to the administrative agency. Moreover, this support and the opportunity of meeting their counterparty in person are meant to have a positive mental effect. The ALL and the courts take their rights and interests, as well as substantive and procedural justice seriously.[931]

6. Consideration of evidence

The Fourth Five-Year Court Reform Program (2014-2018),[932] published in 2015, refers to the Third and Fourth Plenary Sessions of the Chinese Communist Party in 2013 and 2014. It intends to establish a judicial system that respects judicial rules of evidence and human rights and elevates the hearing to the center of the trial. In addition, judges should improve their reasoning by referring to lawyers' opinions and explaining how the judge considered them for the final opinion. These objectives apply to criminal cases but also influenced the revision of the ALL of 1989. Furthermore, the program promises the completion of the transparency measures and the reform of the adjudication committee to make it more professional.

The core of the hearing is the cross-examination of evidence, as determined in the first paragraph of Art. 43 of the ALL of 2014. It follows the principle of directs words[933] so that the parties have an active role during the hearing. At first the claimants present their evidence, then the counterparty refutes with their evidence and at last the interested party can speak. This shall

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[931] *Liang Fengyun* 2015, 106-107; *Sprick* 2015, 265.

[932] Opinions of the Supreme People's Court on Comprehensively Deepening Judicial Reforms – Outline of the Fourth Five-Year Reform Program of the People's Court (最高人民法院 关于全面深化人民法院改革的意见 - 人民法院第四个五年改革纲要（2014—2018）, issued February 6, 2015, at: Fafa（法发）2015, No. 3 (henceforth: Fourth Five-Year Court Reform Program (2014-2018)).

[933] In Chinese: 直接言词原则.

comply with the principle stipulated in Art. 10 of the ALL of 2014 that both parties have the right to debate. Again, the courts use the evidence they collected to support the weaker parties with their collection of evidence and not to prove the legality of the administrative action in question. The parties must examine the court's evidence in the hearing as well. In case state or business secrets or private information are affected, the court adjusts the examination according to their sensitivity.

For reasons of effectiveness and efficiency, the legislators decided to "outsource" the exchange of evidence before the hearing if the facts are complicated. In such a case, examining evidence during the hearing can take too much time. Hence, the 2017 SPC Interpretation stipulates in Art. 38 that in case the facts are complicated or manifold, the court can arrange an extra appointment for the parties to show their evidence or exchange it before the hearing and can file the information on the exchange lists for evidence. The second paragraph of Art. 38 of the 2017 SPC Interpretation determines that courts can use evidence beyond dispute among the parties over the course of exchange as the basis to determine the facts of the case after the judge has made a statement during the hearing.

According to the second paragraph of Art. 43 of the ALL of 2014, the court is supposed to examine comprehensively and objectively and to verify evidence under statutory procedure. When evidence is considered to be inadmissible, the court shall state its reasons. Art. 42 of the 2017 SPC Interpretation names the requirements for evidence that the court has to review to determine the facts of the case: The evidence has to be able to reflect the true circumstances of a case, be relevant to factum probandum, from sources and in forms required by law. However, Chinese scholars debate how to conclude that there is no doubt concerning the evidence and the facts of the case.

Chinese legal scholars commonly accept that administrative litigation stands between civil litigation and criminal litigation concerning the consideration of the evidence.[934] Whereas in civil litigation the general rule for confirming evidence is "probability" which originates from Art. 64 of the Civil Procedure Law, in criminal litigation evidence "excluding reasonable doubts"[935] should be pursued. Hence, scholars argue that administrative litigation should be based on "the clear dominant evidence" as a general standard and probability and the "exclusion reasonable doubt" as supplements. Scholars prefer a diversified way of confirming evidence. For them, it is sufficient that one condition is fulfilled, such as the probability that the "dominant

[934] *Bi* 2013, 401; *Zhang Li* 2015, 612.
[935] Art. 53 (3), Criminal Procedure Law, supra n. 345.

evidence is clear”.[936] The ALL follows the unified standard. The evidence must be comprehensive to the extent that the facts are clear,[937] determined in item 1 of Art. 89 of the ALL of 2014, and it must be sufficient,[938] as mentioned in Art. 70.

7. Objective and legal truth

In his introduction to the 2017 SPC Interpretation, *JIANG Bixin* pointed out that the major objective of a hearing shall be to pursue objective truth[939] and procedural fairness.[940] According to the theory of objective truth, those pieces of evidence are relevant which are identical to the objective facts of the case at hand. The supporters of objective truth claim that even subjective perceptions shall be consistent with the objective reality.[941] In contrast to this rather orthodox attitude, moderate thinkers support legal truth[942] which means that in a trial, the judge shall only rely on the convincing facts of the evidence presented to achieve some kind of truth that is consistent with legal standards.[943] The core difference between objective and legal truth lies in the question of whether a subjective understanding of the evidence is in line with the objectively existing facts. The legal truth is mainly based on the “limited rationality of human beings” and on the principle of free conviction.[944] In this context, the standard of confirming evidence links both objective and subjective aspects.[945] These aspects consist of the judge’s inner conviction, which is a free consideration of evidence within the statutory procedure and the balancing of interests. The judge, who examines, needs to be convinced that the facts of the case are proved, and his conviction needs to be based upon a free consideration during the hearing following his experience, reason, and conscience.[946] He weighs whether each party carries their burden of proof and judges how much each party is allowed to intervene in the confirmation process.[947] The judiciary and in particular for Chinese administrative judges are usually reluctant to use legal truth as a sufficient basis and rather prefer pursuing “legal truth closest to objective reality" to avoid public criticism on their free consideration of evidence. So,

[936] In Chinese: 明显优势证据, see: *Zhang Li* 2015, 612.
[937] In Chinese: 事实清楚.
[938] In Chinese: 证据确实充分.
[939] In Chinese: 客观真实.
[940] *Jiang* 2018.
[941] *Xie, Cui* 2008, 406-407.
[942] In Chinese: 法律真实.
[943] *Xie, Cui* 2008, 406.
[944] In Chinese: 自由心证, see: *Zhang Li* 2015, 614.
[945] *Liang Fengyun* 2015, 245-246.
[946] *Shi* 2018, 17.
[947] *Xie, Cui* 2008, 408.

judges prefer confirming evidence with “excluding reasonable doubt” particularly in cases concerning personal and property rights because they need special protection.[948]

8. Exclusion of illegal evidence

The third paragraph of Art. 43 of the ALL of 2014 determines that courts may not use illegally obtained evidence as a basis to determine the facts of the case. In addition, Art. 43 of the 2017 SPC Interpretation lists three sorts of illegally obtained evidence, namely (1) materials collected in serious violation of the statutory procedures, (2) materials obtained by any means in violation of the mandatory provisions of the law and injurious to the lawful rights and interests of another person, and (3) materials obtained by inducement, fraud, coercion, violence, or any other means. The first illegal evidence refers to the importance for “the administration according to the law” that follows correct procedures. For instance, a normative document violates higher-level rules and regulations because it prescribes an administrative procedure reducing an agency’s procedural obligations and increasing the claimant’s duties. The court must review any material collected on this basis for being eligible because procedural violations can affect substantial rights of the parties.[949] The second group concerns materials that were collected in secret and by that, violate the lawful rights and interests of the counterparty or the third party. Most of the time, this item affects the administrative agency who violates the privacy and freedom of the citizens. Nevertheless, the court can exclude evidence of plaintiffs and third parties because they secretly recorded a conversation, took photographs, or filmed without authorization.[950] Materials collected through inducement, fraud, coercion, or violence are also illegal and excluded from examination. Administrative personnel might realize that some citizens have no experience and hence, deceive them with false information. Coercion and violence are means of intimidation to make people act in a certain way and are clearly less subtle means compared to inducement and fraud.[951]

In practice, judges looked for excuses not to apply the rule of excluding illegal evidence. They shortened the process of confirming evidence and jumped directly to determining the facts of the case. Judges argued that questionable evidence was inappropriate or unnecessary. For instance, to make a judgment of revocation, the judge referred either to the rule of excluding illegal evidence or the violation of administrative procedure when entrapment was involved. The court could sanction according to the rule of exclusion of illegal evidence. Thus, the court

[948] *Zhang Li* 2015, 613-615.
[949] *Liang Fengyun* 2015, 253.
[950] *Zhang Shuo* 2018, 119; *Xin Chunying* 2015, 111-112; *Liang Fengyun* 2015, 254.
[951] *Liang Fengyun* 2015, 255.

ruled that the evidence based on entrapment was inadmissible. The judge could then conclude that the evidence to decide the facts of the case were insufficient and revoked the administrative action in question. Apart from that, the judge could also review the administrative procedure and conclude that the procedure of entrapment is illegal and thus revoked the administrative action. Hence, judges could sanction the same violation in different ways. Scholars criticize that a systematic review of such violations is still missing which gives judges the chance to avoid situations they feel uncomfortable with.[952]

Due to these predicaments, scholars suggest that the rule of exclusion of evidence should not be too broad. It could undermine administrative efficiency and operation because excluding evidence might cause costs concerning the effort for obtaining it. But it must not be too narrow either.[953] Besides that, others indicated that procedural review might be easier to handle for judges than the review of evidence when the evidence presented is not central for determining the facts of the case. When the focus is set on procedural review, the judges have more specific ways of ruling: when the collection of evidence is slightly flawed but does not influence the overall administrative procedure, the court can maintain the administrative judgment, and the administrative agency can correct the procedural mistake. When the collection of evidence is illegal but has still no noticeable influence on the overall administrative procedure, it suffices that the court declares it as a “harmless error”[954]. But when the illegally obtained evidence seriously infringes upon substantial rights of the counterparty, the court must rule the administrative action to be invalid or must revoke it.[955] Critics state that judges without any administrative experience cannot independently determine substantial facts about a special procedure that demands professional knowledge. Judges rely on procedural facts and thus could be inclined to restrain administrative duties.[956]

Overall, putting the hearing at the center of administrative litigation signals respects for the plaintiffs’ grievances and offers an opportunity to settle the dispute through the parties’ dialogue. However, considering evidence demands legal expertise and experience of judges. The ALL of 2014 offers only a broad guidance for the examination that shall be comprehensive and objective to verify evidence under statutory procedure. For inexperienced judges, this might cause some pressure regarding the parties’ expectations. However, the cross-examination of the

[952] *Zhang Shuo* 2018, 116, 120-122.
[953] *Bi* 2003, 402.
[954] In Chinese: 无害错误.
[955] *Zhang Shuo* 2018, 125-126.
[956] *Zhang Shuo* 2018, 123-124; *Bi* 2003, 404.

parties will support the determination of the facts because both parties have equal chances to present their pieces of evidence and their opinions.

IV. Violation of court procedure

To ensure a fair trial, the parties must abide by the court's order that includes their presence during the hearing with an appropriate behavior. The parties who violated and disrespected a fair trial and the judges who were reluctant to hear sensitive cases caused the difficulty of adjudication, which was one of the three major problems demanding the amendment of the ALL. For instance, cadres interfered with the court procedure, plaintiffs and administrative officials also tried to interrupt or obstruct a smooth operation. Hence, the reformers reinforced the measure of judicial control over the parties' conduct. According to the Fourth Plenum decision of the 18th CCP Central Committee made in November 2014, they promised to establish "a system for recording, reporting, and investigating the responsibility of instances wherein leading cadres interfere in judicial activities or get involved in the handling of certain cases".[957]

1. Violations before the start of the trial procedure

Parties expressed their disrespect for the trial procedure in default of appearance. The ALL of 1989 stipulated in Art. 48 that the court must subpoena the plaintiff or defendant. If the plaintiffs refused to attend without a good reason, the court could consider this as withdrawal. In case the defendant refused to attend without good reason, the court could issue a judgment by default. In the revised ALL of 2014, Art. 58 determines that the court considers it as a withdrawal of the lawsuit if the plaintiff refuses to appear after the court subpoenaed them once before. In contrast to this, Art. 49 of the ALL of 1989 had stipulated that the court must send a second subpoena. The reformers streamlined the subpoena process to save resources and thus, to enhance judicial effectiveness. This also corresponds to the regulations of the Civil Procedure Law that acknowledges one subpoena in Art. 159.

A subpoena notice demands the party to attend the hearing. It is an official document that the court must submit in written form, and the recipient has to sign and seal a receipt.[958] However, since plaintiffs have the right to withdraw, they can ignore the official judicial call, and the court can interpret this as a withdrawal from their procedural rights. If the defendant refuses to appear, albeit the court subpoenaed them, the court can issue a judgment by default.

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[957] 18th CCPCC Fourth Plenum Decision 2014, supra n. 4, see: section 4, no. 1, guarantee judicial fairness, raise judicial credibility.
[958] *Xin Chunying* 2015, 153.

In such a case, the court does not suspend the general procedure. The defendant just must bear the negative legal consequences because they renounced their right to make a statement, as the third paragraph of Art. 79 of the 2017 SPC Interpretation underlines. The judgment by default shall follow the principle of "taking facts as the basis and the law as the yardstick" to guarantee fairness.[959]

In addition, the first paragraph of Art. 79 of the 2017 SPC Interpretation determines that the court may even issue a judgment by default if the plaintiff or appellant refuse to appear in court despite being subpoenaed or if they leave the courtroom without good reason after they requested withdrawal which the court rejected. There used to be opposing views about how to handle a case in which the court rejects the plaintiffs' request for withdrawal and the plaintiff refuses to attend the hearing or leaves the courtroom without good reason. Some argued that treating it as a withdrawal would weaken the courts' authority and would support unlawful behavior of the plaintiff. However, a stricter sanction like a compulsory measure was not appropriate either since it missed a legal basis for an encroachment in their personal rights. The supporters of the judgment by default won so that the 2000 SPC Interpretation had picked it up in Art. 49. The judgment by default was more appropriate because it allowed the court to review the materials that have already been submitted, to weigh the facts and arguments and to protect the rights and interests of the plaintiffs as much as possible.[960] However, if both the plaintiff or defendant do have a good reason, they are obliged to report to the court in advance so that the court can review and decide whether to postpone the hearing.[961] The second paragraph of Art. 79 of the 2017 SPC Interpretation underlines that the procedure is not affected at all if a third party refuses to appear in court after being subpoenaed or leaves the hearing without good reason.

In the (unlikely) event both parties do not appear in court, there are two ways for the court to react: Firstly, the court can suspend the trial according to the circumstances listed in Art. 87 of the 2017 SPC Interpretation, for instance (1) when the plaintiff is deceased, and the decision of his/her close relatives whether to participate in the legal proceedings is pending; (2) the plaintiff loses capacity for litigation conduct, and the determination of a legal representative is pending; (3) an administrative agency, legal person or any other organization, as a party, terminates, and the determination of a successor to its rights and obligations is pending. Termination is possible if no person proceeds with the legal proceedings at the expiry of 90

[959] *Liang Fengyun* 2015, 324; *Xin Chunying* 2015, 154; *Ying Songnian* 2015 a, 186.
[960] *Liang Fengyun* 2015, 325-327.
[961] Ibid., 321, 323; *Xin Chunying* 2015, 153.

days after the suspension of the legal proceedings, according to the second paragraph of Art. 88 of the 2017 SPC Interpretation. Secondly, the court can issue a judgment by default for both parties according to Art. 79 of the 2017 SPC Interpretation. Nonetheless, the judge shall decide the case considering whether there are third parties affected by the dispute, and whether the legality of the impugned administrative action is the sole objective of the lawsuit.[962] The ALL of 2014 does not acknowledge summoning the defendant agency by force, unlike Art. 109 of the Civil Procedure Law. The CPL stipulates a summons by force for the defendant who the court has summoned twice without complying. The ALL does not provide any legal basis for this. In administrative litigation, the responsible person of the administrative agency who must appear in court is not necessarily the person who enforced the impugned administrative action. Moreover, it is difficult to use compulsory measures against the administrative agency, being a state organ, or its employees.[963]

2. Violations during the trial procedure

Whereas Art. 58 of the ALL of 2014 refers to misconduct that occurred before the lawsuit, Art. 59 of the ALL of 2014 intends to protect the order during the trial and the smooth implementation of the procedure. It defines four sanctions: Firstly, the court can reprimand the person that renders the court hearing impossible. It is not a strict sanction. The collegial bench must agree on the sanction which the court expresses orally to the responsible person. The second sanction is to order the person to sign a personal statement of repentance with which the person also ensures not to repeat obstructing behavior again. Thirdly, the collegial bench can decide to impose a fine which is far stricter than a statement of repentance. The fine shall not exceed 10,000 RMB. Lastly, the panel can decide to detain the person up to 15 days. The judge usually expresses several warnings before they decide to order detention.[964] If the conduct constitutes a crime, the offender shall be subject to criminal liability. The second paragraph of Art. 59 of the ALL of 2014 determines that if an entity such as a social organization or an administrative organ committed such conduct, the person in charge or liable person shall be fined or detained. Moreover, the term "litigation participant" in the first paragraph of Art. 59 of the ALL of 2014 signals a broad understanding because it does not only affect the litigation parties but also the witnesses and experts. The term "other" means people in the area for the audience or journalists.[965] Again, if any of their conduct constitutes a crime, the offender shall

[962] *Liang Fengyun* 2015, 327-328.
[963] Ibid., 329.
[964] Ibid., 332.
[965] *Ying Songnian* 2015 a, 189.

be subject to criminal liability. According to the third paragraph of Art. 59 of the ALL of 2014, the president of the people's court must approve any fine or detention. The party affected by the measure has the right to apply for reconsideration at the court at the next higher level. The pending reconsideration does not suspend the enforcement of the sanction. In addition, Art. 83 of the 2017 SPC Interpretation stipulates that any fine and detention may be applied separately or together but not for the same conduct. If a new conduct renders the procedure impossible, they can impose another fine or detention.

In the first paragraph, Art. 59 enlists the types of conduct that, if committed, allow the court to take the above-mentioned measures: (1) a person refuses to assist or obstructs the investigation and enforcement of the court against their official order; (2) evidence is forged, concealed, or destroyed or false certification materials are provided that obstruct the trial; (3) a person is instigated, bribed or intimidated to commit perjury, a witness is threatened or prevented from testifying, (4) seized, impounded or frozen property is concealed, transferred, sold, destroyed or damaged; (5) the plaintiff is deceived, intimidated to withdraw the case; (6) staff members of the court are obstructed to perform their duties by violence, threat, the court order is disturbed by clamoring, attacking or any other means; (7) a judge or other staff members, litigation participants or any other investigation or enforcement assistant are intimidated, insulted, defamed, framed up, assaulted, attacked or retaliated. In addition to the last two items of Art. 59, the General Office of the CPC Central Committee, and the General Office of the State Council offer special protection for judges who suffer from cadre interference. The Provisions on the Records, Notifications, and Accountability of Leading Cadres' Interference in Judicial Activities and in the Handling of Specific Cases[966] urge judges to collect relevant materials that prove interference by state functionaries in different party, administrative, military, procuratorial organs. These provisions emphasize that courts should exercise their power independently and impartially.

Furthermore, Art. 80 of the 2017 SPC Interpretation underlines in its first paragraph that the plaintiff or appellant can lose their right to make a statement if their behavior in court renders the hearing impossible. The court must warn the offender about the adverse legal consequences in advance. The second paragraph determines that the court continues the process if it deems that an illegal act has been committed, but a party requests withdrawal or the regular process

[966] Provisions of the General Office of the CPC Central Committee and the General Office of the State Council on the Records, Notifications, and Accountability of Leading Cadres' Interference in Judicial Activities and in the Handling of Specific Cases (中共中央办公厅、国务院办公厅印发了《领导干部干预司法活动、插手具体案件处理的记录、通报和责任追究规定》), issued March 18, 2015, available at: http://politics.people.com.cn/n/2015/0331/c1001-26774155.html [November 22, 2023].

leads to a withdrawal of the case. According to the third paragraph of Art. 80 of the 2017 SPC Interpretation, the court can approve a withdrawal request submitted at the end of the court debate unless national, social, or public interest are involved. In general, the plaintiff can request a withdrawal until the court pronounced the judgment according to Art. 143 of the 2017 SPC Interpretation. The court reviews the requests and decides whether to permit it. Collusion in bad faith, by which the parties obstruct the legal procedure or harm the lawful rights and interests of another person, society or the state, is another misconduct which allows the court to enter a ruling to dismiss the parties' complaint or issue a judgment to dismiss the claims and to fine and detain the parties according to the severity of their conduct, according to Art. 82 of the 2017 SPC Interpretation. If any of their conduct constitutes a crime, the offender shall be subject to criminal liability.

3. Misconduct of the responsible person of the administrative agency

Art. 66 of the ALL of 2014 refers to the two types of measures against misconduct of the responsible person of the administrative agency or a liable person during enforcing the administrative action before the plaintiff initiated the lawsuit. For misconduct during trial, Art. 59 of the ALL of 2014 is applicable.[967] According to the first paragraph of Art. 66, the court shall transfer the relevant materials to the supervisory authority or the agency at the next higher level when they discover that the responsible person or any other liable person of the affected administrative agency violated the law or any discipline. If they deem that a crime has been committed, they shall transfer the relevant materials to the public security organ or procuratorate for investigation. The term "violate the law or any discipline"[968] replaced the term "violate the law or political discipline"[969] to broaden the scope, i.e., to include political discipline as well as organizational discipline. Violating organizational discipline means that the staff of an organization refuses to follow orders or to enforce decisions made by the people's court, the reconsideration agency, or the supervisory authority. For instance, in case of fire, flood or environmental pollution, the administrative personnel being in remiss in its duty causing profound consequences for the people receive a sanction according to this paragraph. The same applies to ultra vires and unlawful actions. The ALL of 1989 did not define the term "supervisory authority". Instead, the Supervision Law of 1997 defined the supervisory organ in Art. 2 as an organ that exercises the supervision function on behalf of the people's governments.

[967] *Ying Songnian* 2015 a, 208.
[968] In Chinese: 违法违纪.
[969] In Chinese: 违法政纪.

Consequently, the revision now added the supervisory organs because the law entitles them to supervise administrative conduct.[970]

The second paragraph of Art. 66 of the ALL of 2014 stipulates that the judge may publish the name of the responsible person who refused to appear in court without good reason or who leaves the trial without permission. As the second part of Art. 58 of the ALL of 2014 stipulates that the court can sanction the refusal to appear in court in a judgment of default with which the defendant agency risks a higher chance of losing the trial and paying compensation. Unlike the provisions of the Civil Procedure Law, attending the trial is an obligation in administrative litigation determined in the third paragraph of Art. 3 of the ALL of 2014.[971] Some argued that a judgment by default would be too soft a sanction because it does not necessarily mean that the administrative agency loses the lawsuit. In their view, if sanctions were stricter, it would support the plaintiffs' wish for justice and would comply more with international law. They refer to the German Code of Administrative Court Procedure that determines in Art. 95 that "the court may order a party concerned to attend in person. In the event of non-attendance, it may threaten an administrative fine just as against a witness who did not appear at the questioning hearing […]." Eventually, the Standing Committee added that the court may publish the name of the perpetrator. This intends to serve the people's right to control the executive and to protect their rights and interests. At the same time, the effect of the "naming and shaming" is to render the administrative staff compliant so that they take the obligation to appear in court seriously.[972] This corresponds with Art. 96 of the ALL of 2014 that deals with the measures the court may take if the administrative agency refuses to enforce the ruling, judgment, or mediation agreement. Making a public announcement of non-compliance by the administration is one measure. Moreover, the court can send judicial recommendations to the supervision authority or higher-level authority of the defendant in which it can indicate what disciplinary measures are suitable regarding the person violating the law or discipline. The revised ALL underlined the importance of judicial recommendations solving systemic problems "such as work omission, institutional deficiency, and hidden troubles and risks commonly existing in the relevant entities".[973]

Art. 66 also reveals the relation between administrative litigation and the internal responsibility system of the administration. Administrative litigation serves as a medium that

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[970] *Liang Fengyun* 2015, 369-370.
[971] *Xin Chunying* 2015, 154; *Ying Songnian* 2015 a, 186, 210.
[972] *Liang Fengyun* 2015, 372; *Xin Chunying* 2015, 178; *Ying Songnian* 2015 a, 209.
[973] SPC Notice on strengthening the work of judicial recommendations, supra n. 52, see Section 2, No. 7, item (7) and (8).

channels cases for further investigation. This corresponds to the regulation of internal responsibility as found in other administrative laws: For instance, the first paragraph of Art. 16 of the State Compensation Law stipulates that the organ liable for compensation shall, after making the compensation, charge its functionaries, entrusted organizations or individuals who have been intentional or grossly negligent in the matter, to bear part or the whole of the compensatory expenses. The second paragraph adds that the relevant organ shall take a disciplinary action against a liable person with intent or gross negligence in accordance with the law; and if their action constitutes a crime, they shall bring the offender to justice according to the law. [974] The procedural linkage between administrative litigation and internal responsibility underlines that personal liabilities are distinguished from nominal liabilities of the agency. Whereas in administrative litigation, the administrative agency is the defendant and not the liable person per se, the internal supervision procedure is addressed at the liable person directly.[975]

V. Analysis

This chapter analyzed the ordinary litigation procedure in its technical sequences. The revision refined the procedure and included practical experiences. The reformers' intention was to provide a detailed guideline for conducting the hearing which guarantees a fair and timely trial and a uniform application of the ALL.

1. Public trial

Public trials are important for monitoring both judicial decisions and administrative actions. Such exposure can have a deterrent effect on the administration teaching them how to act according to law in the future. For the judiciary, compulsory publication has two effects. On the one hand, having a public trial strengthens their authority vis-à-vis the administration. But on the other hand, their performance is also object of scrutiny. Although the transparency measures seem to have a positive effect, but in certain scenarios, it might put judges in a dilemma as well. For example, in sensitive disputes where the administration is under a lot of pressure, the administrative organ might try to interfere in the handling of the dispute. In this situation, judges face the expectation of the administration for a favorable result and the expectation of the public for a fair trial and profound legal reasons in the decision. Hence, in such cases, it depends on the professionalism of the judges. A courageous judge would interpret the dispute according to the law no matter what the administration demands, or a judge less

[974] State Compensation Law, supra n. 380.
[975] *Chen Meng* 2016, 156.

experienced and more insecure would try to avoid this conflict of interests by using evasive language and by trying to dismiss the case. Nevertheless, according to the Regulations on Records, Notifications and Accountability of Leading Cadres Interfering in Judicial Activities and Intervening in the Handling of Specific Cases, jointly issued by the General Offices of the CCP's Central Committee and the State Council in 2015, improper interference should be reported to the Political-Legal Committee of the Party Committee and a higher-level judicial organ.[976] Although this regulation shall protect judges, it can still be uncomfortable and shameful to do so.

Judicial transparency is an essential instrument to show how the state protects the lawful rights and interests of the people which, aligned with the ALL's purposes, finds its expression in the public hearing during the trial. The SPC's emphasis on a comprehensively transparent judiciary recently experienced a setback. It remains unknown what effect the SPC's National Court Adjudication Documents Database will have on the accessibility of judgments. It indicates a re-centralization of the SPC and restricted access only for courts. In the future, this lockup means less predictability for plaintiffs and their lawyers when they want to compare their case to the outcomes of similar cases.

2. Standardization of the ALL

The provisions describing the trial procedure are key aspects for re-gaining the people's trust in courts and administrative litigation because they offer predictability and appreciation of the people's rights and interests. The compulsory attendance of the responsible person in court shall be a step towards realizing "justice for the people". Attending the hearing can constitute a good lesson for the official and is a positive signal towards the people whose trust in the rule of law can increase. It can also be an effective means to improve the mutual understanding of the litigation parties. But it might not be appealing for the responsible person to spend more time with solving disputes than with making every-day administrative decisions. Nevertheless, the chance of making a statement is essential for substantively solving the dispute.

In addition, the legislators emphasized that administrative litigation is a serious procedure that all parties must undergo with respect. Rejecting participation or obstructing court

[976] Art. 8, and Art. 9, The General Office of the Central Committee of the Communist Party of China and the General Office of the State Council issued the "Regulations on Records, Notifications and Accountability of Leading Cadres Interfering in Judicial Activities and Intervening in the Handling of Specific Cases" (中共中央办公厅、国务院办公厅印发《领导干部干预司法活动、插手具体案件处理的记录、通报和责任追究规定》), issued March 18, 2015, available at: http://www.gov.cn/guowuyuan/2015-03/30/content_2840521.htm [October 16, 2022].

procedure are now serious violations. This underlines the meaning of the hearing as the centerpiece of the trial. The hearing is an important debate to solve an administrative dispute. Consequently, everyone should attend and participate in it respectfully.

3. Cross-examination of evidence

The cross-examination of evidence is the centerpiece of the hearing giving the parties an active role. The reformers have thoroughly revised the chapter about evidence and extended the former six provisions (Art. 31-36 of the ALL of 1989) to ten. The 2017 SPC Interpretation adds another thirteen provisions from SPC Provisions concerning Administrative Evidence, issued in 2002.[977] The ALL of 2014 and the 2017 SPC Interpretation specify the cross-examination in a coherent way providing a refined definition of illegal evidence to guarantee a standardized hearing which is less prone to errors. However, the effectiveness of the consideration of evidence depends on the interpretation skills of judges. As indicated before, some judges feel uncomfortable with deciding about the nature of a piece of evidence and about excluding illegal evidence. We already came across this hesitation of judges when they must decide about the impairment of neighboring rights as mentioned in Chapter 4. The SPC provides options for consultation which shall support the judges' understanding and interpretation of a dispute.

Overall, these reforms acknowledge how important procedural justice is to solve the dispute in a competent way that satisfies the parties' expectations. Although they do not strengthen the judges' competencies in legal interpretation as such, but they are an essential precondition for substantive review of the administrative action which the next chapter is dedicated to.

[977] SPC Provisions on Administrative Evidence, surpa n. 910, Art. 34-47, 2017 SPC Interpretation.

Chapter 7: Judicial review of administrative actions

This chapter analyzes how judges review the alleged administrative action and asks how the amended ALL structures judicial review of administrative actions. The impugned administrative action belongs to a certain type and has a specific content that the court will review. Formally, the reform extended the scope of acceptable cases that is based on an enumeration. In this context, this chapter highlights the debates and decisions that took place in the background as well as the expectations of legal academia. Legal scholarship supported the revision process with their opinions and ideas and submitted suggestions for the scope of review.

The chapter also explains the review of legality of an administrative action referring to the hierarchy of norms. Laws and regulations are the basis for judicial review. However, normative documents, which are regulatory documents at the bottom of the hierarchy of norms, cause problems because they oftentimes undermine a uniform application of the national laws and affect the people's rights and interests. Hence, this chapter investigates how the revised ALL protects the people's rights and interests. Besides the formal aspects of review, scholars debated during the revision process whether or to what extent the judiciary shall have the right to review the appropriateness of an administrative action. If judges received power for a full substantive review, they could interfere in administrative decision making. This would affect the separation of powers in the state. The chapter concludes with the types of judgements that correspond with the scope of acceptable cases. In the judgment, judges record their final decision regarding the consideration of evidence and facts of the case.

I. Scope of acceptable cases

1. Definition of "administrative action"

Neither the ALL 1990 nor the amended law or the 2000, 2015 or 2017 SPC Interpretations defined the term administrative action[978]. During the reform process, scholars and practitioners discussed the wording of Art. 2 of the ALL of 2014. Art. 2 says that "a citizen, a legal person or any other social organization which deems that *an administrative action* [emphasis added by the author] taken by an administrative agency or any employee thereof infringes upon the lawful rights and interests of the citizen, legal person or any other organization shall have the right to file a complaint with a people's court in accordance with this Law." In the previous Art. 2 the administrative action had the attribute "*concrete*" which

[978] In Chinese: 行政行为.

the revision deleted. It is a core amendment.[979] In 1991, the SPC issued an interpretation of the ALL for trial implementation in which it defined concrete administrative actions.[980] Before the SPC's definition in the trial interpretation, scholars have long debated how to distinguish concrete and abstract administrative actions. For instance, one group of scholars argued that the main points of difference concern whether the addressee of the administrative action was specific or general and whether the actions were effective in a direct and definite way or in an indefinite way.[981] Others said that the main difference lay in whether the action was repeatedly enforceable: Abstract administrative action could be enforced repeatedly whereas concrete administrative actions were constrained to one single time.[982]

In 1989, *JIANG Bixin* had published a study about the problems of administrative litigation in which he defined the term administrative action:[983] "The so-called abstract administrative action refers to the actions of administrative agencies relating to non-specific addressees and non-specific events that will occur in the future. It is opposite to administrative actions that target specific people and events." His understanding had considerate influence on Art. 1 of the SPC's trial interpretation of 1991 that said:

> "Concrete administrative actions" refer to the exercise of administrative functions and powers by state administrative agencies and its personnel, organizations authorized by laws and regulations, organizations or individuals entrusted by administrative agencies; it is directed against specific legal persons or other organizations for specific matters; they are unilateral actions related to the rights and obligations of the citizen, legal person or other organization."

The SPC's final definition was similar to the French and German legal definition.[984] The German Administrative Procedure Act defines an administrative action in Art. 35 as any order, decision or other sovereign measure taken by an authority to regulate an individual case in the sphere of public law. It affects a specific recipient with a direct, external legal effect. According to this definition, administrative actions can have two different contents: It can refer to administrative actions that bestow rights[985] such as licenses, or to administrative actions that constrain rights[986] such as administrative penalties like fines and administrative detention. The SPC obviously followed the German understanding in its trial interpretation in 1991.

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[979] *Liang Fengyun* 2015, 012.
[980] In Chinese: 具体行政行为¸ see: 1991 SPC Interpretation, supra n. 222.
[981] *Ying Songnian* 2015 a, 10.
[982] Ibid.
[983] *JIANG* had been working as an assistant judge at the SPC's administrative division since 1985. See *Ying Songnian* 2015 a, 11. *Ying* refers to *JIANG Bixin (江必新),* Study of the problem of administrative litigation (行政诉讼问题研究), People's Public Security University of China Publication (中国人民公安大学) 1989, 64.
[984] *Bu* 2009, 49.
[985] In Chinese: 行政赋权行为.
[986] In Chinese: 行政限权行为.

Nonetheless, scholars continued their criticism demanding legal standards for differentiating abstract from concrete administrative actions.[987] A group around *LUO Haocai*, *YING Songnian* and *MA Huaide* represented the leading opinion who understood administrative action as any legal action taken by state organs. This framing was broad enough to incorporate abstract and concrete actions but excluded factual and internal actions.[988] Others asked about the essential difference between abstract administrative actions compared to concrete administrative actions. They thought the essential function of the latter lay in a concrete application of actions in real life whereas abstract actions constituted a precondition that defined the abstract relations between the people and the administration.[989]

The second paragraph of Art. 2 of the ALL of 2014 underlines that the scope also includes administrative actions taken by an organization that other laws, regulations or rules empowered. This reveals that the legislators adopted a broad understanding concerning the administrative subjects. It is common that administrative agencies delegate authority to other (social) organizations to arrange duties and to guarantee administrative effectiveness. For instance, Art. 23 of the Administrative License Law and Art. 70 of the Administrative Compulsion Law both stipulate that organizations, which the law or administrative regulations authorize, can conduct administrative actions in their own name within the authorized scope.

Overall, the revised ALL of 2014 does not settle the debate since it does not provide any final definition of "administrative action". Nor does the 2017 SPC Interpretation provide any definition although it uses the term "administrative actions" for 143 times.[990] In the second paragraph of Art. 1 of the 2017 SPC Interpretation, the SPC excludes actions from administrative litigation.[991] Using an exclusion is helpful to approach an understanding of what administrative action means. A characteristic is its externality because it affects others outside the administrative agency. The administrative action, i.e., the decision, is final affecting the

[987] *Ying Songnian* 2015 a, 11-12.
[988] *Wang Wanhua* 2015, 4-5.
[989] Ibid, 5.
[990] *Zhang Zhiyuan*, 2018, 44.
[991] Excluded are (1) actions taken by public security, national security and other authorities as expressly authorized by the Criminal Procedure Law, (2) mediation actions and arbitral actions as specified by the law, (3) administrative guidance actions, (4) repeated disposition actions rejecting the petitions filed by parties against administrative actions, (5) actions taken by an administrative agency without producing external legal effect, (6) preparation, discussion, research, reporting, consultation and other actions of a procedural nature taken by an administrative agency for an administrative action, (7) enforcement actions taken by an administrative agency according to the effective judgment or notice of assistance in enforcement of the people's court unless the administrative agency expands the scope of enforcement or conducts enforcement in violation of the law , (8) hearing reports, law enforcement inspection, urgency of duty fulfillment […], (9) registration, acceptance, assignment, transfer, re-inspection, reexamination, opinions and other actions pertaining to public complaint items, (10) actions having not actual impact on the rights and obligations of the recipients.

rights and duties of the recipient. Although scholars criticize that the framing is unscientific and vague, however, the term remains adaptable.[992] It is obvious that "action" is broad because it includes actions as well as omissions, legal and factual actions, and uni- and bilateral actions.[993]

The SPC was aware of the academic debate and the difficulty of determining the nature of administrative actions. Hence, it had issued a Notice on Regulating the Cause of Action of Administrative Cases in 2004. On January 1, 2021, the SPC's Interim Provisions on the Main Points of Administrative Cases replaced this Notice.[994] Since clear classification standards for administrative actions are still missing, the SPC provides a kind of manual for judges to define the main points of administrative cases. They shall outline the object of the lawsuit, distinguish the nature of the case, prompt the application of the law, and guide the parties to correctly exercise their litigation rights. This is meant to help to be clear about the contents of the lawsuit and the parties' claims. Secondly, it states that at all stages from the filing of a case to the first and second instance and the retrial, the people's court may determine and re-determine the main points of the case based on the defendant administrative actions in the complaint. To specify administrative actions, courts shall apply a three-step method: In a first step, they identify an administrative action as such. In a second step, they name the action corresponding to the legal terms as provided by the laws and regulations.[995] In a third step, the courts specify the action further, for instance, stating the kind of administrative penalty, license or expropriation at hand. The SPC states that the third step is the most sophisticated and should have priority over the other steps. To facilitate the definition in the second and third step, it attached an exemplary list of 140 types of administrative actions distinguished according to their field. For lower-level courts, it surely is useful to identify the type of administrative action that is object of the lawsuit.

2. Acceptable and unacceptable cases

This part introduces the scope of acceptable cases in detail. China relies on the enumeration of acceptable cases for administrative litigation, listed in Art. 12 of the ALL of

[992] *Xin Chunying* 2015, 8; *Zhang Zhiyuan* 2018, 44.
[993] *Wang Wanhua* 2015, 5; *Xin Chunying* 2015, 8.; *Yang Weidong* 2018 a, 72.
[994] Notice of the Supreme People's Court on Issuing the "Interim Provisions on the Main Points of Administrative Cases" (最高人民法院印发《关于行政案件案由的暂行规定》的通知), issued December 7, 2020, in: Fafa (法发) 2020, No. 44. These interim provisions annul the „Notice of the Supreme People's Court on Regulating the Cause of Action of Administrative Cases (最高人民法院关于规范行政案件案由的通知)", issued January 14, 2004, in: Fafa (法发) 2004, No. 2.
[995] The SPC lists the following: such as administrative punishment, administrative compulsory measures, administrative enforcement, administrative licensing, administrative expropriation or expropriation, administrative registration, administrative confirmation, administrative payment, administrative promise, administrative collection, administrative reward, administrative fee, government information disclosure, administrative approval, administrative processing, administrative reconsideration, administrative ruling, administrative agreement, administrative compensation, non-performance of duties, and public interest litigation.

2014. As mentioned above, Art. 2 grants citizens, legal persons or other organizations the right to file a complaint against an administrative action they deem to be infringing upon their lawful rights and interests. Administrative law scholars doubted whether Art. 2 equals a general clause.[996] The interplay between Art. 2 and Art. 12 and 13 of the ALL of 2014 indicates that administrative litigation includes the disputes enlisted but does not limit the acceptance to these listed disputes. Yet, Art. 2 is not a genuine general clause: Although it appears like a general principle of administrative litigation, Art. 12 and 13 of the ALL of 2014 underscore that not all administrative actions are eligible because they define the scope of acceptable and not acceptable cases in a concise way.

In Socialist law countries, following the concept of "administration according to law", Socialist legislators preferred concise enumerations to general clauses. For instance, in the German Democratic Republic (1949-1990) and in Socialist Hungary, the Socialist administrative laws reflected objective requirements of social development. In this context, using an enumeration for defining the scope of action was more dependable and it was easier to adapt the scope to new circumstances and disputes.[997] The Chinese legislators followed this understanding of strictly defined laws.

3. Scope of acceptable cases

Looking at the list of acceptable cases in Art. 12 of the ALL of 2014, it is obvious that the legislators extended the scope of acceptable cases in the revised ALL from eight types of cases to twelve types. Taking a closer look at the scope, the new ALL included the former list of cases, adapted the wording to the new economic and social circumstances and added new types. Item (1) of Art. 12 of the ALL of 2014 deals with administrative punishments, such as detention, suspension or revocation of a license or permit, order of suspension of production and business, confiscation of illegal income or illegal property, a fine or a warning. This corresponds with all the penalties listed in Art. 8 of the Administrative Penalty Law. Item (2) includes compulsory measures such as temporary restriction of the personal freedom of citizens or temporary control of the property of citizens, legal person, or other social organizations according to Art. 2 of the Administrative Compulsion Law. Item (3) refers to administrative actions concerning administrative licenses. In case the administrative agency denies or does not respond to an application within the prescribed period or in case of any other administrative licensing decision, the party concerned can file a complaint. The term "any other administrative

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996 *Ying Songnian* 2015 a, 9-10.
997 *Büchner-Uhder* 1979, 87; *Suermann* 1971, 362-377.

licensing decision" covers various kinds of decisions in the area of administrative licensing, such as granting or changing, continuing, cancelling, or revoking a license or requesting to withdraw a license. Moreover, the people also have the right to receive information from the granting administrative agency. On the one hand, according to Art. 10 of the Administrative License Law, the people's governments above the county level shall establish and perfect the supervisory system for the administrative licenses implemented by administrative organs. On the other hand, Art. 40 stipulates that administrative agencies shall publish the decisions about the approval of administrative licenses, which the general public can consult. The public also has the right to consult supervisory actions, as the second paragraph of Art. 61 of the Administrative Compulsion Law underlines. Moreover, procedural actions, like reporting and informing about a hearing, about supplementary documents or giving explanations can be justifiable when they affect the rights and interests of the applicant in a significant way.[998]

Item (4) of Art. 12 of the ALL of 2014 refers to disputes concerning the ownership or the right to use natural resources. These include land, mineral resources, water, forest, hill, grassland, wasteland, tidal flat and sea area. As *LIANG Fengyun* points out, the government above the county level can grant citizens, legal persons or other social organizations ownership rights or the right to use, except for mineral resources. The corresponding national commissions are in charge of monitoring registration and issuance. When mineral resources are affected, the State Council is responsible for granting ownership or the right to use.[999] In case, the licensee and the responsible administrative agency have a conflict concerning these rights, a court or the relevant administrative organ shall settle the dispute and decide about the right owner or user. But according to the first paragraph of Art. 30 of the ARL, people shall first file a reconsideration request when they deem the administrative agency infringes upon their right of ownership or right to use. This provision caused a lot of debate regarding the required reconsideration procedure before the plaintiff could file a complaint. In 2005, the SPC had already explained that rights of ownership or rights to use could only be confirmed after they were granted.[1000] Since the administration has the special authority to grant ownership or the right to use of natural resources, administrative reconsideration is determined to be the corresponding way to solve disputes. If the people are not satisfied with the reconsideration decision, they can still file a complaint, unless the people's governments of provinces, autonomous regions, and municipalities directly under the central government made the

[998] *Liang Fengyun* 2015, 117.
[999] Ibid., 85.
[1000] *Liang Fengyun* 2015, 91.

reconsideration decision which renders the ruling final, according to the second paragraph of Art. 30 of the ARL.

The fifth item deals with expropriation or requisition or a decision on compensation for expropriation or requisition. Both expropriation and requisition shall serve the common good. Expropriation means that the ownership is transferred to the state whereas requisition means that the land is taken for emergency control in case of floods, earthquakes, firefighting, disease control and state security.[1001] The Constitution stipulates in Art. 10 that the land in the cities is owned by the state, and land in the rural and suburban areas is owned by collectives except for those portions which belong to the state in accordance with the law. According to the third paragraph, the state may, for the public interest, expropriate or take over land for public use, and pay compensation in accordance with the law. In a similar vein, the Civil Code stipulates in Art. 243 that land owned by collectives and buildings and other immovables of organizations or individuals may be expropriated in the interest of the public within the limits of power and under the procedures provided for by laws.[1002] Corresponding to this, the Legislation Law explains in Art. 8 that only a national law is the legitimate legal basis for expropriation and requisition of non-state property. Both the Constitution and the Civil Code refer to special laws such as the Land Administration Law[1003], the Forest Law[1004] and all the other national laws concerning grassland or foreign enterprises that provide more details concerning the expropriation or requisition procedure. Nevertheless, they remain vague whether the compensation decision is independent from the expropriation and requisition decision or whether they constitute an integral part. Some administrative law scholars argue that the compensation decision is always coupled with either the expropriation or requisition decision.[1005] In contrast to this, others point out that the compensation decision is independent.[1006] As Art. 10 of the Constitution determines, there is no compensation without expropriation which is why the expropriation or requisition decision and the compensation

[1001] *Liang Fengyun* 2015, 98-99.
[1002] Civil Code, supra n. 421.
[1003] See Art. 361 and 363 of the Civil Code referring to the Land Administration Law of the People's Republic of China (中华人民共和国土地管理法), adopted at the 16th Session of the Standing Committee of the Sixth National People's Congress on June 25, 1986; revised August 29, 1998; revised August 28, 2004, amended August 26, 2019 (henceforth: Land Administration Law).
[1004] Forest Law of the People's Republic of China (中华人民共和国森林法), passed by the 7th Session of the Standing Committee of the Sixth National People's Congress on September 20, 1984, amended on April 29, 1998, amended August 27, 2009, revised, and adopted at the 15th session of the Standing Committee of the Thirteenth National People's Congress of the People's Republic of China on December 28, 2019 (henceforth: Forest Law).
[1005] *Liang Fengyun* 2015, 100-101.
[1006] Ibid.

decision are interdependent. So, all actions are justiciable in court.[1007] Adding this item to the scope signals particular respect for the people and their property. Beforehand, the administration used to be eager to use eminent domain to converse rural land into urban real estate and benefitted from cautious courts that did not like to accept such lawsuits.[1008]

The sixth item of Art. 12 of the ALL of 2014 deals with administrative performance. This refers to cases in which the administrative agency refuses to perform or fails to respond to an application for the administrative agency to perform its statutory duties and responsibilities in respect of protecting personal rights, property rights, and other lawful rights and interests. The wording underlines that the administration must protect personal and property rights and other lawful rights and interests. Compared to the wording in Art. 11 of the ALL of 1989, the content of the revised item (6) is now broader because it refers to "*other* lawful rights and interests". Similar to item (6), item (12) also guarantees the protection of personal rights, property rights and other lawful rights and interests. Now, the party concerned can file a complaint for any infringement on any personal or property right affected by an administrative action even though Art. 12 of the ALL of 2014 does not list.[1009] During the reform process, the legislators discussed whether it was best to provide a list of rights. But in the end, they agreed that all other rights and interests, such as the right to labor, social insurance, education, and fair competition are all related to personal and property rights. Adding the formulation "other lawful rights and interests" to the second paragraph of Art. 12 completes the scope of acceptable cases.

It is worth noting that the SPC dedicated a number of model cases for the protection of property rights in July 2020.[1010] Referring to the Fourth Plenum of the 18th CCP Central Committee, it emphasizes that protecting property rights is essential for developing Socialist market economy. These ten model cases round off the Opinions of the SPC on Giving Full Play to the Role of Adjudication for Strengthening the Judicial Protection of Property Rights, issued in November 2016.[1011] These Opinions were released as a reaction to the earlier Opinions of the Central Committee and State Council on Improving the Property Rights Protection System and Protecting Property Rights in Accordance with the Law, issued at the beginning of

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[1007] *Liang Fengyun* 2015, 100-101.
[1008] *Zhang, Ginsburg* 2018, 25-26.
[1009] *Liang Fengyun* 2015, 121.
[1010] Supreme People's Court releases model cases of administrative litigation for protection of property rights (最高人民法院发布产权保护行政诉讼典型案例), issued July 27, 2020, available at: http://www.court.gov.cn/zixun-xiangqing-244101.html [December 26, 2023].
[1011] Opinions of the Supreme People's Court on Giving Full Play on the Role of Adjudication for Strengthening the Judicial Protection of Property Rights (最高人民法院关于充分发挥审判职能作用切实加强产权司法保护的意见), issued November 29, 2016, in: Fafa (法发) 2016, No. 27.

November 2016.[1012] The main objective, as stipulated in both of the 2016 Opinions, is to reduce administrative interference with market operations and to create a good business environment. In the preamble of the ten model cases, the SPC states that the equal protection of property rights is not fully established which the various administrative disputes reflect due to administrative enforcement decisions concerning demolition and expropriation.[1013]

In this context, item (7) reads that plaintiffs can file a complaint when an administrative agency has infringed upon the plaintiff's autonomy in business management, upon the rights in the contractual operations on rural land, or rights in operations on rural land. This item corresponds with the list of acceptable requests for administrative reconsideration as determined in Art. 6 of the Administrative Reconsideration Law. The rights in operations on rural land include the rights to own, use and to make profit.[1014] The Law of the People's Republic of China on the Contracting of Rural Land, amended in 2018, also underlines in Art. 9 that the contractor enjoys the land contractual management rights, and can operate it by themselves, or retain the land contracting right, transfer the land management right of its contracted land, and manage it by others after contracting the land.[1015] Art. 17 of the Rural Land Contracting Law adds a detailed list with the rights of the contractor, namely (1) the right to use and benefit from contracted land in accordance with the law, and the right to independently organize production and operation and dispose of products; (2) exchange and transfer of land contractual management rights in accordance with the law; (3) transfer of land management rights in accordance with the law; (4) the right to obtain corresponding compensation in accordance with law where the contracted land is expropriated, requisitioned, or occupied in accordance with the law; (5) other rights stipulated by laws and administrative regulations. In accordance with the Rural Land Contracting Law, item (7) of Art. 12 of the ALL of 2014 permits contractors to file an administrative complaint.

In addition, the newly included item (8) signals that the reformers are aware of the new economic circumstances. It stipulates that an administrative action that abuses administrative

[1012] Opinions of the Central Committee and State Council on Improving the Property Rights Protection System and Protecting Property Rights in Accordance with the Law (中共中央国务院关于完善产权保护制度依法保护产权的意见), issued November 4, 2016, available at: http://www.gov.cn/zhengce/2016-11/27/content_5138533.htm [November 22, 2023] (henceforth: CCPCC and State Council Opinions on Improving Property Rights Protection).
[1013] Supreme People's Court releases model cases of administrative litigation for protection of property rights, supra n. 1010.
[1014] *Liang Fengyun* 2015, 118.
[1015] Law of the People's Republic of China on the Contracting of Rural Land (中华人民共和国农村土地承包法), Order No. 18 of the President, issued August 29, 2002; revised August 27, 2009; revised December 29, 2018; revised December 29, 2018 (henceforth: Rural Land Contracting Law).

power to preclude or restrict competition is justiciable. Abuse of administrative power is different from ultra vires actions because the impugned action does not necessarily transgress administrative authority as stipulated by the law. The agency tries to realize its objectives by inappropriate means such as accepting bribery or using their position for personal gain. Only a small number of cases is revoked because of abuse of power.[1016] Overall, the ALL remains vague about the definition of "abuse of power". For a court, it is difficult to reveal that the person responsible acted for personal gains and to find evidence for it. Usually, the judiciary cannot but respect the decision of the administration.[1017] The Anti-Monopoly Law provides clearer ideas: Corresponding to item (8) of Art. 12 of the ALL of 2014, Art. 8 of the Anti-Monopoly Law prohibits the abuse of administrative powers to eliminate or restrict competition. Based on this regulation, Art. 32 to 37 of the Anti-Monopoly Law list concrete examples for cases in which an administrative agency has abused its power. For instance, Art. 32 refers to forcing, or using a disguised form to force, any entities or individuals to deal, purchase, or use the commodities provided by the business operators designated by an administrative organ or organization. Art. 33 deals with actions that intend to block the inter-region free trading of commodities, such as imposing discriminatory charges or prices; imposing technical requirements or inspection standards on non-local commodities that are different from those on their local counterparts or repeated inspections; adopting the administrative licensing aimed at non-local commodities, so as to restrict the entry of non-local commodities into the local market; setting up barriers or adopting any other means to block either the entry of non-local commodities or the exit of local commodities or any other discriminatory actions. According to Art. 34 of the Anti-Monopoly Law, an administrative agency abuses its power in case it rejects or restricts the participation of non-local business operators in local tendering and bidding activities. The same applies for investments and the establishment of local branches by non-local business operators, as stipulated by Art. 35. Art. 36 prohibits administrative agencies from compelling business operators to engage in monopolistic activities. Art. 37 underlines that administrative agencies must not formulate any discriminatory provisions that would violate the law. The consequences of abuse of power are usually decided through internal ways of supervision. The first paragraph of Art. 51 of the Anti-Monopoly Law stipulates that the superior authority of the agency that abused its powers shall order the agency to make rectification and impose punishments on the responsible persons. The second paragraph of Art. 51 opens the way to administrative litigation: It determines where a law or an

[1016] *Liang Fengyun* 2015, 106.
[1017] Ibid.

administrative regulation provides otherwise for the handling of an administrative organ or organization empowered by law or administrative regulation to administer public affairs that abuses its administrative power to eliminate or restrict competition, such provisions shall prevail.

For example, Guangdong High People's Court heard a case at second instance in July 2018 about the unlawful restriction of compensation.[1018] To solve the backward situation of public transportation, the Shanwei Municipal People's Government formed the "Work Meeting Minutes" on July 27, 2015, and cooperated with Guangdong Yueyun Transportation Co., Ltd. through government approval. The public transportation enterprise should license the city's public transportation operation right and public station land use right to its project company Shanwei Yueyun Vehicles Transportation Co., Ltd. The Shanwei Municipal Government exclusively appointed franchisees in advance, which violated the relevant provisions regarding administrative measures for infrastructure and public utilities franchising. The administrative measures intended that market competition mechanisms should determine who would be the operators. Thus, it was an act of abusing administrative power to exclude existing competitors in the market and the franchise license was determined to be illegal.

Item (9) deals with illegal funds, apportioned expenses or illegally required performance of obligations. Illegally raising funds, illegally apportioning expenses and illegally collecting fees are known as the "three arbitrary actions".[1019] This item corresponds with item (10) of Art. 11 of the revised Administrative Reconsideration Law. Bot the ARL of 2023 and the ALL of 2014 list the three arbitrary actions to underline the special protection from expropriation or requisition and the guarantee of compensation.[1020]

The tenth item is concerned with administrative payment obligations such as consolation money, minimum subsistence, or social benefits according to the law. The guarantee of administrative payments as a social insurance is based on Art. 14, 44 and 45 of the Constitution. Art. 14 stipulates in the fourth paragraph that the state establishes and improves the social security system fitting in with the level of economic development. On these grounds, Art. 44 promulgates that the state and the society ensure the people's livelihood after retirement. In

[1018] Guangdong High People's Court (广东省高级人民法院), Shanwei Municipality's Zhencheng Bus Transportation Co., Ltd. v. Shanwei Municipal Government (汕尾市真诚公共汽车运输有限公司诉汕尾市人民政府案), issued July 27, 2018, Yue Xing Zhong (粤行终) 2016, No. 1455, available at: https://www.gdcourts.gov.cn/caipanwenshuxuandeng/caipanwenshuxuandeng/content/post_1045867.html [January 4, 2023] (henceforth: Shanwei Municipality's Zhencheng Bus Transportation Co., Ltd. v. Shanwei Municipal Government).

[1019] *Ying Songnian* 2015 a, 119; *Xin Chunying* 2015, 41.

[1020] *Liang Fengyun* 2015, 119.

addition, Art. 45 guarantees the right to material assistance from the state and society when people are old, ill, or disabled. The state develops social insurance, social relief, medical and health services. Consolation money is paid when a person dies on public duty or gets disabled due to sickness. Hence, the minimum subsistence or social benefits insurance embody the constitutional right of livelihood.

The catalogue of Art. 12 of the ALL of 2014 newly added item (11) to adapt to the political trend strengthening administrative agreements[1021] between the state and private parties.[1022] The 2017 SPC Interpretation does not provide any details for handling administrative agreements in court, only the 2015 SPC Interpretation provided a basic definition and guidance. In November 2019, the SPC announced its Provisions on Several Issues concerning the Trial of Administrative Agreement Cases.[1023] The 2019 SPC Administrative Agreement Trial Provisions specify the entire trial procedure for disputes concerning administrative agreements which illustrates the government's striving for judicial credibility.[1024] Art. 1 defines administrative agreements as agreements "containing the rights and obligations under the administrative laws which an administrative agency concludes with a citizen, legal person, or any other organization by consultation in order to achieve the goals of government administration or public services." Art. 2 of the 2019 SPC Administrative Agreement Trial Provisions lists six types of agreements that are eligible for administrative litigation.[1025] The enumeration principle corresponds to Art. 12 of the ALL of 2014 and is not exhaustive. An administrative agency qualifies as a defendant for administrative litigation in case it concluded, performed, modified, or terminated the administrative agreement (Art. 4). It also acts as the defendant when it delegated its authority to another organization. According to Art. 5, as plaintiff are qualified (1) a citizen, legal person or other organization whose rights and interests are infringed by the administrative agency's refusal to conclude the agreement or

[1021] In Chinese: 行政协议. An administrative agreement is substantially different from a civil contract in terms of its subject, the purpose, and the content of the contract. The administration enters a contract to realize its administrative duties and to establish, modify or cancel a legal relation. In contrast to this, a civil contract is a voluntary agreement made by parties that are equal in their standing, see: *Liang Fengyun* 2015, 72.
[1022] 18th CCPCC Third Plenum Decision 2013, supra. 725, section 32.
[1023] Provisions of the Supreme People's Court on Several Issues concerning the Trial of Administrative Agreement Cases (最高人民法院关于审理行政协议案件若干问题的规定), issued November 27, 2019, in: Fashi (法释) 2019, No. 17 (henceforth: 2019 SPC Administrative Agreement Trial Provisions).
[1024] *Wang Biao* 2019; *Wu* 2019.
[1025] The types are: (1) government concession agreements; (2) land, building, or other expropriation or requisition agreements; (3) agreements on the assignment of mineral rights or other rights to use state-owned natural resources; (4) government-invested affordable housing leases, sales, or other agreements; (5) public private partnership agreements conforming to Art. 1 of the provisions, and (6) other administrative agreements. Art. 3 of the 2019 SPC Administrative Agreement Trial Provisions determines to exclude agreements concluded between administrative agencies for causes such as business assistance, and labor and personnel agreements concluded between an administrative agency and its employees from the scope of acceptable cases.

whose concluding action infringes the rights and interests of the other party, (2) the usufructuary of expropriated or requisitioned real property or the lessee of a public building that believe that their rights and interests are prejudiced, (3) a citizen, legal person or other organization that believes that the conclusion, performance, modification or termination of the administrative agreement prejudice their lawful rights and interests. *LIU Fei* underscores that the last definition of plaintiff in item (3) is broader than the qualifications mentioned in the first paragraph of Art. 25 of the ALL of 2014. It requires plaintiffs to have an interest in the impugned administrative action.[1026] Here, the simple conviction is sufficient to file a complaint. The people's court does not accept the counterclaim of the defendant agency when it has already accepted the plaintiff's claim (Art. 6). This ban is criticized as a shortcoming among legal scholars and practitioners. It is pointed out that the private party is also likely to breach the agreement.[1027] However, the administrative agency cannot file a complaint for the private party's breach because administrative litigation is a one-way channel privileging the private party to seek judicial review.[1028] The administrative agency can only resort to non-litigation enforcement procedure according to Art. 24 of the 2019 SPC Administrative Agreement Trial Provisions.

With regard to jurisdiction, Art. 7 of the 2019 SPC Administrative Agreement Trial Provisions determines that the people's court at the place related to their dispute, such as the place of the plaintiff, of the defendant, of the performance of the agreement or formation of agreement, shall hear the case. The claims that can be made are also similar to the ones listed in Art. 68 of the 2017 SPC Interpretation.[1029] Usually, the defendant carries the burden of proof, like in a regular administrative litigation trial. In the event, the plaintiffs claim a judgment for voiding or cancelling the agreement, they shall prove the cause. If the dispute deals with a performance of an obligation, the party who is to perform has to bear the burden of proof (Art. 10). The scope of review focuses on the legality, namely on the statutory authority of the defendant, their application of law and compliance with other statutory procedures and any obviously improper action (Art. 11). The scope of review for cases involving administrative agreements is more precise than in Art. 6 of the ALL of 2014 which only refers to legality of the administrative actions. A court shall confirm an administrative agreement as invalid when

[1026] *Liu Fei* 2019.
[1027] *Wang* 2020, 63.
[1028] *Ou* 2020, 117.
[1029] According to Art. 9 of the 2019 SPC Administrative Agreement Trial Provisions, the plaintiff can claim a judgment for (1) the revocation for a modified or cancelled agreement or a confirmation of its illegality, (2) the performance of an obligation, (3) the confirmation of effectiveness of the agreement, (4) the conclusion of an agreement as prescribed by law or as agreed, (5) the nullification or cancellation of an agreement, (6) a payment or indemnity, and (7) any other conclusion, performance, modification, termination of the agreement.

there is a serious and evident violation of law, according to Art. 12 of the 2019 SPC Administrative Agreement Trial Provisions. The second paragraph of Art. 12 allows the court to apply provisions of the civil laws when affected by the violation. If the administrative agency removes the reason the nullity of the agreement before the judgment is issued, the court may confirm the agreement to be valid (paragraph 3 of Art. 12). According to Art. 23, the court may conduct mediation following the principles of voluntariness and legality without risking an impact on national and public interest and the lawful rights and interests of others.

Returning to the list of acceptable cases for administrative litigation, in context of the wording of Art. 2 of the ALL that allows to assume that it is a general clause, item (12) indicates that the list of acceptable cases is not exhaustive because other[1030] infringements of personal rights, property rights or other lawful rights and interests are also eligible. In 2004, the SPC underlined that the terms "etc." or "other" signal that the enumeration is not complete. In the SPC's Circular on Issues concerning Applicable Legal Norms in Administrative Litigation Trials, it determined that general terms such as "etc." and "other" refer to items other than the items listed in the plain text, but which the court should handle similarly to the listed items.[1031]

The second paragraph of Art. 12 of the ALL of 2014 underlines that the court shall accept administrative litigation cases as prescribed by laws and regulations. For instance, a new type of disputes concerns the disclosure of government information. In 2008, the Open Government Information Regulations (henceforth: ROGI)[1032] became effective by the promulgation of the State Council. They give individuals the right to request government information and to challenge a failure in court.[1033] For cases concerning information disclosure, "[t]he Chinese context is in many ways fundamentally different from other countries where freedom of information laws and regulations are currently implemented."[1034] Administrative reforms which focused on a more service-oriented administration in the 1990s and legal experiments with open government information disclosure on the city level were the driving forces which convinced the State Council to take freedom of information more seriously.[1035]

[1030] In Chinese: 等.

[1031] Circular of the Supreme People's Court on Printing and Issuing the Summary of the Symposium on Issues concerning Applicable Legal Norms for the Trial of Administrative Cases (最高人民法院关于印发《关于审理行政案件适用法律规范问题的座谈会纪要》的通知), issued May 18, 2004, in: Fa (法) 2004, No. 96, Section IV (henceforth: SPC's Circular on Issues concerning Applicable Legal Norms in Administrative Litigation Trials).

[1032] ROGI, supra n. 497.

[1033] An investigative report on judicial review of open government information cases in China, by the *Peking University Center for Public Participation Studies and Support*, article published on October 2013, available at: https://law.yale.edu/china-center/resources/open-government-information-china [January 3, 2024].

[1034] *Piotrowski, Zhang, Lin, Yu* 2009, 129.

[1035] *Xiao* 2013, 798-802.

Economic modernization and the intention to combat corruption were minor factors which pushed the local governments' approach for government transparency. The Open Government Information Regulations define justice, fairness and convenience to the people as its major principles.[1036] Its scope of information disclosure is extensive:[1037] Art. 9 to 12 determine which government agencies are supposed to provide information on their own initiative. Besides that, citizens, legal persons, and social organizations can file requests when they believe that their production, livelihood, and scientific and technological research are concerned.[1038] Art. 8 and 14 enlist the exemptions of disclosure. These exemptions remain ambiguous because state secrets and social stability are vague terms which the ROGI does not further define.[1039] Overall, administrative cases of open government information oftentimes reveal the litigants' creativity because such cases can conceal other claims in disputes concerning land takings, property registration to third parties and illegal rural buildings.[1040]

4. Scope of unacceptable cases

Besides the positive enumeration, the ALL bans judicial review in certain cases. Art. 13 of the ALL of 2014 defines the scope of cases that it excludes form judicial review. Firstly, actions such as national defense and foreign affairs are not eligible (item 1). These are state actions that are issued by the State Council, the Central Military Commission, the Ministry of Defense, and the Ministry of Foreign Affairs. The Constitution or the laws of national authorities authorize them to act in the name of the state or to proclaim a state of emergency as authorized by the Constitution, according to the first paragraph of Art. 2 of the 2017 SPC Interpretation. For example, the declaration of state of war by the President with the approval of the NPC and a treaty or agreement signed and approved by the President and the state organs with another state are not justiciable.[1041]

Secondly, judicial review is not possible regarding issues related to administrative regulations, rules, decisions, or orders with general binding force developed and issued by administrative agencies (item 2). The second paragraph of Art. 2 of the 2017 SPC Interpretation defines that these "decisions or orders with general binding force" are regulatory documents that are issued neither against nor in favor of particular targets and which can be used repeatedly. These decisions and orders include the laws and legal interpretations of the NPC, administrative

[1036] Art. 5 ROGI, supra n. 497.
[1037] *Chen* 2018, 206.
[1038] Art. 13 ROGI, supra n. 497.
[1039] *Chen* 2018, 207.
[1040] *Liebman, Roberts, Stern, Wang* 2018, 23.
[1041] *Jiang, Shao* 2015, 023.

regulations, decisions and orders of the State Council, rules, and normative documents below the rules against which a complaint is filed directly.[1042] Since the lower-level administrative rules and normative documents are numerous and useful means for managing local affairs, some reformers wanted them to be part of the scope of acceptable cases. They underlined that many normative documents violate higher-level administrative regulations and laws.[1043] Eventually, the reformers decided not to add normative documents to justiciable administrative actions but instituted an incidental way of reviewing normative documents in Art. 53 of the ALL of 2014. The court can concurrently review normative documents when the plaintiffs request so, filing their complaint against an administrative action. This does not include administrative rules. The court shall review the normative documents, according to Art. 64 of the ALL of 2014.[1044]

Thirdly, decisions of rewards, or punishments for administrative employees or the appointment and removal of employees are not eligible to administrative litigation because they are internal decisions with no effect on society. As the third paragraph of Art. 2 of the 2017 SPC Interpretation underlines, these kinds of decision relate to the rights and obligations of employees as civil servants. The Civil Servant Law provides remedies in case of disputes arising among a civil servant and their administrative authority.[1045]

Lastly, the fourth item of Art. 13 of the ALL excludes administrative actions taken by an administrative agency as a final adjudication according to the law. The fourth paragraph of Art. 2 of the 2017 SPC Interpretation states that "the law" refers to documents by the National People's Congress and its Standing Committee. For instance, Art. 14 of the Administrative Reconsideration Law determines in its last sentence: "The applicant who refuses to accept the administrative reconsideration decision may bring a suit before a people's court; or apply to the State Council for a ruling, and the State Council shall make a final ruling according to the provisions of this Law." The final ruling of the State Council is the highest remedial measure and hence not justiciable.

The SPC incorporated Art. 1 of the 2000 SPC Interpretation and extended the list. Art. 1 of the 2017 SPC Interpretation underlines that an administrative action taken by an administrative agency, or its employee shall be within the scope of acceptable cases when the

[1042] *Jiang, Shao* 2015, 023.
[1043] *Xin Chunying* 2015, 47.
[1044] In the event, it deems them illegal, the court shall not use it to determine the legality of the impugned administrative action. They shall submit judicial recommendations to the administrative agency that developed them. However, the court must not revoke them. Only the administrative agency that developed the normative documents can revoke or correct them. Section II. Scope of review, 3. Incidental review of normative documents will discuss further details.
[1045] *Xin Chunying* 2015, 48.

recipient deems that the alleged action infringes upon their lawful rights and interests. The scope excludes administrative actions concerning security issues as stipulated by the Criminal Procedure Law (item 1). Mediation is not possible because mediation or arbitration are based on the voluntariness of the parties (item 2). Administrative guidance actions are not justiciable because they are not binding (item 3). When parties repeatedly initiated administrative lawsuits, the court rejects the claims because it is a waste of judicial and administrative resources (item 4). The phenomenon of chain complaints and filing similar cases leads to a free wheel of trials. The scholars argue that plaintiffs start filing cases for indiscriminate reasons abusing the broadened scope of acceptable cases.[1046] Moreover, they illustrate that the improved administrative procedure also facilitates the abuse of litigation.[1047] Plaintiffs file complaints for the same subject matter until they are finally satisfied while wasting judicial and administrative resources. The responsible official who is supposed to attend the hearing usually refuses to appear in court because they consider it meaningless. To break through such chain complaints, they suggest focusing more on substantive resolution of the disputes rather than seeking procedural justice as well as on the diversification of litigation fees and on the investigative rights of judges that would deter repeating complainants.

Internal actions without an external legal effect are also not eligible to administrative litigation (item 5), so are all preparatory actions for making a final decision including discussions, research, reports to a higher or lower level and consultations (item 6). Item 7 does not allow final judgments to be object of another lawsuit unless the administrative enforcement organ illegally expands the scope of enforcement. When an administrative agency acts in its authority as a supervisory organ, the hearing reports, law enforcement inspections and urgent fulfillment of duties are excluded from administrative litigation (item 8). Administrative actions that the administrative agency took in context of petitions such as registration, acceptance, assignment, transfer, re-inspection, re-examination of opinions (item 9), are not justiciable because they are not formal administrative actions. Lastly, actions that have no actual impact on the rights and obligations of citizens, legal persons or other organizations are also not object of review. Thus, the SPC determines that administrative litigation excludes informal and supervisory actions because they do not constitute obligations for the counterparty.[1048]

[1046] *Cai, Hua, Zhao* 2019.
[1047] Ibid.
[1048] *Rotermund* 2018, 280.

II. Review of legality

Both the ALL of 1989 and the revision determine that courts shall review the formal legality of an administrative action.[1049] In general, they cannot review the merits or appropriateness of administrative actions.[1050] The review of legality includes adequate or sufficient evidence, proper application of laws and regulations, procedural compliance, acting within authority, and proper use of official power.[1051]

This section looks at the legal basis on which the administration grounds its administrative action. It illustrates the hierarchy of norms and the difference between rules and normative documents. Usually, the courts must decide based on the laws, administrative regulations, and local regulations. But for a smooth operation and an effective enforcement of the laws, local governments at all levels, provincial governments, and the central government issue internal, and even informal normative documents.[1052] Normative documents are also called regulatory documents and are at the bottom of the hierarchy of norms.[1053] They are necessary for administrative operations. But the people cannot seek redress against an illegal normative document at court because they are internal documents not eligible to administrative litigation. This is a chaotic situation which could become a threat to the realization of the "Socialist rule of law" and of an "administration according to the law". Therefore, the revised ALL offers a cautious solution to tackle the problem. People can request the court to incidentally review a normative document on which the administrative action is based. A deficit of this course of reform, which this chapter will highlight, is that courts cannot proactively start reviewing normative documents but depend on the request of plaintiffs. Hence, many rules and regulations that contradict national laws are still in force. The reform of the ALL did not offer stronger means for judges to guarantee an administration according to the law. That is why this section asks: How can a court review a normative document? What impact does it have for establishing a Socialist rule of law?

[1049] Art. 5 in connection with Art. 54 of the ALL of 1989 and Art. 6 in connection with Art. 70 of the ALL of 2014.

[1050] *Jianfu Chen* 2008, 248.

[1051] See paragraph 2 of Art. 54 of the ALL of 1989 and item 1 to 5 of Art. 70 of the ALL of 2014. For item 6 of Art. 70 see section III. Review of appropriateness.

[1052] *Wei, Jie, Wiesner* 2019, 41. Normative documents exist in sheer number which makes it difficult to find statistics about them.

[1053] In Chinese: 规范性文件. Since there is no unform issuance and no effective monitoring for their issuance, many normative documents are in conflict with laws and higher regulations. See: Bringing the Unified Legislation of Normative Documents into the Legislation Plan of the State Council (将规范性文件统一立法纳入国务院立法计划), issued July 20, 2021, by the Ministry of Justice (中华人民共和国司法部), available at: http://www.moj.gov.cn/pub/sfbgw/fzgz/fzgzxzlf/fzgzlfgz/202107/t20210720_431795.html [October 15, 2023] (henceforth: MOJ's Suggestions for the State Council's Legislation Plan regarding Unified Legislation of Normative Documents).

1. Hierarchy of norms

Art. 63 of the ALL of 2014 defines the basis for the review in administrative litigation in the first paragraph: "The people's courts shall try administrative cases based on laws, administrative regulations, and local regulations. Local regulations shall be applicable to administrative cases occurring within the respective administrative regions. For administrative cases in an ethnic autonomous region, the people's courts shall also try such cases based on the regulation of autonomy and the separate regulations of the ethnic autonomous region." Art. 63 implies that the Constitution is excluded from being a basis of review[1054] and evidently reflects the hierarchy of norms which is determined by the Legislation Law.[1055] Art. 88 and 89 of the Legislation Law stipulate that the effect of laws[1056] shall be higher than that of administrative regulations[1057], local regulations[1058] and rules[1059]; the effect of administrative regulations shall be higher than that of local regulations and rules. Laws are issued by the National People's Congress and its Standing Committee, whereas the State Council is empowered to promulgate administrative regulations, its departments and the people's bank are allowed to issue rules.[1060] Hence, rules specify how to implement higher-level laws and orders of the State Council.[1061] In its Ordinance concerning the procedures for the formulation of administrative regulations, the State Council stipulates that administrative regulations shall be entitled as ordinances[1062], rules[1063], and measures.[1064] Above all these norms is the Constitution.[1065]

A controversial issue is the meaning of normative documents[1066]. The Legislation Law mentions normative documents only once in paragraph 3 of Art. 99 stating: "The relevant specialized committees and the operating divisions of the Standing Committee may, on their own initiative, review the normative documents submitted for examination." This wording hints

1054 *Liu Fei* 2003, 119.
1055 Legislation Law, supra n. 195.
1056 In Chinese: 法律.
1057 In Chinese: 行政法规.
1058 In Chinese: 地方性法规.
1059 In Chinese: 规章.
1060 Art. 7, 65, 72, 80, Legislation Law, supra n. 195.
1061 *Xin Chunying* 2015, 170.
1062 In Chinese: 条例.
1063 In Chinese: 规定.
1064 In Chinese: 办法; see: Decision of the State Council concerning the Revision of the "Ordinance on the Procedures for the Formulation of Administrative Regulations" (国务院关于修改〈行政法规制定程序条例〉的决定》修订), issued January 1, 2002; revised December 12, 2017, by the Order of the State Council No. 694 (中华人民共和国国务院令第 694 号).
1065 Art. 87, Legislation Law, supra n. 195.
1066 In Chinese: 规范性文件.

to a broad range of legal documents.[1067] In effect, in a broader sense, a normative document is understood as the general term for laws, administrative regulations and rules, ordinances, decisions and orders with general binding force.[1068] In a narrow sense, normative documents refer to documents as stipulated in item 2 of Art. 13 of the 2017 SPC Interpretation (formerly item 2 of Art. 2 of the 2000 SPC Interpretation). It states that "decisions and orders with general binding force" refer to normative documents that the administrative agency issues neither against nor in favor of particular targets and that it can repeat. So, in their narrow sense, these normative documents are decisions, orders or norms formulated within the limits of authority by the departments, ministries, and commissions of the State Council. They are abstract and explanatory in nature and do not constitute a legal source which courts could review because as a precondition, an administrative action at a special place or by a certain agency must be implemented.[1069] In a similar vein, under "other normative documents", the SPC's Circular of 2004 lists "the interpretations for specific application of laws, regulations or rules as made by departments under the State Council, people's government or their competent departments of provinces, municipalities, autonomous regions and major municipalities; decisions, orders or other legal documents with general binding force as formulated and promulgated by people's governments at and above the county level and their competent departments."[1070] Such normative documents are usually called, for instance, order, decision, announcement, circular, proposal, report, request for instructions, official reply to the subordinate agency, opinion, definition, and conference summary. However, the titles of official documents are not used uniformly, which is why their contents are decisive to determine whether they possess internal or external effectiveness or have an abstract or concrete issue.[1071]

The first paragraph of Art. 53 of the ALL of 2014 stipulates that a plaintiff can file a complaint and concurrently request the court to review the normative document underlying the administrative action because the plaintiff deems it illegal. The second paragraph of Art. 53 determines that administrative rules[1072] are higher than normative documents and not included in the legal definition of the term. The explicit exclusion refers to the narrow sense: only the normative documents *below* administrative regulations and rules are eligible for judicial review, but the review of administrative regulations and rules is the prerogative of the

[1067] *Xin Chunying* 2015, 139.
[1068] *Wen* 2015, 10.
[1069] *Wu* 2003, 37; *Ying Songnian* 2015 a, 201; *Xin Chunying* 2015, 138-139.
[1070] Circular of the Supreme People's Court on printing and issuing the summary of the symposium on issues concerning applicable legal norms for the trial of administrative cases, supra n. 1031.
[1071] *Wen* 2015, 12.
[1072] In Chinese: 规章.

administration.[1073] For higher-level administrative rules and regulations there are other channels of monitoring: In 2001, the State Council issued its Ordinance on the archivist filing of regulations and government rules.[1074] Art. 9 and 10 of the Ordinance illustrate the review procedure which can be initiated internally by a department or externally by another state organ, enterprise, a public institution or citizens (Art. 9). The legislative affairs organ of the State Council studies the suggestion and puts forward opinions about how to deal with the regulation or government rule and deals with them according to prescribed procedures. Content of review are the scope of authority, conflicts or inconsistencies with other laws and regulations and their appropriateness (Art. 10). Art. 13 stipulates that the NPC shall deal with any local regulation that is in contradiction with any administrative regulation.

In practice, problems concerning the responsible agency and the procedure of drafting and recording rules as well as problems with controlling the legality of normative documents below the rank of administrative rules were and still are wide-ranging.[1075] As a consequence, the State Council has published a number of decisions about the promotion of an administration according to law since 1999.[1076] Particularly, the Outline on Comprehensively Promoting Administration according to Law which the State Council promulgated in 2004 refers to handling normative documents (in their narrow sense): in the drafting of normative documents, the administration shall consider public opinions and suggestions by holding meetings, hearings or discussions. After finalization, they must publish the content that must be clear, concrete, and realistic. They must repeal any normative document that is out-of-date. Regular evaluation shall ensure that the enforcement is correct.[1077] In addition, the State Council's Opinions on Strengthening the Building of Rule of Law Government published in 2010, pointed out that normative documents cannot be the basis for an administrative license, administrative penalty,

[1073] *Liang Fengyun* 2015, 358-360; *Wen* 2015, 10; *Xin Chunying*2015, 139.
[1074] Ordinance on the Archivist Filing of Regulations and Government Rules《法规规章备案条例》, issued December 14, 2001, by the Order of the State Council No. 337 (中华人民共和国国务院令第 337 号).
[1075] *Teng, Cui* 2015, 56.
[1076] Decision of the State Council on Promoting Administration according to Law (国务院关于全面推进依法行政的决定), issued November 8, 1999, in: Guo Fa (国发) No. 23; Notice of the State Council about the Outline concerning Comprehensively Pushing Forward the Implementation of an Administration according to Law (国务院关于全面推进依法行政实施纲要的通知), issued March 22, 2004, in: Guofa (国发) 2004, No. 10; Decision of the State Council on Strengthening the Administration According to Law at the City and County Level (国务院关于加强市县政府依法行政的决定), issued June 18, 2008, in: Guo Fa (国发) No. 17; Opinions of the State Council concerning the Strengthening of Building a Rule of Law Government (国务院关于加强法治政府建设的意见) issued October 10, 2010, in: Guo Fa (国发) 2010, No. 33 (henceforth: Opinions on Strengthening the Building of a Rule of Law Government 2010); Implementation Outline for Setting up a Rule of Law Government (2015-2020) (法治政府建设实施纲要), issued December 23, 2015, available at: http://www.gov.cn/xinwen/2015-12/28/content_5028323.htm [January 3, 2024] (henceforth: Outline on Promoting Administration according to Law 2015).
[1077] Art. 16, 18, Outline on Promoting Administration according to Law 2015, supra n. 1076.

and for administrative compulsory measures. They must not increase the duties of citizens, legal persons, or other organizations. The Opinions on Strengthening the Building of a Rule of Law Government 2010 emphasized the principle of publicity. If normative documents affect people's rights and interests, they need to go through a process of legality review by the respective legislative agencies and by deliberations of the local people's congress. Moreover, a unified system for registration, serial numbers, and publication of normative documents was demanded.[1078] As *SHEN Kui* recognized, the State Council's opinions and suggestions made other ministries, provincial and municipal governments more sensitive on the matter so that they issued their own regulations on handling normative documents.[1079] Although the State Council's numerous regulations about the handling of normative documents clarify many issues, they do not bind the agencies in applying normative documents uniformly.

2. The meaning of "referring to rules"

The second paragraph of the Art. 63 of the ALL of 2014 only stipulates that the court "may refer[1080] to administrative rules". In the ALL of 1989, the corresponding first paragraph of Art. 53 used to be more elaborate and is worth quoting:

> "People's Courts hearing administrative cases *shall refer to rules* enacted and promulgated by ministries and commissions under the State Council based on the law and administrative statutes and regulations, decisions and orders of the State Council, and rules based on the law and administrative statutes and regulations of the State Council enacted and promulgated by the people's governments of the provinces, autonomous regions, and centrally administered cities; […]."

LUO Haocai understands "reference" as deliberation and evaluation of the legality of the underlying rules.[1081] For him, this was the precondition for deciding whether the rules are the basis for the review of the impugned administrative action. Similarly, *YING Songnian* explained that "referring to an administrative rule" allowed some leeway for the courts because it was at their disposal to decide whether they applied the rule in one case and declined it in another.[1082] In addition, some scholars stated that rules supplement the laws and regulations. Therefore, they demanded that the people's court, when handling any case, shall conduct a review of the rules first. If the rules are in accordance with the laws and administrative regulations, they can be a basis for reviewing the legality of the impugned administrative action. Another group of scholars wanted to provide the courts with a right to choose whether to apply

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[1078] Art. 9, Opinions on Strengthening the Building of a Rule of Law Government 2010, supra n. 1076.
[1079] *Shen* 2018, 87.
[1080] In Chinese: 参照.
[1081] *Yao* 2008.
[1082] *Yao* 2008, 54.

rules or not. It should be completely at the court's disposal to apply rules if they find them to be lawful.[1083] Art. 52 of the ALL of 1989 did not indicate such a disposal for courts and only determined that the people's court shall take the law, administrative rules and regulations and local regulations as the criteria for handling. Art. 53 of the ALL of 1989 defined that courts could only refer to those rules that were "based on the law and administrative statutes and regulations, decisions and orders of the State Council". Hence, the application of administrative rules for determining the legality of the administrative action is restricted to lawful ones without any leeway for courts.

The SPC's Circular on Issues concerning Applicable Legal Norms in Administrative Litigation Trials issued in 2004, reads that "according to related provisions of the Administrative Litigation Law and the Legislation Law, people's courts shall try administrative cases in compliance with laws, administrative regulations, local regulations, regulations on the exercise of autonomy, specific regulations, and with referral to rules. When referring to such rules, *whether or not the provisions thereof are legal and valid shall be judged, and those lawful and effective rules shall be applied* [emphasis added by the author]."[1084] Hence, the SPC underlines that the reference to rules for the review of the challenged administrative action only takes place when they do not contradict any other higher norm. In other words, at first, the court must find these rules to be lawful and effective themselves. Courts do not refer to unlawful rules. The 2004 Circular of the SPC also offers a solution in case of conflicts between legal norms: "If there are conflicts arising from different legal consequences specified by two or more legal norms in respect of the same matter, […] a higher-level law shall prevail over a lower-level law, lex posterior derogat legi priori, and a special law shall prevail over a general law according to provisions of the Legislation Law."[1085]

In Guiding Case No. 5, the SPC dealt with a conflict of norms. The Luwei (Fujian) Salt Industry Import and Export Co., Ltd. Suzhou Branch sued the Suzhou Salt Administration Bureau of Jiangsu Province for an administrative penalty.[1086] The Suzhou Salt Administration

[1083] *Wu* 2003, 39.
[1084] SPC's Circular on Issues concerning Applicable Legal Norms in Administrative Litigation Trials, supra n. 1031.
[1085] Ibid.
[1086] Jinchang District People's Court of Suzhou City (苏州市金阊区人民法院), Luwei (Fujian) Salt Industry Import and Export Co., Ltd. Suzhou Branch v. Suzhou Salt Administration Bureau of Jiangsu Province Salt Industry, administrative penalty case (鲁潍（福建）盐业进出口有限公司苏州分公司诉江苏省苏州市盐务管理局盐业行政处罚案), issued April 9, 2012, available at: http://www.court.gov.cn/fabu-xiangqing-4218.html [December 26, 2023] (henceforth: Luwei (Fujian) Salt Industry Import and Export Co., Ltd. Suzhou Branch v. Suzhou Salt Administration Bureau). The SPC's adjudication committee discussed and accepted it as Guiding Case No. 5 on April 9, 2012 (最高人民法院审判委员会讨论通过 2012 年 4 月 9 日发布).

Bureau issued a penalty because in 2007, the Luwei Company had purchased industrial salt without permission of the administrative authority in charge of the salt industry. As a consequence, in 2009, the administration confiscated the salt and issued an administrative fine. The company's reconsideration request to revoke the penalty was unsuccessful. Thereupon, the company filed a complaint with Suzhou's Jinchang District People's Court which supported the company's claims. The Salt Administration Bureau had argued that their penalties were effective because of the principle of non-retroactivity according to Art. 93 of the Legislation Law. Non-retroactivity[1087] means that a new law is only applied to cases that occur after the issuance of that law and not to cases that occurred before its enactment. The Legislation Law recognizes that a new law can be applied retroactively when it aims at the better protection of the rights and interests of citizens, legal persons, and other organizations. However, according to the court's judgement, the relevant provisions in the Jiangsu Salt Industry Implementation Measures violated not only the Provisions of the State Council on Prohibiting Regional Blockades in Market Economic Activities,[1088] but also the Administrative License Law and the Law on Administrative Penalty. The judges cited Art. 64 of the Administrative Penalty Law reading: "Provisions regarding administrative penalty in the regulations and rules, enacted before the promulgation of this Law, which do not comply with the provisions of this Law shall be amended in accordance with the provisions of this Law from the date of promulgation of this Law, and such amendment shall be finished before December 31, 1997." The second paragraph of Art. 83 of the Administrative License Law stipulates that "[…] the legislative organs shall clean up the relevant regulations prior to the implementation of the present Law; those inconsistent with the present Law shall be abolished from the day when it is implemented." The court recognized that the Salt Administration Bureau in Suzhou had exceeded its assigned authority and ignored the hierarchy of laws as determined in Art. 88 of the revised Legislation Law. Its decision was in conflict with higher-level regulations and laws.[1089]

The guiding case is a good example for the procedure of "referring to rules" as stipulated in Art. 63 of the ALL of 2014. First of all, the court shall check the consistency of the administrative rules at dispute and shall look for any conflict with other regulations and laws.

[1087] In Chinese: 不溯及既往.

[1088] Provisions of the State Council on Prohibiting Regional Blockades in Market Economic Activities (国务院关于禁止在市场经济活动中实行地区封锁的规定), Order No. 303 of the State Council, issued April 21, 2001, revised January 8, 2011.

[1089] Luwei (Fujian) Salt Industry Import and Export Co., Ltd. Suzhou Branch v. Suzhou Salt Administration Bureau, supra n. 1086.

If they find a conflict, they shall decide not to take the norm as the basis for judging the legality of the impugned administrative action. But the courts cannot revoke the administrative rules.[1090]

3. Incidental review of normative documents

In addition to Art. 53 of the ALL of 2014, Art. 64 determines that after review, if the court deems a normative document to be illegal, the court shall not use the normative document to determine the legality of the impugned administrative action. In such a case, it shall submit so-called disposition recommendations[1091] to the authority of issuance.[1092] In accordance with the second paragraph of Art. 53, formal norms above and including administrative rules are excluded from the review.[1093] Art. 145 of the 2017 SPC Interpretation[1094] underlines that the court that is responsible for hearing an administrative case shall concurrently review a normative document when the plaintiff requests so. But for reasons of convenience, the plaintiff who files a complaint requesting the review of a normative document shall do so before the hearing. If they have a good reason, they can request it during the stage of cross-examining evidence (Art. 146). In case the court finds that a normative document is illegal, it shall hear the opinion of the responsible administrative authority (Art. 147). The administrative agency shall be allowed to make a statement in court. If they fail to either make a statement or to submit relevant documents, the court will review the normative document (paragraph 3, Art. 147).

The first paragraph of Art. 148 of 2017 SPC Interpretation specifies the scope of review: The court shall deem a normative document to be legal when the court finds that the agency issuing the normative document acted within its statutory authority and followed statutory procedure, such as the provisions it is based on or relating to. The second paragraph of Art. 148 offers a concise definition of the illegality of a normative document. A normative document is illegal when (1) it is exceeds its statutory power or its authorization which is granted by the law, regulations and rules; (2) it contradicts the provisions of any law, regulations, rules or other higher-level laws; (3) it increases the obligations or derogates the lawful rights and interests of the counterparty without a basis in the law, regulations and rules; (4) it disregards the statutory approval procedure, does not publicly announce it, or seriously violates the prescribed procedure, and (5) it otherwise violates the law, regulations and rules.

[1090] *Zhang Jiansheng* 2013 a, 78; *Liang Fengyun* 2015, 363; *Wu* 2003, 40.
[1091] In Chinese: 处理建议.
[1092] Art. 149 of the 2017 SPC Interpretation.
[1093] *Wei, Jie, Wiesner* 2019, 41; *Ying Songnian* 2015 a, 203.
[1094] The articles originate from Art. 20 and 21 of the 2015 SPC Interpretation.

Art. 149 clarifies that the court shall only use the normative document as a basis for determining the legality of the impugned administrative action if they deem it to be legal. But if they conclude after review that the normative document is illegal, it shall explain the reasons in the judgment and shall submit recommendations to the responsible administrative agency. It can send copies to the people's government at the level of the defendant administrative agency, to the agency at the next higher level, to the supervisory authority or to the agency recording the normative document. The court shall send its recommendations to the responsible agency within three months after the judgment was issued. If there are several agencies involved in the issuance of the normative document, the court may send its recommendations to the principal agency or the common agency at the next higher level. The receiving administrative agency shall make a written reply within 60 days from the date of receipt. If there is an emergency, the court can urge the responsible agency to stop implementing the normative document (Art. 149). If the court finds that the normative document is illegal, it shall submit the effective judgment to the court at the next-higher level for recordation. If a department of the State Council or a provincial administrative agency are affected, the court shall send the recommendations to the SPC for recordation (Art. 150). If the president of a people's court at any level discovers that an effective judgment finds a normative document to be legal although it is not, and they deem that retrial is necessary, they shall report to the judicial committee for discussion. If the SPC or a higher-level people's court discover the same, the SPC or the higher-level people's court shall conduct retrial or appoint a lower-level court to do so.

In 2009, the SPC underlined in its Provisions on Citing Laws, Regulations and other Normative Legal Documents in Judgment Documents that a people's court cannot determine the validity of the normative document under review in the judgment or ruling (Art. 7).[1095] For unlawful normative documents, courts shall prepare their disposition recommendations. However, Art. 5 of the Provisions on Citing Laws, Regulations and other Normative Legal Documents in Judgment Documents outlines that court must cite legal documents in judgments or rulings in administrative litigation according to the hierarchy starting with laws, legislative interpretations[1096] of the laws, administrative regulations, or judicial interpretations. Local

[1095] Provisions of the Supreme People's Court on Citing Laws, Regulations, and other Normative Legal Documents in Judgment Documents (最高人民法院关于裁判文书引用法律、法规等规范性法律文的规定), issued October 26, 2009, in: Fashi (法释) 2009, No. 14.
[1096] In Chinese: 立法解释.

regulations, administrative interpretations[1097] by the State Council or its authorized departments as well as rules.

In contrast to this, the SPC's Circular on Issues concerning Applicable Legal Norms in Administrative Litigation Trials had instructed courts that after the review of a normative document on which the specific administrative action is based, the court deems it to be legal, effective, reasonable, and appropriate, the court may comment on and recognize the validity in the judgment.[1098] But it was at the court's discretion to decide whether to comment on this in the judgment.

The review of normative documents is restricted because the normative document cannot be the sole object of a lawsuit. Courts can only review them incidentally in the course of handling a dispute concerning an administrative action, as the SPC pointed out in its list of model administrative litigation cases dealing with incidental review of normative documents.[1099] The compiled model cases reveal an educational character teaching administrative organs about the standards of lawful normative documents. This is an essential benefit with regard to the high number of normative documents issued. For example, between 2016 and 2018, almost 4,000 litigation cases involved the incidental review of a normative document.[1100]

The first case involving an incidental review of a normative document occurred in 2015.[1101] The Huayuan Pharmaceutical Co., Ltd. sued the Trademark Office of the State Administration for Industry and Commerce at the Beijing Intellectual Property Court. The company had applied for trademark registration in 2013. On the same day, two other companies applied for a similar trademark. The Trademark Office had stipulated that in the transition period for the establishment of registration applications for new service, items will be "considered in the same day application" from January 1 to January 31, 2013. Therefore, the Trademark Office informed the applicants that they have to negotiate about the trademarks.

[1097] In Chinese: 行政解释.

[1098] SPC's Circular on Issues concerning Applicable Legal Norms in Administrative Litigation Trials, supra n. 1031.

[1099] Supreme People's Court issued model cases involving incidental review of normative documents (最高法发布行政诉讼附带审查规范性文件典型案例), October 30, 2018, available at: https://www.chinacourt.org/article/detail/2018/10/id/3551915.shtml [December 26, 2023].

[1100] Ibid.

[1101] Beijing Intellectual Property Court (北京知识产权法院), Anhui Huayua v. Trademark Office of the State Administration for Industry and Commerce (安徽华源医药股份有限公司诉国家工商行政管理总局商标局案), issued September 17, 2015, in: Jing Zhi Xing Chu Zi No. 177 (京知行初字第 177 号), available at: https://bjgy.bjcourt.gov.cn/article/detail/2019/04/id/3850563.shtml [December 26, 2023] (henceforth: Anhui Huayua v. Trademark Office of the State Administration for Industry and Commerce).

Huayuan Company refused to accept this notice and initiated an administrative lawsuit with the Beijing Intellectual Property Court, requesting to revoke the Notice of Negotiation on the Same Day Application for Trademark Registration made by the Trademark Office, and order the defendant to make a new decision. The court conducted incidental review and confirmed the conflict with Art. 30 of the Trademark Law and revoked the notice.[1102] In the second instance, the court confirmed the illegality of the notice but did not revoke the administrative action because it believed it would cause harm to public interest. The court only confirmed that the administrative action was illegal, but it did not revoke it to ensure the interests of the majority of trademark applicants and thus maintain the stability of the social order.[1103] Obviously, the judges at first instance were more progressive in their legal interpretation than the judges at the second instance.

Overall, since the review of normative documents is incidental, courts cannot proactively initiate the review of a normative document which they find to be illegal, nor can a normative document be the sole content of an administrative litigation procedure.[1104] But sending judicial recommendations to the administration giving advice on the content and whether to revoke, amend or suspend the normative documents serves as an appropriate solution to avoid the application of the normative documents in other cases and allows the administration to learn how to enhance it. In the 14th Five-Year Plan Period (2021-2025), the State Council and the CCP Central Committee jointly outlined that the supervision and management of the formulation of administrative normative documents needs strengthening, and the formulation of administrative normative documents must be in accordance with the law. The State Council and the CCP Central Committee prohibit issuing documents beyond authority. The number of documents issued and the procedures for issuing need to be refined as well.[1105] The commitment

[1102] Art. 30 stipulates: Where a trademark, for the registration of which an application is made, that does not conform to the relevant provisions of this Law or that is identical with or similar to the trademark already registered by another person or is given preliminary examination and approval for use on the same kind of goods or similar goods, the trademark office shall reject the application and shall not announce that trademark, Trademark Law, supra n. 804.
[1103] *Wang Jing* 2021, 361.
[1104] *Wang Wanhua* 2015, 11. In contrast to this, in Germany, ordinary courts can initiate the review of a valid, formal federal law or law of a Bundesland (state), which they are convinced to be unconstitutional, by submitting it to the Federal Constitutional Court. In a preliminary review procedure, the ordinary courts can review non-parliamentary provisions, such as ordinances, and can overturn them as far as their control function extends. When courts overturn an unlawful norm, they must apply alternative or more general norms instead. Hence, in Germany ordinary courts possess a *destructive* power as an element of the rule of law principle in Germany that binds the legislation as well. The constitutionality of laws and norms is anchored in the German Basic Law. However, courts do not possess the *constructive* power of issuing laws, see *Michael* 2012, 756-757.
[1105] Implementation Outline for Building a Government according to Law (2021-2025), surpa n. 685.

of the State Council and the CCP seems promising, but so far these announcements are still very vague, and it remains unknown what specific measures the two decision-makers will take.

III. Review of appropriateness

In 1992, Pitman B. Potter had pointed out: "The ALL's focus on judicial review of the legality rather than the propriety of administrative decisions suggests that the law's major purpose is to promote compliance by administrative agencies with substantive law, rather than to establish procedural safeguards for persons subject to administrative decision making."[1106] When people wanted to have the appropriateness of an administrative action reviewed, they would file a request for administrative reconsideration.[1107]

After the revision, in general, courts still do not have the possibility to review whether the administrative action is inappropriate[1108]. However, the revision of the ALL opened the standard of review regarding evidently inappropriate administrative action in item 6 of Art. 70 of the ALL that allows courts to revoke the evidently inappropriate administrative action partly or wholly and in Art. 77 that allows courts to modify an evidently inappropriate administrative penalty and any other erroneous administrative action regarding a payment. This expanded standard of review seems to be a promising benchmark for China's administrative rule of law.[1109]

1. Academic debates about the review of appropriateness

Since the ALL's enactment, scholars discussed the scope of review with regard to the inappropriateness of administrative actions.[1110] On several occasions, Chinese administrative law scholars[1111] dealt with questions concerning the meaning of appropriateness and the court's power to modify the challenged administrative action which inevitably would affect the separation of powers.

Regarding the meaning of appropriateness, Professor *JIANG Hongzhen* introduces three subtests which he identifies as suitability, necessity and balance of interests.[1112] These subtests

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[1106] *Potter* 1994, 288.
[1107] *Zhang Hongyan* 2015, 73.
[1108] In Chinese: 不当.
[1109] *Hu* 2005, 9.
[1110] *Liang Junyu* 2021.
[1111] Participants were *HUANG Yongwei*, the head of the SPC's Administrative Division, *LIANG Fengyun*, the deputy of the SPC's Administrative Division, and among others Professor *LIU Fei* of the University of Political Science and Law and Professor *JIANG Hongzhen*, the deputy dean of Kaiyuan Law School of Shanghai Jiaotong University, see *Liu Quan* 2019, 86-89.
[1112] The three subtests are in Chinese: 适当性, 必要性; 均衡性; *Jiang Hongzhen* 2020, 41-54.

originate form the German example of proportionality review. The judiciary's power to control the administration and their discretionary decisions were subject to much debate in the late 19th century when Germany became a constitutional monarchy.[1113] Initially, the principle of appropriateness helped monitoring the police force. From there, it became relevant for all other realms of administrative operations.[1114] The Federal Constitutional Court in Germany honed the concept of proportionality establishing the so-called "three-step theory"[1115], which many Chinese scholars also reviewed.[1116] Uncertain legal concepts[1117] offer the administration discretion and leeway for interpretation. To review how the administration applied the legal concept, the courts apply the three components or subtests of appropriateness.[1118] Firstly, the court reviews the suitability of the administrative action. An action is suitable when it achieves the intended goal, but it must not achieve it altogether. Secondly, the administrative action must be necessary. The action is necessary when, compared to other similarly effective measures, its infringement on the rights and interests of the counterparty remains little. Thirdly and in the strict sense of appropriateness, the action is appropriate when the long-term public interests pursued are not disproportionate to the private interests of the counterparty. In this last step, the court must weigh differing interests to see whether the action is reasonable compared to the interests at stake.[1119]

Whereas *JIANG* refers to the German model of proportionality and its review process, others followed the Anglo-American model of rationality. In contrast to appropriateness, the review of rationality focuses on general norms such as the natural law and consideration of relevant factors like the public interest. Rational or reasonable would be any action that a person, who “can think clearly and make decisions based on reason”, would agree to.[1120] For instance,

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[1113] *Held-Daab* 1996.

[1114] *Heusch* 2003, 21. The first case involving the principle of proportionality was the so-called “Kreuzberg Judgment” by the Prussian Supreme Administrative Court in 1882 in which the court refined the scope of authority for the police. In the underlying case, the police of the district of Kreuzberg in Berlin announced a regulation for the protection of a special national war monument. Based on this regulation, the Berlin administration rejected a request of a citizen to build a house on his ground. The police in Kreuzberg believed that this would have a negative impact on the view of the war monument. The man filed a complaint claiming that the police regulation of Kreuzberg infringed upon his lawful rights and interest. The Prussian Supreme Administrative Court ruled in his favor arguing that the rejection by the police did only focus on public interest of protection of war monuments but did not respect the man’s property rights. See: Kreuzbergurteil, PrOVG Endurteil des II Senats vom 14.6.1882, available at: https://www.denkmalrechtbayern.de/wp-content/uploads/2016/02/2-5-4-Sonstiges-Kreuzbergurteil-PrOVG-14-6-1882-11-S.pdf [November 23, 2020].

[1115] In German: Dreistufentheorie.

[1116] *Huang, Yang* 2017, 5-18; *Wang Jing* 2014, 22-33.

[1117] In German: unbestimmte Rechtsbegriffe.

[1118] *Xiao* 2023, 461-462.

[1119] *Wienbracke* 2013; *Liu Quan* 2019, 94-97.

[1120] *Huang, Yang* 2017, 11; for a definition of the term „rational“ see: Oxford Learner’s Dictionary of Academic English: https://www.oxfordlearnersdictionaries.com/definition/academic/rational?q=rational [November 27, 2023].

HUANG Xuexian and *YANG Hong* argue that the principle of appropriateness is easier to apply because the review standards had been defined by the three subtests which the State Council considered in its policies as well.[1121] They conclude that appropriateness should absorb rationality because by applying the former both the private and public interests are considered in detail in the last step of review.[1122] Other scholars also called for administrative self-determination or self-restraint to protect the people's rights and interests.[1123] Since the review of administrative self-restraint is not covered by the court's current standard of review, the law, local rules and regulations should be refined to include clear standards of administrative procedures. Furthermore, commentators also debated whether courts should review the legitimacy of the purpose of the administrative action as well. The majority argues that courts must not review the purpose of an action separately because it would hamper administrative efficiency.[1124] Besides this, courts should presuppose the action's legitimacy since an administrative agency only takes those actions that they can justify referring to the law.[1125]

In general, as scholars point out, the core problem lies in the administrative organ's ignorance of the limits of their discretion. Discretion means that rules and standards define the scope within which the decision-maker can make a choice.[1126] If the law uses terms such as "can", "may", "is authorized", or similar expressions, the administration has room to adapt the decision to the circumstances. Ideally, the administrative decision-maker keeps in mind the different interests and the possible consequences of the decision. Associate Professor *LIU Quan* criticizes the judges who avoid giving proper reasons why they deem an administrative action to be appropriate or not. For judges, it seems less offensive towards the administration if they remain vague and board.[1127] Up until today, many administrative law scholars have been criticizing the courts' excessive deference to administrative decisions which neglects the rights and interests of the recipient of the administrative action.[1128] Judges usually do not cite the terms "evidently inappropriate", or "abuse of power" provided in Art. 70 or Art. 77 of the ALL of 2014 but re-frame their reasoning.[1129] The SPC also used to take a rather hesitant and conservative stance towards the application of the principle of appropriateness due to the lack

[1121] *Huang, Yang* 2017, 11, 15.
[1122] Ibid., 16.
[1123] *Zhang Hongyan* 2015, 75; *Zheng Chunyan* 2013, 62.
[1124] *Jiang Hongzhen* 2020, 46-47.
[1125] *Liu Quan* 2019, 93.
[1126] *Kim* 2007; *Rosenberg* 1971.
[1127] *Liu Quan* 2019, 104.
[1128] Ibid., 102; *Wang Jing* 2014, 22-33.
[1129] *Zheng Chunyan* 2013, 61-68.

of any legal basis.[1130] If an action was obviously unfair, the SPC preferred to implicitly review appropriateness.[1131]

2. The review of appropriateness and the review of discretion in administrative litigation

Art. 6 of the ALL of 2014 declares that courts shall examine the legality of administrative actions. Apart from this, courts can review the appropriateness of administrative actions in particular cases. Item 6 in the list of Art. 70 of the ALL of 2014 allows the court to revoke the action wholly or partly when it is "obviously inappropriate"[1132]. In addition, Art. 77 of the ALL of 2014 allows the court to modify an administrative penalty that is obviously inappropriate or the administration's calculation of an amount of money is erroneous. Usually, cases involving administrative penalties, administrative compulsion, and information disclosure deal with questions of appropriateness.[1133] For instance, the Administrative Penalty Law grants administrative organs discretion and instructs them in which cases the party shall receive a lighter or mitigated administrative penalty.[1134] In such cases, courts can modify the challenged administrative action. This is a major innovation in the revised ALL revealing that in this limited number of cases, courts review the appropriateness of an administrative action in a sense of "material legality".[1135] The review of "material legality" supplements formal legality review that is still the prevalent purpose of administrative litigation.[1136]

Moreover, the innovation also illustrates the discussion that the legislators had: How shall the state regulate the relationship between judicial and administrative power? Here, judicial power means judicial assertiveness regarding the resolution of administrative disputes and the outreach into the political realm. In contrast, administrative power subsumes coercive power upon social groups and individuals as well as the formal authority across hierarchical

[1130] *Jiang Hongzhen* 2020, 51.
[1131] Supreme People's Court (最高人民法院), Harbin City Planning Bureau of Heilongjiang Province v. Heilongjiang HSBC Industrial Development Co., Ltd., administrative penalty case (黑龙江省哈尔滨市规划局诉黑龙江汇丰实业发展有限公司行政处罚纠纷案), Xing Zhong Zi (行终字) No. 20, 1999, issued June 19, 2000, in: Fa Gongbu (法公布) No. 5 (henceforth: Harbin City Planning Bureau of Heilongjiang Province v. Heilongjiang HSBC Industrial Development Co., Ltd.).
[1132] In Chinese: 明显不当.
[1133] *Liu Quan* 2019, 86-89; *Wang Jing* 2014, 24-28; *Wang Kai* 2018.
[1134] Those cases are cases where the party (1) actively eliminates or mitigates the harmful consequences of illegal acts; (2) was coerced or induced by others to commit illegal acts; (3) voluntarily confesses illegal acts that the administrative organ has not grasped; (4) performs meritorious service in cooperating with administrative organs in investigating and punishing illegal acts; (5) or where laws, regulations, and rules stipulate that other administrative penalties should be lightened or mitigated, Art. 32 of the Administrative Penalty Law, supra n. 275
[1135] *Liang Junyu* 2021.
[1136] Ibid.

levels within the bureaucracy itself.[1137] Against this backdrop, the judges' power to change the content of an administrative action according to Art. 77 of the ALL of 2014 affects the functional separation of powers in China. When judges conclude that an administrative action is "obviously inappropriate" and change the content of the administrative action, they do not only assume an administrative task but also interfere in administrative power. Their judgment or ruling can teach the administration to avoid such errors in the future. Administrative law scholars were optimistic that the review of appropriateness would help the judiciary to replace administrative power.[1138] However, in practice, courts do not review appropriateness uniformly and usually not explicitly. Although it is farfetched to conclude that the judiciary can conduct an independent review of administrative actions, the selected cases below illustrate that some judges dare to scrutinize the appropriateness of administrative actions.

In 1999, the SPC decided on the dispute between a company and the municipal planning bureau of Harbin City:[1139] The HSBC Industrial Development & Co. Ltd had purchased a building from Harbin Tongli Industrial Company and wanted to extend the original two-story building by one underground and seven ground floors. The Harbin Municipal Planning Bureau issued an administrative penalty for illegal construction, violating the Urban Planning Law of the People's Republic of China and the Measures of Heilongjiang Province for the Implementation of the Urban Planning Law of the People's Republic of China. Consequently, the HSBC Company requested reconsideration by the Harbin Municipal People's Government which confirmed the original administrative penalty. The company filed a complaint at the higher people's court in Heilongjiang. The court reasoned that the HSBC Company had partly violated the approval procedure for the renovation of the frontage building because it did not obtain a construction planning permission for the nine-story building but only for the already existing two-story building. The court also rejected the Planning Bureau's argument that the "Foreign Bookstore", a protected building on Central Street nearby, was the architectural standard for any new construction. The court replied that there were other tall buildings on the street whose constructors did not receive a fine. It considered the Planning Bureau's argument that the nine-story building would destroy the cityscape as discriminatory. Hence, in view of the illegal construction of HSBC's building, the Planning Bureau's penalty was clearly unfair, and the Planning Bureau should change the specific administrative actions. The Planning Bureau was not satisfied with the judgment of first instance and appealed to the SPC in 1999.

[1137] *Zhou, Ai, Lian* 2012. 82-83.
[1138] *Liang Junyu* 2021; *Xin Chunying* 2015, 202.
[1139] Harbin City Planning Bureau of Heilongjiang Province v. Heilongjiang HSBC Industrial Development Co., Ltd., supra n. 1131.

The SPC dismissed the appeal by implicitly using the principle of appropriateness for its reasons. It argued that the bureau did not weigh up the different interests (principle of balance), namely the rights and interests of the company and the interests of the planning bureau to realize management goals. Therefore, the bureau's decision to demolish the building was obviously unfair because it caused "excessive adverse effects" on the company (principle of necessity).[1140]

In 2001, a plaintiff named Miss *CHEN* claimed that she suffered from economic loss of 210,000 yuan because the Public Security Bureau of Zhuanghe Municipality in the province of Liaoning had cut her car by gas wielding which caused a fire. Beforehand, her husband had been involved in a car accident in which he died on the spot. The police had tried to rescue him, but the gas wielding destroyed the car. Both the court of first instance as well as the court of appeal dismissed Miss *CHEN*'s lawsuit applying the suitability test, the necessity test and the balance test. They reasoned that the gas wielding of the car's door was the suitable and necessary method in an emergency situation where other safer and more effective methods were absent. The courts found that police's action was appropriate.[1141]

In 2017, in a second-instance administrative litigation dealing with an administrative fine for selling taros, an agricultural product, to which sulfite had been added, the court decided to reduce the penalty fee from 50,000 RMB to 1,000 RMB.[1142] The Intermediate People's Court of Taizhou City reasoned that the plaintiff was a small vendor who had no records of violating food safety regulations before. The relevant administrative agency had inspected the vendor's business and discovered the illegal addition of sulfite. It issued an administrative fine in the amount of 50,000 RMB according to the Food Safety Law that grants them discretion to calculate the amount within a predefined frame for the fee.[1143] However, as the court

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[1140] Harbin City Planning Bureau of Heilongjiang Province v. Heilongjiang HSBC Industrial Development Co., Ltd., supra n. 1131.

[1141] Dalian Municipality Intermediate People's Court (大连市中级人民法院), CHEN Ning vs the Public Security Bureau of Zhuanghe Municipality, administrative compensation case (陈宁诉庄河市公安局行政赔偿纠纷案), issued July 11, 2002, published in: SPC Gazette 2003, Issue No. 3 (henceforth: *CHEN Ning* vs the Public Security Bureau of Zhuanghe Municipality).

[1142] Intermediate People's Court of Taizhou City (浙江省台州市中级人民法院), Xianju County Xu Suzhen Vegetable Merchant v. Xianju County Market Supervision Administration, administrative penalty case (仙居县徐苏珍蔬菜商诉行仙居县市场监督管理局), August 8, 2017, Intermediate People's Court of Taizhou City (浙10行终) 2017, No. 110 (henceforth: Xianju County Xu Suzhen Vegetable Merchant v. Xianju County Market Supervision Administration).

[1143] The first paragraph of Art. 124 states in the second sentence: "If the value of food and food additives illegally produced and traded is less than 10,000 yuan, a fine of not less than 50,000 yuan but not more than 100,000 yuan shall be imposed. If the amount of goods is more than 10,000 yuan, a fine of not less than ten times the amount of goods and not more than twenty times the amount of goods, shall be imposed; if the circumstances are serious, the license shall be revoked. […]," see: Food Safety Law of the People's Republic of China (中华人民共和国食品安全法), issued February 28, 2009, revised April 24, 2015, amended December 29, 2018, and amended April 29, 2021.

summarized, the vendor had not sold the product to the public before the inspection and did not earn much money from the selling. After the inspection, he fed the taro to the pigs. Therefore, the court found that there were indications that the vendor eliminated harmful consequences (by not selling the taros to the people, but the pigs) of the illegal act (the adding of sulfite), as mentioned in Art. 45 of the Administrative Penalty Law. Hence, the court found that according to the facts, circumstances, and consequences of the illegal act in this case, it is more suitable to impose a fine of 1,000 yuan on the appellant. However, the court did not explain why it concluded to reduce the fee in this rather radical way and how they calculated the amount of the appropriate fine.

Looking at the three cases, it is obvious how diverse the application of the subtests of appropriateness is: For instance, in the third case presented above, the administration could issue a fine between 10,000 RMB and 50,000 RBM, and it decided to issue the highest amount given the circumstances. But the court disagreed with this decision and considered the amount inappropriate and the administrative organ's use of discretion to be erroneous. Here, "erroneous" refers a technical miscalculation due to the misinterpretation of the facts of the case. In contrast to the third case, in the case involving Miss *CHEN*, the court acknowledged that the public security bureau acted within its discretionary power and had weighed up all consequences.

For the courts, challenges lie in determining when an administrative act is "obviously" inappropriate. How can they measure "obviously" inappropriate? So far, due to a missing legal definition, the measurement of obvious inappropriateness mainly depends on the judges' discretion which depends on the judges' subjective experience with judicial work.[1144] For instance, courts can argue that there is only "minor infringement of the principle of appropriateness" and decide not to review the appropriateness.[1145] Then, they defer to the decision of the administration or they are hesitant to weigh up different interests since they fear criticism that they are not impartial.[1146]

To sum up, for courts interpreting the use of administrative discretion is challenging because clear and uniform discretionary benchmarks are missing in administrative laws. Besides that, in its 2017 SPC Interpretation, the SPC missed the chance of providing a clear definition of "obvious inappropriate" mentioned in Art. 70 and Art. 77. These explanations could help to avoid arbitrary decisions and make it easier for courts to judge. Again, a national Administrative Procedure Law could fill those gaps and contribute to a standardized application

[1144] *Liang Junyu* 2021.
[1145] *Liu Quan* 2019, 100.
[1146] *Jiang Hongzhen* 2020, 51; *Liu Quan* 2019, 100-101.

of administrative discretion. The ongoing academic controversy and the incoherent judicial practice highlight that even though the State Council and the CCP underline the importance of administrative procedures that correspond with the laws, they cannot find a solution easily.

IV. Types of actions and judgments

The ALL of 2014 expanded both the scope of acceptable cases, the scope and standard of review, and also the types of judgments in order to enhance the uniformity in the application of the ALL.[1147] But the need for and the way of categorizing actions was very controversial. Commentators indicated that due to the missing clear systematization of litigation types, the existing types proved inadequate to solve administrative disputes.[1148] That is why they observed that many litigants initiated civil lawsuits against administrative authorities for compensation if they could not get a satisfactory administrative judgment. Some scholars considered this phenomenon as a strategic creativity calling it the "administrativization" of private disputes.[1149]

1. Debate about the categorization

Before the revision of the ALL, a constant line of criticism was the lack of a clear typification of administrative lawsuits. The ALL of 1989 did not define the litigation types in an explicit way. In the course of its application, the critique gradually became harsher. At the beginning, some administrative law scholars had only remarked that legislators and other scholars suffered from a "collective unconsciousness" concerning the important matter of typification.[1150] Later, others complained that the ALL's shortcomings were manifest in the missing litigation types. They demanded to add a clear categorization in the legal text because it was the common trend among other legal system.[1151] Scholars offered numerous attempts of classification according to various categories, like the underlying administrative dispute, the plaintiff's claim, and the facts of the case, the administrative procedure, or the type of judgment.[1152]

Comparative analyses were very common in academic publications to look for a suitable systematization of lawsuits and judgments.[1153] One group of scholars, who constitute only a minority within the discourse, prefers to adopt the German or Japanese system that both define

[1147] *Liu Fei* 2013, 48.
[1148] *Ma, Wu* 2001, 65.
[1149] *Liebman, Roberts, Stern, Wang* 2018.
[1150] *Liu Fei* 2013, 42-43.
[1151] Ibid.
[1152] *Yan* 2017 a, 6.
[1153] *Zhang Jiansheng* 2011.

types of administrative lawsuits.[1154] However, critics find it hard to develop a suitable classification by simply transplanting other types.[1155] Another subgroup wants to classify types according to the function of lawsuits. Another group criticizes this opinion because a functional differentiation is unreasonable. The core function of all lawsuits is always to determine whether an administrative action is lawful or not.[1156]

The common line is that the litigants' right to sue is the basis for determining the types of lawsuits.[1157] For instance, *MA Huaide* categorized the types of administrative lawsuits according to the scope of actions listed in Art. 11 of the ALL of 1989 and deduced some types according to Art. 56 to 57 of the 2000 SPC Interpretation dealing with administrative judgments. He distinguished six types, namely upholding[1158], revoking[1159], performing[1160], modifying[1161], confirming[1162], and rejecting[1163].[1164] In addition, he determined another type according to Art. 58 of the 2000 SPC Interpretation. A court could confirm that the concrete administrative action was unlawful. If its annulment would harm national and public interests, the court could demand the agency to issue remedies or pay compensation.

Another group preferred the Taiwanese model that classifies administrative judgments[1165].[1166] *YING Songnian* took the list of Art. 54 of the ALL of 1989 as the basis to determine the four main types of administrative judgments: upholding, revoking, performing, and modifying.[1167] *MA Huaide* criticized that the types of judgments in administrative litigation were insufficient. Oftentimes the facts of a case and the judgment were not corresponding insofar that the written judgment was too vague and did not offer the relief the litigants hoped for.[1168] Both *MA* and *YING* observed unscientific handling by courts that were not able to make clear distinction between the types of administrative lawsuits and the types of judgment.[1169] They were taking effect for cause. For example, in a judgment of modification, judges could

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[1154] In Chinese: 行政诉讼的类型, see: *Lin* 2010, 76-79.
[1155] *Li* 2003, 153, 157.
[1156] Ibid., 153.
[1157] Ibid.
[1158] In Chinese: 维持诉讼.
[1159] In Chinese: 撤销诉讼.
[1160] In Chinese: 履行诉讼.
[1161] In Chinese: 变更诉讼.
[1162] In Chinese: 确认诉讼.
[1163] In Chinese: 驳回诉讼.
[1164] *Ma, Wu* 2001, 63; *Ma* 2009, 389.
[1165] In Chinese: 行政判决的类型.
[1166] *Lin* 2010, 78.
[1167] *Ying, Yang* 2004.
[1168] *Ma* 2009, 387.
[1169] *Ma* 2010, 31-32; *Ying, Yang* 2004.

demand the administrative agency to correct their action. But as scholars observed, it was necessary that judges acquired special qualifications and courage to dictate the bureaucracy how to correct their actions.[1170] Chinese judges still lacked these requirements.

Overall, we can criticize that both groups ignored the litigant's claims and mixed up the differences between administrative lawsuits and administrative judgments. *LI Guiying* criticized the classifications for two reasons: Firstly, he argued that it was difficult to solve administrative disputes thoroughly due to vague judgments. If the court ordered the administrative agency to fulfill its duty but did not specify the way it should perform, the agency might not know what to do. But if the court specified the performance, it might intervene in the agency's power. This was similar to judgments that determined the agency to change its concrete administrative action. For instance, when the court decided that administrative action was "clearly unfair"[1171], the judge used discretionary power infringing on administrative power. Secondly, the missing systematization caused misunderstandings and an incoherent application. Moreover, negative publicity surrounding this legal gap impaired the lawful rights and interest of the plaintiffs.[1172]

According to *LIN Lihong*, the majority of scholars is in favor of a so-called "theory of holistic classification and comprehensive criterions".[1173] This third approach attempts to consider all available aspects of a case such as the underlying claim, the defendant, time limits, jurisdiction, and type of judgment to classify a case. Proponents argued that the categorization of administrative lawsuits and administrative judgments is the same: for plaintiffs, it might be easier to distinguish types of lawsuits whereas judges might prefer to speak of types of judgments or remedies.[1174] So far, administrative law scholars have not reached a consent for categorizing administrative lawsuits and judgments . Most of them agreed that the existing categorization is insufficient firstly, to reflect the variety of administrative disputes and secondly, to resolve them. Moreover, they think that the lack of typification could negatively affect the lawful rights and interests of the litigants and society and constrain the court's effective procedure.[1175]

LIU Fei criticizes this discourse arguing that most of the Chinese administrative law scholars exaggerate the problem and ignore that the types of lawsuits are only a name. It does

[1170] *Ye* 2011, 75.
[1171] Item 4 of Art. 54 of the ALL of 1989.
[1172] *Li* 2003, 153.
[1173] In Chinese: 整体分类与综合标准说, in: *Lin* 2010, 77.
[1174] Ibid., 79.
[1175] *MA* 2010, 31-32; *Ying, Yang* 2004; *Li* 2003, 153.

not matter whether the ALL mentions them explicitly because they already exist implicitly and depend on other litigation conditions, like the plaintiff's qualification, the scope of acceptable cases, the time limit for filing a complaint, the claims, the examination of evidence, and the suspension of the original action. In his view, improving the litigation conditions is more important than finding a consent on how to categorize and name the litigation types in the ALL.[1176]

2. Types of judgments in the ALL of 2014

In the end, the legislators specified the existing regulations of the ALL of 1989 and to incorporate the provisions of the 2000 SPC Interpretation in the latest version.[1177] Whereas only Art. 54 of the ALL of 1989 listed types of administrative judgments, the ALL of 2014 expanded the provisions from Art. 69 to 79. The types of judgments add procedural rights because they determine how the court must proceed to issue a certain judgment. Hence, the revision refined the distinction between substantive and procedural law.[1178] The revocation of a concrete administrative action used to be the main type of lawsuit under the former ALL and the 2000 SPC Interpretation. Lawsuits concerning the performance of an agency, or the modification of a concrete action were minor.

3. Art. 69 of the ALL of 2014: Rejection of a claim

Art. 69 of the ALL of 2014 states that a court rejects plaintiffs' claims when the evidence in favor of the administrative action is solid, the agency applies the relevant laws and regulations, and met the statutory procedures, or where the plaintiffs have no grounds for requesting the defendant to perform a legally prescribed duty or payment obligation. Thus, the rejection of lawsuits can be due to procedural and substantive reasons. In contrast to the former version of the provision[1179], the wording changed from "uphold the concrete administrative action" to "dismiss the plaintiffs' claims"[1180]. Both formulations are essentially the same in their meaning and effect, but the legislators changed the wording mostly for psychological reasons: Firstly, the new wording serves uniformity since Art. 1 of the ALL of 2014 deleted the phrase "to protect the fulfillment of administrative duties"; secondly, the new wording highlights neutrality because, before the reform, the involved litigants might have associated the upholding of the administrative action with judicial bias, arguing that "officials protect each

[1176] *Liu Fei* 2013, 57-59.
[1177] *Yan* 2017 a, 4.
[1178] *Yu, Jiang* 2020, 94.
[1179] Originally in the first paragraph of Art. 54 of the ALL of 1989.
[1180] In Chinese: 驳回原告的诉讼请求.

other"[1181]. The plaintiffs would hardly accept the upholding of an action they already filed a lawsuit against. Moreover, the legal effects of administrative action and judicial judgment were not uniform. The court could not confer effectiveness to an administrative action because it was not legally empowered to do so. Nevertheless, it could confirm administrative power by upholding a challenged action. Lastly, the public had a negative impression that even when the agency was willing to change its action, the court ruled to uphold it. Therefore, the term "dismissal" is clearer, broader, and more encompassing.[1182]

What still remains unanswered in Art. 69 of the ALL of 2014 is what constitutes "statutory procedure" since an Administrative Procedure Law that would define standards of administrative operations is still missing.

4. Art. 70-71 of the ALL of 2014: Revocation of an administrative action

Art. 70 of the ALL of 2014 determines the circumstances when the court revokes or partly revokes an administrative action and may order the defendant to take the administrative action anew: (1) when the principal evidence is insufficient, (2) when laws and regulations are not applied correctly, (3) when legally prescribed procedures are violated, (4) when the powers of office were exceeded, (5) when authority was abused and (6) when the administrative action was obviously inappropriate. Firstly, like in civil procedures, any evidence should be clear and convincing. However, it is difficult to determine this standard in administrative litigation due to the variety of administrative actions, as illustrated in detail above. Thus, judges should rely on their experience and on the circumstances of the administrative action.[1183] In the second case, laws and regulations were applied incorrectly. The incorrect application is understood as applying the wrong law, an invalid law, a lower instead of a higher law, the wrong provision of law, or the applied provision was not mentioned at all.[1184] Thirdly, the violation of procedures is the cause for revoking the administrative action even if the rights and interests of the plaintiffs are only slightly influenced.[1185] This item[1186] underlines the importance the due process principle gained in China over the course of legal reforms.[1187] Fourthly, in judicial practice, it is common to check whether the agency had exceeded its legally determined powers of office. It is argued that the excess of powers should be construed extensively which results in the

[1181] In Chinese: 官官相护.
[1182] *Xin Chunying* 2015, 183-184.
[1183] Ibid., 187.
[1184] Ibid.
[1185] Ibid. 188.
[1186] Formerly item 2 of the second paragraph of Art. 54 of the ALL of 1989.
[1187] *Ahl* 2022; *Haibo He* 2008, 60-62.

following scenarios: The wrong agency exercises power, the agency at the wrong place exercises power, the agency at the wrong administrative level exercises power or the wrong legally determined powers are exercised.[1188] Fifthly, in contrast to an excess of powers, an abuse of power means that the original intention of the legislators is violated. This occurs, for instance, when the administrative agency applies discretion in an unreasonable way. The extent of abuse of power is controversial so that scholars suggested to reject a broad interpretation of the term.[1189] The last item mentions an administrative action that is clearly improper. This provision serves to underline the scope of review concerning the appropriateness of the action when the administrative agency exercised discretion in an obviously and extremely unreasonable way. In their examination, judges cannot but consider whether the administrative agency applied discretion in a lawful and reasonable way. However, they are not to construe the term extensively.[1190] The difference between a clearly improper action (item 6) and an action that abuses power (item 5) lies in the perspective of the respective provision: the former affects the external results of the administrative action, whereas the latter refers to the intention of the provision.[1191]

Furthermore, the wording "the judge may require the defendant to take an administrative action anew" indicates that the order to take an administrative action anew is of concomitant nature and does not constitute an independent judgment but can only exist besides a major revocation judgment.[1192] Hence, a plaintiff has to request that the court first revokes the administrative action and simultaneously orders the defendant to take the action anew.[1193] When the plaintiff is not content with the concomitant judgment, they can file an appeal at the higher-level court. In this case, the concomitant judgment is regarded as an independent one and thus, eligible for a trial at the second instance.[1194] Concerning its content, it is required that the new action shall neither be of the same content as the former one nor be to the detriment of the plaintiff.[1195] Overall, the combination of the main revocation judgment and the dependent ordering to take an action anew highlights that the judge is given both the power of judgment and of discretion. However, it simultaneously illustrates that the judges' power to order the

[1188] *Xin Chunying* 2015, 189.
[1189] Ibid.
[1190] *Zhao Xueyan* 2015, 218.
[1191] Ibid.; *Xin Chunying* 2015, 190.
[1192] *Xiang* 2011, 465-469.
[1193] Ibid., 470-471.
[1194] *Xiang* 2011, 473-474.
[1195] Ibid., 421-423.

taking of an action anew, which clearly interferes with administrative power, remains restricted because it always depends on the premise of a previous revocation.[1196]

In addition to Art. 70, Art. 71 bans the agency to issue an essentially similar administrative action but has to issue a new one when the judge in the judgment demands it to renew the administrative action according to Art. 70. Furthermore, Art. 94 of the 2017 SPC Interpretation underlines that the newly issued action can be equal to the former one if the principal facts and reasons have changed. This provision emphasizes the distinction between administrative and judicial power and underlines that the restraint imposed by the judgment is binding no matter if the judge demanded the administrative agency to renew the administrative action explicitly or if the agency acts on its own terms.[1197]

5. Art. 72-73 of the ALL of 2014: Performance of an administrative duty or order to pay

In the course of economic modernization and development, administrative functions and requirements increased alongside a popular discontent with the administration. That is why the government under *HU Jintao* introduced the concept of a service government to solve the people's grievances and secure social stability. But besides these new responsibilities, officials seemed to avoid commitment or to make too many mistakes so that they were not aiming at the best possible results.[1198] The legislators realized that it was necessary to reflect both the new responsibilities and the corresponding consequences in the revised ALL.[1199] Thus, the revision added Art. 72 and Art. 73 to the catalogue of judgments.

A plaintiff can file a complaint within two months after their first request when the administrative agency refuses to perform or fails to respond to an application for the agency to perform its statutory duties and responsibilities in respect of protecting personal rights, property rights, and other lawful rights and interests. In urgent cases where the plaintiff's personal rights, property rights, and other lawful rights and interests need protection, the time limit of two months does not apply.[1200] Correspondingly, Art. 72 of the ALL of 2014 determines that a judge shall order the agency to perform within a fixed period of time. The judgment can either order the defendant agency to perform or to perform considering certain requirements. The judge can even dictate the concrete way of performing.[1201] Moreover, the SPC stipulates in its 2017 SPC

[1196] *Xiang* 2011, 396-538, 398-399, 408.
[1197] *Xin Chunying* 2015, 191.
[1198] Ibid., 192.
[1199] Ibid., 194.
[1200] See the item 6 of the first paragraph of Art. 12 and Art. 47 of the ALL of 2014.
[1201] *Xin Chunying* 2015, 193.

Interpretation that the administrative agency has to re-evaluate the plaintiff's request when the agency has not finished the evaluation yet.[1202] Art. 72 clearly enables judges to intervene in administrative power to protect the citizen's lawful rights and interests in the agency's performance. Particularly cases involving land management, labor, and social insurance are concerned. In cases involving open government information disclosure, the court can order the administrative agency to disclose the requested information in a certain period of time.[1203] Furthermore, Art. 72 also defines administrative non-performance, which is a rejection to perform or a delay of performance. But Art. 72 does not apply when an administrative agency and a citizen agreed upon a performance in a so-called public-private partnership. Scholars of administrative law express their praise and regard it as a major type of judgment and as the most effective remedy to make an agency fulfill its statutory duties in a market economy that China is striving for.[1204] However, a judgment issuing a performance cannot guarantee comprehensive protection of the people's rights and interests because during the enforcement or performance another substantive dispute could erupt.

In addition, Art. 73 concerns the judgment of a payment obligation on part of the administrative agency. It is one of the main types of judgment.[1205] The scope of acceptable cases allows plaintiffs to file a complaint in case the agency refuses to pay consolation money, minimum subsistence, or social insurance benefits according to law. When the claim is well-founded, the judge may order the agency to pay in a certain period of time.[1206] However, it is not to be understood as generalizing the people's entitlement to government payment.[1207] The narrow understanding of this entitlement is underlined in the 2017 SPC Interpretation which stipulates in Art. 93 that before a lawsuit will be accepted, the plaintiffs are required to send their request to the agency first. If the court concludes that the administrative agency is not responsible for the payment, it can reject the lawsuit.

It is obvious that Chinese legal scholars compared the Chinese handling with foreign examples.[1208] For instance, the German administrative law differentiates between four forms of

[1202] Art. 91, 2017 SPC Interpretation, which originates from Art. 22, 2015 SPC Interpretation, supra n. 227.
[1203] Art. 9 (1), Regulations of the Supreme People's Court on some questions concerning hearing administrative cases about open government information (最高人民法院关于审理政府信息公开行政案件果然问题的规定), issued December 13, 2010, effective July 13, 2011. Art 9 reads that the court has to revoke or partly revoke the impugned decision of not disclosing the requested information and orders the defendant to disclose in a determined period of time, when the defendant has to disclose the government information according to the law. If the defendant still needs time to examine and evaluate, the court orders to answer anew within a fixed period.
[1204] *Wu* 2011, 250, 292.
[1205] *Shao* 2011, 314.
[1206] Art. 12 I no. 10 ALL 2015 and Art. 92, 2017 SPC Interpretation, supra n. 228.
[1207] *Xin Chunying* 2015, 195.
[1208] *SHAO Yanfen 2011,* 299-300.

administrative actions according to their objective. Important for this analysis is the distinction between the administration which aims at intervening in people's rights, and which aims at providing a certain service. Intervention measures should maintain public order, mainly in form of restricting personal freedom or property rights. The collection of taxes also belongs to this form of administrative action. In contrast to this, some administrative actions intend to meet the social, economic, and cultural needs of the people. This form aims at providing all necessary means and institutions for social welfare.[1209]

6. Art. 74 of the ALL of 2014: Confirmation of the illegality of an administrative action

Art. 74 was also newly incorporated into the revised ALL and is meant to serve the people's rights and interests. However, it is regarded as an additional and not a core type of judgment which supplements the revocation in Art. 70. [1210] The first paragraph states circumstances where a people's court shall enter a judgment to confirm the illegality of the impugned administrative action but shall not revoke it: (1) an administrative action shall be revoked according to the law, but the revocation will cause any significant damage to the national interest or public interest; (2) or a petty violation of the statutory procedures in taking an administrative action will not have any actual impact on the plaintiff's rights. For instance, severe damage to the national and public interest would occur when a building was set up without a building permit, but its demolition would run counter public interest. To be more precise on the definition of "petty violation of statutory procedures", the SPC added in Art. 96 of the 2017 SPC Interpretation that a petty violation occurs when the time limit of the procedure is slightly expired, the process of delivery and announcement slightly delayed and when other circumstances of minor nature violate the statutory procedure. Thus, for instance, when an administrative action arrives late by one day, it would fall under petty violation. Moreover, the SPC underlines that a substantial violation of hearing, pleas, and defenses that are a guarantee for the parties are exempt from this regulation.

The second paragraph of Art. 74 adds circumstances where a people's court shall enter a judgment to confirm the illegality of the impugned administrative action, if it is not necessary to revoke it or enter a judgment to order the defendant to perform: (1) an administrative action is illegal, but there is nothing revocable; (2) the defendant has modified the original illegal administrative action, but the plaintiff still requests confirmation of the illegality of the original

[1209] *Graf von Westfalen*, 2001, 444-445.
[1210] *Xin Chunying* 2015, 196-197.

administrative action; (3) the defendant fails to perform or delays the performance of its statutory duties and responsibilities, and it is meaningless to enter a judgment to require the defendant to perform. An example of a non-revocable content is frequently seen in open government information cases when state secrets, commercials secrets or individual privacy are involved.[1211] Any disclosure of such contents would violate the procedure of the open government information regulations. In the second case where the plaintiff requests the confirmation of the illegality of the original administrative action, the court shall fulfill this request. This is adapted from the first sentence in the first paragraph Art. 113 of the German Code of Administrative Court Procedure which determines that a court shall confirm the illegality of an administrative action when the plaintiff has a lawful interest in this confirmation although the administrative action concerned has changed. The third scenario describes that although the agency has not performed its duty at the time when the plaintiff filed the suit, in the meantime, the legal basis or some other facts have changed so that any performance would now be meaningless.

Art. 81 of the 2017 SPC Interpretation determines that where the defendant changes the impugned administrative action during the first instance period, it shall notify the people's court in writing. If the plaintiff or third party files a complaint against the changed administrative action, the people's court shall decide about the modified administrative action. If the defendant changed the former illegal administrative action, but the plaintiff nevertheless requests recognition of the illegality of the former administrative action, the people's court shall enter a judgment of recognition in accordance with the law. If the plaintiff files a complaint against nonfeasance of the defendant and does not withdraw the complaint after the defendant has taken an administrative action in the legal proceedings, the people's court shall enter a judgment of recognition of the nonfeasance in accordance with the law.

7. Art. 75 of the ALL of 2014: Confirmation of invalidity of an administrative action

In addition, Art. 75 illustrates that on the plaintiff's request, a people's court shall enter a judgment to confirm the invalidity of an impugned administrative action that a party other than an administrative agency has taken and is baseless or otherwise violates the law seriously and evidently. Firstly, this provision fills a legal gap because beforehand, ineffective actions could only be revoked although being ineffective *ab initio*.[1212] Secondly, it was added to foster

[1211] See item 3 of Art. 14 of the ROGI.
[1212] *Zhao Xueyan* 2015, 233-234.

the development of "administration according to law".[1213] The term "significantly and evidently illegal" was adapted from item 1 of Art. 44 of the German Administrative Procedure Law where an administrative act is determined to be null and void when it suffers from a "serious error" which is obvious after a reasonable assessment of all possible circumstances. In this respect, Art. 99 of the 2017 SPC Interpretation provides a precise definition of the term: An action is significantly and evidently illegal when (1) the conducting agency does not possess the qualification as an administrative agency; (2) the impugned administrative action does not have a legal basis; (3) the content of the administrative action is obviously impossible and (4) other circumstances of significantly and evidently illegal actions are given.

In judicial practice, judges were unsure in which case they had to revoke an administrative action and when they had to confirm it as illegal.[1214] The SPC elaborated in Art. 94 in the 2017 SPC Interpretation the difference between a declaratory judgment and a judgment rendering an administrative action invalid. For instance, when the plaintiff demands that the court revokes an administrative action, but the court believes that the impugned administrative action is illegal, it has to declare its illegality. This means that the court must declare the illegality even if the plaintiff wants a revocation. Secondly, the plaintiff demands the court to declare the impugned administrative action to be illegal, but the court believes it is not illegal, it must inform the plaintiff that they can file a complaint for revoking the impugned administrative action, according to the second paragraph of Art. 94.

8. Art. 76 of the ALL of 2014: Order of compensatory liability

In addition to Art. 70 of the ALL of 2014, Art. 76 underscores that the agency must bear the responsibility for its actions.[1215] It stipulates that (1) in conjunction with confirming the illegality or invalidity of an impugned administrative action, the court may concurrently order the defendant to take remedial measures. (2) If the plaintiff has sustained losses from the impugned administrative action, the court orders the defendant to assume compensatory liability according to the law. The significant difference between the first and second paragraph is that the former is a permissive provision, i.e., the court can decide whether to order the defendant to take remedial measures. In case of losses, the court has to order the defendant to pay indemnity.[1216] For instance, an agency published government information that involves business secrets and individual privacy, and the court confirms this action to be illegal, the court

[1213] *Xin Chunying* 2015, 199.
[1214] *Jiang* 2018, 5.
[1215] It originates from Art. 58 in the 2000 SPC Interpretation which refers to the former item 2 of Art. 54 of the ALL of 1989, supra n. 226.
[1216] *Zhao Xueyan* 2015, 239.

is supposed to order the agency to delete the released information and pay compensation for any losses.

Moreover, as determined in Art. 95 of the 2017 SPC Interpretation the plaintiff can also demand compensation from the agency due to its action. If the plaintiff requests that the court jointly hears both the administrative dispute and the dispute concerning the losses, the judge can offer mediation. If mediation fails, the judge must enter a judgment for both disputes and inform the plaintiff that they could initiate another lawsuit. On this matter, the SPC clearly adds an important differentiation that the revised ALL does not cover.

9. Art. 77 of the ALL of 2019: Modification of an administrative action

The content of Art. 77 was added as a new article.[1217] The legislators agreed that besides administrative penalties, there were still manifold administrative actions that also involve an amount of money and can lead to administrative errors.[1218] It now stipulates: "(1) Where an administrative punishment is evidently inappropriate, or any other administrative action is erroneous in determining or recognizing an amount, a people's court may enter a judgment to modify it. (2) A modification judgment of a people's court may not aggregate the plaintiff's obligations or impair the plaintiff's rights and interests unless the plaintiffs include any interested party with opposing claims." The term "determine" in the first paragraph indicates normative issues, such as cases where administrative agencies calculate and pay pensions, minimum living allowances, and social insurance benefits.[1219]

Compared with the revocation of the original administrative action in whole or in parts (Art. 70-71 of the ALL of 2014), modifying the content of the administrative action can be more efficient. The court does not have to worry whether the administrative agency issues an administrative action which is different in content. When the court decides to modify, the administrative agency has no more discretion over the content.[1220] However, scholars criticize that courts oftentimes do not explain up to what degree administrative organs have discretionary power or why their modification of the administrative action is appropriate compared to the content of the challenged administrative action. How can administrative organs understand why their administrative action is unlawful?[1221] Hence, if judgments lack a convincing explanation, the parties can be unhappy with the outcome. Consequently, this levers out the argument of

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[1217] It originates from the fourth paragraph of Art. 54 ALL of 1989.
[1218] *Zhao Xueyan* 2015, 243.
[1219] *Wang Kai* 2018.
[1220] Ibid.
[1221] Ibid.

having an efficiency advantage with modifying the judgment. Moreover, there is the risk that the case falls into circular litigation as well. The second paragraph of Art. 77 provides an exemption that intends to solve the judicial dilemma of two opposing plaintiffs. Although the judge must not modify the impugned administrative action in an unfavorable way, it cannot but harm one party whose claims contradict the other ones.

In the ALL, turning Art. 77 into a permissive provision intends to solve the controversy concerning the separation of judicial and administrative power, as illustrated in the previous section. Concurrently, judicial power is still bound by the principle that a modification must not be unfavorable, which protects the people's lawful rights and interests. Art. 55 of the 2000 SPC Interpretation[1222] and Art. 51 of the Regulation on the Implementation of the Administrative Reconsideration Law[1223] also refer to this principle.

10. Art. 78 of the ALL of 2014: Judgment concerning an administrative agreement

Art. 78 deals with judgments concerning administrative agreements which item 11 in the first paragraph of Art. 12 lists in the scope of acceptable cases. Art. 78 stipulates that where the defendant fails to perform according to the law or as agreed upon or illegally modifies or cancels an agreement, a people's court shall enter a judgment to require the defendant to continue to perform, take remedial measures, or compensate for losses, among others. The second paragraph provides an exemption stating that where the defendant legally modifies or cancels an agreement as but fails to provide compensation as required by the law, the people's court shall enter a judgment to require the defendant to provide compensation. As mentioned in the section on administrative agreements, possible agreements are government concession agreements or land and building expropriation compensation agreements. To prevent the administration from malpractice, the courts have to consider the legal basis on which the agreement shall rest.[1224] Therefore, the court has to check whether the agreement is based on a normative document that empowers the corresponding agency to modify or cancel an agreement.[1225] Art. 16 of the SPC Provisions concerning Trials about Administrative Agreement Cases 2019[1226] instructs courts how to handle a case where the administrative agency has unilaterally modified or cancelled an administrative agreement. The court must

[1222] See 2000 SPC Interpretation, supra n. 226.
[1223] Regulation on the Implementation of the Administrative Reconsideration Law, supra n. 616.
[1224] *Zhao Xueyan* 2015, 252.
[1225] *Xin Chunying* 2015, 206.
[1226] Provisions concerning Trials about Administrative Agreement Cases 2019, supra n. 1023

review the reasons for the modification or cancellation. If the reasons are lawful, the court dismisses the plaintiff's request. The third paragraph of Art. 16 explicitly refers to Art. 78 of the ALL of 2014.

11. Art. 79 of the ALL of 2014: Concurrent judgment about the administrative action and administrative reconsideration decision

Art. 79 stipulates that the court shall concurrently enter judgments for both the administrative reconsideration decision and the original administrative action when the reconsideration agency and the agency that issued the impugned action are co-defendants. This provision intends to underline that the judge is dealing with two separate administrative actions that are a unity. They are linked if the reconsideration agency maintained the original administrative action. Therefore, they receive a joint judgment. In the same vein, the 2017 SPC Interpretation confirms in Art. 136 that the judgment shall be issued with respect to both the original administrative action and the reconsideration decision. The second paragraph of Art. 136 adds that the court can issue a judgment either for the original action or the reconsideration decision when it adds either of the agency as a co-defendant on its own motion. This means that the courts have discretion to decide whether to add a related agency as co-defendant.

Art. 136 of the 2017 SPC Interpretation provides five more paragraphs illustrating different scenarios: The third paragraph deals with the revocation judgment. In case the court revokes both decisions, the court has the discretion to order that the agency issuing the original action takes an administrative action anew. Fourthly, when the court decides to issue a judgment of performance of statutory obligation or payment, it revokes the reconsideration decision. Fifthly, in case the original action is legal, but the reconsideration decision is illegal, the court can decide either to revoke the reconsideration decision or to recognize its illegality. But it dismisses the plaintiff's claim concerning the original action. In the sixth scenario, the involved agencies must bear legal liability according to the damage either of them caused. The administrative agency of the original action is liable for the damage its action caused before the court revoked it or recognized it as illegal or invalid. The reconsideration agency carries any aggravation of the damage caused by its decision. Lastly, when neither the original action nor the reconsideration decision falls within the scope of acceptable cases, the court rules to dismiss the plaintiff's request against both the original administrative action and the reconsideration decision. With this judgment, the reformers intended to enhance effectiveness and to save

judicial resources.[1227] Obviously, for the sake of uniformity, these scenarios correspond to the provisions of being co-defendants analyzed in Chapter 5.

12. Art. 80 of the ALL of 2014: Announcement of the judgment

Art. 80 underscores that the court must announce the judgment in public no matter if the trial was in public or not. The court can issue the judgment right after it closed the trial or after a fixed period for consultation. Moreover, the court must cite any judicial interpretation of the SPC or any lawful rules and other regulations it applies when hearing an administrative case, according to Art. 100 of the 2017 SPC Interpretation. Eventually, the litigants shall receive the written judgment with all the used adjudicatory instruments within ten days of its announcement and shall receive information about their rights of appeal.

Two other aspects concerning the types of judgments are worth mentioning. Firstly, both the original[1228] and the revised ALL[1229] recognized the differentiation between judgments and rulings without defining the differences in any further detail. This seemed to have caused problems in judicial practice.[1230] Judgments and rulings are distinguished first, by content and second, by the time limit for appeal.[1231] Firstly, both the 2000 and the 2017 SPC Interpretation[1232] define "rulings" by enlisting fifteen items that are partly adapted from Art. 154 of the Civil Procedure Law.[1233] Only three items of the list, namely the ruling concerning the rejection to docket a case, concerning the dismissal of a complaint, and concerning the objection of jurisdiction of a court, are allowed for appeal.[1234] Secondly, the time limit for an appeal is fifteen days for judgments and ten days for rulings. Thus, judgments will be legally effective after fifteen days, whereas a ruling will be final after ten days. This time limit is determined because a judgment affects substantive rights and thus, the affected persons shall have enough time to consider an appeal. In contrast to this, a ruling does not touch upon a litigant's substantial rights, but procedural rights.[1235]

[1227] *Xin Chunying* 2015, 206-207.
[1228] See Art. 58 of the ALL of 1989.
[1229] See Art. 85 of the ALL of 2014.
[1230] *Ma* 2009, 388; *Zhao Xueyan* 2015, 261.
[1231] *Ying Songnian* 2015 a, 299.
[1232] Art. 63 of the 2000 SPC Interpretation, supra n. 226, Art. 101 of the 2017 SPC Interpretation, supra n. 228.
[1233] Rulings deal with the acceptance of a case (1); the dismissal of a lawsuit (2), the objection of jurisdiction (3), the end of procedure (4), an interruption of procedure (5), the transfer and assignment of jurisdiction (6), the enforcement of administrative action during the procedure or the rejection of enforcement (7), asset protection (8), preliminary enforcement (9), permission or prohibition of case withdrawal (10), the correction of spelling errors in the ruling document (11), the interruption or termination of enforcement (12), the trying of the case or the remanding of the case for retrial or the dismissal for re-investigation (13), permission or prohibition of enforcement of the administrative action by an administrative agency (14), other matters that require a ruling (15).
[1234] Art. 101 (2) ALL 2015.
[1235] *Xin Chunying* 2015, 219.

Overall, we can summarize the interplay of each of the provisions as follows: On the one hand, with Art. 70 of the ALL of 2014, the important status of revoking an administrative action is underscored at the beginning and differentiated from the confirmation of its illegality in Art. 74, its invalidity in Art. 75 and its modification in Art. 77. But on the other hand, the revocation of action also corresponds to the legislator's accuracy that confirming the illegality and invalidity of action, or a modification have priority over a universal revocation.[1236] This adds more precision to the judgments.

As for judicial power, it is obvious that the revision and the recently enacted 2017 SPC Interpretation strengthen the court's competencies towards administrative actions in terms of a precise distinction of the types of judgments. This allows judges to effectively weigh up the interests at stake because the requirements for each type are clear. It helps to protect procedural justice because the way of resolving a dispute is set out. For instance, a plaintiff requesting financial subsistence has to approach the administrative agency first before they can file a complaint. Moreover, the judge can order a defendant agency to act in a certain way. Scholars criticized the overlap of judicial and administrative powers. But Art. 1 of the ALL states the protection of the rights and interests of citizens, legal persons or other organizations and the resolution of the administrative dispute to be the major purposes of administrative litigation. The perseverance of administrative power if it acted against the law is no longer under the ALL's protection. Therefore, the revision expanded the types of judgments to signal that procedural justice and judicial power shall contain administrative malpractice.

V. Analysis

This chapter analyzed the substantive review of administrative action which is the core of administrative litigation. The reformers were cautious because politically, it is the most sensitive aspect. Establishing an "administration according to law" is an administrative *and* a political goal that refers to the legality of administrative actions but also to adherence to political agendas.

1. Standardized handling of normative documents

The procedure of handling normative documents during administrative litigation trials, as stipulated in the 2017 SPC Interpretation, is very precise to ensure a more uniform application of the ALL. Beforehand, the 2004 SPC's Circular[1237] indicated two important

[1236] *Xin Chunying* 2015, 199, 202.
[1237] SPC's Circular on Issues concerning Applicable Legal Norms in Administrative Litigation Trials, supra n. 1031.

aspects for the scope of review: Firstly, courts should distinguish between formal legal bases, such as laws, administrative regulations, and local regulations, and normative documents as an informal legal basis. Secondly, administrative organs used to take informal normative documents as the direct basis for specific administrative actions although they are not formal legal sources.

Whereas the SPC's Circular on Issues concerning Applicable Legal Norms in Administrative Litigation Trials of 2004 also granted courts the right to review the legality and the appropriateness of normative documents, the 2017 SPC Interpretation underlines that the judiciary is not in the position to review the purpose of administrative actions. In general, courts can only decide whether an action is lawful. In two cases, when an administrative punishment is obviously inappropriate, or a calculation is erroneous, they can acknowledge the inappropriateness and enter a judgment of modification. As *Wei, Jie* and *Wiesner* point out "this can only be viewed as a step backward."[1238] Clearly, there is a trend that judges do not simply defer to administrative actions, as the selected cases about the review of appropriateness revealed. However, judges still tend to "avoid a decision on the substantive legality" of the administrative action and prefer focusing on procedural errors when the administrative agency is more powerful than the court.[1239] In the end, the review of appropriateness requires expertise and experience, but most of all legal authority.

The courts can review a normative document when the plaintiffs request so. They can send their disposition recommendations to the administrative agency when they find the normative document unlawful. In that case, the courts do not refer to the normative document in the judgment. Moreover, the courts cannot overturn unlawful normative documents as such. Even the revision did not broaden the scope of review towards this competence, but it opened the way for judges to give advice to the administration.[1240] Before the revision, judges did not mention that they decided that a particular normative document was unlawful and thus, they do not cite it in the judgment. It is uncertain whether they reviewed them at all.[1241] The unlawful normative document just continued to exist without any consequence. Thus, with the disposition recommendations, the revision made a crucial step towards monitoring normative documents.

It remains open how courts can get information and opinions about the normative document they review. The administration will not be eager to submit evidence that confirms

[1238] *Wei, Jie, Wiesner* 2019, 41.
[1239] *Ahl* 2022, 275-276.
[1240] *Wei, Jie, Wiesner* 2019, 39-41.
[1241] *Wang Jing* 2014, 351.

an accusation of illegality of a normative document they had issued. Unfortunately, the ALL does not regulate this aspect of incidental review. At least, the 2017 SPC Interpretation provides clear standards for the scope of incidental review and about the content of the recommendations. So, with sending their recommendations, the courts take a small step towards the judicialization of administrative work. However, what the 2017 SPC Interpretation does not reflect upon is the quality of judicial recommendations. In a comment, the People's Courts Daily[1242] stated that courts consider issuing judicial recommendations as "additional service" and therefore, there are putting less effort in the analysis of the problems and in the research for their recommendations. This was particularly a problem of lower-level courts.[1243] Although judicial recommendations should support the standardization of administrative actions, they can be ineffective due to their careless preparation.

So even ten years after the revision of the ALL, the situation remains chaotic. The revision did not heal the roots of the problems, namely the discretionary issuance of normative documents. That is why scholars demand that the State Council will attend to the matter.[1244] This points to a remarkable deficit. The leaders have not drafted a comprehensive Administrative Procedure Law so far which could prevent many procedural deficiencies right from the beginning and could provide a manual for issuing normative documents. It could be a way towards an "administration according to law". For example, this law could include the principle that the administrative authorities are bound by their own provisions. Such provisions could incorporate standards of administrative conduct, like efficiency, transparent and reasonable administrative decisions, public hearings, and public participation. The law could demand an active commitment to such standards.

2. The scope of acceptable cases and the expectations of the academia

The reformer's decision to expand the scope of acceptable cases is a decisive aspect that reflects that the reformers take substantive rights of the plaintiffs seriously. For instance, the inclusion of administrative agreements underlines their increasing importance for public procurements. Despite this positive development, a law regulating PPP in China is still missing. There are no national standards concerning the application for bidding and the procurement. Such legal uncertainties render the revision ineffective because judges cannot apply the ALL uniformly. The decision of the Ministry of Finance and Ministry of Justice to promote the

[1242] *Yang Fan* 2021, 2.
[1243] *Chen Guohua* 2015, 8.
[1244] MOJ's Suggestions for the State Council's Legislation Plan regarding Unified Legislation of Normative Documents, supra n. 1053.

legislation of a PPP law in China gives hope that bidding procedures, procurement, and litigation procedures are gradually improved.[1245]

The academic hopes were somehow disappointed because the reformers refrained from a general clause that does not distinguish types of administrative actions at all. Sticking to an enumeration is not only a fossil of Socialist times, but an obstacle for an ALL that must keep up with a fast-changing socio-economic environment. The scope does not include abstract administrative actions which certainly affect the people's lives.

The rulers might assume that the introduction of a general clause could cause problems for many stakeholders. Administrative agencies would realize that people can easily sue their actions. The judiciary would suffer from a higher workload due to an immense upsurge in cases filed at court. The administration would then try muddling through by issuing administrative rules that are not eligible to court. Judges would face special disputes for which they might not yet have the required special legal knowledge. Hence, they would try to avoid unpreferable cases and delay their handling. As a consequence, people would become even more disillusioned and turn to other dispute resolution channels. Hence, the political leaders would reverse the general clause and turn to centralized control to avoid further public chaos. Not surprisingly, the leadership intends to avoid such a scenario. Therefore, so far, legal fragmentation and gaps will continue undermining the ALL's effectiveness as long as the judiciary does not have more authority which they should assert with profound legal qualifications.

The detailed explanations regarding the types of judgments shall guide courts in their reasoning and in the settlement of the dispute. In addition to this, the ALL clarifies that judges cannot review the appropriateness of administrative actions except when an administrative penalty is obviously inappropriate or the administration's calculation of an amount of money is erroneous. Common cases include administrative penalties, administrative compulsion, and information disclosure. Hence, the reformers chose those cases in which reason demands courts to examine the appropriateness. But this review does not question the authority of the administration altogether. The reformers refrained from a general review of appropriateness because it would affect the separation of powers. The judiciary would be more autonomous and more powerful towards the administration which could also threat the power of the Party-state in the future.

[1245] *Cheng, Jia,* 2021.

Chapter 8: Finality of judicial decision, enforcement, and supervision procedures

This chapter asks how courts eventually settle administrative disputes and supervise the trial procedure. It studies the last of the three difficulties, namely the enforcement of the judgment and the completion of the trial. The legislators determined administrative litigation to have two instances, so that after the last instance, the judgment will be final. When final, the parties shall enforce the judgment or ruling. But enforcement met the parties' resistance, evasion, and interference. Courts also used to be passive, selective, and arbitrary regarding unpleasant enforcement. Moreover, since judges are also prone to mistakes, trial supervision is necessary as well to ensure protection of the people's rights and interests during administrative litigation.

The legislators also realized that time was precious to understand the administrative dispute and to find a solution that all parties accept. After the ALL of 1989 became effective, it soon became evident that three months were too short to deal with more complicated administrative disputes. The academia argued that the time period should neither be too short nor too long to preserve administrative procedures, protect the lawful rights and interests of the people and to prevent administrative interference with the judicial trial.[1246] Therefore, Art. 81 of the ALL of 2014 stipulates that the entire trial of a case shall take place within six months. In contrast to this, Art. 57 of the ALL of 1989 determined a time period of three months for the trial. The clear definition of the time limit is a positive signal for ensuring justice and having time for settling a dispute.

I. Appeal

Before the ALL of 1989 became effective, the system of appeal had been based on the Civil Procedure Law. During the drafting process of the original ALL, the legislators reviewed international examples and adopted the "one instance and one review" system.[1247] Accordingly, Art. 6 of the ALL of 1989 determined that a judgment or decision is final after the second instance. Art. 58 to 61 dealt with the parties of appeal, the trial, the time limit, and its judgment or ruling. Since the ALL remained vague, the 2000 SPC Interpretation added details in Art. 65 to 70, which the 2017 SPC Interpretation included in Art. 107 to 109.

[1246] *Xin Chunying* 2015, 208-209.
[1247] In Chinese: 一审一核; see: *Wu* 2011, 282

1. Initiation and procedure of second instance

In contrast to first instance trials, both the original plaintiff and the original defendant can initiate a procedure of second instance.[1248] The first paragraph of Art. 107 of the 2017 SPC Interpretation states that each party can be appellant if each one of them files an appeal against the judgment or ruling of first instance. The second paragraph adds that if only one party files an appeal, the opposing party shall be the appellee. The other parties, such as third parties, shall have the status according to the original trial. Art. 85 of the ALL of 2014 stipulates that a party must file an appeal against a judgment of first instance within 15 days after receiving, whereas the time limit is ten days for a ruling of first instance. If the party fails to file the appeal, the judgment or ruling shall be final. This corresponds to the general principle as stated in Art. 7 of the ALL of 2014. The distinction between judgment and ruling and the different time limits take account of the depth of interference: whereas judgments affect substantial rights and interests, judicial rulings usually deal with procedural matters.[1249] However, Art. 101 of the 2017 SPC Interpretation limits the right to file an appeal to three kinds of rulings, namely not docketing a complaint, dismissing a complaint, or objecting jurisdiction. These rulings affect the plaintiff's substantial right to seek redress according to Art. 3 of the ALL of 2014.

The party must send the application to the court of first instance, according to Art. 108 of the 2017 SPC Interpretation. The party filing the appeal shall prepare copies of the written appeal according to the number of other parties. The court of the original trial must within five days after receiving the written appeal submit the copies to the other parties. The counterparty has another fifteen days to prepare a statement of defense and send it back to the court of original trial that must forward them to the appellant. If the counterparty fails to hand in a statement of defense, it shall not affect the procedure of appeal. After receiving all written statements, within five days, the court of original trial must submit them to the court of second instance with all the case files and evidence. The court of first instance must also transfer litigation fees for the second instance that the parties have already paid. The SPC had already determined this in Art. 19 of its Interim Provisions of the Supreme People's Court on the Case Filing Work of People's Courts, issued in April 1997.[1250] Art. 20 of the SPC Interim Provisions specified the procedure at the court of second instance: Upon receipt of the files and documents, the court of second instance should check whether the documents of the appeal and the

[1248] *Wu* 2011, 283.
[1249] *Xin Chunying* 2015, 219.
[1250] Interim Regulations of the Supreme People's Court on the Case Filing Work of People's Courts (最高人民法院关于人民法院立案工作的暂行规定), issued April 21, 1997, in: Fafa (法发) 1997, No. 7.

judgment of first instance are complete. The court of second instance shall state the number of files in the letter of transfer. Furthermore, it should also check whether the parties exceeded the time limit or if it shall extend the deadline due to force majeure or other reasons. Thirdly, the court must check the amount of litigation fees and make amendments if necessary. If the files and materials are incomplete, the court of second instance notifies the court of first instance in time to supplement. After checking the formal requirements, the court of second instance reviews whether the case is acceptable for appeal. It rejects cases that do not meet the requirements or if information is missing or erroneous, it informs the parties to supplement documents.[1251] If it accepts the case, the case docketing division of the court of second instance shall send a notification to the parties with the file number.[1252]

If the court of second instance dockets the case, it shall form a collegial bench for the trial, according to Art. 86 of the ALL of 2014. Like in the first instance, the collegial bench shall consist of an odd number of three or more (Art. 68 of the ALL of 2014). If there is no new fact, evidence, or ground submitted and the court reviewed all the files, heard the parties, and conducted investigation, it can decide to try the case in writing without holding a hearing. Hence, the court has discretionary power.[1253] In general, however, the court of second instance conducts a hearing as well.[1254] This reveals that the trial of second instance is not an entirely new trial where parties cross-examine new evidence, neither is it only restricted to the materials submitted by the first instance court to control their work. Both instances constitute an entity.[1255]

However, the legal academia debated about the relationship between the first and second instance during the ALL reform process. On the one hand, some scholars argued that the court

[1251] *Ying Songnian* 2015 a, 284.
[1252] Art. 21, Interim Regulations of the Supreme People's Court on the Case Filing Work of People's Courts, supra n. 1250.
[1253] *Liang Fengyun* 2015, 382.
[1254] *Liang Fengyun* 2015, 383; *Ying Songnian* 2015 a, 287.
[1255] Like in China, in Germany, the court of appeal (*Berufungsgericht*) conducts a review of the laws applied and the facts of the case to the same degree as the administrative court, but can also examine new facts and evidence, according to Art. 128 of the Code of Administrative Court Procedure. Unlike in China, in Germany, administrative appeal is only possible in cases in which an appeal is either admitted by the administrative court of first instance or, if the court of first instance rejects an appeal, by the higher administrative court after reviewing the claims made against the decision of the court of first instance (*Zulassungsberufung,* Art. 124). If they find that an appeal is necessary due to the issues at dispute. These issues are defined in the second paragraph of Art. 124: The appeal on points of fact and law shall only be admitted: 1. if serious doubts exist as to the correctness of the judgment, 2. if the case has special factual or legal difficulties, 3. if the case is of fundamental significance, 4. if the judgment derogates from a ruling of the Higher Administrative Court, of the Federal Administrative Court, of the Joint Panel of the supreme courts of the Federation or of the Federal Constitutional Court, and is based on this derogation, or 5. if a procedural shortcoming subject to the judgment of the court of appeal on points of fact and law is claimed and applies on which the ruling can be based. The court will admit the request for appeal. This system of admission intends to accelerate the entire procedure and to reduce the workload for the higher administrative courts See also: *Schoch, Schneider (eds.)* 2020, § 128 VwGO (Umfang der Nachprüfung), at point 3 and *Schoch, Schneider (eds.)* 2020, § 124 VwGO (Statthaftigkeit der Berufung), at points 15, 65-69.

of second instance should only review the claims of appeal and the application of law. This signals respect for the parties' rights and interests and corresponds to the respective regulation in the Civil Procedure Law.[1256] Moreover, this also follows international examples. For instance, in Germany, the higher administrative court is restricted to the claims the original administrative court reviewed before.[1257] On the other hand, others argued that such restrictions would not fulfill the purpose of appeal as a dispute resolution channel. The second instance is also meant to protect the people's lawful rights and interests and to supervise the administration. The focus of appeal is the review of legality of the administrative action. Thus, the court should review the claims of appeal and should have more discretion to investigate.[1258] This also constitutes a major difference between administrative litigation and civil litigation. The legislators agreed with this view and decided that the trial at second instance is the continuation of the first instance.

The scope of review reflects this model of continuation: In the first instance, the judge only reviews the legality of the impugned administrative action whereas in the second instance, the scope of review is comprehensive and includes the trial procedure of the first instance as well as the legality of the impugned administrative action, according to Art. 87 of the ALL of 2014. Thus, in the second instance, the court reviews whether the court of first instance applied the laws correctly and whether the evidence was clear. But it can go beyond the claims made by the appellants.[1259] The court of second instance must make a judgment within three months upon receipt, as stated in Art. 88 of the ALL of 2014. If necessary, they can extend the period with the approval of a higher people's court. If a higher people's court needs to extend the period itself, it shall ask the SPC for permission.

2. Types of judgments and rulings in second instance

Art. 89 lists the types of judgments a court of second instance shall make. This is a major revision of the former Art. 61 of the ALL of 1989 because it puts rulings on the same rank as judgments. It included Art. 68 to 71 of the 2000 SPC Interpretation which also defined types of judgments for appeal cases.[1260] Firstly, if the judgment or ruling of first instance is clear in fact finding and correct in the application of law, it shall dismiss the appeal and maintain the original judgment or ruling. The original judgment or ruling becomes final in this case.[1261] In this

[1256] Art. 168, Civil Procedure Law.
[1257] Ibid.
[1258] *Liang Fengyun* 2015, 385-386.
[1259] *Ying Songnian* 2015 a, 291, 293.
[1260] *Liang Fengyun* 2015, 387; *Ying Songnian* 2015 a, 299.
[1261] *Xin Chunying* 2015, 226.

context, *LIANG Fengyun* discusses how the judges shall react if they realize that the appellee submits evidence which they should have already submitted in the first instance. He concludes that the second instance is also a procedure of investigation and examination. But sending the case back for a new trial lacks a legal basis. A new trial can only be demanded if the facts were unclear or the evidence insufficient. Hence, the court must maintain the original decision because otherwise, it would undermine the function of the first instance.[1262]

Secondly, if the finding of facts is unclear or the court of first instance applied the law erroneously, the court of second instance will enter its own judgment to revoke or modify the original judgment, or it will rule to revoke or modify the original ruling. The court of first instance applied the law erroneously if they applied the ALL in the wrong way, for instance by exceeding the scope of acceptable cases, or applying another, but wrong substantive law.[1263] In case it enters its own judgment or ruling, the court of second instance is obliged not to make an unfavorable modification.[1264] Thirdly, if the basic fact is unclear, the court of second instance will either enter its own judgment or rule to send the case back to be tried anew[1265]. The basic fact refers to the key fact which influences the decision about the impugned administrative dispute.[1266] Some argued that the court of second instance should directly correct the wrong first-instance decision because it would save judicial resources and would be logical. However, the opponents won with the argument that the court of first instance was responsible if the key fact is unclear and evidence is insufficient. The court of second instance should send the case back to allow the original court to correct the mistake.[1267] Fourthly, if that court of first instance omitted a party in the original judgment, a default judgment was entered illegally, or statutory procedures were seriously violated otherwise, the court of second instance decides to revoke the original judgment and sends it back to be tried anew. This affects trials in which the court should have conducted a hearing but omitted it, or where it left out claims or where judicial staff should have been recused.[1268]

The second paragraph of Art. 89 of the ALL of 2014 underlines that after the court of first instance tried a case anew and the plaintiff files an appeal against this decision, the court of second instance cannot decide to send it back for trial again. To stop such cases from entering a continuous loop, the ALL of 2014 restricts it to one new trial. The third paragraph specifies

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[1262] *Liang Fengyun* 2015, 388-389.
[1263] Ibid.
[1264] *Ying Songnian* 2015 a, 299.
[1265] In Chinese: 重审.
[1266] *Xin Chunying* 2015, 226.
[1267] *Liang Fengyun* 2015, 390.
[1268] Ibid.

that the judgment of the court of second instance covers the procedure of first instance and the impugned administrative action. Moreover, the second paragraph of Art. 109 of the 2017 SPC Interpretation adds that the original court must form a new collegial bench in such cases. This follows the idea that no one should be the judge of his own case.[1269] With the provisions, the legislators emphasized the importance of substantive and procedural review. Not only the procedural mistakes of the trial at first instance are object of supervision, so is the legality of the impugned administrative action to solve the underlying administrative dispute.[1270]

In addition, Art. 109 of the 2017 SPC Interpretation adds other types of judgments made by the court of second instance. According to the first paragraph of Art. 109 of the 2017 SPC Interpretation, if the court of second instance concludes that the decision of the original court not to docket a case or to dismiss the case is erroneous, it rules to send the case back to the original court that has to docket the case and proceed with a hearing, but it shall form a new collegial bench, as stipulated in the second paragraph. The third paragraph deals with the situation in which the court of first instance wrongly omitted a party or a claim in the proceedings. The court of second instance shall rule to revoke the original judgment and send it back for a new trial. The fourth paragraph stipulates that if the court of first instance omitted a claim for administrative compensation, but, as the court second instance concludes, it was not necessary, it shall dismiss this claim. In contrast to this, the fifth paragraph deals with the lawful claim for administrative compensation which the court omitted in the first instance. The court of second instance confirms the illegality of the impugned administrative action and can decide to mediate. If mediation fails, it shall send the case back to try the part concerning the compensation again. Lastly, if a party claims for administrative mediation at the second instance, the court of second instance may mediate. If this is unsuccessful, it shall notify the party for filing another complaint.

[1269] *Ying Songnian* 2015 a, 329.
[1270] *Xin Chunying* 2015, 228.

3. Practical experiences

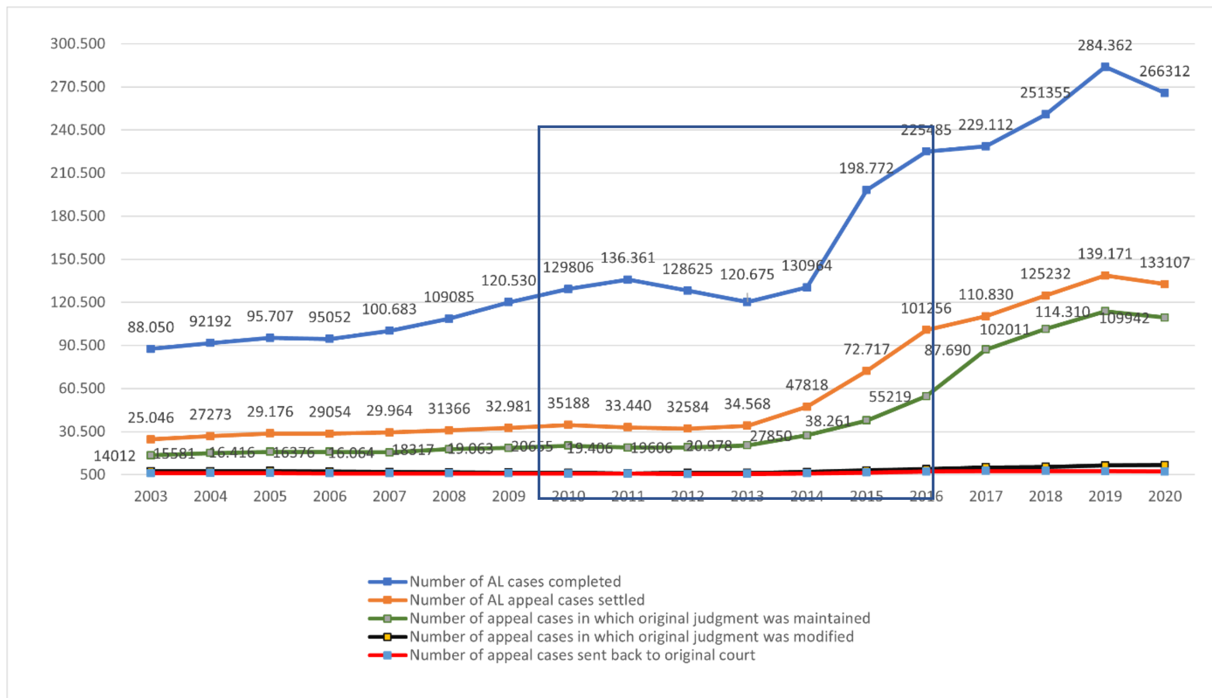

Figure 4 Development of appeal cases, 2003-2020

Figure 4[1271] compares the steady increase of appeal cases with the increase of administrative litigation cases. The development of appeal cases fluctuated similarly to the development of administrative litigation in the early 2010s (highlighted in the box).[1272] On average, in about one third of all cases, the plaintiffs filed an appeal between 2003 and 2020. From this, it can be assumed that the parties were unsatisfied with the results of the first-instance trial and demanded that their dispute to be solved by a higher-level court, as *HE Haibo* pointed out.[1273] But in judicial practice, the second-instance courts usually confirmed the original judgment or ruling (on average: 27,000 cases which constitute about 60 percent of all second instance judgments). Even after the revision of the ALL, as Figure 4 illustrates, in the majority of second-instance trials, the court of second instance maintained the original judgment. In six percent of the cases (about 2,700 cases), the court of second instance changed the judgment or ruling and entered their own decision. In only about three percent (about 1,600 cases), it sent the case back to the court of first instance for a new trial.[1274]

Figure 5 compares the maintenance rate of administrative reconsideration with that of administrative appeal between 2013 and 2016. Both channels are procedures for controlling

[1271] Based on data drawn from the China Law Yearbooks, supra n. 658.
[1272] *He Haibo* 2012.
[1273] Ibid.
[1274] *He Haibo* came to similar conclusions in *He Haibo* 2012.

original administrative and judicial decisions. It is evident that the majority of procedures end with a decision maintaining the original one. For administrative reconsideration, this shows that administrative agencies follow their predecessor's decision accepting the risk of being co-defendant in an administrative litigation trial.

For the courts, this is either the result of pure coincidence or it signals that they respect or are unwilling to undo the decision of their lower-level colleagues. They probably experience administrative interference. In his study from 2013, *ZHU Chunhua* analyzed 3,980 second-instance administrative judgments gathered between 2009 and 2010.[1275] Similar to the presented graphs and the findings of *HE Haibo*, *ZHU* also confirmed that administrative agencies had obvious advantages in winning cases. He highlighted that the rate for modifying the original judgment was double as high when the defendant agency filed an appeal. Most of the claims concerned unclear facts and errors in the application of the law, whereas violations of legal procedures were usually only subsidiary reasons.[1276]

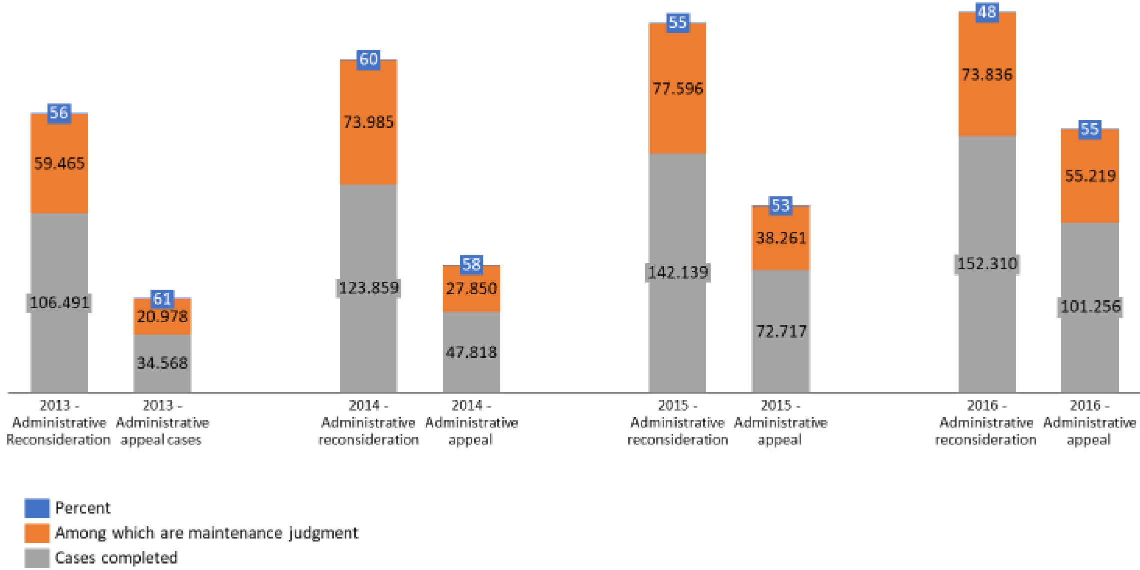

Figure 5 Maintenance rate of administrative reconsideration and administrative appeal cases from 2013-2016.

To sum up, the revision of the ALL added important provisions for specifying the interplay of its two-tier administrative litigation system. The refinement within the ALL concerning administrative appeal was necessary to offer a precise manual of how to conduct the procedure and to decide the case. This will help to reach a consistent application of law eventually. However, clearly, in the majority of appeals, the court of second instance does not deviate from the judgment or ruling of first instance. What we cannot answer here is how

[1275] *Zhu* 2013.
[1276] Ibid., 98-99.

effective an appeal really is with respect to a mediation of the dispute and the protection of the lawful rights and interests, in particular regarding the fact that the decision of the appellate court is final.

II. Finality of judicial decisions

According to the revised ALL of 2014, a first-instance judgment becomes final[1277] under two circumstances: Firstly, the plaintiff does not appeal against the first-instance judgment within fifteen days after receiving the judicial documents or they do not appeal against judicial rulings within ten days after receiving. Art. 85 of the ALL of 2014 stipulates that the judgment or ruling is final after the time for filing an appeal expired. Secondly, according to item 1 of Art. 89 of the ALL of 2014, the first-instance judgment becomes final, when the appellate court decides to dismiss the appeal and maintains the original judgment if the factual findings of the first-instance judgment are clear, and the court of first instance applied the law correctly.

In Chinese legal academia, there is no consensus about what types of final rulings shall be acceptable for retrial[1278]. According to the second paragraph of Art. 101 of the 2017 SPC Interpretation, plaintiffs can file an appeal for three types of court rulings (not docketing a complaint, dismissal of a complaint, and objection to jurisdiction) because they affect the right to sue when the parties before the hearing. Consequently, they should be eligible for retrial as well. The other twelve types of rulings are exempt from the appeal because they affect the trial hearing when the parties can make statements. Besides that, appeal against a mediation agreement is not possible because both parties agreed upon the terms. On the one hand, scholars demand that only those rulings that touch upon the people's substantive rights and duties should be in the scope of rulings. On the other hand, scholars argue that the scope of retrial is not clearly determined which is why the court shall review whether a petition for retrial is acceptable or not.[1279]

The ALL of 2014 describes the retrial procedure in Art. 90 to 93. Plaintiffs who do not accept a final first-instance judgment or ruling can request the court to retry the case in accordance with the procedure of supervision. According to Art. 110 of the 2017 SPC Interpretation, parties shall request a retrial within six months after the parties concerned become aware or should have become aware of the circumstances of retrial, provided they received the judicial documents of the first instance. Art. 119 of the 2017 SPC Interpretation

[1277] In Chinese: 发生法律效力.
[1278] In Chinese: 再审.
[1279] *Xin Chunying* 2015, 217-219, 230.

determines that judgments or rulings of second-instance cases are final when a second-instance court tried them according to the second-instance procedure. If a higher-level court retries a case according to the procedure of supervision and second instance, its judgments and rulings are final, too. Besides that, appeal is not possible for first-instance judgments and rulings by the SPC because they become immediately effective.[1280] These regulations serve to clarify when a judgment or ruling becomes legally effective.

For Chinese legal scholars, it is rather controversial at what point in time a second-instance judgment becomes final. Art. 148 of the Civil Procedure Law determines that the court must announce the judgment publicly and must issue a written judgment within ten days. The court must also instruct the parties about their right to appeal. The pronouncement of the judgment, its issuance within ten days and the instruction about the right to appeal are similarly determined in Art. 80 of the ALL of 2014. However, scholars discussed the difference between the moment of public pronouncement and the time of issuance. The lack of clear finality of judgments and rulings was even called a "unique institutional feature of the Chinese legal system".[1281] Some propose to take the pronouncement as the time of legal effectiveness because the law does not explicitly mention the receipt of the judicial judgments, whereas others indicate that Art. 155 and Art. 164 of the Civil Procedure Law as well as Art. 85 of the ALL of 2014 unequivocally refer to the time limit of appeal which supports that the receipt of the judgment should be the point of finality.[1282]

In contrast to this debate, the 2017 SPC Interpretation provides a clear message concerning the point of legal effectiveness. All judgments and rulings are effective after the expiration of the time limit for appeal or after the pronouncement of a second-instance judgment or ruling, as explained above. The 2017 SPC Interpretation determines that the parties must sign a receipt of the judicial documents sent by the court. Parties are supposed to tell their address and their preference between postal or electronic issuance. Moreover, they must confirm the receipt of judicial documents. If they move and their address changes, they must inform the court.[1283] Therefore, these detailed provisions allow concluding that the finality of judgments and rulings complies with the receipt and not only with the public pronouncement.

Secondly, the time limit for appeal distinguishes judgments form rulings. Parties can file an appeal against a judgment within 15 days, whereas they must file an appeal against a

[1280] *Xin Chunying* 2015, 219.
[1281] *Ji Li* 2014, 76.
[1282] *Ahl, Sprick, Czoske*, 2014, 201; *Xin Chunying* 2015, 219.
[1283] Art. 51 and 52, 2017 SPC Interpretation, supra n. 228.

ruling within 10 days. In comparison, the time limit to file a complaint in the first instance is three months, according to Art. 46 of the ALL of 2014. The prescribed time limit for appeal recognizes that the parties need some, but less time to think about the possibility to appeal. Furthermore, a shorter time limit is also appropriate to maintain administrative effectiveness and stability. [1284] Scholars argued that a judgment solves substantial problems of the administrative case and thus, its influence on the rights and duties of the parties is rather strong. In contrast to this, a ruling solves procedural problems and hence, does not affect the rights and duties of the parties.[1285]

III. Enforcement of judicial decisions

In his empirical study about the use of capital punishment for curbing oil thefts, *Ji LI* illustrates that the courts are "deeply embedded in local power contexts" where local administrative agencies engage in power-bargaining.[1286] He argues that the administration's powerful position towards the courts makes it difficult for the latter to enforce final judgments and rulings. The Chinese government primarily bases its Chinese model of "Socialist rule of law" governance on the bureaucratic apparatus.[1287] Hence, the stage of enforcing effective judgments and rulings is where de jure and de facto power collide and where the structural problem of power distribution becomes obvious.

1. Regular enforcement

Noncompliance is not only a problem the courts face with administrative agencies, but people are also reluctant to abide by an effective judicial decision.[1288] In its Work Program on Implementing "the Basic Solution of the Difficulty in Enforcement within Two to Three Years" issued in 2016,[1289] the SPC underscores that the difficulty in enforcement was and is not a problem of administrative litigation alone, it affects civil and criminal procedure as well. It announces taking measures to solve the four basic problems, namely of the evasion of enforcement, the resistance to enforcement, external interference in enforcement, and passive, selective, and arbitrary enforcement by the people's courts. For that purpose, a third-party evaluation agency should be set up which should determine specific goals and indicators for

[1284] *Xin Chunying* 2015, 219.
[1285] Ibid.
[1286] *Ji Li* 2015, 834, 838.
[1287] *Wang, Wang* 2019, 24.
[1288] *Creemers* 2018.
[1289] Supreme People's Court's Work Program on Implementing "the Basic Solution of the Difficulty in Enforcement within Two to Three Years" (最高人民法院关于落实 "用两到三年时间基本解决执行难问题" 的工作纲要), issued April 29, 2016, in: Fafa (法发) 2016, No. 10, 1.

solving implementation difficulties within two to three years. The evaluation team is composed of four departments, thirteen media, and fifteen experts and scholars led by the Chinese Academy of Social Sciences, as the SPC reported in 2018.[1290] The mode of enforcement needs innovation as well: For instance, a system should be set up to punish people who are untrustworthy. Moreover, the traditional mode of searching for people by “waiting at their door” or locating objects is time-consuming and work intensive. The intermediate people’s court shall set up enforcement branches at the basic people’s court and to guide the enforcement personnel at the basic level to curb local protectionism.

In 2018, the SPC reported to the NPC that the difficulty of enforcement was still relevant.[1291] It also emphasized that the Social Credit System (henceforth: SCS)[1292] that the government started setting up in 2014 was an effective tool for making people comply with final judgments and rulings. The SCS is a set of data- and technology-driven mechanisms that punish or reward the people’s behavior to make the entire society more sincere, honest, and virtuous.[1293] In 2016, the General Office of the CCP Central Committee and of the State Council jointly published their Opinions concerning Accelerating the Construction of Credit Supervision, Warning and Punishment Mechanisms for Persons Subject to Enforcement for Trust-Breaking.[1294] The Opinions’ objective is threefold: The effectiveness of enforcement work controlled by the people’s courts is to be enhanced, information should be shared more quickly to people who are subject to enforcement but who broke trust, and such persons must perform their duties. It has a catalogue of restrictions for not trustworthy citizens, legal persons, or social organizations. For any misbehavior, people enter on a blacklist which cause restrictions on government subsidies or on issuing bonds or shares. Being on the blacklist can also have negative effects on the person’s career and promotion or their freedom of movement. In the final report delivered in April 2019, the SPC praised the success and the future steps in

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[1290] Report of the Supreme People’s Court on the People’s Court’s Work in Solving the “Difficult Enforcement” – hold at the 6th meeting of the Standing Committee of the 13th National People’s Congress on October 24, 2018 (最高人民法院关于人民法院解决 “执行难” 工作情况的报告 ——2018 年 10 月 24 日在第十三届全国人民代表大会常务委员会第六次会议上), available at: http://www.npc.gov.cn/npc/c12435/201810/18a4f866ad0f4880b27040949e1fb66d.shtml [February 26, 2021].

[1291] Report of the Supreme People’s Court on the people’s court’s work in solving the "difficult enforcement,” supra n. 1290.

[1292] In Chinese: 社会信用体系.

[1293] *Creemers* 2018, 2.

[1294] The General Office of the Central Committee of the Communist Party of China and the General Office of the State Council issued the "Opinions on Accelerating the Construction of Credit Supervision, Warning and Punishment Mechanisms for Persons Subject to Enforcement for Trust-Breaking " (中共中央办公厅、国务院办公厅印发了《关于加快推进失信被执行人信用监督、警示和惩戒机制建设的意见》), issued September 25, 2016, available at: https://chinacopyrightandmedia.wordpress.com/2016/09/25/opinions-concerning-accelerating-the-construction-of-credit-supervision-warning-and-punishment-mechanisms-for-persons-subject-to-enforcement-for-trust-breaking/ [January 3, 2024].

the work of effective enforcement work by the people's court.[1295] It pointed out that they foster the cooperation of different administrative agencies, integrate diverse types of media and technology in their work. For instance, together with CCTV, more than fifteen issues of a TV program called "Punishment for the Dishonest" were broadcasted.[1296] This program reports about enforcement cases that were impressive because the execution was a major operation of courts, police, and the administration. Furthermore, the SPC stresses the work on the platform called "China Enforcement Information Disclosure Network"[1297] that aims at making it easier to share information and the work more transparent. For the long-term work, the SPC summarizes the experiences and the comments of the pilot work in a new work outline which shall provide standardized tools for enforcement of judicial decision.

The revised ALL also set up standards for enforcement of effective administrative judgments and rulings by the people's courts. Art. 94 declares that the parties must comply with an effective judgment, ruling or mediation agreement issued by the court. This underlines the binding nature of the court's decision. The revision added the enforcement of mediation agreements as well. Art. 83 of the 2000 SPC Interpretation had already listed mediation agreements whereas the Art. 65 of the ALL of 1989 did not mention them. As a matter of consistency, the revised ALL now acknowledges mediation agreements to be judicial decisions.[1298] Parties can initiate the enforcement procedure upon request. The time limit for filing an enforcement request used to be one year for citizens, and 180 days for administrative agencies or legal persons, according to Art. 84 of the 2000 SPC Interpretation. The 2017 SPC Interpretation does not distinguish between natural and legal persons anymore but stipulates in Art. 153 that the time limit for the application for enforcement shall be two years. The time limit shall be counted from the day the time period for performing or fulfilling the requirements as declared in the judicial decision expired. In case the judicial decision determines performance in installments, the time limit shall be counted from the last installment. If there is no time limit prescribed, the time limit shall be counted from the day of receiving the judicial decision. Due to the long time limit, the court shall not accept any application that parties filed after the

[1295] Report of the Supreme People's Court on Studying and Handling the Deliberation Opinions of the Report on the Work to Solve the Difficulty of Enforcement – held at the 10th meeting of the Standing Committee of the 13th National People's Congress on April 21, 2019 (最高人民法院关于研究处理对解决执行难工作情况报告审议意见的报告——2019 年 4 月 21 日在第十三届全国人民代表大会常务委员会第十次会议上), available at: http://www.npc.gov.cn/npc/c30834/201904/4e10448c88124ac182d851c5738d4877.shtml [March 2, 2021].
[1296] A sample is accessible here: https://tv.chinacourt.org/search/search.html?keyword=%E5%A4%B1%E4%BF%A1%E6%83%A9%E6%88%92%E5%BD%95&submit= [March 29, 2024].
[1297] In Chinese: 中国执行信息公开网, the website is available at: http://zxgk.court.gov.cn/ [January 4, 2024].
[1298] *Ying Songnian* 2015 a, 348.

expiration, unless they can provide a good reason. The courts accept requests that according to Art. 18 of the SPC's Provisions on Several Issues concerning the Enforcement of People's Courts (for Trial Implementation) (henceforth: Enforcement Provisions),[1299] fulfill the following requirements: firstly, the judicial decision must have taken effect; secondly, the applicant is the right holder or their successor; thirdly, the judicial decision contains details concerning the content of performance, and the subject matter of enforcement and the debtor; fourthly, the debtor failed to perform their duties beforehand; and the case falls under the jurisdiction of the court that enforces the judicial decision. Art. 154 of the 2017 SPC Interpretation designates the court of first instance as responsible for enforcing. It may report to the court of second instance if the circumstances of enforcement are particular. It is at the discretion of the court of second instance to have the application either transferred to it or to have the court of first instance to enforce.

Art. 20 of the Enforcement Provisions determines that parties must submit the application in written. If the applicant has trouble with writing, they can file it verbally with the staff of the enforcement division. They also must submit the effective judicial decision, their identification and the details concerning their successor. The enforcement division is responsible, among others, for the execution of administrative judgments, rulings or administrative mediation agreements, and administrative punishment decisions, as Art. 2 determines. It reviews the application, demands the applicants to supplement missing information or correct mistakes until the application meets all requirements. Afterwards, the enforcement division dockets the case.[1300] The enforcement division shall send a notice of enforcement or a letter of transfer for enforcement within ten days as of receipt, as Art. 24 stipulates. The notice of enforcement shall also inform the debtor to pay the interest or surcharge for delay of performance in accordance with the provision of Article 253 of the Civil Procedure Law. Entitled to file an application for enforcement are all parties, namely the plaintiffs, the defendant administrative agencies and third parties when the non-performance of their counterparty affects their rights and interests, as the first paragraph of Art. 152 of the 2017 SPC Interpretation determines. If the administrative agency must make administrative compensation,

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[1299] Provisions of the Supreme People's Court on Several Issues concerning the Enforcement of People's Courts (for Trial Implementation) (最高人民法院关于人民法院执行工作若干问题的规定(试行)), issued June 11, 1998, in: Fashi (法释) 1998, No. 15; revised according to the "Decision of the Supreme People's Court to Amend Eighteen Enforcement Types of Judicial Interpretation including the Provisions of the Supreme People's Court on Several Issues concerning People's Courts' Impoundment of Goods Transported by Railway (最高人民法院关于修改《最高人民法院关于人民法院扣押铁路运输货物若干问题的规定》等十八件执行类司法解释的决定), issued December 23, 2020, in: Fashi (法释) 2020, No. 21 (henceforth: Enforcement Provisions).

[1300] *Ying Songnian* 2015 a, 341-342.

reimbursement, or any other payment, but refuses to pay, the counterparty can apply to the court for enforcement, according to the second paragraph of Art. 152 of the 2017 SPC Interpretation. An administrative agency can express non-performance in diverse ways: the agency either announces not to comply with the judicial decision, it delays its performance, it does the opposite of what the judicial decision determines, or it does not react at all.[1301]

The first-instance people's court can choose between five measures to enforce against an administrative agency, as determined by Art. 96 of the ALL of 2014: Firstly, the court can send a notice to a bank that shall transfer the amount of money for refund from the administrative agency's account. Secondly, it can impose a fine of 50 to 100 Yuan per day on the responsible person of the agency if they do not fulfill within the prescribed period. The responsible persons must pay directly.[1302] In this context, Art. 96 of the 2000 SPC Interpretation referred to the Civil Procedure Law, which in the second paragraph of Art. 114 determined that the court could impose a fine on the primary person in charge or liable persons of an entity. During the reform process, the legislators changed the wording from "administrative agency" to "the responsible person" which is more precise and effective in making the agency comply with the judicial decision.

Thirdly, the court can announce the administrative agency's refusal publicly. This is not an enforcement tool as such. But public scrutiny is an effective means to put pressure on the agency because otherwise, the responsible person would "lose their face" and risk a promotion. Compared to Art. 65 of the ALL of 1989, the revision added the third option of public announcement to the catalogue. Fourthly, the court can also send judicial recommendations to the higher-level agency or the supervisory authority of the impugned administrative agency. The recipient agency shall take measure according to the judicial recommendation and inform the court of the results. Judicial recommendations also belong to the supplementary measures. It is controversial how effective judicial recommendations are since the recipient is part of the administrative apparatus as well and can simply refuse to handle according to the judicial recommendations.[1303]

Lastly, if the agency's noncompliance has reverse social impact, the court can detain the liable supervising official or any other liable person. If the circumstances are serious, criminal law investigations can be started. Art. 313 of the Criminal Law stipulates that a court can pronounce a sentence of not more than three years of fixed-term imprisonment, criminal

[1301] *Liang Fengyun* 2015, 479; *Ying Songnian* 2015 a, 352.
[1302] *Ying Songnian* 2015 a, 353.
[1303] *Liang Fengyun* 2015, 484.

detention or a corresponding fine to whoever refuses to carry out a decision or order made by a court while he is able to carry it out. Scholars debated whether the administrative division of a court should directly initiate a criminal procedure in such a case. However, reformers rejected it because of the special function and role of administrative litigation. The prosecution is responsible initiating criminal procedure and conducting investigation.[1304] Nevertheless, Art. 96 of the ALL of 2014 underlines that the enforcement division of a court has discretionary power to encounter noncompliance.[1305]

Enforcement must be completed within six months, according to Art. 107 of the Enforcement Provisions. It can be suspended due to special circumstances and be resumed when the reasons for suspension are gone. As Art. 103 determines, a case enters trial supervision or retrial, the enforcement shall be suspended if the higher-level court enters a corresponding ruling. Enforcement terminates, according to Art. 108, in case it is completed, the procedures or the enforcement terminated, the case is dismissed, enforcement is not allowed, or the application rejected. If the parties both voluntarily agree, they can sign a mediation agreement. The original status before the enforcement has to be restored if the original legal basis has changed or is revoked, according to Art. 109 of the Enforcement Provisions.[1306]

2. Non-litigation enforcement

Art. 95 of the ALL of 2014 stipulates that the administrative agency or a concerned third party may apply to the court for enforcement if the citizens, legal persons, or other social organizations refuse to comply. The administrative agency may even enforce itself as long as it does so according to law. If the agency is not authorized by the law to enforce itself, it must apply to the court.[1307] China applies a so-called compromise model that combines self-enforcement by administrative agencies and application to the people's court for enforcement.[1308] The latter type of enforcement is non-litigation enforcement.[1309] In contrast to regular enforcement by the court executing judicial decisions, in cases of non-litigation enforcement the administration applies to the court to enforce an administrative action. Soon after implementing the ALL of 1989, the legislators realized that the people eagerly accepted enforcement by the courts. Since the courts reviewed the legality of the administrative action before the enforcement, people believed that the courts considered, respected, and protected

[1304] *Liang Fengyun* 2015, 486.
[1305] *Ji Li* 2017, 24.
[1306] *Ying Songnian* 2015 a, 345-346.
[1307] Ibid., 349.
[1308] *Yang, Zhang* 1997.
[1309] In Chinese: 非诉行政执行案件.

their rights and interest if the action turned out to be illegal. Hence, non-litigation enforcement served not only as tool for the administration, but also as a means to restrict the growing administrative power.[1310]

Art. 2 of the Administrative Compulsion Law[1311] defines administrative enforcement as the performance of obligations legally enforced by administrative organs or by the people's courts. The administrative agency can file an application for non-litigation enforcement by the courts if citizens, legal persons, or other organizations do not perform an effective administrative decision. According to Art. 37 of the Administrative Compulsion Law, the administrative agency may decide to enforce if the party concerned, after it prompted them, still fails to perform an administrative decision within the prescribed time limit without any justifiable reason. The party concerned can file a complaint against the written enforcement decision, unless they exceed the time limit for filing complaints, according to Art. 44 of the Administrative Compulsion Law. The reformers of the ALL followed the Administrative Compulsion Law's provisions. As stipulated in Art. 97 of the ALL of 2014, the administration can apply to the people's court for enforcement of an administrative action, or it can conduct the action itself if the recipient citizen, legal person, or other social organization neither files a complaint against the administrative action nor complies with the action within the prescribed period.

But Art. 156 of the 2017 SPC Interpretation stipulates that the law must authorize agencies to enforce. If they do not have any authorization, the respective administrative agency must apply to the people's court within three months after the expiration of the time limit within that the obligated party must enforce. The people's court do not accept requests that parties submit after the time limit of application expired. This corresponds to Art. 53 of the Administrative Compulsion Law that states that an administrative agency shall apply to the people's court for enforcement within three months if the party subject to enforcement neither performs within the time limit, nor applies for reconsideration nor files a complaint. Art. 13 of the Administrative Compulsion Law stipulates if the law is silent on the authority to enforce, the administrative agency making the relevant administrative decision shall apply to the people's court for enforcement.

Art. 155 of the 2017 SPC Interpretation specifies the requirements for non-litigation enforcement: firstly, the law must prescribe that the court shall enforce the administrative action.

[1310] *Zhao Zhonggen* 2012, 24.
[1311] Administrative Compulsion Law, supra n. 745.

Apart from the provisions of the Administrative Compulsion Law, Art. 28 of the Regulations on Expropriation and Compensation of Houses on State-Owned Land clearly demands that the people's government at the city or county level that made the house expropriation decision shall apply to the people's court for enforcement according to law if the expropriated person does not apply for administrative reconsideration or initiate an administrative lawsuit within the statutory time limit, and does not move within the time limit specified in the compensation decision.[1312] Secondly, the administrative action must be effective and must possess an enforceable content. Thirdly, the applicant must be the administrative agency that issued the administrative action or an authorized organization. Fourthly, the administrative action must name the obligated party against that the court shall enforce. Fifthly, the obligated party failed to perform within in the prescribed time limit. Sixthly, the administrative agency applies to the court within the statutory time limit. Lastly, the court must have jurisdiction to enforce the administrative action. In its second paragraph, Art. 155 refers to Art. 55 of the Administrative Compulsion Law which lists the materials required for the application. These consists of a written application for enforcement, the written administrative decision, and the facts, reasons, and basis for making the decision, opinions of the party concerned and information on prompting by the administrative agency, information on the subject matter of enforcement upon application; and other materials as prescribed by laws and administrative regulations. Like in regular enforcement cases, the time limit for applying is two years after the last day for performing by the party subject to enforcement, as determined in Art. 153 of the 2017 SPC Interpretation.

The courts only accept applications that meet the requirements and notify the administrative agency within five days, according to the third paragraph of Art. 155 of the 2017 SPC Interpretation. If the administrative agency is not satisfied with the ruling of the court, they can apply for reconsideration at the higher-level court within fifteen days. The court at the next level shall enter a ruling within 15 days. The basic-level court at the place of the administrative agency that applied has jurisdiction. If real property is involved, the basic-level court at the place of the real property is responsible, as designated by Art. 157 of the 2017 SPC Interpretation.[1313] If the responsible court considers the enforcement to be difficult, it can consult its higher-level court which can decide either to enforce itself or to have the original court do it. Art. 160 determines that the court forms a tribunal that has seven days to review the

[1312] Regulations on Expropriation and Compensation of Houses on State-Owned Land (国有土地上房屋征收与补偿条例), Order No. 590 of the State Council, issued January 19, 2011.
[1313] Formerly Art. 89 of the 2000 SPC Interpretation.

legality of the administrative action for non-litigation enforcement. If the action is lawful, the court rules to permit enforcement. If the action is obviously illegal and damages the lawful rights and interests of the party against that the court enforces, the court shall hear the opinions of both the administrative agency and the counterparty within 30 days. After the hearing it shall enter a ruling whether to permit enforcement. If it permits it, the enforcement division of the court shall take the enforcement measure. However, Art. 161 of the 2017 SPC Interpretation adds a list of circumstances that forbid enforcement. Firstly, the party issuing the administrative action does not qualify as an administrative agency. Secondly, clear factual basis, and a legal basis are missing, or lastly, there are other clearly illegal and harmful circumstances. The appellant has the right to apply for reconsideration at the higher-level court within fifteen days. The higher-level court shall enter a ruling within 30 days. This corresponds to Art. 58 of the Administrative Compulsion Law.

In addition to administrative agencies, a third party can also apply to the court for enforcement of an administrative action when the administrative agency ruled over a civil dispute between the parties before. The administrative agency can mediate in civil disputes, as Art. 8 of the Administrative Reconsideration Law states. In such cases, if none of the parties files a complaint against the mediation ruling, or enforces the decision within the prescribed period, and the administrative agency itself fails to apply to the people's court for non-litigation enforcement, the right holder or their heir may apply to the court for non-litigation enforcement within six months, as determined by Art. 158 of the 2017 SPC Interpretation. The second paragraph specifies that the procedure follows the provisions for non-litigation enforcement. Art. 159 states that the right holder can apply to the people's court for property reservation if they have reason to believe that the party subject to enforcement might evade enforcement. The right holder shall submit a property security.

In their overview, *YANG Haikun* and *LIU Jun* compared different provisions which either demand the courts to enforce, authorize administrative agencies to enforce themselves or provide the latter with the right to choose. From sixty-five laws and regulations involving provisions on the matter, about 70 percent determined that the administrative agencies should apply to the people's court for non-litigation enforcement. The agencies usually enforce themselves matters concerning taxes, customs and public security.[1314] In 2001, corresponding provisions accounted for about 23 percent. Only three percent of the laws and regulations include the right to choose who must enforce.[1315] Similarly, in his research, *ZHAO Zhonggen*

[1314] *Xin Chunying* 2015, 252.
[1315] *Yang, Liu* 2000, 18.

confirmed that the majority of provisions involved non-litigation enforcement by courts.[1316] Corresponding to this, in his national study from 2012, *HE Haibo* pointed out that the enforcement divisions' main business in some grassroots courts was not to execute administrative litigation decisions but to handle non-litigation enforcement cases.[1317] Figure 6[1318] illustrates and confirms this development.

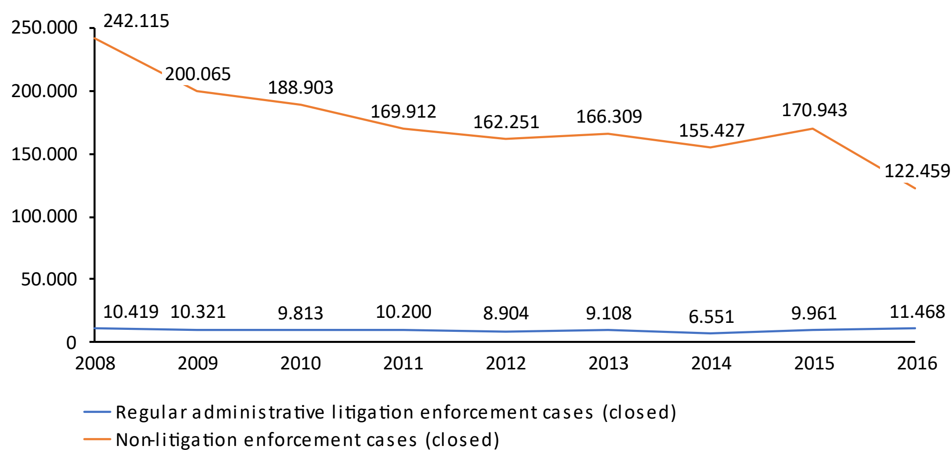

Figure 6 Development of enforcement cases by the court, 2008-2016

Scholars discussed to have the courts review the administrative action and to send it back to the administrative agency to enforce it themselves. However, due to the regulations of the Administrative Compulsion Law and the SPC's Opinions on the Reasonable Allocation and Scientific Exercise of Enforcement Power, issued in 2011,[1319] the reformers decided not to change the ALL. The courts remain responsible for the enforcement of their decision and for the majority of administrative actions under the above-mentioned circumstances.[1320]

Scholars further discussed what consequences the courts could expect concerning the function and position of the courts and considering how dominant non-litigation enforcement used to be and still is. They assumed that the separation of powers between the courts and the administration on the one hand, and the trial and enforcement power of the courts on the other hand would be affected.[1321] They discussed whether the same court division that heard the case

[1316] *Zhao Zhonggen* 2012, 24.
[1317] *He Haibo* 2012.
[1318] Based on data drawn from the China Law Yearbooks, supra n. 658.
[1319] Notice of the Supreme People's Court on Issuing the Several Opinions on the Reasonable Allocation and Scientific Exercise of Enforcement Power (最高人民法院印发《关于执行权合理配置和科学运行的若干意见》的通知), issued October 19, 2011, in: Fafa (法发) 2011, No. 15.
[1320] *Xin Chunying* 2015, 256.
[1321] *Zhao Zhonggen* 2012, 18.

and entered a judicial decision should also enforce it afterwards (principle of unified trial and enforcement)[1322] or whether these two stages should be separated and enforcement should be handed over to an enforcement division (principle of separation between trial and enforcement).[1323] Art. 93 of the 2000 SPC Interpretation clarified that administrative litigation enforcement followed the principle of separation between the trial, which ends with entering a judicial decision, and the enforcement. It said that after the people's court accepted an administrative agency's application for the enforcement of its concrete administrative action, it should, within 30 days, form a collegial panel to review the legality and make a ruling on whether to approve compulsory enforcement. Where compulsory enforcement measures were necessary, the enforcement division of the court should conduct the compulsory enforcement. In a similar vein, the SPC announced its Opinions on the Reasonable Allocation and Scientific Exercise of Enforcement Power. It underlined that the enforcement division of a people's court shall exercise enforcement power. Art. 2 states that an enforcement implementation department and an enforcement examination department should be established. Art. 10 continues that the people's tribunals may enforce cases heard by themselves upon the authorization and under the administration and guidance of the enforcement division. Besides this, the enforcement examination department reviews the enforcement in a collegial system, and it approves the implementation of enforcement, according to Art. 5.

Overall, since the court conducts a review of legality, non-litigation enforcement is not a tool of the administration for using courts to enforce in their names. Non-litigation enforcement is part of judicial supervision over the administration and their lawful operations. It constitutes an area where judicial and administrative power cooperate whereas in regular enforcement cases, they are likely to collide.

IV. Review of judgments and rulings

In October 2014, the CCP announced "false and malicious litigation [to] be punished."[1324] An important measure for guaranteeing a fair trial and a correct application of the law is the supervision of the trial. The legislators partly adapted the provisions from the Civil Procedure Law concerning the trial supervision because the former version of the ALL included only three provisions. Now, the supervision of courts is more comprehensive in the

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[1322] In Chinese: 审执合一.

[1323] In Chinese: 审执分离, see: *Zhao Zhonggen* 2012, 21; *Liang Fengyun* 2015, 490.

[1324] In Chinese: 加大对虚假诉讼、恶意诉讼、无理缠诉行为的惩治力度, see 18th CCPCC Fourth Plenum Decision 2014, supra n. 4, at: IV. Guarantee judicial fairness and judicial credibility.

ALL. The process of reviewing judgments and rulings can be a multistage process depending on the requests of the parties and the supervisors' decisions of action. The request of a party, of a court's president, a higher court or the SPC and the procuracy can initiate the procedure of trial supervision. Figure 7 illustrates this process. The finality of the judgment or ruling is the precondition for the trial supervision procedure, as mentioned above.[1325]

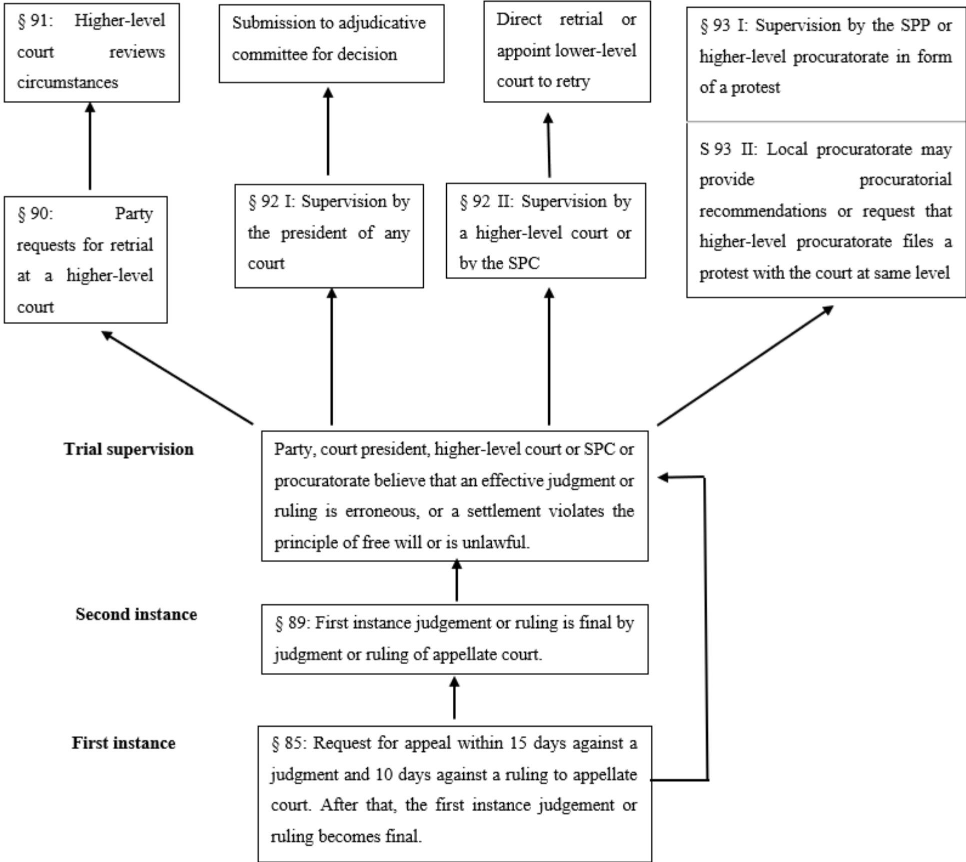

Figure 7 Trial supervision after procedure of second instance according to the ALL of 2014

Before the revision of the ALL, the lack of a detailed procedure description made trial supervision difficult. During the revision process, the legislators eased the applicability of the supervision of the trial and to reduce arbitrariness. Therefore, they added more details to the ALL in Art. 90 to 93. For instance, they changed the wording from "appeal to a higher court"[1326] to "request retrial"[1327]. The SPC had also issued its Provisions on Case Docketing Procedures for Administrative Retrial Petitions, which came into effect on January 1, 2018, to fill legal

[1325] *Xin Chunying* 2015, 228.
[1326] In Chinese: 申诉.
[1327] In Chinese: 申请再审.

gaps in the ALL of 2014.[1328] In addition, the legislators specified the reasons when trial supervision can be started and improved its process also by extending the role of the procuratorate that functions as the supervisor of the trial work of the courts.

1. Retrial procedure

In addition to the ALL of 2014, the 2017 SPC Interpretation and the SPC Retrial Docketing Provisions describe the retrial procedure because the ALL only refers to the object and the scope of retrial. The SPC Retrial Docketing Provisions add details in fifteen articles, such as the parties, the relevant materials, and the reasons for rejecting a request. The 2017 SPC Interpretation includes Art. 110 to 127 and covers all aspects from time limit for filing a request, to the court trial proceedings, the scope of review, the types of decisions and the termination of retrial.

Art. 1 of the SPC Retrial Docketing Provisions of 2017 defines four core conditions for docketing cases for retrial: (1) The adjudication document must list the eligible applicants. Applicants that are not on the list can be eligible if the reasons for absence are not attributable to them themselves. Art. 3 of the SPC Retrial Docketing Provisions adds that an applicant can designate an entrusted agent, as mentioned in Art. 31 of the ALL of 2014. Another core condition, as mentioned in Art. 1, is that retrial must take place at the court at the next higher level of the court entering the effective judgment or ruling. Art. 11 adds that a leapfrog procedure is not possible, which means that a trial must go through each instance. The third core condition is that the judgement must be effective as stipulated by Art. 90 of the ALL of 2014.[1329] The parties have the right to request a retrial at the court at the next higher level against any effective judgment or ruling they consider to be erroneous, but the execution of the judgment or ruling shall not be suspended.

The retrial case must be within the scope as listed in Art. 91 of the ALL of 2014, which was partly adopted from Art. 9 of the SPC's Opinions on Regulating the Filing of Cases for Retrial by the People's Courts.[1330] Art. 91 lists eight circumstances: Retrial includes cases in which (1) a ruling not to file a case or a ruling to dismiss a case is erroneous; (2) there is any

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[1328] Provisions of the Supreme People's Court on Case Docketing Procedures for Administrative Retrial Petitions (最高人民法院关于行政申请再审案件立案程序的规定), issued November 21, 2017, in: Fashi (法释) 2017, No. 18 (henceforth: SPC Retrial Docketing Provisions).

[1329] Art. 62, ALL of 1989; also see supra n. 736.

[1330] Opinion of the Supreme People's Court on Regulating the Filing of Cases for Retrial by the People's Courts (for Trial Implementation) (最高人民法院关于规范人民法院再审立案的若干意见(试行)), issued September 10, 2002, in: Fafa (法发) 2002, No. 13.

new evidence which suffices to overturn the original judgment or ruling; (3) the primary evidence for the fact finding in the original judgment or ruling is insufficient, has not been cross-examined, or is forged; (4) there is any erroneous application of laws and regulations in the original judgment or ruling; (5) there is any violation of statutory proceedings, which may affect the impartial trial of the case; (6) the original judgment or ruling has omitted any claims; (7) the legal instrument based on which the original judgment or ruling is entered has been revoked or modified; and (8) in trying the case, a judge commits embezzlement, accepts bribes, practices favoritism, makes falsification, or adjudicates by bending the law.

The first reason, erroneously not filing a case, underlines that the legislators are taking solving the three difficulties seriously. This circumstance is in line with Art. 3 of the ALL of 2014 that protects the right to sue.[1331] If there is new evidence, as stipulated in item 2, it must simultaneously be sufficient to overturn the original judgment or ruling. Both conditions have to be fulfilled to be permitted to retrial.[1332] "New evidence" means pieces of evidence that were not presented in court during the cross-examination in the first-instance trial or that the court did not collect although it was obliged to collect it by the law; or pieces of evidence that the plaintiff or a third person discovered after the period of evidence collection had expired. However, new evidence on side of the administrative organ is not eligible because they are bound by the principle of "collect evidence first, then judge".[1333] China follows international examples with item 2. For instance, in Germany, Art. 87b and Art. 128s of the Code of Administrative Court Procedure also allow plaintiffs to submit new evidence when they can state good reasons for their delay or when there is no negligence on their side. In the same vein, the French and Swiss administrative litigation systems consider new evidence to be a circumstance eligible for retrial. Item 3 also follows common law models, like the Taiwanese administrative litigation law.[1334] Insufficient evidence can impact the fairness of the trial because essential information is missing. Evidence must be true, objective, and relevant to determine the facts of the case. That is why any forged evidence or evidence that the parties did not cross-examine leaves room for doubt and on such a basis the judge shall not enter a judgment or ruling.

Whereas item 4 emphasizes violations of substantive rights, item 5 looks at procedural defects. The application of laws and regulations can refer to national laws and local regulation that became invalid but where still applied, or that were applied wrongly, or a regulation was

[1331] *Xin Chunying* 2015, 233; *Ying Songnian* 2015 a, 316.
[1332] *Liang Fengyun* 2015, 393.
[1333] Ibid., 394, *Ying Songnian* 2015 a, 317.
[1334] *Liang Fengyun* 2015, 394.

considered that was not supposed to be.[1335] To name a few examples of procedural defects mentioned in item 5, Art. 68 of the ALL of 2014 determines that the responsible people's court shall form a collegial bench to hear a case. Hence, one single judge trying a case would constitute a procedural defect. Moreover, the fairness of the trial might be at stake if a judge remains a member of the collegial bench but should be disqualified to hear a case, according to Art. 55 of the ALL of 2014. Other procedural defects involve the omission of legal representatives according to Art. 30, the omission of plaintiffs or third persons who should be part of the trial according to Art. 27 of the ALL of 2014. Another procedural defect occurs when a court deprives the parties of their right of debate which is guaranteed by Art. 10 of the ALL of 2014. Item 6 refers to the omission of claims which was adapted from Art. 71 of the 2000 SPC Interpretation. In general, the court considers only those claims that the parties stated in the complaint. The only exception to this rule is that the court always reviews the legality of the administrative action. This does not need a specific explanation because it is a legal obligation determined in Art. 6 of the ALL.

Item 7 describes an obvious defect when the legal basis on which the court issued original judgment or decision has been modified or revoked. When an administrative action causes damages that a civil dispute can solve, the court can hear and decide both cases concurrently according to Art. 61 of the ALL of 2014. However, when a civil judgment or ruling is the basis for the judgment or ruling and the former is modified or revoked, the validity of the latter is affected.[1336] Nevertheless, the mentioned "legal documents" here do not include administrative legal documents such as normative documents.[1337] The last item 8 refers to judicial misconduct during the trial for which there is evidence, such as embezzlement, bribes, favoritism, and false application of the law. These reasons consider both substantive and procedural violations that occurred during the trial of the first instance.

In July 2023, the SPC issued the SPC Guiding Opinions on Strengthening and Standardizing the Work of Elevated Jurisdiction and Retrial of Cases (henceforth: SPC Guiding Opinions 2023),[1338] in which it emphasizes the importance of the functions of trial level supervision and retrial error correction conducted by people's court at or above the intermediate level. Retrial is initiated by a "people's court at a higher level ordering retrial of a legally effective administrative judgment or ruling rendered by a people's court at a lower level if it deems that there is any definite error in such judgment or ruling and its retrial is warranted,

[1335] *Ying Songnian* 2015 a, 320.
[1336] Ibid., 323.
[1337] *Liang Fengyun* 2015, 398.
[1338] SPC Guiding Opinions 2023, supra n. 737.

including retrial by a people's court at a higher level *ex officio*, retrial by a people's court at a higher level upon application by a party, and retrial by the Supreme People's Court upon request by a high people's court."[1339] In Art. 15 and 16, the SPC Guiding Opinions 2023 add further legal and political circumstances that demand the retrial of a case. In Art. 15 of the SPC Guiding Opinions 2023, retrial is necessary at a higher-level court when (1) the main evidence for determining the facts have not been cross-examined; (2) the main evidence needed for trial of the case cannot be collected by the party due to objective reasons, a written application for investigation and collection is filed with the people's court, and the people's court fails to conduct investigation and collect evidence; (3) a party's right to debate is deprived of in violation of the law; (4) a legally effective judgment or ruling was rendered by a court of first instance; (5) dealing with civil cases in which a large number of parties are involved or in which both parties are citizens; (6) there are other circumstances discussed and decided by the judicial committee. In addition, Art. 16 refers to political aspects that demand retrials by the SPC itself. These aspects include the following circumstances: (1) the case has a significant influence across the country; (2) the case has a guiding significance in general application of the law; (3) the case reveals major differences in the SPC's application of the law involved; (4) the case reveals major differences with similar cases with effective judgments rendered by different high people's courts in application of law involved; (5) the case is more appropriate to be tried by the SPC to ensure a fair trial, (6) there are other circumstances under which the SPC deems a retrial necessary.

In contrast to the ALL of 1989, the revised ALL of 2014 stipulates that only a higher-level court handles a retrial. Before the revision, the applicants could choose between the original and its higher-level court. The reformers took the jurisdiction of retrial cases off the lower-level courts to avoid interference by local agencies. They also believed that the original court was not likely to admit any mistake. Hence, higher-level courts should control lower-level courts and correct their mistakes better.[1340] Whereas the time limit for filing an appeal is 10 or 15 days for rulings or judgments respectively, the time limit for retrial is six months after the ruling, judgment or mediation document became final. The time limit for request is six months after a party knows or should have known that (1) there is any new evidence sufficient to overturn the former judgment or ruling; (2) the primary evidence for the fact-finding in the former judgment or ruling is forged; (3) the legal instrument based on which the former judgment or ruling is entered has been revoked or modified or (4) a judge trying the case

[1339] SPC Guiding Opinions 2023, supra n. 737, Art. 3.
[1340] *Xin Chunying* 2015, 229.

commits embezzlement, accepts bribes, practices favoritism, makes falsification, or adjudicates by bending the law. Art. 110 of the 2017 SPC Interpretation lists these four circumstances in correspondence with item 2, 3, 7 and 8 of Art. 91 ALL of 2014. They are important because they reflect social interests: The first two items underline the importance of evidence for the adjudication of administrative cases. Finding reliable facts and granting justice are two of the key purposes of administrative litigation. To achieve these objectives, the evidence on which a judgment or ruling is based needs to be lawfully obtained and convincing in its content.[1341] The third item refers to a change in laws and regulations which not only affects the validity of the original judgment or ruling but also affects fairness and predictability of the application of laws in general. In addition to these three procedural and substantial rights, the fight against corruption is determined to be a political objective.

As for docketing a retrial case, the applicant must send copies of the request for all other parties, their identity, the power of attorney, the original judgment or mediation agreement and copies thereof, according to Art. 4 of the SPC Retrial Docketing Provisions.[1342] Supplementary documents are listed in Art. 5 of the SPC Retrial Docketing Provisions, such as the complaint of first instance and of the appeal, key evidence in the original trial, evidence relevant to the administrative action or the nonfeasance of the administrative agency. The applicant must send these documents with a letter of confirmation. For reasons of safety, they should also submit them in electronic form (Art. 6 of the SPC Retrial Docketing Provisions). The request for retrial must have, among others, the basic personal information, the name of the original court, specific claims in retrial, and the case number (Art. 7 of the SPC Retrial Docketing Provisions). The so-called "List of Received Litigation Materials" will list the documents. The applicant will receive a copy of the list (Art. 8 of the SPC Retrial Docketing Provisions). If the request does not meet the requirements for filing, the court of retrial must notify the applicant and allow them to supplement or correct within a reasonable time limit (Art. 9 of the SPC Retrial Docketing Provisions). If the applicant withdraws the request for retrial before docketing, the court returns the documents and makes an entry in its register. If they want to withdraw after docketing, the court must enter a ruling if it accepts it. If it accepts the withdrawal, another retrial is not possible unless for reasons affecting the evidence, facts, and legal basis on which the judgment or ruling of first instance is based on or in case of bribery and embezzlement, as specified in item 2, 3, 7 and 8 of Art. 91 of the ALL of 2014.

[1341] *Xin Chunying* 2015, 109-111.
[1342] SPC Retrial Docketing Provisions, supra n. 1328.

For docketing, the court follows a so-called "wide in, strict out" principle[1343] which means that people can request retrial when they perceive their judgment or ruling to be erroneous (wide in). But the receiving court must undertake a review to decide whether the request is eligible (strict out).[1344] Art. 116 of the 2017 SPC Interpretation underlines this rule determining that the court permits only those requests to retrial that fulfil all requirements as set out in the ALL. In the SPC Guiding Opinions 2023, the SPC determines a three-month examination period for retrial by the SPC according to Art. 16.[1345] The case receives a "supervision" number. A collegial panel will review the claims and facts (Art. 19 of the SPC Guiding Opinions 2023). If the conditions are not fulfilled, the SPC's collegial panel states reasons for disapproval and sends back the materials including the profile of the case, the examination of the application for retrial by the court, the reasons for submitting the request for retrial, the comments of the collegial panel and the discussion opinions of the judicial committee, and the necessary case materials (Art. 18 of the SPC Guiding Opinions 2023).

In Art. 111 to 115, the 2017 SPC Interpretation elaborates the retrial procedures. Parties must submit a written retrial request and other materials to the court of retrial which can decide to forward a copy to the counterparty who also can submit a written defense, according to Art. 111 of the 2017 SPC Interpretation which corresponds with Art. 203 of the Civil Procedure Law. The court of retrial has to decide within six months. The president of the court has to permit any extension, as determined in Art. 112 the 2017 SPC Interpretation. The hearing of the parties is optional, and the court shall decide about it according to the "need of the review of the retrial request". If new evidence may overturn the former judgment or ruling, Art. 113 the 2017 SPC Interpretation states that the people's court shall question any parties, which is to

[1343] In Chinese: 宽进严出.

[1344] *Xin Chunying* 2015, 228.

[1345] In contrast to this, in 2021, the SPC conducted a pilot program that focused on Art. 15 (jurisdiction of intermediate people's courts) and Art. 90 (petition for retrial). The SPC had refined retrials by introducing permissive and compulsory jurisdiction for retrial cases. Art. 14 listed cases of compulsory retrial, namely when a judgment or decision is erroneous and has guiding significance, or when major differences remain unresolved after three years although the SPC had provided binding judgments in similar cases. Permissive jurisdiction (Art. 11) referred to cases in which people believe that the law applied in the judgment or ruling is erroneous, although they agree with the facts of the case, the primary evidence, and the procedure of litigation; or when the adjudicative committee considered the case before. Moreover, for Art. 90, the amendment planned to add another paragraph clarifying that a party may apply to the people's court at the next higher level for retrial if they consider the legally effective judgment or ruling to be wrong. If a higher people's court issued the effective judgment or ruling, they shall apply at the original higher people's court for retrial. The SPC would have been responsible for retrial under two circumstances: (1) The parties had no objection to the facts identified in the original judgment or ruling and the applicable litigation procedures, but they believe that there are errors in the application of laws and regulations; and (2) the original judgment or ruling was discussed and decided by the Judicial Committee of the High People's Court. If the NPC decides to amend Art. 90 as described, the non-suspension of the effective judgment or ruling would be stated in the third paragraph and not as a sub-clause anymore, see: SPC Pilot Reform of Improving the Positioning of Four Levels of Courts in terms of Adjudication Levels and Functions, supra n. 736.

ensure that the court considers all aspects extensively following the principle of cross-examination of evidence (Art. 43 ALL of 2014) and the principle of directs words[1346]. Moreover, when the opposing party also decides to request a retrial while the court reviews the other party's request, the court must accept the new request and adapt the time limit for review. It allows a retrial when the opposing party can assert the reasons for it. If the parties do not have reasons, the court rejects these requests, according to Art 114.

The 2017 SPC Interpretation ensures in Art. 115 that the people's court which is reviewing a retrial request does not permit any request by the requesting party for commissioned appraisal or scene investigation. When the party withdraws its retrial request within the time limit of review, the court of retrial shall decide about the request for withdrawal. Moreover, when a hearing is necessary, which the applicant does not attend without a due reason, the court shall consider this as a withdrawal. The court usually rejects a request for retrial after the court has already granted the withdrawal of retrial. Nevertheless, the third paragraph of Art. 115 of the 2017 SPC Interpretation lists four exceptions to this rule which Art. 91 ALL of 2014 lays out. A request for retrial is allowed for a second time when (1) the applicant presents new evidence which suffices to overturn the original judgment or ruling; (2) the primary evidence is insufficient, not cross-examined or forged, (7) the legal instrument based on which the former judgment or ruling is entered has been revoked or modified, (8) and the judge trying the case has been involved in embezzlement, bribery favoritism and bends the law. As already mentioned shortly before, these four exemptions are important because they reflect procedural and substantial rights and interests such as justice, legal effectiveness, and predictability.[1347] That is why parties can request a retrial for a second time. In general, Art. 115 of the 2017 SPC Interpretation corresponds to the principle that retrial is only possible once which intends to preserve the authority of the judgment or ruling and to avoid an infinite loop of retrials and re-retrials.[1348]

Art. 118 of the 2017 SPC Interpretation prescribes that after the court decided to retry, it shall rule to suspend the enforcement of previous ruling. Before the higher-level courts decides, while the party's request for retrial is still pending, the enforcement of the effective ruling or judgment is not suspended according to Art. 90 of the ALL of 2014. After the court reviewed the request and decided to retry, the court has to issue a ruling of suspension. Art. 90 of the ALL of 2014 was adapted from Art. 206 of the Civil Procedure Law of 2017. It specifies

[1346] In Chinese: 直接言词原则.
[1347] *Xin Chunying* 2015, 229.
[1348] *Xin Chunying* 2015, 231-232.

the right to request a retrial with the intention to avoid malpractice that used to be common due to vague legal terms. Before the revision of the Civil Procedure Law in 2007, the respective provision guaranteed a right to file a complaint which was more general than the right to request a retrial. Both terms differ in their legal nature. The right to request a retrial constitutes a procedural right that parties can apply for once within a certain period. It initiates a retrial which concerns a final judgment or ruling. In contrast to this, a complaint is not bound by time limit and can be filed more than once. Once a court accepts a complaint, the suspension of the enforcement of the final judgment or ruling is not necessarily the legal consequence. But this is the case in an accepted request for retrial. The right to file a complaint and the right to request a retrial used to co-exist before 2007. Because of this co-existence, the former levered out the latter rendering the right to request a retrial useless and void.[1349]

The reformers of the ALL took the respective provision of retrial in the revised CPL into account and adapted it to administrative litigation. That is why as soon as the court decides to accept the retrial, the court must issue the suspensive ruling concerning the enforcement of the former judgment or ruling. This suspensive effect is important for two reasons: first of all, the former judgment or ruling might be erroneous and thus, need to be subject to review, and secondly, a continuous enforcement of a judgment or ruling could harm the parties' rights and interest and waste judicial resources.[1350] Art. 118 of the 2017 SPC Interpretation also determines an exception to the suspension rule which concerns the payment of survivor benefits, minimum living, or social insurance benefits. These payments must continue because the parties' rights and interests enjoy a special protection. This provision corresponds to Art. 57 of the ALL of 2014 which protects the people's good faith on financial support by the administration. The second paragraph of Art. 118 of the 2017 SPC Interpretation specifies that a higher-level court, which can either retry itself or appoint a lower-level court to retry, enters a written ruling for the suspension of the original judgment or ruling. When it is urgent, the higher-level court can notify the court responsible for enforcement verbally to suspend it and hand in a written notification later.

Art. 120 adds the scope of review determining that the court dealing with a retrial shall only focus on the claims in the retrial request and on the legality of the impugned administrative action. If the claim of the retrial is different from the original claims, the court must notify the party to file another case. Concurrently, the court shall decide the request before the end of the parties' debate and within the determined period, as regulated in Art. 112 of the 2017 SPC

[1349] *Liang Fengyun* 2015, 391-392.
[1350] *Ying Songnian* 2015 a, 330.

Interpretation. The court shall concurrently decide about any damage to national, social, or public interests caused by the original judgment or ruling.

Art. 119[1351] stipulates that under the trial supervision procedure, for final first-instance judgments and rulings, cases follow the first instance procedure, and the parties have the right to file an appeal. When a court of second instance issues a final judgment or ruling and a retrial is possible, the adjudication shall be subject to the procedure of second instance. Consequently, the judgment or ruling of the retrial are final and the parties have no more legal remedies. Moreover, when a higher-level court deals with retrial, the adjudication shall be subject to the procedure of second instance. The judgment or ruling of the higher-level court are final and binding with no other legal remedies for the parties. As the second paragraph of Art. 119 determines, in all procedures, the responsible court shall set up a separate collegial bench. This regulation give clear guidance about the procedures court shall follow and underscores that the new collegial bench shall not face any external influence.

According to Art. 121 of the 2017 SPC Interpretation, the retrial procedure can either end when (1) the applicant withdraws the case which the court permits; (2) the applicant refuses to appear without any good reason or withdraws without permission; (3) the People's Procuratorate withdraws its protest or (4) there are other reasons for termination. In case the procuratorate protested or the plaintiff did not appear in court without any good reason, the court shall terminate the retrial procedure when there is obviously no other damage caused. Therefore, the court will restore the suspended former judgment or ruling in the moment of termination. Art. 122 provides details for the adjudication: When the court of retrial deems that the former judgment or ruling is erroneous, it shall reverse it. It can adjudicate the case itself or it can send it back to the court of the original judgment or ruling to try the case again. When a court adjudicates in a case of appeal or retrial and discovers that the original court made mistakes concerning the docketing, not-docketing or dismissal of a case, the adjudication court has to decree according to the provisions of Art. 123 of the 2017 SPC Interpretation. (1) When the court of second instance deems that the case shall not be docketed, it rejects the request and concurrently reverses the ruling of the first instance. (2) When the court of second instance erroneously sustains the ruling of not docketing made by the court of first instance, the court of retrial shall reverse both rulings and appoint the court of second instance to accept the case. (3) When the court of first instance dismissed the case and the court of second instance erroneously

[1351] Formerly Art. 76 of the 2000 SPC Interpretation.

sustains this ruling, the court of retrial shall reverse the rulings and appoints the court of second instance to accept the case.

From the provisions of the ALL and the additional provisions of the SPC, it becomes obvious that the legislators intended to strengthen procedural rights and to improve judicial adjudication by providing a detailed body of laws which covers a wide range of practical problems. The overall objective is clearly to foster the people's trust in judicial adjudication work.

2. Internal supervision by the president of the court and the higher-level court

In contrast to other continental legal systems, like the French, German or Japanese administrative litigation systems, the Chinese ALL empowers higher-level courts or the presidents of a court to initiate retrial after they reviewed a trial. According to the concept of "investigating one's mistakes"[1352], people's courts at every level shall take the responsibility for their judgments and rulings and in case of defects, also for their correction.[1353] The SPC exercises judicial supervision towards people's courts at all levels, whereas higher-level courts supervise their lower-level courts. This also complies with the Organic Law of the People's Courts whose Art. 10 determines the supervision power of the SPC and higher-level courts towards lower-level courts. Art. 41 of the Organic Law states the duties of the president of a people's court among which is the supervision of the court's trial work. Art. 37 of the Organic Law of the People's Courts stipulates the duties and responsibilities of the judicial committee also includes the deliberation and decision about a retiral. Art. 39 adds that a presiding judge can with approval of the president request such a deliberation process.

The reformers of the ALL added more details regarding the presidents' supervision of a trial process.[1354] The new Art. 92 of the ALL of 2014 changed the scope of the former Art. 63 of the ALL of 1989. The former version stipulated that a president of the responsible court initiated a supervision when they or a higher-level court discovered "violations of the law, rules and regulations". In the latest version, trial supervision starts when one of the circumstances in Art. 91 of the ALL of 2014 is discovered or when mediation violates the principle of the free will, or any part of the mediation consent violates the law. The principle of the free will includes a procedural right of choosing whether, when or how to mediate. It also refers to a substantial right because the mediation consent must reflect the demands of both parties because one party

[1352] In Chinese: 有错必究.
[1353] *Ying Songnian* 2015 a, 326.
[1354] *Liang Fengyun* 2015, 400.

must not force their counterparty.[1355] A forced consent violates Art. 60 of the ALL of 2014 and consequently, a president of a court or a higher-level court can decide to start a trial supervision procedure.

The procedure itself differs according to the initiation of the trial supervision. One way of initiation is by the president of the court that issued the judgment or ruling. He can submit the case to the adjudicative committee for deliberation and decision according to the first paragraph of Art. 92 of the ALL of 2014. When the adjudicative committee decides that retrial is necessary, the court has to comply. Secondly, a higher-level court that realizes that an effective judgment or ruling is erroneous can initiate a retrial either by retrying itself or by assigning it to a lower-level court. Thirdly, if the SPC discovers any reason for supervision, it has the power to retry the case itself or to send it back to a lower-level court. It can assign a lower-level court in written providing all the necessary details. As the section above mentioned, the court retrying a case has to issue the suspension of the enforcement of the final judgment or ruling according to the second paragraph of Art. 118 of the 2017 SPC Interpretation.

Scholars criticize that the revised ALL does not specify that the court of the original judgment should not be responsible for retrying the case. This should avoid that in retrial, the original court is "the judge of their own case". Simultaneously, in face of a rather frequent administrative interference at lower-level courts, a fair trial and procedural justice might be at stake when the original court retries its own case.[1356] Overall, the option of a retrial shall increase fairness and public credibility. What we do not know is how higher-level courts cope with the increased workload and how this impacts their efficiency.[1357]

3. Procuratorial protest

Not only plaintiffs or the courts can initiate a retrial. The procuratorate, that also monitors administrative conduct, can initiate a special form of trial supervision. According to Art. 93 of the ALL of 2014, the procuratorate supervises the circumstances in Art. 91 of the ALL of 2014 in form of the procuratorial protest. In general, a higher-level procuratorate or a state organ at the same level can assign a procuratorial organ to file a protest to the corresponding court. Moreover, a procuratorate can also receive a report by citizens, legal persons, or other organizations, revealing that the judgment or ruling is flawed. In the majority of cases, citizens send their requests to the responsible procuratorial organ to file a protest.[1358]

[1355] *Ying Songnian* 2015 a, 194-195.
[1356] Ibid., 329.
[1357] Ibid.
[1358] *Ying Songnian* 2015 a, 331.

Eligible cases are listed in the first paragraph Art. 117 of the 2017 SPC Interpretation which stipulated that people can request a protest when (1) the people's court dismisses their retrial request; (2) the people's court fails to enter a ruling on the request within the prescribed period of time, and (3) the retrial judgment or ruling is evidently erroneous.

Art. 93 of the ALL of 2014 sets a specific scope for protest initiated by the procuratorate according to its supervision power. In contrast to this specific scope, Art. 64 of the ALL of 1989 used to refer only to the vague term of "violation of laws, rules, and regulations." However, the scope of cases not eligible for procuratorial protest is still not coherently determined but spread over different rules, regulations, judicial opinions, and notices.[1359] To name a few examples: In the Notice of the SPC about the Speech of Vice-President Ma Yuan delivered at the Conference of Higher People's Courts in 1991, it summarized the scope and exceptions of procuratorial protest. For instance, a protest is not allowed in case the court has already decided to retry, or in case a marriage is annulled.[1360] Besides this, decisions about litigation fees and decisions made in the process of enforcement cannot be subject to procuratorial protest either, which is what the SPC replied to an inquiry of the Higher People's Court of Guangdong in 1995.[1361] Moreover, a procuratorate can only protest once against a judgment or ruling even though the court at the same or the lower level maintains the original judgment or ruling after retrial.[1362]

The ALL used to be silent on some procedural issues, such as the time limit, the legal consequences of a protest or the procuratorial right to investigate. Hence, before the SPC released its 2017 Interpretation, the respective regulations of the Civil Procedure Law were effective for administrative litigation.[1363] For instance, according to the second paragraph of Art. 209 of the CPL, plaintiffs can apply only once for retrial at court and can request only once the procuratorate to file a protest.[1364] The second paragraph of Art. 117 of the 2017 SPC

[1359] *Liang Fengyun* 2015, 408-409; *Ying Songnian* 2015 a, 333-334.

[1360] Notice of the Supreme People's Court on the Printing and Delivering of the Speech of Vice-President Ma Yuan at the Conference of Higher People's Courts Discussing How to Deal with Procuratorial Protest in Retrial Cases (最高人民法院«关于印发马原副院长在部分高级人民法院讨论如何办理检察院抗诉的再审案件座谈会上的讲话的通知»)，issued December 20, 1991, in: Fa(Min)fa (法(民)发) No. 41.

[1361] Reply of the Supreme People's Court concerning the Inadmissibility of Procuratorial Protest for Decisions in the Enforcement Process (最高人民法院«关于对执行程序中的裁定的抗诉不予受理的批复), issued August 10, 1995, in: Fafu (法复) No. 5.

[1362] Notice of the Supreme People's Court on the Printing of the Conference Summary of the National Work on Trial Supervision about Some Problems concerning the Current Trial Supervision Work (最高人民法院关于印发«全国审判监督工作座谈会关于当前审判监督工作若干问题的纪要»的通知), issued November 1, 2001, in: Fa 法 2001 No. 161, available in: New Compilation of the legal codes of procedural application (新编诉讼实用法典), Chinese legal system publishing house （中国法制出版社）2005，2-153 – 2-158. 2-157.

[1363] Art. 101 ALL of 2014.

[1364] *Liang Fengyun* 2015, 409-410.

Interpretation follows this rule stipulating that the court will reject any further request for retrial after it issued a judgment or ruling in favor or against retrial which the procuratorate initiated by protest or recommendation. Moreover, according to Art. 127 of the 2017 SPC Interpretation, when the court retries a case that a procuratorial protest or recommendation initiated, it is not subject to any previous ruling that dismissed the request for retrial. This provides full range of discretion to the retrying court to ensure fairness and justice.

The court shall handle a retrial that is based on protest by the procuratorate within 30 days according to the first paragraph of Art. 124 of the 2017 SPC Interpretation. However, when the reason for retrial concerns new evidence that could overturn the original judgment or ruling or the primary evidence is insufficient, forged or not cross-examined, the court at the next lower level can be assigned with the retrial under the condition that the assigned court has retried the case before. This provision follows the logic that the review and verification of evidence is easier at the next lower level because they are likely to be closer to the case.[1365] The people's court that decided to retry a case shall notify the responsible procuratorate three days before the beginning to assign a delegate (Art. 125).

A retrial terminates according to Art. 121 of the 2017 SPC Interpretation, for instance when the procuratorate withdraws its protest. According to the second paragraph of Art. 121, the court has to rule to terminate the retrial whose initiation is based on the request of a party towards the procuratorate to protest under two conditions: The party requesting the protest either withdraws its request, does not attend the hearing, or withdraws from it without any due reason, and secondly, this conduct does not damage national, public, or social interests or the lawful rights and interests of another party. The enforcement of the suspended judgment or decision automatically continues after the termination of the retrial, according to the third paragraph of Art. 121 of the 2017 SPC Interpretation. Furthermore, when parties reach a settlement during the review of the retrial materials the court proposes the procuratorate to withdraw its protest according to the second paragraph of Art. 124.

However, the ALL or the 2017 SPC Interpretation do not mention any time limit to review whether the procuratorate shall accept a request for protest. In this case, Art. 209 of the CPL stipulates that the procuratorate shall reply within three months to the applicants. In addition to this, Art. 210 CPL decides that the procuratorate has the right to investigate and verify relevant information from the parties or those who are not parties to a case. Chinese scholars criticize the investigation right for the procuratorate in administrative litigation arguing

[1365] *Ying Songnian* 2015 a, 329.

that there are administrative principles, such as the principle "collect evidence first, then judge" that define evidence collection to be a prerogative only for the court. The principle and the respective provisions in the ALL structure the process of evidence collection and intend to prevent misconduct of administrative agencies. So, according to the provisions of evidence collection in the revised ALL, only the courts have the right to collect evidence. Hence, procuratorial investigation in an administrative retrial, albeit according to the provisions of the Civil Procedure Law, contradicts the provisions set in the revised ALL.[1366]

The ALL of 1989 only recognized procuratorial protest to the higher-level procuratorate and not to the court on the same level. The revised ALL added in the second paragraph of Art. 93 that local-level prosecutors may send procuratorial recommendations to the courts at the same level and report to the procuratorate at the next higher level for recordation. The procuratorate at the lower level can request higher-level procuratorate or the SPP to protest at the court concerned. Moreover, if a prosecutor discovers that judges have violated the law in trial procedures, prosecutors at any level can issue procuratorial recommendations. There are two reasons for filing procuratorial recommendations towards the court at the same level: the first refers to substantial violations according to Art. 91 of the ALL of 2014 and the second to procedural flaws committed by the judge.[1367] When the procuratorate issues a recommendation to a court to demand the retrial of a case, the court shall complete the review of the recommendation materials within three months. When the court concludes that the former judgment, decision, or consent judgment is erroneous, it decides to enter a retrial according to Art. 92 of the ALL of 2014 and notifies the parties. If it concludes that retrial is not necessary, it replies to the procuratorate in written.[1368]

Overall, the revision advanced the system of procuratorial protest, but the legal basis still needs refinement to be less scattered and further adapted to practice.[1369] Scholars criticized that Art. 93 of the ALL only mentions the protection of the lawful rights and interests of state and society but leaves out personal rights and interests of the parties. It would only be logical and consequent to protect them as well because the second paragraph of Art. 60 ALL of 2014 lists them as well, which refers to the protection of personal rights and interests during mediation.[1370] In a similar vein, legal practitioners point out that personnel trained in trial supervision procedure is missing because firstly, chief procurators pay more attention to

[1366] *Liang Fengyun* 2015, 410.
[1367] Ibid., 405.
[1368] Art. 126, 2017 SPC Interpretation, supra n. 228.
[1369] *LI Yanfei* 2017, 69.
[1370] *Liang Fengyun* 2015, 404.

criminal procedure than on civil and administrative procedure. Furthermore, they argue that civil and administrative trial supervision procedures are mixed because the departments for civil and administrative procedures are not separate which results in unreasonable evaluation mechanism. Statistics reveal that trial supervision through procuratorial protest is not significant since in only about 0.5 percent of first instance cases, the parties decide to request the procuratorate to file a protest. The parties seem to be more inclined towards the *Xinfang* system.[1371]

V. Analysis

This chapter highlighted that providing detailed guidelines for a uniform application of the law was a serious objective of the reformers to overcome the last of the three difficulties, namely the difficulty of enforcement of the judicial decisions. With reference to the regulations in the Civil Procedure Law and international examples to fill in the gaps of the ALL of 2014, the reformers generated a sophisticated supervision procedure.

For China's Socialist rule of law, it is important to define the point in time when the judicial decision becomes final and to provide remedies against the judicial decision in case the parties are not satisfied and there are reasons to doubt the decision. So far, the high maintenance rate of the original decision in appeal procedures still causes concerns because it affects all supervision channels and reduces the people's trust in the effectiveness of litigation. The more administrative agencies see their decisions confirmed, the less deterrent will be administrative litigation. Evidently, appearing in court is an annoying appointment rather than a lesson about an administration according to law.[1372] Again, this is an issue also concerning judges that need to have the competencies and also the courage to decide a dispute in a way that might be inconvenient regarding the expectations of the administration.

The enforcement of judicial decisions used to be difficult because of power differences between the courts and the administration or because the people did not accept an unfavorable decision and were stubborn. The reform of the ALL helped the courts to take the lead in enforcing the judgment or ruling as final decisions in a regular enforcement procedure. The reform tackles problems of disobedience with effective tools, such detention or methods like "naming and shaming". Putting people or administrative officials under mental pressure helps to demand compliance. In addition, non-litigation enforcement demands the review of the legality of the administrative action that the parties should enforce, so that courts monitor

[1371] *Ying Songnian* 2015 a, 331. *Li Yanfei* 2017, 68.
[1372] *Chen, Xu, Yu* 2024.

administrative actions in these cases as well. On the one hand, the workload of the enforcement division increases significantly. But on the other hand, the respect for court decisions will increase eventually when the parties realize that the courts have the power to monitor and to enforce.

In China, three ways exist to initiate a trial supervision. The higher people's courts and the SPC can conduct internal trial investigation and can determine retrial when they deem it necessary. People can also initiate a retrial at the higher-level people's court, or they can request the procuratorate to send their protest. It is likely that people initiate supervision requests with more than one authority, which could lead to overlapping actions which would hamper a just and timely procedure. Nevertheless, the ALL bans trial loops to relieve the courts from such burden.

The nature of procuratorial power is subject to academic debate in China. One group of scholars argues that the procuratorate operates within the NPC's empowerment regarding the supervision of administrative subjects. Hence, according to these thoughts, both the procuratorate and the judiciary control administrative authority and must cooperate and coordinate their work. In contrast to this, another group of scholars believes that the procuratorate derives its supervision power directly from the Constitution.[1373] They point to Art. 134 of the Constitution saying that the procuratorate is the organ for legal supervision. They act independently, according to Art. 136 of the Constitution. Art. 138 of the Constitution underscores that the Supreme People's Procuratorate is responsible to the National People's Congress and its Standing Committee. The people's procuratorates at various local levels are responsible to both the organs of state power, which created them, and to the people's procuratorates at higher levels.[1374] Hence, the procuratorates supervise the judicial supervisor but the government or higher-level procuratorates supervise them. Evidently, a system of checks and balances is in place.

[1373] *Zhang Wenxiang* 2016, 42.

[1374] In the same vein, Art. 9 of the Organic Law of the People's Procuratorates also clarifies the accountability of the people's procuratorate towards the people's congresses at their respective levels. See: Organic Law of the People's Procuratorate in China (中华人民共和国人民检察院法), Order No. 12 of the President, issued July 1, 1979, revised in 1983 and October 26, 2018 (henceforth: Organic Law of People's Procuratorates).

In this context, the Chinese discourse also points to a modest exercise of procuratorial power. The general understanding of the so-called principle of self-restraint[1375] focuses on a prudent exercise of powers by the public organs towards one another and towards the people.[1376]

The modesty principle also applies to administrative decision-making. A modest administration is not meant to be inactive and neglect its obligations, but it is rather prudent in its actions.[1377] Nevertheless, in China, modesty is not an official feature of the administration so far. The leadership rather relies on internal and external control channels to control administrative actions. Thus, the CCP, the Political Consultative Conference and the public monitor the judiciary and administration externally as well.[1378] However, regarding judicial monitoring, the courts can only review the legality and not the appropriateness of the actions, except for certain cases. The courts can act within their "expertise on questions of procedure" but must respect the "special competence or expertise of administrative agencies."[1379]

[1375] In Chinese: 权力谦抑原则. This originates from the American principle of judicial modesty which is associated with judicial "[R]eliance on administrative expertise, self-limiting delineations of jurisdiction and the political question doctrine." See: *Shapiro* 1962, 533.
[1376] *Cheng* 2012, 51.
[1377] *Shen* 2018, 92; *Liu Yuyan* 2017, 96-97.
[1378] *Wang* 2005, 14-17.
[1379] *Huang* 2007 a, 20-24.

Chapter 9: Summary

In a comprehensive textbook narration, this dissertation focused on judicial control of administrative actions by exploring the revision of the ALL, which opens a formal legal channel for citizens, legal persons or other organizations to solve disputes with the administration. The catalyst for the legislators to revise the ALL were the three difficulties that consisted of the difficulty of filing a case, the difficulty of adjudication and the difficulty of enforcing the judicial decision. They made the entire administrative litigation procedure ineffective. As a consequence, people lost faith in it and turned to informal channels, like petitions and mediation. Facing this crisis of administrative litigation, the decision makers, especially the CCP, could have concluded that it had failed and was no longer a useful tool. But they still saw the ALL's merits and potential to prove their commitment and their credibility regarding the "Socialist rule of law" and to monitor the administration. Hence, they revised the Administrative Litigation Law in a conclusive way instead of dropping it. This dissertation asked about the ways in which the revision amended and adjusted the procedure of administrative litigation to effectively realize the ALL's purposes stated in Art. 1.

1. How did the revision influence the position of administrative litigation in China's system of dispute resolution channels and Socialist rule of law framework?

The CCP is committed to legislative pragmatism for guaranteeing social order and justice to satisfy the people's demands and consolidate their political power. The literature pointed out that "the Party develops formal legal institutions that appear to meet world standards, while using informal practices to maintain control over the administration of justice when needed".[1380] Legal reforms are technical in nature intending to improve the process of dispute resolution and to combat corruption rather than to signal a higher degree of judicial independence concerning the judges' review power. In centralist China, the judiciary is bound by the law and also to the Party. Judicial independence is not an end in itself.[1381]

In this sense, the legislators chose a pluralist approach to dispute resolution to secure the system's flexibility. Besides court litigation, people can submit petitions at the respective *Xinfang* offices. These offices exist within all core political institutions at the national and the local levels which means that private parties can address them easily. The scope of acceptable cases is broad, and the number of petitions people can file is unlimited. This seems to offer

[1380] *Solomon* 2010, 351.

[1381] Since General Secretary *XI Jinping* came to power in 2013, legal reforms and the development of Chinese laws have been concurrent with the re-emergence of party dominance and re-centralization. *Ahl,* 2021, 1; *Henderson*, 2010, 35; *Zhu* 2010, 63; *Balme* 2010, 156.

people a way to participate in the political realm.[1382] However, the internal decision-making process in *Xinfang* offices is not transparent so people cannot be sure to receive a satisfying decision. Mediation is another alternative way to solve disputes between private parties and the administration. It relies on their voluntary cooperation to find a compromise. Officially, the ALL did not allow mediation, but unofficially, the courts have been using mediation to solve disputes since its enactment. The revised ALL of 2014 now allows mediation for disputes involving administrative compensation or indemnity or an administrative agency's exercise of discretionary power. Compared to *Xinfang* and mediation, administrative litigation is more streamlined, more documented but also less flexible. It has an adversarial character offering a platform for debate between the private party and the administration.

Xinfang and mediation are alternatives to administrative litigation, but they are not necessarily better options. The private party should choose a dispute resolution channel according to their motivation with respect to the complaint. Whereas petitions offer people a way to express their grievances, administrative litigation's purpose goes further by determining the facts of the case, reviewing the legality of the administrative action, and distinguishing right from wrong.[1383] The settlement of the administrative dispute, as mentioned in Art. 1 of the ALL, means that both parties accept the judicial decision, which is a worthy objective of the revised ALL. In fact, however, the acceptance of the judicial decision is not easy, as the numbers of appeal cases reveal. In one third of first instance cases, the parties file for an appeal. Hence, mediation would be more suitable for having both parties voluntarily to agree to a compromise.

Private parties can also send their complaints to the administrative agency at the next higher level for administrative reconsideration. It serves as a diversion of disputes, but so far, people do not take full advantage of its potential. Possibly, people believe that the administrative agencies protect one another and do not judge in an impartial way. The revised ALL urges the reconsideration agency to review the alleged administrative action thoroughly because it can be liable as well. Both the administrative agency that originally issued the action and the reconsideration agency, in case it maintains the original action, are co-defendants in administrative litigation. The amendment of the Administrative Reconsideration Law intends to make reconsideration more effective by aligning it to the procedure of administrative litigation. For instance, the responsible person of the administrative agency issuing the original administrative action must attend the hearing at the reconsideration agency as well. The aim is to turn administrative reconsideration into an equal channel for dispute settlement. If the revised

[1382] *Zhang Taisu* 2009, 16.
[1383] Ibid., 28.

ARL becomes a more attractive channel for dispute resolution, is a suitable topic for future research.

2. How did the revision improve the access to justice?

Facing the difficulty of filing an administrative case, the SPC already emphasized in 2009 that the right to sue was a principle of administrative litigation that the people's court must respect. Because people's courts treated the people's complaints arbitrarily, the SPC's issued standards for the acceptance of lawsuits to administrative litigation. Moreover, alongside the revision of the ALL, an institutional reform introduced the case registration system. The SPC established it in 2015 to smooth the filing of cases in administrative litigation, make the procedure more transparent and predictable, and protect the people's right to sue. The case registration system separated the filing from adjudication to guarantee a fair trial.

The revision of the ALL dealt with refining legal definitions, such as the qualification of the plaintiff. A qualified plaintiff is someone with an interest in the administrative action. The SPC specified the qualification with a non-exhaustive list in the 2017 SPC Interpretation (Art. 12) to support courts in determining the qualification of plaintiff. As the result, anyone who suffers from an infringement on their protected rights and interests can file a complaint. Even though the qualification of the plaintiffs is broad, some plaintiffs lack eligibility or resources when filing a complaint, for instance social organizations that care for public interests. To protect public interests regarding the ecological environment and resources, food and drug safety, state-owned assets, and the transfer of state-owned land-use rights, the procuratorate appears as plaintiff in public interest litigation besides its role as general supervisor. In this constellation, another state organ represents the voice of the people. The procuratorate has the necessary authority to make the administration act according to the laws. The implementation of a pilot program for procuratorial PIL revealed that the pre-litigation procedure is particularly useful. In this procedure, the procuratorate issues recommendations to the relevant administrative agency that omitted its duties or acted in an unlawful way harming public interests. The procuratorate urges the agency to rectify their illegal administrative action or to perform their duties. The majority of accused administrative agencies complied with the recommendations and prevented a lawsuit. The introduction of procuratorial PIL in administrative litigations reveals how serious administrative misconduct still is and that the administration needs guidance to act according to the law. The instrument of pre-litigation recommendation has an educational effect for the administration and at the same time, saves judicial resources.

Furthermore, the reform clarified the definition of the "third party" which contributes to the transparency of administrative litigation. It includes those who have an interest in the administrative action but did not file a complaint against the impugned administrative action or who have an interest in the outcome of the case. The third party is independent because they can submit evidence and can request the court to collect evidence as well. The integration of the third party in administrative litigation shall fully realize the right to sue and improve the court's determination of the facts of the case. However, the courts still struggle with identifying the third party that do not file a request to participate themselves. This can constitute a procedural mistake eligible for the trial supervision procedure. It reveals how complex administrative litigation is and that judges must conduct a reasonable assessment of all parties having with an interest in the lawsuit.

The same complexity becomes apparent regarding the identification of the right defendant. It is a challenge for the people because of the complex administrative apparatus in China. The revised ALL offers piecemeal definitions regarding administrative subjects and subordinate organs. But this piecemeal way of explaining cannot keep up with the changes taking place within the administration. This will make it easier for liable administrative agencies to find excuses for not being responsible and to avoid trials.

In general, the ALL stipulates that basic people's courts are responsible for trying administrative cases of first instance. Over the last 30 years, the cases filed for administrative litigation became more complex and difficult and thus, became a challenge for basic people's courts. Therefore, the SPC added in the 2017 SPC Interpretation that a party can file their case directly with the intermediate people's court when they believe that the case is major and complicated and not appropriate for the basic people's court to hear. Elevated jurisdiction aims at curbing administrative interference at the local level because intermediate people's court hear cases with a certain complexity and difficulty. The revision also introduced jurisdiction crossing administrative district, which serves the same objectives as elevated jurisdiction. However, the innovative jurisdiction provisions do not address the problem at its source, namely that administrative agencies still find ways to continue interfering in judicial operations. They only shift the problem upwards or to another court hoping that it has a deterrent effect on the administration. In the end, it depends on the standing and experience of the judge at the higher-level court or in the neighboring district whether the administrative agency is still likely to interfere.

3. How does the revised ALL structure judicial review of administrative actions?

The revised ALL made the hearing the center of the procedure, which expresses respect for the parties' positions and serves as a platform for debate. From a psychological perspective, the opportunity to engage in a guided discussion with one's adversary to solve a problem seems promising and reassuring. Simultaneously, the mandatory appearance of the responsible person of the administration in court fulfills an educational function as well. The administration can take it as a chance to familiarize with the law and lawful administrative actions. It is a unique practice compared to administrative litigation in other countries.[1384] But empirical studies revealed that the appearance of the responsible person of the administration in court has a limited educational effect and does not noticeably enhance the quality of the trial.[1385]

To ensure that the parties follow the order of the trial, the revised ALL strengthens judicial discretion with respect the organization of the litigation procedure. For instance, judges can decide to conduct a summary procedure when the facts and the legal outcome are clear or to add a civil dispute to the administrative litigation procedure when the outcome of the civil dispute is relevant for administrative litigation. These innovations signal a pragmatism of the legislators that saw the need to save judicial resources. Moreover, judges possess the "power of discovery"[1386] regarding the pieces of evidence that are necessary to determine the facts of the case.

The judge can also to reprehend a responsible person of an administrative agency either by sending recommendations to the higher administrative authority or by publishing their name when they violated the court order. The concept of "naming and shaming" exposes the misconduct and puts the person liable under public scrutiny. Such exposure is an innovative method to demand compliance by the responsible person of the administrative action and is an opportunity for them to learn. But private parties also sometimes disregard the court order. Depending on the seriousness of their misconduct, the judge can reprimand with a rule of detention or a financial penalty. The measures are similar to those used for the enforcement of the final judgment or ruling. Even though the parties can debate in the hearing, oftentimes, they do not respect the court's final decision. Therefore, the revision of the ALL provides judges with measures like detention, financial penalties or publishing the names of administrative officials for noncompliance with the judgment or ruling.

[1384] *Chen, Xu, Yu* 2024, 18.
[1385] Ibid, 19.
[1386] *Zhang Taisu* 2009, 28.

The revision of the ALL also dealt with the content of judicial control of administrative actions. At first glance, it is positive that the revision broadened the substantive review. Substantively, the revision updated and extended the scope of acceptable cases which makes filing a complaint for private parties more predictable. The scope of acceptable cases is a non-exhaustive list of administrative actions that are eligible to administrative litigation. The revision also added administrative agreements that signal a new understanding of cooperation between private parties and the administration. In this context, the revision improved the types of judgments as well. The ALL and the 2017 SPC Interpretation offer comprehensive definitions of the types of judgments. The revocation of the alleged administrative action is the main type followed by the judgment confirming the illegality or invalidity of an administrative action. This reflects that the revised ALL's purpose is not a mere settlement of the dispute but a confirmation of right and wrong or of valid and invalid, which the people sometimes want to know as well.

The reform specified the review of normative documents as well to ensure a uniform application of the ALL. When judges review a normative document and they realize that it is unlawful, they should not cite it in the judgment or ruling. They shall only refer to lawful rules in the judgment or ruling. As an additional service, they shall send recommendations to the administrative agency informing them about the unlawfulness of the normative document. However, the evident shortcoming is that courts can review normative documents only incidentally. Again, the revision could not heal the root cause which is that administrative agencies issue normative documents without regarding higher statutory regulations and rules. Since a guiding Administrative Procedure Law does not exist, the revised ALL cannot stop administrative agencies from issuing unlawful normative documents.

The revision of the ALL also dealt with the substantive review by courts. As the standard, courts review the legality of the administrative action. The revision clarified to what extent the review of appropriateness is possible. So far only two circumstances allow courts to review the appropriateness: The court can modify an administrative penalty that is obviously inappropriate or when the administration's calculation of an amount of money is erroneous. The review of appropriateness demands judges to conduct a reasonable assessment of all possible circumstances regarding administrative discretion that underlies the administrative action. Although the revision would have been a good occasion to add a comprehensive review of appropriateness to the judges' authority, it would have affected the functional separation of powers in China for the benefit of courts. But as the Constitution and the revision of the ALL highlight, courts are not supposed to interfere with the substantive work of the administration.

Their main task is to review the legality of administrative actions. However, in practice, courts became creative regarding the review of appropriateness. But so far, they do not review uniformly and usually do not explicitly express it in the judicial decision. Judges are usually hesitant to weigh up different interests since they fear criticism.

4. How does the revised ALL of 2014 organize the settling of administrative disputes and the supervision of the trial?

The revised ALL promotes legal certainty through a standardized litigation procedure. Through these legal standards, it endows the judgment or ruling with a normative character. But as mentioned before, the settlement of the administrative dispute is not the central purpose of administrative litigation. Theoretically, after the judicial decision is final, it represents a legitimate decision that binds the parties involved. But in practice so far, the people and the administration's disregard the final judgment or ruling which makes enforcement measures more important to avoid that judicial control of administrative actions becomes ineffective. Therefore, the legislators included supervisory and educational measures in the revised ALL. In particular, recommendations are a useful tool. The courts can send them when they found a normative document to be unlawful. The procuratorate can send them when they deal with administrative nonfeasance or misconduct harming public interests. This aims at increasing the judiciary's credibility and at having the people and the administration comply with the laws in a serious and substantive way and to avoid errors in the future.

Administrative litigation acknowledges two instances. In the appeal procedure, the court deals with the review of the trial procedure of the first instance as well as the legality of the impugned administrative action. Statistics show that the courts of second instance usually maintain the judgment or ruling of first instance unless the appellant is the defendant administrative agency. This tendency allows to assume that administrative interference is still a problem for administrative litigation. An independent administrative court seems indispensable to overcome this situation. But since the government is not likely to establish such an independent court in the near future, supervision of the courts is necessary.

Similar to the pluralist control system for administrative actions, trial supervision is also diverse. The revision illuminated three trial supervision methods, namely the retrial, internal supervision, and procuratorial protest, to monitor the courts' performances and to guarantee a fair procedure. The people can approach the higher-level court or the procuratorate when they deem the judgment or ruling to be erroneous. The president of a people's court or a higher-level

court can also initiate trial supervision ex officio. This diversification of control mechanisms ensures the state's flexibility.

5. Concluding remarks

Over the last 35 years, courts collected practical experiences with administrative litigation. The SPC guided them pro-actively through its rulemaking. Moreover, the SPC could and can rely on the expertise of the administrative law community that supports the reform agendas. Administrative law scholars contributed to the revision of the ALL with their expertise. In their debates surrounding the revision of the ALL of 1989, many scholars were convinced of its merits and emphasized that the ALL was a mirror of China's advancing Socialist rule of law status.

However, the reform curbed their high hopes concerning a more autonomous litigation procedure because despite the trend to proceduralization, which is obvious within the ALL, the reformers still have not enacted an Administrative Procedure Law. Thus, the courts still cannot refer to a standardized national law that could harmonize the application of administrative laws by guiding all administrative operations in the country. Instead, courts must develop the due process principle on their own account or refer to other administrative operative laws on the local level or procedural requirements which are mentioned in other laws, like the Administrative Penalty Law.[1387] What is more, the leadership still does not take the step of setting up an independent administrative court with the necessary institutional power to make judicial control of administrative action more uniform and effectual.

Moreover, to achieve the objectives of administrative litigation procedures, like fairness and protection of rights and interests, the judiciary should invest in judicial qualifications, such as legal interpretation skills. The ALL and the SPC's rules and regulations cannot include all possible scenarios in the legal text and cannot keep up as fast with the political, economic and social changes. Therefore, judges must be able to conduct a reasonable assessment of all possible circumstances to solve the administrative dispute. Interpretation skills are necessary where judges have discretion in the ALL. For instance, they have the discretion to suspend the enforcement of the original administrative action, the discretion to decide how to collect evidence, or the discretion to determine when an administrative action is obviously inappropriate. Some questions might be less difficult and complex than others, however, profound interpretation skills are necessary to make a reasonable conclusion.

[1387] *Ahl* 2022; *Weller* 1998.

"If laws are promulgated but the ruler cannot be fair and just, that is equivalent to not having any laws. Having fair laws that cannot be enforced is equivalent to not having a ruler," as states a governing principle of ancient China. This puts the problem of the ALL of 1989 and the revised ALL of 2014 in a nutshell. Transferring the first sentence of the principle to the situation of the ALL of 1989, it illustrates that the ALL of 1989 as the promulgated law found no fair enforcement or was enforced in an inefficient, even unjust way. The three difficulties were the result of unfair and ineffective application of the ALL. People distrusted the courts, and the ALL became a useless tool although it should protect the lawful rights and interests of the people. The second sentence of the principle reflects the situation of the ALL of 2014. The revision improved the ALL to become a tool for fair dispute resolution. However, due to structural obstacles, such as the lack of judicial personnel and qualifications, and eventually, the lack of judicial autonomy, the ALL of 2014 still suffers from ineffective enforcement in some cases.

In the end, "[t]here is no best law, only better law, no ideal law, only actual law."[1388] *TONG Weidong*'s words suitably define the mixed assessment this dissertation developed about legal improvements and the remaining deficits of the revised ALL. Certainly, the manifold provisions and explanations surrounding administrative litigation will ensure a uniform application of the ALL, and clearly, people have already regained trust in administrative ligation as a serious dispute resolution channel. Thus, the ALL is not a "frail weapon"[1389] anymore, and the revised ALL is evidently the "better law". Administrative litigation is an important pillar in the legal system that can facilitate an administration according to law, which so far, is still only an ideal and not reality. But the ALL is also certainly not the "best law" for China's circumstances because the Chinese legislators offered piecemeal solutions. Again, it is obvious that the revised ALL intends to alleviate symptoms, like the three difficulties, but does not tackle the cause of problems, namely the powerful standing of the administration and a lack of separation of powers with checks and balances. Issuing an Administrative Procedure Law and establishing an independent administrative court could both have a stabilizing and sustainable effect on judicial control of administrative actions.

[1388] *Tong* 2015, 22-32.
[1389] *O'Brien, Li* 2004, 76.

Appendix

I. List of relevant national administrative laws

Administrative Compulsion Law of the People's Republic of China (中华人民共和国行政强制法), Order No. 49 of the President, issued June 30, 2011.

Administrative License Law of the People s Republic of China (中华人民共和国行政许可法), Order No. 7 of the President, issued August 27, 2003; effective July 1, 2004; revised April 23, 2019.

Administrative Litigation Law of the People's Republic of China (中华人民共和国行政诉讼法), Order No. 16 of the President, issued April 4, 1989; revised November 1, 2014; revised June 27, 2017.

Administrative Penalty Law of the People's Republic of China (中华人民共和国行政处罚法), Order No. 70 of the President, issued March 17, 1996; revised August 27, 2009; revised September 1, 2017; revised January 22, 2021.

Administrative Reconsideration Law of the People's Republic of China (中华人民共和国复议法), Order No. 9 of the President, issued April 29, 1999; revised August 27, 2009; revised September 1, 2017; revised September 1, 2023.

Administrative Supervision Law of the People's Republic of China (中华人民共和国行政监察法), Order No. 31 of the President, issued May 9, 1997; revised June 25, 2010; expired.

Constitution of the People's Republic of China (中华人民共和国宪法), issued at the Fifth Session of the Fifth National People's Congress on December 4, 1982, revised April 12, 1988; revised March 29, 1993; revised March 15, 1999; revised March 14, 2004, revised March 11, 2018.

Public Security Administration Punishments Law of the People's Republic of China (中华人民共和国治安管理处罚法), Order No. 67 of the President, issued August 28, 2005; revised October 26, 2012.

State Compensation Law of the People's Republic of China (中华人民共和国国家赔偿法), Order No. 68 of the President, issued May 12, 1994; revised April 29, 2010; revised October 26, 2012.

Supervision Law of the People's Republic of China (中华人民共和国监察法), by Order No. 3 of the President, issued March 20, 2018.

II. Overview of interpretations, notices, and provisions of the SPC and the SPP concerning administrative litigation

General guidance	
	Circular of the Supreme People's Court on Strictly Implementing and Enforcing the "Dual Track" Regulation (最高人民法院关于认真贯彻落实"收支两条线"规定的通知), issued June 9, 1998.
	Circular of the Supreme People's Court on Printing and Issuing the Summary of the Symposium on Issues concerning Applicable Legal Norms for the Trial of Administrative Cases (最高人民法院关于印发《关于审理行政案件适用法律规范问题的座谈会纪要》的通知), issued May 18, 2004, in: Fa (法) 2004, No. 96.

	Detailed Rules for the Implementation of the Provisions of the Supreme People's Court on Case Guidance《最高人民法院关于案例指导工作的规定》实施细则, issued May 13, 2015, in Fa (法) 2015, No. 130.
	Guiding Opinions of the Supreme People's Court on Unifying the Application of Law and Strengthening the Search for Similar Cases (Trial Implementation) (《最高人民法院关于统一法律适用加强类案检索的指导意见》(试行)), issued July 27, 2020.
Trial work	Notice of the Supreme People's Court on Issuing the "Interim Provisions on Several Issues concerning the Specific Application of Laws in the Trial of Public Security Administrative Cases by the People's Courts" (最高人民法院关于印发《人民法院审理治安行政案件具体应用法律的若干问题的暂行规定》的通知), issued October 24, 1986.
	Notice of the Supreme People's Court on Regulating the Cause of Action of Administrative Cases (最高人民法院关于规范行政案件案由的通知), issued January 14, 2004, in: Fafa (法发) 2004, No. 2.
	Notice of the Supreme People's Court on Issuing the Opinions of the Supreme People's Court on Strengthening and Improving the Administrative Trial Work (最高人民法院印发《最高人民法院关于加强和改进行政审判工作的意见》的通知), issued April 24, 2007, in: Fafa (法发) 2007, No. 19.
	Notice of the Supreme People's Court on Certain Opinions concerning Good Trial Work under the Current Circumstances (最高人民法院印发《关于当前形势下做好行政审判工作的若干意见》的通知), issued June 16, 2009, in: Fafa (法发) 2009, No. 38.
	Provisions of the Supreme People's Court on Several Issues concerning the Trial of Building Registration Cases (最高人民法院关于审理房屋登记案件若干问题的规定), November 5, 2010, effective November 18, 2010, in: Fashi (法释) 2010, No. 15.
Interpretations of the ALL	Notice of the Supreme People's Court on Several Issues concerning the Implementation of the "Administrative Litigation Law of the People's Republic of China" (For Trial Implementation) (最高人民法院关于贯彻执行《中华人民共和国行政诉讼法》若干问题的意见 (试行) 的通知), in: Fafa (法发) 1991, No. 19.
	Interpretation of the Supreme People's Court on Several Issues concerning the Implementation of the "Administrative Litigation Law of the People's Republic of China" (最高人民法院关于执行《中华人民共和国行政诉讼法》若干问题的解释), issued November 24, 1999, effective March 10, 2000, in: Fashi (法释) 2000, No. 8.
	Interpretation of the Supreme People's Court on Several Issues concerning the Implementation of the "Administrative Litigation Law of the People's Republic of China" (最高人民法院关于执行《中华人民共和国行政诉讼法》若干问题的解释), effective April 20, 2015, in: Fashi (法释) 2015, No. 9.

	Interpretation of the Supreme People’s Court on Several Issues concerning the Application of the “Administrative Litigation Law of the People’s Republic of China” (最高人民法院关于适用《中华人民共和国行政诉讼法》若干问题的解释), issued November 13, 2017, effective February 8, 2018, in: Fashi (法释) 2018, No. 1.
Filing of cases	Interim Regulations of the Supreme People’s Court on the Case Filing Work of the People’s Courts (最高人民法院关于人民法院立案工作的暂行规定), issued April 21, 1997, in: Fafa (法发) 1997, No. 7.
	Opinion of the Supreme People’s Court on Regulating the Filing of Cases for Retrial by the People’s Courts (for Trial Implementation) (最高人民法院关于规范人民法院再审立案的若干意见(试行)), issued September 10, 2002, in: Fafa (法发) 2002, No. 13.
	The Spokesperson of the Supreme People’s Court informs the country about the Progress concerning the Implementation of the Case Registration System (最高法院新闻发言人通报全国法院实施立案登记制度进展情况), held on June 9, 2015.
	Provisions of the Supreme People’s Court on Case Docketing Procedures for Administrative Retrial Petitions (最高人民法院关于行政申请再审案件立案程序的规定), issued November 21, 2017, effective January 1, 2018, in: Fashi (法释) 2017, No. 18.
Withdrawal	Provisions of the Supreme People’s Court on Several Issues concerning the Withdrawal of an Administrative Lawsuit (最高人民法院关于行政诉讼撤诉)若干问题的规定), in: Fashi (法释) 2008, No. 2.
Summary procedure	Notice of the Supreme People’s Court on the Pilot Work concerning Launching the Summary Procedure of Administrative Litigation (最高院关于开展行政诉讼简易程序试点工作的通知)， issued December 11, 2010, in: Fa (法) 2010, No. 446.
Mediation	Several Opinions of the Supreme People’s Court on Further Displaying the Positive Roles of Litigation Mediation in the Building of a Socialist Harmonious Society (最高人民法院关于进一步发挥诉讼调解在构建社会主义和谐社会中积极作用的若干意见), issued January 3, 2007, in: Fafa (法发) 2007, No. 9.
Litigation rights	Opinion of the Supreme People’s Court on the Protection of the Litigation Rights of Parties in Administrative Litigation according to the Law (最高人民法院关于依法保护行政诉讼当事人诉讼权的意见), in: Fafa (法发) 2009, No. 54.
	Notice of the Supreme People’s Court on Issuing the Several Opinions on Further Protecting and Regulating the Legal Exercise of Administrative Litigation Rights by the Parties (高人民法院关于进一步保护和规范当事人依法行使行政诉权的若干意见), issued in: Fafa (法发) 2017, No. 25.
Jurisdiction	Provisions of the Supreme People’s Court on Several Issues concerning the Jurisdiction over Administrative Cases (最高人民法院关于行政案件管辖若干问题的规定), issued January 14, 2008, effective February 1, 2008, in: Fashi (法释) 2008, No. 1.

	Notice of the Supreme People's Court on Launching the Pilot Program about Centralized Jurisdiction of Administrative Cases (最高人民法院关于开展行政案件相对集中管辖试点工作的通知), issued January 14, 2013, in: Fa (法) 2013, No. 3.
	Notice of the Supreme People's Court on the "Pilot Reform of Improving the Positioning of Four Level of Courts in terms of Adjudication Levels and Functions" (最高人民法院关于印发《关于完善四级法院审级职能定位改革试点的实施办法》的通知), issued September 9, 2021, in: Fa (法) 2021, No. 242.
	Supreme People's Court Guiding Opinions on Strengthening and Standardizing the Elevated Jurisdiction and Retrial Work (最高人民法院印发《关于加强和规范案件提级管辖和再审提审工作的指导意见》) issued July 28, 2023, in: Fafa (法发) 2023, No. 13.
PIL	Measures for the Implementation of the Pilot Program of Initiating Public Interest Actions by the People's Procuratorate (人民检察院提起公益诉讼试点实施办法), issued December 24, 2014, in: Interpretation No. 6.
	Plan for the Pilot Program of the Reform of Instituting Public Interest Litigations by the Procuratorial Organs (检察机关提起公益诉讼改革试点方案)，issued July 2, 2015, in: Working Document of the Supreme People's Court and the Supreme People's Procuratorate.
	Notice of the General Office of the Supreme People's Procuratorate on Issuing the "Opinions on Questions concerning the Deepening of the Pilot Program of Public Interest Litigation" (最高人民检察院办公厅关于印发《关于深入开展公益诉讼试点工作有关问题的意见》的通知), issued December 22, 2016.
	Notice of the Supreme People's Court on Issuing the Measures of the Implementation of the Pilot Program of Trial by the People's Court of Public Interest Litigation Cases Instituted by People's Procuratorate (最高人民法院关于印发《人民法院审理人民检察院提起公益诉讼案件试点工作实施办法》的通知)， in: Fafa (法发) 2016, No. 6.
	Interpretation of the Supreme People's Court and Supreme People's Procuratorate concerning Several Questions about Implementing the Law in Procuratorial Public Interest Litigation Cases (最高人民法院最高人民检察院关于检察公益诉讼案件适用法律若干问题的解释), adopted February 23, 2018, by the Supreme People's Court and February 11, 2018, by the Supreme People's Procuratorate, issued March 2, 2018.
	Report of the Supreme People's Procuratorate Regarding the Work Situation of Launching Public Interest Litigation (最高人民检察院关于开展公益诉讼检察工作情况的报告), issued October 24, 2019.
Administrative license	Provisions of the Supreme People's Court on Several Issues concerning the Trial of Administrative Licensing Cases (最高人民法院关于审理行政许可案件若干问题的规定), issued December 14, 2009, in: Fashi (法释) 2009, No. 20.

Administrative agreements	Press Conference about "The Provisions of the Supreme People's Court on Several Issues concerning the Trial of Administrative Agreement Cases" (《最高人民法院关于审理行政协议案件若干问题的规定》新闻发布会), on December 10, 2019, available on Website of the Supreme People's Court (最高人民法院网).
	Provisions of the Supreme People's Court on Several Issues concerning the Trial of Administrative Agreement Cases (最高人民法院关于审理行政协议案件若干问题的规定), issued November 27, 2019, effective January 1, 2020, in: Fashi (法释) 2019, No. 17.
Evidence	Provisions of the Supreme People's Court on Several Questions concerning Administrative Evidence (最高人民法院关于行政证据若干问题德规定), issued June 4, 2002, effective October 1, 2002, in: Fashi (法释) 2002, No. 21.
Defendant qualification and appearance in court	Provisions of the Supreme People's Court on Several Issues concerning Correctly Determining the Qualifications of Defendants in Administrative Litigation of Local People's Governments at or above the County Level (最高人民法院关于正确确定县级以上地方人民政府行政诉讼被告资格若干问题的规定), issued March 25, 2021, in: Fashi (法释) 2021, No. 5.
	Provisions of the Supreme People's Court on Several Issues concerning the Responsible Person of the Administrative Agency Appearing in Court (最高人民法院关于行政机关负责人出庭应诉若干问题的规定), effective July 1, 2020, in: Fashi (法释) 2020, No. 3.
	Notice of the Supreme People's Court concerning Adjusting the Identification Method of Patent Agents Representing Patent Litigation (最高法院发出通知调整专利代理人代理专利诉讼的身份确认方式), issued March 6, 2016.
Judgments	Provisions of the Supreme People's Court on Citing Laws, Regulations, and other Normative Legal Documents in Judgment Documents (最高人民法院关于裁判文书引用法律、法规等规范性法律文的规定), issued October 26, 2009, in: Fashi (法释) 2009, No. 14.
	Notice of the Supreme People's Court on Issuing the "Interim Provisions on the Main Points of Administrative Cases" (最高人民法院印发《关于行政案件案由的暂行规定》的通知), issued December 7, 2020, effective January 1, 2018, published in: Fafa (法发) 2020, No. 44.
	Notice of the Supreme People's Court on Issuing the "Guiding Opinions on Further Promoting the Integration of Core Socialist Values into Judgment Documents" (最高人民法院印发《关于深入推进社会主义核心价值观融入裁判文书释法说理的指导意见》的通知), issued January 19, 2021, in: Fa (法) 2021, No. 21.

	Regulations of the Supreme People’s Court regarding Placing Judicial Decisions on the Internet (最高人民法院关于人民法院在互联网公布裁判文书的规定), issued August 29, 2016, in: Fashi (法释) 2016, No. 19.
Judicial recommendations	Notice of the Supreme People’s Court on Issuing the Opinions on Strengthening the Work of Judicial Recommendations (最高人民法院印发《关于加强司法建议工作的意见》的通知), issued March 15, 2012, in: Fa (法) 2012, No. 74.
Trial supervision	Notice of the Supreme People’s Court on the Printing and Delivering of the Speech of Vice-President *MA Yuan* at the Conference of Higher People’s Courts discussing How to Deal with Procuratorial Protest in Retrial Cases (最高人民法院«关于印发马原副院长在部分高级人民法院讨论如何办理检察院抗诉的再审案件座谈会上的讲话的通知»)，issued December 20, 1991, in: Fa(min)fa (法(民)发) 1991, No. 41.
	Reply of the Supreme People’s Court concerning the Inadmissibility of Procuratorial Protest for Decisions in the Enforcement Process (最高人民法院«关于对执行程序中的裁定的抗诉不予受理的批复), issued August 10, 1995, in: Fafu (法复) 1995, No. 5.
	Notice of the Supreme People’s Court on the Printing of the Conference Summary of the National Work on Trial Supervision about Some Problems concerning the Current Trial Supervision Work (最高人民法院关于印发 «全国审判监督工作座谈会关于当前审判监督工作若干问题的纪要»的通知)，issued November 1, 2001, in: Fa (法) 2001, No. 161.
	Supreme People’s Court Guiding Opinions on Strengthening and Standardizing the Elevated Jurisdiction and Retrial work (最高人民法院印发《关于加强和规范案件提级管辖和再审提审工作的指导意见》) issued July 28, 2023, in: Fafa (法发) 2023, No. 13.
Enforcement	Notice of the Supreme People’s Court on Issuing Several Opinions on the Reasonable Allocation and Scientific Exercise of Enforcement Power (最高人民法院印发《关于执行权合理配置和科学运行的若干意见》的通知), issued October 19, 2011, in: Fafa (法发) 2011, No. 15.
	Supreme People’s Courts Work Program on Implementing "the Basic Solution of the Difficulty in Enforcement within Two to Three Years” (最高人民法院关于落实“用两到三年时间基本解决执行难问题” 的工作纲要), issued April 29, 2016, in: Fafa (法发) 2016, No. 10.
	Report of the Supreme People's Court on Studying and Handling the Deliberation Opinions of the Report on the Work to Solve the Difficulty of Enforcement – held at the 10th meeting of the Standing Committee of the 13th National People's Congress on April 21, 2019 (最高人民法院关于研究处理对解决执行难工作情况报告审议意见的报告——2019 年 4 月 21 日在第十三届全国人民代表大会常务委员会第十次会议上), issued April 21, 2019.

	Provisions of the Supreme People’s Court on Several Issues concerning the Enforcement of People's Courts (For Trial Implementation) (最高人民法院关于人民法院执行工作若干问题的规定(试行)), issued June 11, 1998, in: Fashi (法释) 1998, No. 15; revised according to the “Decision of the Supreme People's Court to Amend Eighteen Enforcement Types of Judicial Interpretations including the Provisions of the Supreme People's Court on Several Issues concerning People's Courts' Impoundment of Goods Transported by Railway” (最高人民法院关于修改《最高人民法院关于人民法院扣押铁路运输货物若干问题的规定》等十八件执行类司法解释的决定), issued December 23, 2020, in: Fashi (法释) 2020, No. 21.

List of references

Björn Ahl, Die Justizauslegung durch das Oberste Volksgericht der VR China – Eine Analyse der neuen Bestimmungen des Jahres 2007, in: Zeitschrift für Chinesisches Recht 2007, Issue 14, No. 3, 251-258.

Björn Ahl, The politicization of the Chinese national judicial examination (2007-2012), in: Modern China 2017, at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2872473 [December 4, 2023].

Björn Ahl, Judicialization in authoritarian regimes: The expansion of powers of the Chinese Supreme People's Court, in: International Journal of Constitutional Law 2019, Vol. 17, 252-277.

Björn Ahl (ed.), Chinese courts and criminal procedure - Post-2013 reforms, Cambridge University Press 2021.

Björn Ahl, The development of the due process principle in post-2013 China, in: The Journal of Comparative Law 2022, Vol. 17, 254-276.

Björn Ahl, Daniel Sprick, Pilar Czoske, Maßnahmen des Obersten Volksgerichts zur Schaffung einer transparenten Justiz, in: Zeitschrift für Chinesisches Recht 2014, Issue 21, No. 3, 199-208.

Björn Ahl, Daniel Sprick, Towards judicial transparency in China: The new public access database for court decisions, in: China Information 2017, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2923697, 1-38.

Helmut K. Anheier, Wolfgang Seibel (eds.), The third sector: Comparative studies of nonprofit organizations, de Gruyter 1990.

Jongyoon Baik, Speaking up: why people dare to sue the government in China, Journal of Law and Society 2023, No. 50, 344-368.

Stephanie Balme, Michael W. Dowdle (eds.), Building constitutionalism in China, New York 2009.

Bao Wanchao (包万超), The implementation and reformation of administrative litigation law in China – Analysis based on the Law Yearbook of China (1991-2012) (行政诉讼法的实施状况与改革思考 – 基于《中国法律年鉴》（1991-2012）的分析), in: Chinese Public Administration (中国行政管理) 2013, Vol. 4, No. 334, 48-55.

Hartmut Bauer, Altes und Neues zur Schutznormtheorie, in: Archiv des öffentlichen Rechts 1988, Vol. 113, No. 4, 582-631.

Wolfgang Bernhardt, Beweislast und Beweiswürdigung im Zivil- und Verwaltungsprozeß, in: Juristische Rundschau 1966 No. 9, 322-327.

BI Yuquan (毕玉谦), Eligibility and exclusion of evidence: Comparing and examining the three major procedural laws (证据适格性与证据排除：三大诉讼间的比较与检视), in: Evidence Science 2013, Vol. 21, No. 4, 389-407.

Kjeld Erik Brødsgaard, Assessing the Fourth Plenum of the Chinese Communist Party: Personnel Management and Corruption, in: Asia Policy 2015, No. 20, 30-37.

Bu Yuanshi, Einführung in das Recht Chinas, Munich 2009.

Willi Büchner-Uhder (Hrsg.), Verwaltungsrecht, Akademie für Staats- und Rechtswissenschaft der DDR, Berlin 1979.

Jean-Pierre Cabestan, Administrative law-making in the People's Republic of China, in: *Eduard B. Vermeer; Ingrid D'Hoghe (eds.),* China's legal reforms and their political limits, Curzon Richmond 2002, 31-48.

Cai Chao (蔡超), Hua Hui (花卉); Zhao Qingfei (赵庆飞), The predicament and way out of "procedural freewheel" caused by "chain complaints" and "similar litigation" – Sample of the data of the five years from 2013 to 2017 from some central provinces ("连环型诉讼" 与 "同类型诉讼" 引发 "程序空转" 的困境与出路 -- 以中部某省 2013-2017 五年数据位样本), in: Administrative law enforcement and administrative trial (行政执法与行政审判) 2019, No. 73.

Dingjian Cai; Chenguang Wang, China's journey toward the rule of law. Legal reform, 1979-2008, Brill Leiden 2010.

Cai Xiaoxue (蔡小雪), 30 years of administrative litigation – Witnesses' narration (行政诉讼 30 年- 亲历者的口述), Law Press China Beijing (法律出版社北京) 2019.

Cao Yeru (曹也汝), The nature and function of cross-district courts– the pilot program of the reform of the railway transportation courts as reference (跨行政区划法院的性质与功能——以铁路运输法院改革试点为参照), in: Research on the modernization of the rule of law (法治现代化研究) 2018, No. 4, 150-160.

Hon S. Chan, Judicial review, and control over administrative discretion in the People's Republic of China, in: Review of Central East European Law, 1992, No. 2, 135-163.

Chen Guohua (陈国华), Problems and countermeasures of judicial recommendation work in basic people's courts (基层法院司法建议工作存在的问题及对策), in: People's Court Daily (人民法院报), April 29, 2015, 8, available at https://www.chinacourt.org/article/detail/2015/04/id/1605311.shtml [October 18, 2023].

Chen Huanhuan (陈欢欢), On the system of appearing in court of the legal representative of administrative organs (行政机关法定代表人出庭应诉制度研究), in: Journal of Guangxi Administrative Cadre Institute of Politics and Law (广西政法管理干部学院学报) 2017, Vol. 32, No. 6, 95-99.

Jianfu Chen, Chinese Law: Context and transformation, Leiden, 2008.

Chen Meng (陈萌), On the link between administrative litigation and internal responsibility investigation of administrative organs (论行政诉讼与行政机关内部责任追究的衔接), in: Postgraduate Journal of Zhongnan University of Economics and Law (中南财经政法大学研究生学报) 2016, No. 3, 155-160.

Chen Peng (陈鹏), The multi-level structure of the plaintiff qualification in administrative litigation (行政诉讼原告资格的多层次构造), in: Peking University Law Journal (中外法学) 2017, Vol. 29, No. 5, 1214-1232.

Tianhao Chen, Wei Xu, Xiaohong Yu, Administrative litigation in China: Assessing the chief officials' appearance system, in: The China Quarterly 2024, 1-21.

Chen Xiumin (陈修敏), Sharpen the sword of "power checks and balances" — On the right of using power in administrative supervision (磨砺"权力制衡" 之剑 — 试论行政监督中的以权制权), in: Administration and Law (行政与法) 2003, No. 2, 61-63.

Chen Yixin (陈一新), Deeply studying and thoroughly understanding of the XI Jinping Thought on the rule of law and promoting the building of a China ruled by law on the new level (学深悟透习近平法治思想，推动法治中国建设迈上新台阶), article published April 2, 2021, available at: http://www.chinapeace.gov.cn/chinapeace/c100007/2021-04/02/content_12470137.shtml [January 4, 2024].

Yongxi Chen, Circumventing Transparency: Extra-legal exemptions from freedom of information and judicial review in China, in: Journal of International Media and Entertainment Law, Vol. 7, No. 2, 203-252.

Siwei Cheng, Denise Jia, China to speed up public-private partnership legislation, article published at Caixin online, August 24, 2021, available at: https://www.caixinglobal.com/2021-08-24/china-to-speed-up-public-private-partnership-legislation-101758968.html [January 4, 2024].

Cheng Xiaolu (程晓璐), The modesty of the procuracy in litigation supervision (检察机关诉讼监督的歉抑性), in: Journal of National Prosecutors College (国家检察官学院学报) 2012, Vol. 20, No. 2, 50-56.

Arthur K.C Cheung, China's administrative litigation law, in: Public Law 2005, 549-570.

Jerome Alan Cohen, The Chinese Communist Party and "judicial independence": 1949-1959, available in: Harvard Law Review 1969, Vol. 82, No. 5, 967-1006.

Peter Howard Corne, Foreign Investment in China: The Administrative Legal System, Hong Kong University Press 1997.

Rogier Creemers, China's Social Credit System: An evolving practice of control, published May 9, 2018, available at SSRN: https://ssrn.com/abstract=3175792 or http://dx.doi.org/10.2139/ssrn.3175792 [December 26, 2023].

***D**eng Zhi (邓志),* The dilemma and solution of the joint defendant system for the reconsideration agencies (复议机关作共同被告制度的困境与出路), in: Journal of Shaoyang University (Social Sciences Edition) (邵阳大学学报 (社会科学版)) 2020, Vol. 19, No. 5, 59-64.

Anthony R. Dicks, Compartmentalized law and judicial restraint: An inductive view of some judicial barriers to reform, in: *Stanley Lubman (ed.),* China's Legal Reforms, Oxford University Press 1996, 82-110.

Steffen Detterbeck, Allgemeines Verwaltungsrecht mit Verwaltungsprozessrecht, 15. Auflage, München 2017.

*Timothy **E**ndicott*, Administrative Law, Fourth Edition, Oxford 2018.

***F**ang Jun (方军),* On the substantive definition and functional positioning of administrative review – Discussion on the changes in the legislative purpose of administrative reconsideration in China (论行政复议的性质界定与功能定位 –兼议我国行政复议立法宗旨的变动), in: Journal of Henan University of Economics and Law (河南财经政法大学学报) 2020, No. 6, 10-18.

Fang Yu (房雨), Consideration on the major issues and solutions that affect the administrative supervision in China (影响我国行政监督的主要问题及对策思考), in: Journal of Baicheng Normal University (白城师范大学学报) 2004, No. 3, 5-7.

Michael Fehling, Berthold Kastner, Rainer Störmer (eds.), Verwaltungsrecht, 4. Edition, Nomos 2016.

Susan Finder, Like throwing an egg against a stone? Administrative litigation in the People's Republic of China, in: Journal of Chinese Law 1989, Vol. 3, 1-28.

Susan Finder, Supreme People's Court interprets the Administrative Litigation Law, published May 6, 2015 a, available at: https://supremepeoplescourtmonitor.com/2015/05/06/supreme-peoples-court-interprets-the-administrative-litigation-law/ [December 26, 2023].

Susan Finder, New docketing procedures come to the Chinese courts, published June 2015 b, in: https://supremepeoplescourtmonitor.com/2015/06/18/new-docketing-procedures-come-to-the-chinese-courts/ [December 27, 2023].

Susan Finder, Data from the Supreme People's Court on administrative cases, published April 2, 2016, in: https://supremepeoplescourtmonitor.com/2016/04/02/data-from-the-supreme-peoples-court-on-administrative-cases/ [December 26, 2023].

Susan Finder, Supreme People's Court's 2020 judicial interpretation agenda, published April 2, 2020, available at: https://supremepeoplescourtmonitor.com/2020/04/ [December 26, 2023].

Hualing Fu, Richard Cullen, From mediatory to adjudicatory justice: The limits of civil justice reform in China, in: *Margaret Y.K. Woo; Mary E. Gallagher (eds.),* Chinese justice: Civil dispute revolution in China, Cambridge University Press 2011 a, at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1306800 [December 26, 2023],1-72.

Hualing Fu, Richard Cullen, The development of public interest litigation in China, in: *Po Jen Yap, Holning Lau (eds.),* Public Interest in Asia, Oxon 2011 b, 8-34.

Hualing Fu, Building judicial integrity in China, in: Law Research Paper 2015, No. 048, University of Hong Kong Faculty of Law, at: http://ssrn.com/abstract=2684603 [December 23, 2023].

Hualing Fu, The procuratorate and public interest litigation (PIL), October 30, 2017, in: http://thechinacollection.org/procuratorate-public-interest-litigation-pil/ [December 23, 2023].

Gao Jiawei (高家伟), The appearance of the responsible person in court is a systemic innovation for fostering grassroot democracy (行政机关负责人出庭应诉作为持续稳定推进基层民主的一项制度创新), article published July 2, 2020, available at: https://mp.weixin.qq.com/s/BqsKN7AkecTDkzXBbUHMxg [January 7, 2024].

Antoine Garapon, A New Approach for Promoting Judicial Independence, in *Randall Peerenboom (ed.)*, Judicial independence in China. Lessons for global rule of law promotion, Cambridge 2010, 37-51.

Ge Xianyuan (葛先园), DING Yishi (丁翊时), Analysis of the effectiveness of the co-defendant system of the reconsideration agency (复议机关共同被告制度实效分析), in: Journal of Liaocheng University (Social Science Edition) (聊城大学学报 (社会科学版)) 2019, No. 4, 84-89.

Zheng Ge, Toward a regulatory neutrality in a Party-State? A review of administrative law reforms in China, in: *John Gillespie, Albert H.Y. Chen (eds.),* Legal reforms in China and Vietnam: A comparison of Asian Communist regimes, Routledge New York 2010, 109-133.

Geng Baojian (耿宝建), YIN Qin (殷勤), How to embody "the principle of administrative integration" in the amendment of administrative reconsideration law? (《行政复议法》修改

如何体现 “行政一体原则” ？), in: Journal of Henan University of Economics and Law (河南财经政法大学学报), 2020, Vol. 6, No. 182, 19-29.

Gunhart Gerke, Die Schlichtung im chinesischen Recht, Mitteilungen des Instituts für Asienkunde, Hamburg 1992.

Tom Ginsburg; Tamir Moustafa (eds.), Rule by law: The politics of courts in authoritarian regimes, Cambridge University Press 2008.

Tom Ginsburg; Albert H.Y. Chen (eds.), Administrative Law and Governance. Comparative Perspectives, London 2009.

George Ginsburgs, The Soviet procuracy and forty years of socialist legality, in: The American Slavic and East European Review 1959, Vol. 18, No. 1, 34-62.

Gu Angran (顾昂然), Looking back at the circumstances of the enactment of the Administrative Litigation Law and deepening the understanding of its significance (回顾制定情况，加深对《行政诉讼法》重要意义的认识), in: Administrative Law Review (行政法学研究) 2009, No. 3.

Weixia GU, Responsive justice in China during transitional times: Revisiting the juggling path between adjudicatory and mediatory justice, in: Washington University Global Studies Law Review 2015, Vol. 14, No. 49, 49-85.

Guan Baoying (关保英), Questioning the norms of administrative free discretion (行政自由裁量基准质疑), in: Legal Science (Journal of Northwest University of Political Science and Law) (法律科学 (西北政法大学学报) 2013, No. 3, 45-55.

Sujian Guo, Chinese politics and government. Power, ideology, and organization, Routledge New York 2012.

Keith Hand, Watching the watchdog: China's State Compensation Law as a remedy for procuratorial misconduct, in: Pacific Rim Law and Policy Journal 2000, Vol. 9, No. 1, 95-138.

Haibo HE, The dawn of the due process principle in China, in: Columbia Journal of Asian Law 2008, Vol. 22, 57-118.

Haibo HE, Litigations without a ruling: The predicament of administrative law in China, in: Tsinghua China Law Review 2011, Vol. 3, 257-281.

He Haibo (何海波), Difficult administrative litigation (困顿的行政诉), in: Journal of East China University of Political Science and Law (华东政法大学学报) 2012, No. 2, available at: http://fzzfyjy.cupl.edu.cn/info/1044/1779.htm [January 3, 2024].

He Haibo et al (何海波等), The ideal "Administrative Litigation Law" – Scholars' draft proposal of the "Administrative Litigation Law of the People's Republic of China" (理想的《行政诉讼法》——《中华人民共和国行政诉讼法》学者建议稿), in: Administrative Law Review (行政法学研究), 2014 No. 2, 9-39.

He Haibo (何海波), Administrative Litigation Law (2nd edition) (行政诉讼法（第二版）), Law Press (法律出版社) 2016.

Haibo He, How much progress can legislation bring? The 2014 amendment of the Administrative Litigation Law of PRC, in: University of Pennsylvania Asian Law Review 2018, Vol. 13, 137-190.

HE Haibo (何海波), When the foundation of the administrative law was laid: Collection of historical materials of the Administrative Litigation Law of 1989 (行政法治奠基时：1989 年《行政诉讼法》史料荟萃), Law Press China Beijing (北京法律出版社) 2019.

He Fan (何帆), Li Chengyun (李承运), Chen Kun (陈琨), Understanding and application of the "Guiding Opinions of the Supreme People's Court on strengthening and standardizing the work of elevated jurisdiction and retrial of cases" (《最高人民法院关于加强和规范案件提级管辖和再审提审工作的指导意见》的理解与适用), published August 1, 2023, available at: https://www.chinacourt.org/article/detail/2023/08/id/7449320.shtml [November 28, 2023].

Xin He, Black hole of responsibility, The adjudicative committee's role in a Chinese court, in: Law & Society Review 2012, Vol. 46, No. 4, 681-712.

Xin He; Kwai Ng, Inquisitorial adjudication and institutional constraints in Chinese civil justice, in: Periodical Law and Policy 2014, Vol. 35, No. 4, 290-318.

Xin He, Administrative reconsideration's erosion of administrative litigation in China, in: The Chinese Journal of Comparative Law 2014, Vol. 2, No. 2, 252-269.

Sebastian Heilmann, Das politische System der Volksrepublik China, 3., aktualisierte Auflage, Berlin 2016.

Friederike Heins, Die Abschaffung des Widerspruchsverfahrens. Eine rechtliche und rechtstatsächliche Untersuchung der Regelung in Niedersachsen, Dissertation, Hannover 2010.

Ulla Held-Daab, Da freie Ermessen - Von den vorkonstitutionellen Wurzeln zur positivistischen Auflösung der Ermessenslehre, Dissertation, Berlin 1996.

Keith Henderson, Halfway home and a long way to go: China's rule of law evolution and the global road to judicial independence, judicial impartiality, and judicial integrity, in: *Randall Peerenboom (ed.),* Judicial independence in China. Lessons for global rule of law promotion, Cambridge 2010, 23-36.

Andreas Heusch, Der Grundsatz der Verhältnismäßigkeit im Staatsorganisationsrecht, Duncker und Humboldt Berlin 2003.

Robert Heuser, Einführung in die chinesische Rechtskultur, Hamburg 1999.

Robert Heuser, „Sozialistischer Rechtsstaat" und Verwaltungsrecht in der VR China, Hamburg 2003.

Jamie P. Horsley, Observations on the first draft revision of the Administrative Reconsideration Law, published January 23, 2023, available at: https://www.chinalawtranslate.com/en/observations-on-the-first-draft-revision-of-the-administrative-reconsideration-law/ [October 24, 2023].

Shumei Hou, Ronald C. Keith, A new prospect for transparent court judgement in China?, in: China Information 2012, Vol. 26, No. 1, 61-86.

Hu Jianmiao (胡建淼), The evolution and trends of the scope of administrative litigation in China: Designation, limitation, recovery, and expansion (中国行政诉讼范围的演变与趋向: 划定, 限制, 恢复, 拓展), in: Legal Forum (政法论坛) 2005, No. 5, Vol. 23, 3-9.

Jieren Hu; Lingjian Zeng, Grand mediation and legitimacy enhancement in contemporary China – the Guang'an model, in: Journal of Contemporary China 2015, Vol. 24, No. 91, 43-63.

Huang Tao (黄涛), Fu Ting (付厅), Procuratorate of Gansu Province – Work and investigation report of the pilot program for administrative public interest litigation (甘肃省检察机关 - 行

政公益诉讼试点工作调研报告), in: The Chinese Procurators (中国检察官) 2017, Vol. 1, No. 260, 42-46.

Huang Xianxiong (黄先雄), The theoretical and practical foundations of judicial deference and restraint – On the basis of American judicial review (司法谦抑的理论与实现基础 - 以美国司法审查为视角), in: Journal of Xiangtan University (Philosophy and Social Sciences) (湘潭大学学报(哲学社会科学版)) 2007 a, Vol. 31, No. 5, 20-24.

Huang Xuexian (黄学贤), Investigation concerning some hot issues about mediation in administrative litigation (行政诉讼调解若干热点问题探讨), in: Legal Science (法学) 2007 b, No. 1, 43-49.

Huang Xuexian (黄学贤), Elements, structure and foundation of mediation in administrative litigation (论行政诉讼调解制度的要件、构架和基础), in: Journal of Jiangsu Administrative Institute (江苏行政学院学报) 2008, Vol. 5, No. 41, 109-114.

Huang Xuexian (黄学贤), Some basic issues concerning the effective implementation of the case filing registration system in administrative litigation (行政诉讼立案登记制有效实施的几个基本问题), in: Journal of Fujian Administration Institute (福建行政学院学报) 2016, No. 3, 17-25.

Huang Xuexian (黄学贤), YANG Hong (杨红), On the theoretical study and the practical development of the principle of proportionality in Chinese administrative law (我国行政法中比例原则的卢纶研究与实现发展), Law and Economy (财经法学) 2017, No. 5, 5-18.

Huang Xuexian (黄学贤), The third party who shall be notified to participate in administrative litigation (行政诉讼中法院应当通知其参加诉讼的第三人), in: Journal of Liaoning University (Philosophy and Political Sciences) (辽宁大学学报（哲学社会科学版）), 2020 a, Vol. 48, No. 1, 118-124.

Huang Xuexian (黄学贤), The perfection of the relief system of the third party that must participate in administrative litigation (行政诉讼中必要参加诉讼第三人权利救济制度之完善), in: Legal Forum (法学论坛) 2020 b, Vol. 35, No. 3, 48-54.

Charles O. Hucker, Governmental Organization of the Ming Dynasty, in: Harvard Journal of Asiatic Studies 1958, Vol. 21, 1-66.

William Hurst, Mingxing Liu, Yongdong Liu, Ran Tao, Reassessing collective petitioning in rural China. Civic engagement, extra-state violence, and regional variation, in: Comparative Politics 2014, 459-478.

Weidong Ji, Building the rule of law in China – Ideas, praxis and institutional design, Routledge 2018.

Jiang Bixin (江必新), SHAO Changmao (绍长茂) (eds.), Guiding reader on the Opinions of the Supreme People's Court about several issues concerning the application of the "Administrative Litigation Law of the People's Republic of China" (最高人民法院关于适用《中华人民共和国行政诉讼法》若干问题的解释 辅导读本), in: The Introduction of the Judicial Interpretation on Administrative Law of PRC, China Legal Publishing House 2015.

Jiang Bixin (江必新), Actively innovate the ideal system for an effective resolution of administrative disputes (积极创新理念机制 有效化解行政争议), issued April 27, 2011, in:

Journal of the People's Court (人民法院报), available at: http://fzzfyjy.cupl.edu.cn/info/1044/1794.htm [January 2, 2024].

Jiang Bixin (江必新), Introduction to the background and main content and reporter questions concerning the "Opinions of the Supreme People's Court concerning the application of the Administrative Litigation Law of the People's Republic of China"(介绍《最高人民法院关于适用<中华人, 民共和国行政诉讼法>的解释》的相关背景和主要内容并回答记者提问), speech delivered February 7, 2018, in: http://www.court.gov.cn/zixun-xiangqing-80332.html# [January 2, 2024].

Jiang Bixin (江必新), Three decades of administrative litigation in silhouette (行政诉讼三十年发展之剪影), in: China Law (中国法律), 2019, No. 2, 79-84.

Jiang Ming'an (姜明安), Some problems of the revision of the Administrative Litigation Law (行政诉讼法修改的若干问题), in: Law Review (法学) 2014, No. 3, 16-25.

Jiang Hongzhen (蒋红珍), Judicial application of the hierarchical order of the principle of proportionality (比例原则位阶秩序的司法适用), in: Chinese Journal of Law (法学研究) 2020, Vol. 42, No. 4, 41-54.

Jie Zhiyong (解志勇), Mediation in administrative litigation (行政诉讼调解), Chinese University of Politics and Law Press (中国政法大学出版社) 2012.

Pauline T. ***K****im*, Lower Court Discretion, New York University Law Review 2007, Vol. 82, 383-442.

Wolfgang Kuhla, Jost Hüttenbrink, Der Verwaltungsprozess, C.H. Beck 2002.

L*i Dayong (李大勇),* The evolvement of the Supreme People's Court judicial policies of administrative litigation (最高法院行政诉讼司法政策之演变), in: Journal of National Prosecutors College (国家检察官学院学报) 2015, Vol. 23, No. 5, 89-102.

Li Guiying (李桂英), Reconstruct our country's administrative litigation category system (重整我国的行政诉讼类型制度), in: Hebei Law Science (河北法学) 2003, Vol. 21, No. 6, 152-157.

Li Huai (李淮), The appearance of administrative organ in court: status and prospect – Review of the third paragraph of Art. 3 of the new Administrative Litigation Law (行政机关负责人出庭应诉：现状与展望——兼对新《行政诉讼法》第 3 条第 3 款之检讨), in: Journal of the Administrative Institute of Gansu (甘肃行政学院学报) 2016, No. 4, 114-125.

Ji Li, When are there more laws? When do they matter? Using Game Theory to compare laws, power distribution, and legal environments in the United States and China, in: The Pacific Rim Law & Policy Journal, 2007, Vol. 16, No. 2, 335-373.

Ji Li, Suing the Leviathan – An empirical analysis of the changing rate of administrative litigation in China, in: Journal of Empirical Legal Studies, 2013, Vol. 10, No. 4, 845-846.

Ji Li, Dare you sue the tax collector? An empirical study of administrative lawsuits against tax agencies in China, in: The Pacific Rim Law & Policy Journal, 2014, Vol. 23, No.1, 57-112.

Ji Li, The Leviathan's rule ***by*** law, in: Journal of Empirical Legal Studies 2015, Vol. 12, No. 4, 815-846.

Ji Li, The power logic of justice in China, available in: The American Journal of Comparative Law 2017, Vol. 65, No. 1, 95–144.

Li Li, Judicial discretion within adjudicative committee proceedings in China. A bounded rationality analysis, Springer Berlin 2014.

Lianjiang Li, Kevin J. O'Brien, Protest leadership in rural China, in: The China Quarterly 2008, No. 193, 1-23.

Lianjiang Li, Mingxing LIU, Kevin O'Brien, Petitioning Beijing: The high tide of 2003-2006, in: The China Quarterly 2012, Vol. 210, 313-334.

Li Peilei (李培磊), Administrative procedure system reform in 2014 - 2015: Focusing on the amendment and implementation of the Administrative Litigation Law (2014—2015 年行政诉讼制度改革——以《行政诉讼法》修改和实施为中心); in: Research on Administrative Law (行政法学研究) 2016, No. 2, 109-121.

Li Yanfei (李艳菲), Major obstacles and countermeasures of procuratorial supervision work in administrative litigation (行政诉讼检察监督工作的瓶颈与对策), in: The Chinese Procurators (中国检察官) 2017, Vol. 6, No. 269, 67-70.

Yedan Li, Joris Kocken, and Benjamin van Rooij, Understanding China's court mediation surge: Insights from a local court, in: Law & Social Inquiry 2018, Vol. 43, Issue 1, 58–81.

Yuwen Li, Yun MA, The hurdle is high: The Administrative Litigation system of the People's Republic of China, in: *Yuwen LI (ed.),* Administrative litigation system in Greater China and Europe, England 2014, 16-40.

Liang Fengyun (梁凤云), Lectures on the new Administrative Litigation Law (新行政诉讼法讲义), People's Court Press 人(民法院出版社) 2015.

Liang Fengyun (梁凤云), Research on the issue of being co-defendant of the administrative reconsideration agency——Based on legislative and judicial Considerations (行政复议机关作共同被告问题研究——基于立法和司法的考量), in: Journal of China University of Political Science and Law (中国政法大学学报) 2016, Vol. 56, No. 6, 122-135.

Liang Junyu (梁君瑜), Re-review of the reconsideration agency's maintenance "double-defendant system" (复议维持 "双被告制" 之再检讨), in: Hebei Law Science (河北法学) 2019, Vol. 37, No. 6, 73-84.

Liang Junyu (梁君瑜), Scope and limits of the application of the modification judgment in administrative litigation (行政诉讼变更判决的适用范围及限度), in: The Jurist (法学家) 2021, No. 4, available at: http://www.calaw.cn/article/default.asp?id=14256 [December 27, 2023].

Benjamin Liebman, Xinfang: An alternative to formal Chinese legal institutions, in: Stanford Journal of International Law 2006, Vol. 42, 113-179.

Benjamin Liebman, China's courts: Restricted reform, in: The China Quarterly 2007, No. 191, 620-638.

Benjamin Liebman, Legal reform: China's law-stability paradox, in: Daedalus Journal of the American Academy of Arts and Sciences 2014, Vol. 143, 96-109.

Benjamin Liebman, Margaret E. Roberts, Rachel R. Stern, Alice Z. Wang, Mass digitization of Chinese court decisions: How to use text as data in the field of Chinese law, in: 21st Century China Center Research Paper 2018, 1-40.

Benjamin Liebman, Rachel Stern, Xiaohan Wu, Margaret Roberts, Rolling back transparency in China's courts, in: Columbia Law Review 2023, Vol. 123, No. 8, 2407-2481.

Lin Lihong (林莉红), Current theories on the Administrative Litigation Law (行政诉讼法问题专论), Wuhan University Press (武汉大学出版社) 2010.

Lin Lihong (林莉红), On the space for system of procuratorial organs initiating civil public interest litigation (论检察机关提起民事公益诉讼的制度空间); in: Administrative Law Review (行政法学研究) 2018, No. 6, 55-66.

Michael Lipsky, Street-level bureaucracy, Dilemmas of the individual in public services, New York 1982, Russell Sage Foundation.

Fei Liu, Die gerichtliche Verwaltungskontrolle als Entwicklungsfaktor des chinesischen Verwaltungsrechts. Eine vergleichende Untersuchung zwischen China und Deutschland, Dissertation, Köln 2003.

Liu Fei (刘飞), The function of a system of administrative litigation types (行政诉讼类型制度的功能), in: Chinese Journal of Law (法学研究) 2013, No. 5, 42-62.

Liu Fei (刘飞), Breakthrough and innovation – The meaning of the "Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Agreement Cases" for China's system of administrative agreements (突破与创新——《最高人民法院关于审理行政协议案件若干问题的规定》对于我国行政协议诉讼制度的意义), published December 10, 2019, available at: https://mp.weixin.qq.com/s/hVkW-C6SveYG8idgeey0rw [November 18, 2023].

Liu Liming (刘黎明), Research on the case registration system in administrative litigation (行政诉讼立案登记制度研究), in: Legality Vision (法制博览) 2015, No. 12, 217.

Nanping Liu, Michelle Liu, Justice without judges: The case filing division in the People's Republic of China, in: Journal of International Law and Policy 2011, Vol. 17, No. 2, 283-343.

Liu Quan (刘权), The application of the principle of proportionality in administrative judgments (行政判决中比例原则的适用), in: China Legal Studies (中国法学) 2019, No. 3, 84-104.

Liu Yi (刘艺), The development trend and system improvement of China's procuratorial public interest litigation system - empirical analysis based on data from 2017 to 2019 (我国检察公益诉讼制度的发展态势与制度完善——基于 2017 年-2019 年数据的实证分析), in: Journal of Chongqing University (Social Science Edition) 2020, No. 5 (重庆大学学报（社科版）), available at: http://fzzfyjy.cupl.edu.cn/info/1035/12223.htm [November 18, 2023].

Liu Yuyan (刘雨嫣), Discussion on expansion and modesty of administrative power (论行政权的扩张性与谦抑性), in: Journal of North China University of Water Resources and Electric Power (Social Sciences Edition) (华北水利水电大学学报(社会科学版)) 2017, Vol. 33, No. 1, 95-99.

Liu Zejun (刘泽军), Zhang Shuang (张爽), On the plaintiff qualification in administrative litigation: Based on the theory of the Supreme People's Court typical case analysis (论行政诉讼原告资格—基于最尬人民法院典型案例的理论解释), Journal of North China University of Technology (北方工业大学雪板) 2020, Vol. 32, No. 3, 20-27.

Liu Zhongyuan (刘忠元), Jiang Lilong (蒋利龙), The responsible person of an administrative agency appearing in court – Taking Miganjiang City as an example (行政机关负责人出庭应诉研究———以牡丹江市为例), in: Journal of Heilongjiang Administrative Cadre College of Politics And Law (黑龙江省政法管理干部学院学报) 2018, Vol. 6, 22-25.

Luo Liping (罗礼平), Analysis of mediation in administrative litigation (行政诉讼调解制度论纲), in: Contemporary Law Review (当代法学) 2011, Vol. 145, No. 1, 157-160.

Lü Changcheng (吕长城), Identification of the defendant qualification of the management organ of development zones (开发区管理机构被告资格辨识), in: People's Judiciary (人民司法) 2019, No. 22, 54-59.

Laura M. Luehrmann, Facing citizen complaints in China, 1951-1996, in: Asian Survey 2003, Vol. XLIII, No. 5, 845-866.

Chao Ma, Chao-Yo Cheng, Haibo He (eds.), From local to upper capture: The Chinese experiment of administrative courts, in: The China Review 2022, Vol. 22, No. 3, 9-46.

Ma Huaide (马怀德), Alternative solutions for the procedure of administrative license in China (中国行政许可程序解决方案之选择), in: Legislative Affairs Commission of the Standing Committee of the National People's Congress, (全国人大常委会法律工作委员会), Systems of administrative law: Comparative essays (行政法制度：比较法文集), Beijing 2002, 229-338.

Ma Huaide (马怀德), Theory on administrative litigation, 2nd edition (行政诉讼原理 （第二版）), Law Press China (法律出版社) 2009.

Ma Huaide (马怀德), Existing problems and amendment proposal for the "Administrative Litigation Law" (《行政诉讼法》存在的问题及修改建议), in: Legal Forum (法学论坛), 2010, Vol. 25, No. 131, 29-36.

Ma Huaide (马怀德), Creating administrative courts for the reform of the administrative litigation system (行政审判体制改革的目标: 设立行政法院), in: Journal of Law Application (法律适用) 2013, No. 7, 8-11.

Ma Huaide, The establishment of an administrative court is not to be delayed (马怀德教授：设立行政法院刻不容缓), in: Democracy and Legal System Times (民主与法制时报), published October 28, 2014, available at: http://fzzfyjy.cupl.edu.cn/info/1138/3558.htm [November 18, 2023].

Ma Huaide (马怀德), 30 years of administrative litigation – Looking back and moving forward (行政诉讼三十年 - 回首与前行), published March 29, 2019, available at: https://www.ilawpress.com/material/detail/342789130964435456, [November 18, 2023].

Ma Huaide (马怀德), WANG Yibai (王亦白), Scanning the system of administrative adjudication in China: Problems and reforms (透视中国的行政审判体制: 问题与改革), in: Seeking Truth (求是学刊) 2002, Vol. 29, No. 3, 73-80.

Ma Huaide (马怀德), WU Hua (吴华), Reflections and reconstruction of the types of administrative lawsuits (对我国行政诉讼类型的反思与重构), in: Zhengfa luntan (政法论坛) 2001, No. 5, 63-71, 65.

Neysun Mahboubi, Suing the government in China, in: *Kate Xiao Zhou; Shelley Rigger; Lynn T. White III (eds.)*, Democratization in China, Korea, and Southeast Asia, Routledge 2014, 141-155.

Anna Katharina Mangold, The persistence of national peculiarities: Translating representative, in: Indiana Journal of Global Legal Studies 2014, Vol. 21, No. 1, 223-261.

Madeleine Martinek, Special Economic Zones in China and WTO: Bleak or Bright Future?, in: Zeitschrift für Chinesisches Recht 2014, Vol 21, No 1, 41-51.

Lothar Michael, Normenkontrollen – Teil 1: Funktionen und Systematisierung, in: Zeitschrift für das Juristische Studium (ZJS) 2012, 756-765.

Carl Minzner, Xinfang: An alternative to formal Chinese legal institutions, in: Stanford Journal of International Law, 2006, No. 103, 103-179.

Carl Minzner, China's turn against law, in: The American Journal of Comparative Law 2011, Vol. 59, 935-984.

Mo Yuchuan (莫于川) et al., On the direction, points, and scheme of the revision of China's Administrative Procedure Law – An expert recommended draft of the Administrative Procedure Law from Renmin University of China (我国《行政诉讼法》的修改路向、修改要点和修改方案 - 关于修改《行政诉讼法》的中国人民大学专家建议稿), in: Journal of Henan University of Finance, Economics, Politics and Law (河南财经政法大学学报) 2012, Vol. 131, Nr 3, 17-52.

Mo Yuchuan (莫于川), Analysis of the administrative reconsideration mechanism and method innovation path: From the perspective of law amendment to improve the standardization, efficiency, and fairness of administrative reconsideration (行政复议制度和方法创新路径分析 – 从修法提升行政复议规范性、效率性和公正性的视角), in: Administrative Law Review (行政法学研究) 2019, No. 6, 3-13.

Frank Münzel, Erläuterungen des Obersten Volksgerichts zu einigen Fragen der Durchführung des "Verwaltungsprozessgesetzes der Volksrepublik China", übersetzt in: http://www.chinas-recht.de/991124.htm [December 26, 2023].

Kwai Hang Ng, Xin He, Internal contradictions of judicial mediation in China, in: Law and Social Inquiry 2014, Vol. 39, No. 2, 285-312.

Kwai Ng; Xin HE, Embedded courts: Judicial decision-making in China, Cambridge University Press 2017.

Ni Yi (倪弋), As of the end of June this year, the average rate of court cases filed on the spot has reached 95.7% after the registration system came into effect - The case must be established to better protect the public's right to appeal (立案登记制施行后，截至今年 6 月底，全国法院平均当场立案率已达 95.7% - 有案必立，更好保障群众诉权), article published in People's Daily (人民日报), August 4, 2022, available at: http://paper.people.com.cn/rmrb/html/2022-08/04/nw.D110000renmrb_20220804_2-07.htm [January 4, 2024].

Nele Noesselt; Ulrike Gansen; Martin Miller; Jonas Seyferth, Konstitutionalisierungsprozesse in der chinesischen Staatstheorie: Top-Down-Orchestrierung institutioneller Reformen, in: ASIEN 152/153, Juli/Oktober 2019, 49–71.

Kevin O'Brien, Li Lianjiang, Suing the local state: Administrative litigation in rural China, in: The China Journal 2004, Vol. 151, 76-96.

Ou Jungen (欧俊根), Reverse administrative litigation: the remedies for the administrative agency when the counterparty breaches the contract (反向行政诉讼：行政机关在行政协议相对人违约的救济途径), in: Cross-strait Legal Science (海峡法学) 2020, No. 84, 114-120.

Michael Palmer, Controlling the state? Mediation in administrative litigation in the People's Republic of China, in: Transnational Law and Contemporary Problems 2006, Vol. 16, 165-187.

Michael Palmer, Compromising courts and harmonizing ideologies, Mediation in the administrative chambers of the People's Republic of China, in: *Andrew Harding, Penelope Nicholson (eds.),* New courts in Asia, Routledge 2010, 251-276.

Michael Palmer, Mediating state and society: social stability and administrative suits, in: *Susan Trevaskes, Elisa Nesossi, Flora Sapio, Sarah Biddulph (eds.),* The Politics of Law and Stability in China, Edward Elgar Publishing 2014, 107-126.

Danilo Pappano, Administrative law and the Chinese legal system: Some issues on judicial review of administration activity, in: *Giacinto della Cananea, Mauro Bussani (eds.),* Judicial review of administration in Europe, Oxford University Press 2021, 326-338.

Randall Peerenboom, More law, less courts. Legalized governance, judicialization and dejudicialization in China, in: *Tom Ginsburg; Albert H.Y. Chen.,* Administrative Law and Governance. Comparative Perspectives, London 2009, 175-201.

Randall Peerenboom (ed.), Judicial independence in China. Lessons for global rule of law promotion, Cambridge 2010.

Minxin PEI, Citizens vs. Mandarins: Administrative litigation in China, in: The China Quarterly 1997, Vol. 152, 832-862.

Minxin PEI, The CCP's domestic security taskmaster: The Central Political and Legal Affairs Commission, in: China Leadership Monitor 2021, No. 69, 1-13.

Nils Pelzer, Fallannahme und Verfahrenseröffnung an chinesischen Gerichten: Löst die jüngste Reform die Probleme?, in: Zeitschrift für chinesisches Recht 2015, Vol. 22, No. 4, 372-383.

Nina Peter, Neue Kompetenzen der Volksstaatsanwaltschaft: Zivil- und verwaltungsrechtliche Klagen im öffentlichen Interesse, in: Zeitschrift für chinesisches Recht 2020, Vol. 27, No. 1, 5-16.

Suzanne J. Piotrowski, Yahong Zhang, Weiwei Lin, Wenxuan Yu, Key issues for the implementation of Chinese Open Government Information Regulations, in: Public Administration Review, December 2009, 129-135, 129.

Pitman B. Potter, The Administrative Litigation Law of the PRC: Judicial review and bureaucratic reform, in: *Pitman B. Potter (ed.),* Domestic law reforms in Post-Mao China, New York 1994, 270-304.

Pitman B. Potter (eds.), Domestic law reforms in Post-Mao China, New York 1994.

Qing Feng (青锋); Zhang Shuihai (张水海), Reflection on administrative reconsideration organ being defendant in administrative litigation (行政复议机关在行政诉讼中作被告问题的反思), in: Administrative Law Review (行政法学研究) 2013, No. 1, 9-14.

Qiu Yuxiang (邱玉香), Exploration of China's model of central jurisdiction in administrative litigation (我国行政诉讼集中管辖模式的探析), published February 01, 2018, available at: https://www.chinacourt.org/article/detail/2018/02/id/3196516.shtml [November 18, 2023].

Maurice Rosenberg, Judicial Discretion of the Trial Court, Viewed from above, Syracuse Law Review 1971, Vol. 22, 635-667.

Nina Rotermund, Auslegung zur Anwendung des Verwaltungsprozessgesetzes der Volksrepublik China, in: Zeitschrift für chinesisches Recht 2018, No. 4, 275-292.

Friedrich Schoch, Jens-Peter Schneider (eds.), Verwaltungsgerichtsordnung; Bier, Steinbeiß-Winkelmann, VwGO § 65, C.H. Beck 2020.

R. Keith Schoppa, The Columbia guide to modern Chinese history, New York 2000.

Martin Shapiro, Judicial modesty: Down with the old! -Up with the new?, in: UCLA Law Review 1962, Vol. 10, 533-560.

Shao Yanfen (邵燕芬), Research on judgment of payment in administrative litigation (行政诉讼给付判决研究), in: *ZHANG Jiansheng (章剑生) ed.,* Research on judgement of administrative litigation (行政诉讼判决研究), Zhejiang University Press (浙江大学出版社) 2011, 294-346.

Shen Kui, Administrative self-regulation, and the rule administrative law in China, in: University of Pennsylvania Law Review 2018, Vol. 13, 72-106.

Shimon Shetreet, The culture of judicial independence: Rule of law and world peace, Leiden 2014.

Shi Chunlei (石春雷), The case registration system reform: Theoretical basis, operational dilemma and route optimization (立案登记制改革: 理论基础、运行困境与路径优化), in: Journal of Chongqing University (Social Science Edition) (重庆大学学报 (社会科学版)) 2018, Vol. 24, No. 5, 125-138.

Shi Manxin (时满鑫), Lü Jiao (吕佼), Gao Peipei (高沛沛), Using non-litigation to reach a settlement in administrative disputes – The Intermediate People’s Court of Qingdao in Shandong Province builds an administrative dispute pre-trial settlement center (用非诉实现行政争议实质化解——山东青岛中院全面构建行政争议审前和解机制), article published in People’s Court Daily (人民法院报), December 4, 2019, available at: https://www.chinacourt.org/article/detail/2019/12/id/4702574.shtml [November 18, 2023].

Shi Pengpeng (施鹏鹏), The inner conviction in the criminal judgment - Study on China’s reform of criminal proof system (刑事裁判中的自由心证 — 论中国刑事证明体系的变革), Tribune of Political Science and Law (政法论坛) 2018, Vol. 36, No. 4, 16-34.

Shu Yulin (舒钰琳), Discussion of the administrative litigation system of late Qing Dynasty and early Republic of China – Taking the Pingzheng courtyard of Beiyang government as basis (清末民初行政诉讼制度述论 – 以北洋政府平政院为切入点)， Journal of Heilongjiang Administrative Cadre Institute of Politics and Law (黑龙江省政法管理干部学院学报) 2010, Vol. 83, No. 8, 21-24.

Helge Sodan; Jan Ziekow (eds.), Verwaltungsgerichtsordnung, § 79, Nomos Kommentar, 5th edition, 2018.

Peter H. Solomon Jr., Authoritarian legality and informal practices: Judges, lawyers and the state in Russia and China, in: Communist and Post-Communist Studies 2010, No. 43, 351-362.

Song Guotao (宋国涛), On identifying evidence form of administrative certification as evidence in administrative procedure (行政诉讼中作证性行政证明证据形式的认定研究), Evidence Science (论据科学), 2013, Vol. 21, No. 4, 486-493.

Song Weidong (宋卫东); WANG Zihan (王子涵), Configuration of the jurisdiction in administrative public interest litigation (行政公益诉讼管辖权的配置), in: The Chinese Procurators (中国检察官) 2018, Vol. 9, No. 299, 70-73.

Daniel Sprick, Rechtsstaatsentwicklung durch Gesetzgebung? – Das neue Verwaltungsprozessgesetz der Volksrepublik China, in: Zeitschrift für chinesisches Recht, 2015, 249-271.

Walter Suermann, Verwaltungsrechtsschutz in der DDR, Dissertation, Göttingen 1971.

Ying Sun, Hualing Fu, Of judge quota and judicial autonomy: An enduring professionalization project in China, in: The China Quarterly 2022, Vol. 250, 1-22.

Sun Zhangzhu (孙长柱), Qi Ji (齐迹), Guo Peng (郭朋), Guiding principles and practical problems of procuratorial administrative public interest litigation (检察机关提起行政诉讼公益诉讼基本原则与实践问题), in: The Chinese Procurators (中国检察官) 2018, Vol. 1, No. 283, 72-75.

Murray Scot Tanner, How a bill becomes a law in China: Stages and processes in lawmaking, in: The China Quarterly 1995, Vol. 141, 39-64.

Teng Yawei (腾亚为), Cui Menghao (崔梦豪), Improving the filing and examination system of normative documents and advancing the rule of law (完善规范性文件的备案审查制度推进依法治国), in: Journal of Guizhou Police Officer Vocational College (贵州警官职业学院学报) 2015, 55-60.

Steven Thomson, The public sector ombudsman in Greater China: Four Chinese models of administrative supervision, in: University of Pennsylvania Journal of International Law 2017, Vol. 39, No. 2, 435-490.

Edgar Tomson, Jyung-Hsyong Su, Regierung und Verwaltung der Volksrepublik China, Köln 1972.

Tong Weidong (童卫东), Progress and compromise: Review on administrative procedure law amendment (进步与妥协：《行政诉讼法》修改回顾), in: Administrative Law Review(行政法学研究) 2015, Vol. 4, 22-32.

Susan Trevaskes, Courts and criminal justice in contemporary China, Plymouth UK 2007.

Susan Trevaskes, Elisa Nesossi, Flora Sapio, Sarah Biddulph (eds.), The politics of law and stability in China, Edward Elgar Publishing 2014.

Wang Biao (王飙), Performing administrative agreements according to law is an inevitable requirement for building a law-abiding and honest government (依法履行行政协议是建设守法诚信的法治政府的必然要求), article published December 11, 2019, available at: https://mp.weixin.qq.com/s/YE8o-q4Wr84w3c2wEUj7eQ [November 18, 2023].

Wang Cailiang (王才亮), Shan Lei (单磊), Analysis of related issues of patent agent's litigation agency in administrative litigation (行政诉讼中专利代理人诉讼代理相关问题的分析), article published September 14, 2016, available at: https://mp.weixin.qq.com/s/35LxVaG3iIpZYH5ROFZXzA [November 18, 2023].

Wang Chunye (王春业), On the influence of the judicial interpretation of administrative agreement on PPP (行政协议司法解释对 PPP 合作之影响分析), in: Law Science Magazine (法学杂志) 2020, No. 6, 59-68.

Wang Guisong (王贵松), Administrative discretion: The myth between bound and free (行政裁量: 羁束与自由的迷思), in: Administrative Law Review (行政法学研究) 2008, No. 4, 47-51.

Wang Hui (王辉), Analysis of the defendant qualification of administrative litigation involving the FTA (涉自贸区行政诉讼被告资格探析), in: Journal of Guangxi Administrative Cadre Institute of Politics and Law (广西政法管理干部大学学报) 2014, Vol. 29, No. 6, 84-92.

Wang Jing (王静), The application of the principle of proportionality in Chinese administrative judgments (比例原则在中国行政判决中的适用), in: SJTU Law Review (交大法学), 2014, No. 4, 22-33.

Wang Jing, Judicial review of regulatory documents in administrative litigation in China, in: University of Pennsylvania Asian Law Review 2021, Vol. 15, 329-373.

Wang Kai (王锴), Applicable conditions for the modification judgment of the administrative action in administrative litigation — A study based on theories and cases (行政诉讼中变更判决的适用条件——基于理论和案例的考察), in: Politics and Law (政治与法律) 2018, No. 9, available at: http://www.calaw.cn/article/default.asp?id=12933 [November 18, 2023].

Wang Mingyang (王名扬), Administrative Law of France (法国行政法), Chinese University of Politics and Law Press (中国政法大学出版社)1988.

Wang Qingbin (王青斌), Reflection on the mechanism of the administrative reconsideration agency being a co-defendant (反思行政复议机关作共同被告制度), in: Politics and Law (政治与法律) 2019, No. 7, 122-135.

Wang Shaohua (王韶华), Li Jihong (李继红), Ji Tianfu (冀天福), Lu Yu (卢瑜), Wang Yumeng (王雨蒙), Improving the system of the senior officials appearing in court, promoting the substantive settlement of administrative disputes – Research report of the High People's Court of Henan on the situation of the appearance of senior officials in trials of administrative cases (完善行政首长出庭应诉制度促进行政争议实质性化解——河南高院关于行政首长出庭应诉行政案件审理情况的调研报告), article published February 27, 2020 in People's Court Daily (人民法院报), available at: http://rmfyb.chinacourt.org/paper/html/2020-02/27/content_165461.htm?div=1 [November 18, 2023].

Wang Wanhua (王万华), The analysis of "administrative action" in the new administrative litigation law – Comments on the immediacy of enacting an administrative procedure law as soon as possible (新行政诉讼法中 "行政行为" 辨析 --- 兼论我国应加快制定行政程序法), in Journal of National Prosecutors College (国家检察官学院学报) 2015, Vol. 23, No. 4, 3-15.

Wang Wanhua (王万华), Several issues on perfecting the system of procuratorial organ initiating administrative public interest litigation (完善检察机关提起行政公益诉讼制度的若干问题), in: Law Science Magazine (法学杂志) 2018, No. 1, 96-108.

Wang Wanhua (王万华), Revision and improvement of the Administrative Reconsideration Law – From the perspective of "substantial solution of administrative disputes" (行政复议法

的修改与完善 – 以 “实质性解决行政争议” 为视角), in: Chinese Journal of Law (法学研究) 2019, Vol. 41, No. 5, 99-117.

Wang Wei (王薇), Some reflections on improving administrative reconsideration (完善行政诉讼复议制度的若干思考), in: Hubei Journal of Social Sciences (湖北社会科学) 2017, No. 6, 164-170.

Wang Wenzhi (王文志), The land bureau of Shaanxi Province overrules a legal judgement – Citizens suing the government" win a mining case but they were told that it was useless (陕国土厅否了法院判决 - "民告官"赢了矿权官司却被告知赢也没用), article published in Economic Information Daily (经济参考报) on July 19, 2010, available at: http://jjckb.xinhuanet.com/yw/2010-07/19/content_238609.htm [December 29, 2023].

Wang Xiaomei (王小梅), Internet+ Sunshine Judiciary. The important dimension of the intelligence court (互联网+阳光司法：智慧法院的重要维度), in: Chinese Cadres Tribune (中国党政部论坛), 2017, 63-66.

Wang Xueheng (王学恒), Analysis of the types and validity of supervision of the procuratorate's work under the current Chinese system (我国现行体制下对检察工作实施监督的种类和有效性分析), in: Procuratorial Practice (检察实践) 2005, No. 4, 14-17.

Wang Yaqiong (王雅琼), Wang Peng (王鹏), Study on the difficult enforcement in administrative cases targeting administrative agencies (以行政机关为对象的行政案件执行难问题研究), in: Journal of the Teachers' College of Huainan University (淮南师范学院学报) 2019, Vol. 21, No. 4, 23-26.

Zichen Wang, Peiyu Li, Jia Yuxuan, Tsinghua law professors call for renewing open access to China's court judgments, published December 13, 2023, available at: https://www.pekingnology.com/ [April 15, 2024].

Yuhua Wang, Court Funding and Judicial Corruption in China, in: The China Journal 2013, Vol. 69, 43-63.

Zhiqiong June Wang, Jianfu Chen, From alternative dispute resolution to pluralist dispute resolution: towards an integrated dispute-resolution mechanism in China, in: International Journal of Law in Context 2020, No. 16, 165-180.

Vicky Waye, Ping Xiong, The relationship between mediation and judicial proceedings in China, in: Asian Journal of Comparative Law 2011, Vol. 6, No. 1, 1-34.

Wei Cui, Does Judicial Independence Matter? A Study of the Determinants of Administrative Litigation in an Authoritarian Regime, in: University of Pennsylvania Journal of International Law 2016, Vol. 38, No. 3, 941-998.

Wei Cui, JIE Cheng, Dominika Wiesner, Judicial review of government actions in China, in: China Perspectives 2019, No. 1, 35-44.

David L. Weller, The bureaucratic heavy hand in China: Legal means for foreign investors to challenge agency action, in: Columbia Law Review 1998, Vol. 98, No. 5, 1238-1282.

Wen Hui (温辉), Study on the recordation and review system of normative documents by the government (政府规范性文件备案审查制度研究), in: Law Science Magazine (法学杂志) 2015, No. 1, 9-21.

Raban Graf von Westfalen, Deutsches Regierungssystem, Oldenburg 2001.

Mike Wienbracke, Der Verhältnismäßigkeitsgrundsatz, in. Zeitschrift für das juristische Studium 2013, No. 2, 148-155.

Margaret Y. K. Woo, Law and Discretion in the Contemporary Chinese Courts, in: Pacific Rim Law & Policy Journal, 1999, Vol. 8, No. 3, 581-616.

Wu Dexing (吴德星), On the proceduralization of administrative legal system and legalization of administrative procedure in China (论中国行政法制的程序化与行政程序的法制化), in: Journal of Renmin University of China (中国人民大学学报) 1997, No. 1, 83-88.

Wu Peng (吴鹏), Research on the "reference to" administrative rules (行政规章 "参照" 研究), Journal of Capital Normal University (Social Sciences Edition) (首都师范大学学报（社会科学版）) 2003, No. 4, 36-41.

Wu Peng (吴鹏), Hu Jinguang (胡锦光), The amendment of the "Administrative Litigation Law" and building the rule of law state (《行政诉讼法》修改与法治国家建设), in: Journal of National Administrative Faculty (国家行政学院学报) 2015, at: http://theory.people.com.cn/n/2015/0130/c217905-26481955.html [March 29, 2017].

Wu Xielin (吴偕林), Perfecting the review system of administrative agreements to constantly increase the people's sense of gain and judicial credibility (完善行政协议案件审理制度不断提升人民获得感和司法公信力), published December 10, 2019, available at: https://mp.weixin.qq.com/s/DqUhxsC-Ftn5IqvnVRQjUg [November 18, 2023].

Wu Zhenyu (吴振宇), Research on the judgment of performance in administrative litigation (行政诉讼履行判决研究), in: *Zhang Jiansheng (章剑生) ed.,* Research on judgement of administrative litigation (行政诉讼判决研究), Zhejiang University Press (浙江大学出版社) 2011, 242-293.

Shiling Xiao, State-centric proportionality analysis in Chinese administrative litigation, in: International Journal of Constitutional Law 2023, Vol. 21, No. 2, 461–487.

Weibing Xiao, Freedom of information reform in China: information flow analysis, in: International Review of Administrative Sciences 2013, Vol. 74, No. 4, 790-808.

Xiang Xin (项新), Research on the judgment of administrative litigation including civil litigation (行政附带民事诉讼判决研究), in: *ZHANG Jiansheng (章剑生) ed.,* Research on judgement of administrative litigation (行政诉讼判决研究), Zhejiang University Press (浙江大学出版社) 2011, 603-639.

Xiang Yicong (项一丛), Research on the judgment taking an action anew in administrative litigation (行政诉讼重作判决研究), in: *ZHANG Jiansheng (章剑生) ed.*, Research on judgement of administrative litigation (行政诉讼判决研究), Zhejiang University Press (浙江大学出版社) 2011, 465-469.

Xie Zhiyong (解志勇), Cui Xiaojing (崔晓婧), Research on the standards of proof in administrative litigation (行政诉讼证明标准研究), in: Evidence Science (论据科学) 2008, Vol. 16, No. 4, 405-417.

Xin Chunying (信春鹰), Explanation of the (draft) amendment of the Administrative Litigation Law of the People's Republic of China (关于《中华人民共和国行政诉讼法修正案（草案）》的说明), delivered at the 6th session of the of the Standing Committee of the 12th National People's Congress on December 23, 2012, available at: *Ying Songnian (应松年),*

Annotations and comments on the revised articles of the Administrative Procedure Law of the People's Republic of China (中华人民共和国行政诉讼法修改条纹释义于点评), Peking 2015, 387-393.

Xin Chunying (信春鹰), Explanation of the Administrative Litigation Law of the People's Republic of China (中华人民共和国行政诉讼法释义), Law Press China (法律出版社) 2015.

Xin Wen (辛汶), Li Dongxing (李东兴), Procuratorial public interest litigation: Moving forward during confusion (检察公益诉讼：在困惑中前行), in: Construction of the National People's Congress (人大建设) 2005, No. 11, 32-33.

Xu Ying (徐莹), Some reflections concerning the revision of the administrative reconsideration law (对行政复议法修改的若干思考), in: Legality Vision (法制博览) 2012, No. 11, 63-65.

Xu Zhenbo (徐振博), Three Supremacies – Finding a Chinese road to judicial reform (三个至上 - 寻找中国特色的司法体制改革之路), Law Press China 2010.

Yan Erbao (闫尔宝), About the development trend and problems of China's administrative lawsuits categories (论我国行政诉讼类型化的发展趋势向与课题), in: Shandong Justice (山东审判) 2017 a, Vol. 33, No. 238, 4-22.

Yan Erbao (闫尔宝), About the determination criterion of the third party under the new Administrative Litigation Law (新《行政诉讼法》中的第三人确定标准论析), in: Administrative Law Review (行政法学研究) 2017 b, No. 3, 52-62.

Yan Xianbin (殷宪斌), The current situation concerning the formulation of the administrative procedural law of China (论我国制定行政程序法的现状), in: Business world forum (商界论坛) 2016, No. 18, 258.

Yang Fan (扬凡), Using judicial recommendations to promote social governance (用好司法建议 推进社会治理), published: People's Court Daily (人民法院报) 2021, September 10, at page 2.

Yang Haikun (杨海坤), LIU Jun (刘军), On administrative enforcement (论行政强制执行), in: Legal Forum (法学论坛) 2000, No. 3, 13-22.

Yang Haikun (杨海坤), An exploration of the present administrative litigation mediation in China (中国行政诉讼调解制度探讨), in: Legal Forum (法学论坛) 2008, Vol. 23, No. 3, 40-44.

Yang Linhong (杨临宏), Overhaul or Small Change of Administrative Procedure Law — Thought on Amendment of Administrative Procedure Law (《行政诉讼法》的大修与小改—关于《行政诉讼法》修改的思考), in: Administrative Law Review (行政法学研究) 2014. No. 4, 48-53.

Yang Weidong (杨伟东), ZHANG Yanrui (张艳蕊), Exploration of China's principle of litigation does not stop execution (我国起诉不停止执行原则探索), in: Law Science Magazine (法学杂志) 1997, No. 5.

Yang Weidong (杨伟东), Reconsideration first or free choice – treatment of relation between administrative reconsideration and administrative litigation in China (复议前置抑或自由选择), in: Administrative Law Review (行政法学研究) 2012, Vol. 2, 71-76.

YANG Weidong (杨伟东), The coordinative development of administrative reconsideration and administrative litigation (行政复议与行政诉讼的协调发展), Journal of CAG (国家行政学院学报) 2017, Vol. 111, No. 6, 38-44.

Yang Weidong (杨伟东), The consideration, logic, and future development of the scope of case accepting in new judicial interpretation (新司法解释受案范围规定的思路、逻辑及未来发展), in: Administrative Law Review (行政法学研究) 2018 a, No. 5, 67-78.

Yang Weidong, Can the introduction of administrative reconsideration committees help reform China's system of administrative reconsideration?, in: University of Pennsylvania Asian Law Review 2018 b, Vol. 13, 107-136.

Xuedong Yang; Jian Yan, Top-level design, reform pressures, and local adaptions: An interpretation of the trajectory of reform since the 18th CPC Party Congress, in: Journal of Chinese Governance 2018, Vol. 3, No. 1, 25-48.

Yao Ruimin (姚锐敏), Thoughts on the status and function of administrative rules and normative documents during the review of legality (关于规章和其他规范性文件在合法性审查中的地位和作用的思考), in: Administrative Tribune (行政论坛) 2008, No. 6, 53-57.

Xinzhong Yao, An introduction to Confucianism, Cambridge 2000.

Po Jen Yap, Holning Lau (eds.), Public Interest in Asia. An overview, Oxon 2011.

Ye Meng, Judicial (dis)empowerment and centralisation efforts – Institutional impacts of China's new Supervision Commission, in: *Björn Ahl (ed.),* Chinese courts and criminal procedure - Post-2013 reforms, Cambridge University Press 2021, 109-143.

Ye Ping (叶平), Research on judgment of correction in administrative litigation (行政诉讼补正判决研究)， in: *Zhang Jiansheng (章剑生) ed.,* Research on judgement of administrative litigation (行政诉讼判决研究), Zhejiang University Press (浙江大学出版社) 2011.

Ye Yipei (叶亿培), Exploring and analyzing the direction of the revision of the Administrative Litigation Law (行政诉讼法的改革方向探析), in: Journal of Hezhou University (贺州学院学报) 2009, Vol. 25, No. 4, 34-37.

Cao Yin, China's top court announces new library to improve public knowledge of the law, China Daily, issued December 22, 2023, at: https://www.mylawcn.com/p/4b5f7f5511fc3 [April 15, 2024].

Ying Songnian (应松年), Administrative reconsideration should become the main channel for resolving administrative disputes (行政复议应当成为解决行政争议的主渠道), in: Reform of administrative management (行政管理改革) 2010, Vol. 12, 49-51.

Ying Songnian (应松年), Annotations and comments on the revised articles of the Administrative Procedure Law of the People's Republic of China (中华人民共和国行政诉讼法修改条纹释义于点评), Peking 2015 a.

Ying Songnian (应松年), The improvement and development of administration procedure law system (行政诉讼法律制度的完善、发展), in: Administrative Law Review (行政法学研究2) 2015 b, No. 4, 3-11.

Ying Songnian (应松年), Opinions on the revision of the Administrative Reconsideration Law (对《行政复议法》修改的意见), in: Administrative Law Review (行政法学研究) 2019, No. 2, available at:

http://lawyeredu.pkulaw.cn:8091/index.php?m=content&c=index&a=show&catid=11&id=944 [January 4, 2024].

Ying Songnian (应松年), Yang Weidong (杨伟东), Tentative ideas about the revision of the Administrative Litigation Law of China (我国行政诉讼大修正初步设想), in: Journal of Chinese Judiciary (中国司法) 2004, Vol. 4, No. 5.

Yu Dehou (余德厚), JIANG Wenyu (蒋文玉), On the intensity of judicial review in administrative litigation (论行政诉讼司法审查的强度), in: Journal of Southwest University for Nationalities (西南民族大学学报) Humanities and Social Sciences Edition (人文社会科学版) 2020, No. 6, 91-96.

Yu Lingyun (余凌云): On the revision of the administrative litigation law (论行政诉讼法的修改), article published May 22, 2014, available at: http://www.aisixiang.com/data/74949.html [January 4, 2024].

Yu Longgang (于龙刚), The pressure resolving strategy in people's court case-filing and its reform (人民法院立案环节的压力化解策略及其改革), Modern Law Science (现代法学) 2019, Vol. 41, No. 5, 24-36.

Yu Qi (俞祺), Review of the effect of the reconsideration agency's co-defendant system (复议机关作共同被告制度实效考), in: China Legal Studies (中国法学) 2018, No. 6, 195-216.

Xiaohong Yu, The meandering path of judicial reforms with Chinese characteristics, in: *Björn Ahl (ed.),* Chinese courts and criminal procedure - Post-2013 reforms, Cambridge University Press 2021, 29-58.

Xianyi Zeng, Mediation in China – Past and Present, in Asia Pacific Law Review 2009, Vol. 17, No. 1, 1-29.

Zhan Zhongle (湛中乐), Some questions about the revision of the Administrative Reconsideration Law of China (论我国《行政复议法》修改的若干问题), in: Administrative Law Review (行政法学研究) 2013, Vol. 1, 31-37.

Zhan Zhong-le, The codification of Chinese administrative procedural law, in: *Wang, Wen-Yeu (ed.)*, Codification in East Asia, selected papers from the 2nd IACL thematic conference. Berlin: Springer, 2014, 147-152.

Zhan Zhongle (湛中乐), The Administrative Procedure Law's "change" and "hesitation" (《行政诉讼法》的"变革"与"踟蹰"), in: Law Science Magazine (法学杂志) 2015, No. 3, 23-33.

Zhang Fang (张芳); Zhang Yan (张艳), The differences and relations between administrative evidence and administrative procedural evidence (论行政证据与行政诉讼证据的相异及衔接), in: Journal of Heilongjiang Administrative Cadre Institute of Politics and Law (黑龙江省政法管理干部学院学报) 2004, Vol. 5, No. 44, 28-31.

Zhang Hongyan (章红艳), Judicial review of administrative discretion (论行政裁量的司法审查), in: Journal of Fujian Police College (福建警察学院学报) 2015, Vol. 2, No. 144, 71-75.

Zhang Jiajun (张嘉军), Position and future development of the case filing division in the backdrop of the case registration (立案登记背景下立案庭的定位及其未来走向), in: China Legal Studies (中国法学) 2018, No. 4, 217-237.

Zhang Jiansheng (张剑生), Reflection and transcendence: Criticism of the Chinese administrative subject theory (反思与超越：中国行政主体理论批判), in: Northern Legal Science (北方法学) 2008, No. 6, 68-76.

Zhang Jiansheng (章剑生) ed., Research on judgement of administrative litigation (行政诉讼判决研究), Zhejiang University Press (浙江大学出版社) 2011.

Zhang Jiansheng (章剑生), On the „refusal to apply rules" in administrative litigation: Based on the analysis of Guiding Case No. 5 published by the Supreme People's Court (行政诉讼中规章的"不予适用"– 基于最尬人民法院第 5 号指导案列所作的分析), in: Zhejiang Social Sciences (浙江社会科学) 2013 a, No. 2, 73-79.

Zhang Jiansheng (章剑生), The basic position of the revision of the revision of the Administrative Litigation Law (行政诉讼法修改的基本立场), in: Social Sciences in Guangdong (广东社会科学) 2013 b, No. 1, 12-19.

Zhang Jiansheng (章剑生), Judgment structure of "interests" in the qualification of plaintiff in administrative litigation (行政诉讼原告资格中"利害关系"的判断结构), in: China Legal Studies (中国法学) 2019, No. 4, 245-264.

Zhang Li (张力), The context and path of application of "beyond any reasonable doubt" in administrative litigation (行政诉讼中"排除合理怀疑"的适用语境和路径), in: Evidence Science (论据科学) 2015, Vol. 23, No. 5, 611-622.

Zhang Sheng (张生), Evolution of modern Administrative Litigation Law in China (中国近代行政诉讼法之沿革), in: Journal of Administrative Law (行政法学研究) 2002, No. 4, 84-89, 89.

Zhang Shuo (张硕), The predicament and outlet of the application of illegal evidence exclusion rule in administrative litigation – based on the 218 juridical documents (行政诉讼非法证据排除规则适用的困境与出路 – 以 218 份裁判文书为样本), in: Administrative Law Review (行政法学研究) 2018, Vol. 6, 115-127.

Zhang Taisu (张泰苏), Why the Chinese public prefer administrative petitioning over litigation (中国人为何在行政纠纷中偏好信访), in: Sociological Studies (社会学研究) 2009, No. 3, Issue 139.

Taisu Zhang, Tom Ginsburg, Legality in Contemporary Chinese Politics, in: Public Law and Legal Theory Working Paper Series 2018, No. 689, 1-64, 26.

Zhang Wenxiang (张文祥), Research on supervising administrative behavior: the controversy, the predicament, and the construction (行政执法检察监督：争议、困境与建构), in: Academic Research (integrated edition) (学术问题研究(综合版)) 2016, No. 2, 42-46.

Zhang Xiaoli (张晓丽), Improving China's theory of administrative subject with the theory of administrative subject from France (从法国行政主体理论完善我国行政主体理论), in: Science and Technology Vision (科技视界) 2015, No. 7, 120, 124.

Zhang Yingying (张莹莹), The debate between the principle of "non-suspension of execution" and the principle of "suspension of execution" ("诉讼停止执行"原则与"诉讼不停止执行"原则之争), in: The South China Sea Law Journal (南海法学) 2019, Vol. 14, No. 2, 29-39.

Zhang Zhiyuan (章志远), Study on the system of the chief executives appearing in court in administrative litigation (行政诉讼中的行政首长出庭应诉制度研究), in: Law Science Magazine (法学杂志) 2013, No. 3, 94-104.

Zhang Zhiyuan (章志远), Development of the theory of administrative law with the new judicial interpretation of the "Administrative Litigation Law" (新《行政诉讼法》司法解释对行政法学理论的发展), in: Journal of Fujian Administration Institute (福建行政学院学报) 2018, No. 4, 43-50.

Zhao Xueyan (赵雪雁), Explanations of the new Administrative Litigation Law and the judicial interpretation (新行政诉讼法及司法解释案例精解), People's Court Press (人民法院出版社) 2015.

Zhao Yuancheng (赵元成), Research on the judgment of revocation in administrative litigation (行政诉讼撤销判决研究), in: *ZHANG Jiansheng (章剑生)*, Research on judgement of administrative litigation (行政诉讼判决研究), Zhejiang University Press (浙江大学出版社) 2011, 539-602.

Zhao Yun (赵运), On the role as defendant in administrative litigation of administrative reconsideration organ (简析行政复议机关的被告地位问题), in: Hebei Law Science (河北法学) 2009, Vol. 27, No. 4, 155-156.

Zhao Zhengqun (赵正群), Liu Zhenxiang (刘珍香), The defendant qualification of universities in administrative litigation – Taking the perspective from cases like TIAN Yong and GAN Lu (论高校在行政诉讼中的被告资格 – 以田永、甘露案等系列案件为视角), in: Journal of Hunan Police Academy (湖南警察学院学报) 2013, Vol. 25, No. 5, 48-53.

Zhao Zhonggen (赵钟根), On the procedure of administrative litigation enforcement (论行政诉讼执行程序), in: Oriental Law (东方法学) 2012, No. 4, 17-26.

Zheng Chunyan (郑春燕), The view and revision of administrative discretion under "hidden" judicial review - An analysis based on the relevant cases in the Supreme People's Court Bulletin ("隐匿" 司法审查下的行政裁量观及其修正———以《最高人民法院公报》中的相关案例为样本的分析), in: Studies in Law and Business (法商研究) 2013, Vol. 153, No. 1, 61-68.

Zheng Guofeng (郑国锋), New context of sunshine judiciary (阳光司法新语境), in: People's Political Scene (人民政坛) 2004, No. 2, 10–13.

Zheng Yuanjian (郑元健), XIA Huimin (夏慧敏), Discussion of the revised Administrative Litigation Law (《行政诉讼法》新修评议), in: Journal of Shanghai University of Political Science & Law (上海政法学院学报) 2015, Vol. 30, No. 2, 64-73.

Zhou Hao (周浩), Revision of evidence standards: The due path of administrative public interest litigation (证明标准修正：行政公益诉讼之应然路径), in: The Chinese Procurators (中国检察官) 2018, Vol. 7, No. 295, 74-76.

Xueguang Zhou, Yun Ai, Hong Lian, The Limit of Bureaucratic Power in Organizations: The Case of the Chinese Bureaucracy, in: *David Courpasson, Damon Golsorkhi, Jeffrey J. Sallaz (eds.),* Rethinking Power in Organizations, Institutions, and Markets, Bingley 2012, 81-111, 82-83.

Zhu Chunhua (朱春华), Research on the second-instance trial status of administrative litigation—Based on a statistical analysis of 3980 judgment documents from eight courts (行政诉讼二审审判状况研究 — 基于对 8 家法院 3980 份裁判文书的统计分析), in: Tsinghua Law Journal (清华法学) 2013, Vol. 7, No. 7, 86-102.

Suli Zhu, The Party and the courts, in: *Randall Peerenboom (ed.),* Judicial independence in China. Lessons for global rule of law promotion, Cambridge University Press 2010, 52-68.

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