

## **Reflections on the Amendment of Chinese Administrative Litigation Law (2<sup>nd</sup> Revision) from the perspective of UK Judicial Review and Tribunals**

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### **Abstract**

The thesis studies the amendment for the first time of the Administrative Litigation Law of China since its enforcement in 1989. It falls into four parts. The first part outlines the historical evolution of the Law from 1949, its initial enforcement and the status quo, before exploring the multiple factors prompting its amendment. The second part deals in depth the three rounds of revision and makes an all-round comparison of the original, the draft amendments and the 1<sup>st</sup> and 2<sup>nd</sup> version, encompassing the crucial topics, the functions, the scope of legal review, the standing, the structure of court system and judgment. The third part gives an account of progress made at different stages and the crucial factors at play, which are sorted by function. In conclusion, the author points out that despite the progress achieved, there are still outstanding issues. Since the function of Law is the decisive factor and prerequisite of this amendment, all of the rest elements should be addressed correspondingly, but the revision has shown much reluctance in this respect, leading to a structural inconsistency, which might be open to challenge in the future.

**Article category:** original article

**Keywords:** Administrative Litigation Law, Chinese, Function, Judgment, Standing, Scope of Review

### **Introduction**

The Chinese Administrative Litigation Law (ALL) went into force in the year 1989. The event was regarded as a milestone in Chinese history because for the first time in record that the masses were allowed to sue the government. After its implementation, the law has played a significant role in safeguarding the legitimate rights of citizens, legal persons and other organizations, supervising the administrative authorities to act according to law and constructing rule of law government and governance by law.<sup>1</sup> Its significance should never be undermined, although its legislative skills were wanting. However, after over 20 years of practice, several systematic deficiencies have surfaced, mostly because it was borrowed from overseas, in particular Germany, while such reference or transfer had been incomplete and inaccurate. Besides, the Chinese economy has seen extraordinary development since the inception of reform and opening up since 1978. The economic achievement has been prompting every social sector into change, for adaptation, no exception in the field of law as well. At last the openness in economy has also enhanced the awareness of property and political rights protection among the people, and thus posed a serious challenge to the unitary rights protection system.<sup>2</sup> This article also cites the statistics on administrative cases, which

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<sup>1</sup>Yang Lingping, 'The Ten Major Issues in Amending the Administrative Litigation Law' (2013) Vol. 21 No.3 Journal of National Prosecutors College 15-21, 15.

<sup>2</sup> According to the Chinese Administrative Litigation Law, only personal rights and property rights are under

clearly show the malfunction of this remedy. Therefore, it is consensus to amend the ALL, make it reach the need of the society, a pathway to the democratic and welfare society.

The first part of this article shows some basic facts about the ALL. Firstly, it tells its enforcement in 1989 and its historical development. Secondly, it deals with its function and structure in the Chinese judicial system. Unlike UK, US or Germany, China has its own characteristics in its approaches to the Administrative litigation system. Thirdly, it lists the many reasons that worked together to make this amendment happen. At last, the background of this amendment: there have been heated discussions before the official decision to move. Hence it is of relevance to figure out what were the most important incentives that triggered this amendment.

The second part focuses on the comparison of the two templates of the law, i.e., before and after the amendment. This part analyzes the changed articles selectively before comments on the revision, the problems it intended to solve, the positive side of the revision and critique about it.

The third part mainly gives the theoretical explanations with various theories in the academic circle on this revision. The administrative law professors and lawyers have made painstaking efforts in figuring out how we should amend it. Numerous articles have been written, and seminars, workshops and field studies conducted.<sup>3</sup> Their opinions are not necessarily the same but we could sort out a general outline shared by them, despite the difference in their expectations. The outline is mainly about the following topics: The functions or purposes of ALL, the scope of cases subject to review, the Standings (*locus standi*), the structure of court system and the judgments. As it is known to us all that the reluctance and rigidity of government might be ameliorated by the calls from masses and law professors. We hoped that considerable progress has been made during the amending process. The fourth part will be a conclusion to the amendment.

## **I Basic Facts of ALL**

### **1. Historical Development**

The current Judicial System in China is established after 1949, the year when the People's Republic of China was founded. All the previous laws before that have been abandoned. As far as ALL is concerned, it could be generally divided into three periods.

From the year 1949 to 1978, history has witnessed uncertainty and fluctuation in Chinese legal systems. Generally speaking there is no ALL in the modern sense to abide by. This is a period of vacuum when the glimpse of light is shut out very shortly. In 1949, the Article 19

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protection.

<sup>3</sup>Five unofficial revised versions have been provided by five top academic institutes, namely Peking University, Tsinghua University, China University of Political Science and Law, Renmin University and Zhejiang University. The unofficial revisions are furnished by law professors, who have no special interests. The absence of ulterior motive guarantees the objectivity of those revisions.

of *Joint Programme*(共同纲领) stipulated that “The masses and the mass organizations have the right to bring charges against illegitimate acts and negligence of duties by any state agency and any public service personnel to the people’s supervisory or the judicial agencies.”<sup>4</sup>, and in 1954 Article 97 of the *Constitution* ruled that “Citizens of the People’s Republic of China have the right to bring complaints against any person working in organs of state for transgression of law or neglect of duty by making a written or verbal statement to any organ of state at any level. People suffering loss by reason of infringement by persons working in state organs as citizens have the right to compensation.”<sup>5</sup> These two fundamental principles have provided constitutional source for the establishment of administrative litigations;<sup>6</sup> however this strong potential has been eliminated by the 1954 *Peoples’ Court Organizational Law*, according to which Civil Division and Criminal Division have both been set up within the court system, but there is no Administrative Division, or anything about administrative litigation or trials. “although the 1954 Constitution authorized the state to compensate.... Courts were in fact prohibited from taking such cases by internal judicial directives.”<sup>7</sup> Actually, if there is any principle to guide the justice then, it is “shifting from suppression of counter revolutionary(反对阶级斗争) to Three Anti(三反) and Five Anti (五反),<sup>8</sup> from “anti-rightist” (反右) to “cleansing the class forces” (消灭阶级敌人). For example, it is advocated that “the theory of full proletariat dictatorship be used to deal with divorce cases.”<sup>9</sup> (用无产阶级专政理论处理离婚案件) The judges then were selected on the sole basis of “political reliability”, that is, from veteran cadres of the revolution, with clear historical background, high school education, and the health and devotion required of a political and legal career. And the overwhelming target is to support political work in an era when class struggle reigns supreme.(阶级斗争高于一切) It is not until the 11<sup>th</sup> Central Committee of the Communist Party of China(CCCPC) when the focus was shifted from class struggle to economic development that the judicial system saw an opportunity to evolve.

From 1978 to 1989, the milestone event is the promulgation of the Civil Litigation Law on March 8<sup>th</sup> 1982. Pt 3 Article 2 of this law stipulated that “Administrative Cases which are tried by the People’s Court should comply with this law”, marking the reopening of administrative litigations. Then, the administrative law saw its opportunities and surged along with economic reform and opening up, like many other law sectors. By the end of 1988, there are over 130 laws or regulations stipulating that the court could try administrative cases. However, there was no administrative division in court, and all the cases are tried in the civil

<sup>4</sup>[http://www.law-lib.com/law/law\\_view.asp?id=283576](http://www.law-lib.com/law/law_view.asp?id=283576), last visited on 22<sup>nd</sup> sept, 2014.

<sup>5</sup>[http://www.law-lib.com/law/law\\_view.asp?id=343215](http://www.law-lib.com/law/law_view.asp?id=343215), last visited on 22<sup>nd</sup> sept, 2014.

<sup>6</sup>Hu Jianmiao, Wu Huan, ‘Evolution of Administrative Litigations in China over 100 Years, Rule of Law and Social Development’(2014) Vol.1 Rule of Law and Social Development 28-45,31.

<sup>7</sup>Susan Finder, Like throwing an egg against a stone? Administrative litigation in the Peoples’s Republic of China(1989) 3 JCHINL 1.

<sup>8</sup> Specifically, Three Anti refers to anti-corruption, anti-waste and anti-bureaucracy activities launched among staff of state and CPC organizations and Five Anti refers to anti-embezzlement, anti-tax evasion, anti-theft of state property, anti-cheat on labour and materials, and anti-theft of state economic intelligence launched among the private sector, between late 1951 and October 1952.

<sup>9</sup>Xin Chunying, ‘Which kind of judicial power is need in China for the 21st Century?’(2006), <<http://www.yfzs.gov.cn/gb/info/xsll/flx/2006-06/13/2231023014.html> >accessed 27 Sept. 2014.

division. When the cases reached a certain amount, the systematic change and reform occurred. On 6<sup>th</sup> October 1986, the first administrative division was established at Wuhan Intermediate People's Court. By the end of 1987, 1422 administrative divisions had been established in courts at all levels. In 1987, 1093 more were added. In 1990, the total number of administrative divisions had reached 3037. It means that all of the high courts, 99% of the intermediate courts and 91% of local courts have administrative divisions.<sup>10</sup> The establishment of court system signals a great judicial advancement brought by the economic reform, as well as awareness of civil rights protection and restriction of government power. It also signifies that despite the obvious borrow of mechanism in early legislative experiment, the Chinese society has developed an inner demand for administrative law and litigation. The later outburst of administrative division in court system is not only a political maneuver but a response to social demand.

From 1989 till 2013, on 4<sup>th</sup> April 1989, ALL went into force. Another remarkable thing is the State Council has approved the proposal on Shenzhen Special Economic Zone and the relevant legislation. The two things are quite relevant. Through the reform and opening up, Chinese economy has attained marked development, enabling the likelihood of individual rights protection. So the transition of ALL coincided with Chinese Economic development and political democracy. During the past two decades after the ALL was put into force, the People's Supreme Court promulgated 40 judicial interpretations, covering over 700 articles. Those interpretations have improved the effectiveness of its implementation and even created some new systems. These statistics shows the rapid development of ALL, yet it is another reflection on the inward demand for amendment.

## 2. Functions or Goals

By definition, goal or function of ALL is the target that the legislation wants to achieve by deliberate design of rules and its consequences. It is the most important topic concerning legislation. There are several Chinese theories from which traces of reference to those in UK or the rest of Europe could be detected. One is "Protectionism". This theory argues that the sole or main purpose of ALL is to protect the legitimate rights of citizens, legal persons or other institutions. Without this goal, all talk about Administrative Litigation would be in vain. The second is "supervisionism". This theory argues that the goal is supervision and restriction of the administrative branch by the judicial branch. The protection is the subsequence or trigger of supervision. The third is generally a combination of the above two theories, indicating that both are the goals and of the same importance. It even adds an additional goal to make it complete. However, by probing into the articles of the Law, we could see the confliction of interests.<sup>11</sup>

The basic theory of "Protectionism" and "supervisionism" are quite similar to their western counterpart of "objective" and "subjective" litigations, which were historically represented by

<sup>10</sup>Xin Chunying, 'Which kind of judicial power is need in China for the 21st Century?' (2006), <<http://www.yfzs.gov.cn/gb/info/xsll/flx/2006-06/13/2231023014.html>> accessed 27 Sept. 2014.

<sup>11</sup>Ma Huaide, Principles of Administrative Litigation (1<sup>st</sup> edn Law Press 2003) 60.

Germany and UK respectively. Some may question the significance of mentioning the issue here, as German and British professors have pointed out that the differences in between are declining. Prof. Paul Craig once said that they are “two sides of a coin”<sup>12</sup>; you cannot divide them that clearly. However, if you take a look at the rapid development of Tribunal Systems in Britain, you will understand the reason. The structure of Tribunal and Administrative court has been very skillfully based on the two goals: the tribunals dealing with most of the disputes and aiming at protection of individual rights, while judicial review designed to review the legality of decisions, not as an effective approach to relief. German has a constitutional court serving as the overseer of the administrative branch, so the Administrative court could concentrate on providing remedies for individuals.

However, in China there is no constitutional Court; Administrative courts at all levels are following the same rules or principles for reviewing cases. This is the structural and systematic problem awaiting a solution. We want a system that could simultaneously serve supervising and remedying purposes and the ALL in China bears more functional expectations than that in any other country in the world. Besides, the goal determines all the factors in litigation, for example, which cases are subject to review; who has standing (whether sufficient interest is necessary); what is under review (unlawful actions/decision or infringed rights); procedures; principles (to which degree and discretion the court should act e.g., whether the judge has the right to overthrow the original decision); evidence (who has the burden of proof) and the judgments (complete remedy or mere quashing or declaration).<sup>13</sup> So the goal is the precondition and decisive factor in this amendment. Without a clear goal to guard the construction of a coherent litigation mechanism, there will be inherent conflicts and twists from the very beginning. The following is a chart which illustrates the respective focus on each factor of the procedure. We will continue this topic in the following parts, to illustrate the problem of structural inconsistency from different perspectives.

Chart 1: <sup>14</sup>Characteristic of Each Factor in Law

|   | Subjective<br>Characteristic | Objective<br>Characteristic |
|---|------------------------------|-----------------------------|
| Goal or Function                              | Yes                          | Yes                         |
| Cases subject to review                       |                              | Yes                         |
| Standing                                      | Yes                          |                             |
| Procedures                                    | Yes                          |                             |
| Principles (Intensity or Discretion of Judge) |                              | Yes                         |
| Rules of Evidence                             | Yes                          |                             |
| Judgment                                      |                              | Mostly                      |

<sup>12</sup> It is quoted during a conversation with Prof. Paul Craig in May, 2014.

<sup>13</sup> Xue Gangling, ‘Comments on Basic Questions of Administrative Litigation Law Amendment’ (2014) Vol.3 China Legal Science 229-246, 235.

<sup>14</sup> Cf. Xue Gangling, Yang Xin, ‘The Structure of Administrative Litigation in China—Subjective or Objective?’ (2013) Vol.4 Administrative Law Research 29-78, 36.

### 3. Background and Reasons for Amendment

The main reason for this amendment is the inadequacy of the original ALL, assumed up as “it is hard to get a case under review, it is hard to have a fair trial and it is hard to carry out its judgments”(立案难, 审理难, 执行难). It is incompatible with the rapidly changing society. This could be illustrated by several charts which demonstrate the enormous social development during the past 20 years or so, in tandem with enormous social development in economy and the slight increase of administrative litigation cases.

Chart 2<sup>15</sup>: numbers of administrative cases accepted and closed (1999-2013)

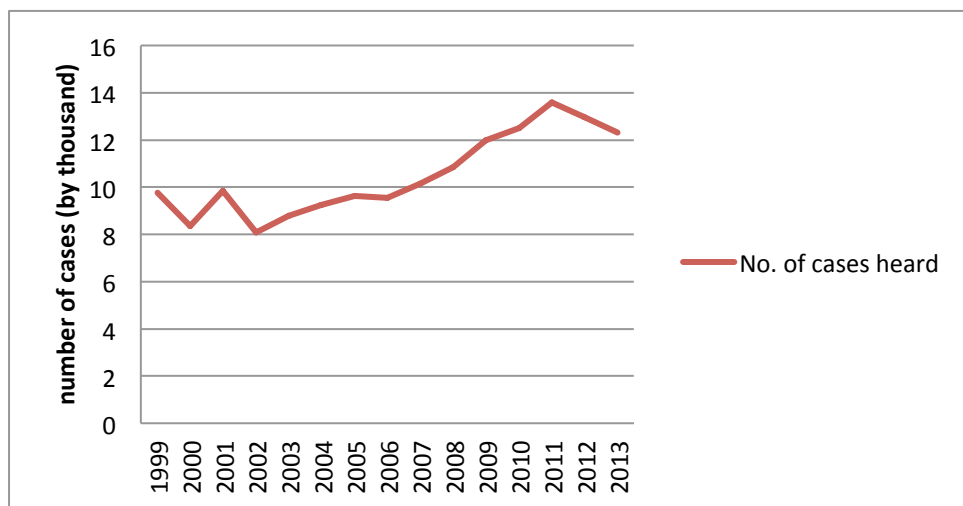
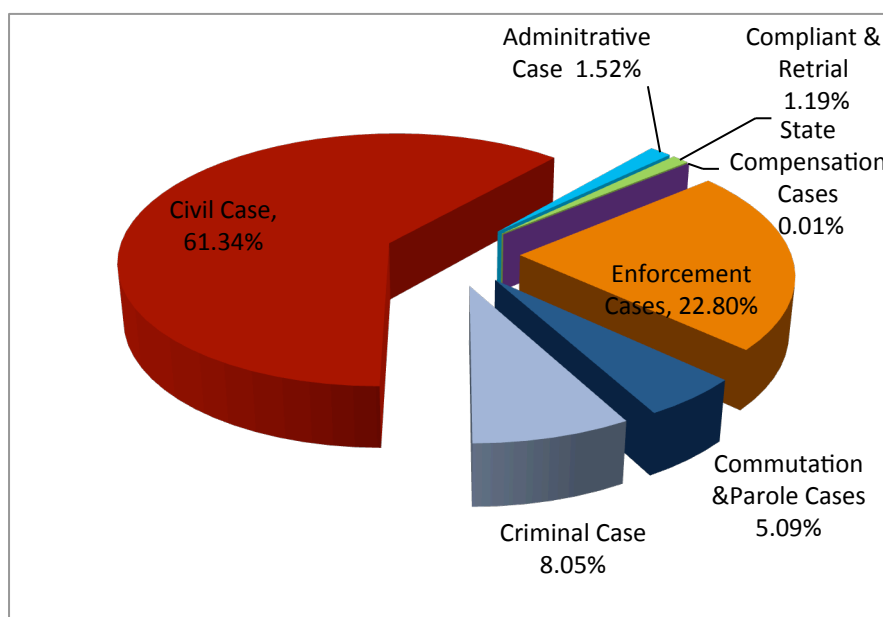


Chart 3<sup>16</sup> Proportion of all cases concluded by People’s Court at 2010.



<sup>15</sup>Data sources: <http://www.court.gov.cn>, accessed 23rd Sept, 2014; <http://www.chinalaw.gov.cn>, accessed 23rd Sept, 2014.

<sup>16</sup>[http://www.court.gov.cn/qwfb/sfsj/201103/t20110324\\_19079.htm](http://www.court.gov.cn/qwfb/sfsj/201103/t20110324_19079.htm), accessed 23 sept, 2014.

First, administrative caseload is small. Since the implementation of the ALL, the total number of administrative cases closed has assumed a rising trend. However, “seen from the statistics released by the Supreme Court, in 2011, cases handled by each administrative judge on average amounted to only 11.63, well below the average number of 59.8 for all judges across the nation.<sup>17</sup> Take the proportion of all cases concluded by People’s Court at 2010 for example, only 1.52% of which are administrative cases. It is a great mismatch to the reality. According to the Beijing Higher People’s Court, from 2010 to 2012, the rate of administrative cases accepted by courts in Beijing are 32.85%, 39.12% and 35.19% respectively, and as many as 17282 cases have been handled via “three no’s”(i.e., no acceptance of case materials, no issuance of legal documents and no filing of cases). The situation is mirrored in Fujian Province. In 2012, of the 59,800 non-legal non-litigation cases of petition by letters and call accepted by the Province, 35000 cases or 58.6% of the total were administrative cases handled via approaches other than litigation procedures. The flow of administrative cases to the channel of petition by letters and calls seriously undermined the function of the people’s court in providing relief to civil rights and alleviating civil complaints.<sup>18</sup> A large part of administrative disputes cannot be effectively resolved under the current judicial system.

Secondly, the administrative cases of first instance face a high withdrawal rate. Take the year 2012 for example. Among all the administrative cases of first instance closed, 64,104 or 49.84% of the total were closed via withdrawal, up by 1.89%. Of those, 47.89% had been withdrawn by the relative person voluntarily, and 1.95% by the relative person after the defendant changed the specific administrative action.<sup>19</sup> It is hard to analyze the reason for withdrawal, but this abnormal high rate also shows that there are big problems inside.

Thirdly, the winning rate of the relative person in administrative cases is low. In the following figure, the author carries out a statistical study of cases clearly falling within the category of winning administrative proceedings on the part of the relative person, and finds out that the winning rate has declined year by year, falling to less than 10%.<sup>20</sup> The reasons might be many; one may argue that the official has increased its awareness of justice and act according to law. However, according to comments and along with practitioners’ observation that the administrative cases have been subjected to various influences and judges dare not to give a fair trial. That might be responsible for the withdrawal of a large number of cases.<sup>21</sup>

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<sup>17</sup>Geng Baojian, ‘Solutions to Administrative Disputes’ (1st edn Law Press 2013) 85.

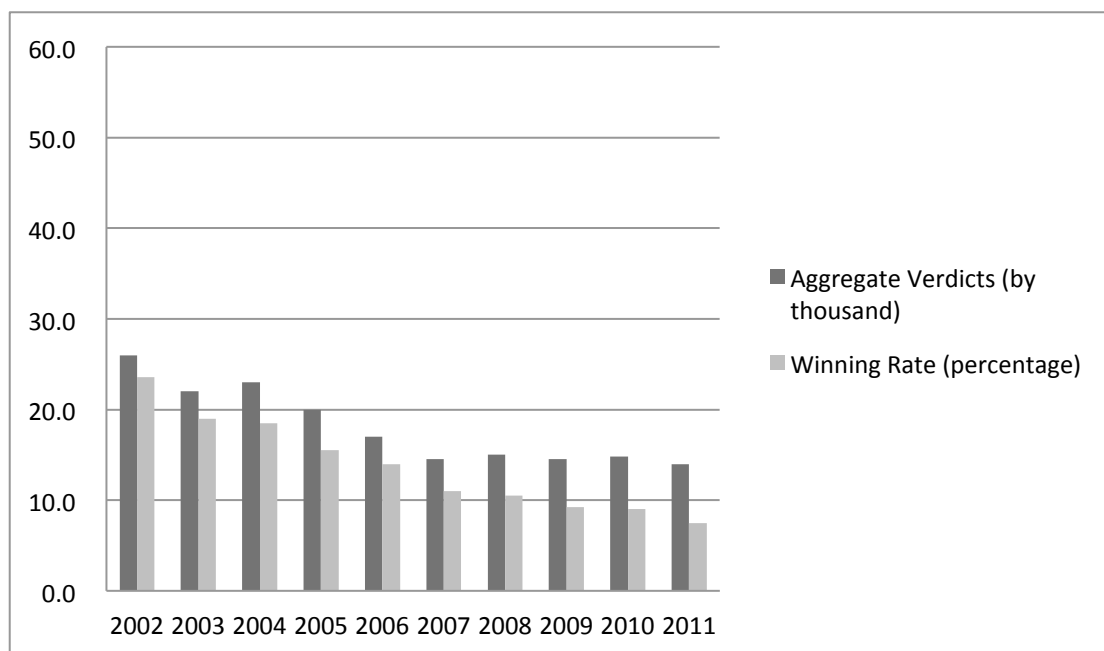
<sup>18</sup>Liang Fengyun, ‘On Administrative Trial System Reform—Construction, Functions and Steps of Administrative Court System with Chinese Characteristics’(2014) Papers of 2014 Administrative Law Conference 1581-1588, 1185.

<sup>19</sup>Liu Ze, ‘Enforcement Analysis of Administrative and State Compensation Cases Handled by Courts across China in 2012’ (2013) Vol.5 Legal Information [http://www.legaldaily.com.cn/zbk/content/2013-06/03/content\\_4525461.htm?node=25497](http://www.legaldaily.com.cn/zbk/content/2013-06/03/content_4525461.htm?node=25497).

<sup>20</sup>According to the research of Professor He Haibo, withdrawal rate of first-instance administrative cases has never been below one-third, with the peak year reaching 57.3%. cf. Zhang Shuyi, Zhang Li, ‘Towards an Era of Comprehensive Analysis—the Dilemma of administrative Litigation and Realization of Administration’ according to Law’(2013) Vol.1 Administrative Law Review 15-30, 18.

<sup>21</sup>Li Guangyu, Wang Zhenyu, Liang Fengyun, ‘Ten Issues to Be Dealt with in Revising the Administrative

Chart 4: <sup>22</sup>Plaintiffs' Winning Rate for Administrative Cases of First Instance at All Courts in China (2002-2011)



Finally, administrative cases are marked by high appeal rate and complain rate. Take the year 2011 for example. The national appeal rate of administrative cases is 72.85%, 6 times and 2.4 times that of criminal cases and civil cases respectively over the same period, while the complain rate is 8.5%, 6 times and 6.3 times that of criminal cases and civil cases respectively over the same period.<sup>23</sup>

The reasons are manifold. Firstly, as mentioned before, the lack of clarity in the goal of this law undermines its proper function. Two or three goals may be set in total, but the systematic design doesn't follow or meet the need, causing incoherence within as illustrated. Chart 1 has clearly shows the inconsistency of articles in the Law. Therefore, no matter what the legislature wants to achieve in the very beginning, some articles emphasize supervising or ensuring exercise of power according to rule of law. As a result, the purpose of providing remedies for the citizens, legal persons and other institutions whose rights have been infringed is undermined, and there is no proper linkage that will combine the two functions properly. This systematic defect could only be recognized after trial of thousands of cases.

Secondly, the past 30 years has witnessed enormous social and economic changes; however, the judicial environment seems to be less motivated. The economic development has fostered the most urgent need for judicial reform in this transitional era. After experiencing the most

Litigation Law' (2013) Vol.3 Journal of Law Application 65-72, 69.

<sup>22</sup>Data Source: 2002—2011 Law Yearbook of China.

<sup>23</sup>Zhu Haihong, 'Approaches to Resolving Substantial Administrative Disputes' (2012), "Papers for the 2012 Annual Meeting of Beijing Law Society Administrative Law Association" 148-156, 150.



rapid growth and profound social evolvement, the judicial sector needs to be transformed into its modern and up-to-date format. The administrative litigations with their special implications and restraints to the existing power encounter more resistance and greater obstacles. So it is understandable that China is catching up by carrying out three main litigation law amendments one after another rapidly with varying achievements. The ALL is the last to be handled. Before amendment, to alleviate the terrible situation, several judicial interpretations have been promulgated by the Supreme Court to solve urgent problems. They are far from enough. The judicial interpretation has its own limitations, in that it is unable to correct structural defects. And judicial interpretation has its conflicts with the original law,<sup>24</sup> and such conflicts might make the situation even worse.

Thirdly, China has the longest history of Feudalist society with a Centralized government, and its administrative bureaucracy reached the peak in the Ming Dynasty.<sup>25</sup> However, during the rise and fall of dynasties, there is no substantial reform in the way of governance and the social ideology remains during the repeats of dynasties.<sup>26</sup> With the surge of interior social development, the emperors failed to improve their ruling skills correspondingly. The seclusion combined with Confucius philosophy has maintained the agriculture economy, prevented the virtuous circle of economy and institution and shut down any stimulus that may cause innovation. What the rulers did was sticking to the reforms on the existing administrative bureaucracy and structure, while neglecting the techniques of justice that may keep human rational and prompts them to behave. What the old bureaucracy relies on is self-discipline; however, the morality control of officials by Confucianism has been declining and the traditional way of governance is in falling apart while the new mechanism has yet to take shape. The Judicial department never reached the status of checking or the balancing of administrative powers in history, not to mention rule of law. The governance of China is characterized by the supremacy of the Administrative Branch. Till modern China one may clearly observe that rigid application of administrative measures still prevails in the process of reform and opening-up. This background has two implications. First, the ALL lacks tradition and cultural support, and legal transfer might take years to reach perfection. Second, effective ways for rights protection is urgently needed. Compared with civil or criminal litigation law, the administrative acts have a wider range of influence on one's life and there is a great need for properly designed judicial mechanism to address all disputes and provide remedies. If no effective measures are taken judicial development might become nothing but empty talk.

Therefore, with all these statistics and reasons considered, we can see how tremendous the urgent need for amendment is. The academic circle and legal practitioners have all reached this conclusion in common without any disputes. There are different versions of amendment proposals provided, just to demonstrate how earnest they are trying to promote the

<sup>24</sup>Mo Yuchuan, et al, 'Orientation, Key Points and Plans for Amending "Administrative Litigation Law"—Suggestions from Experts of Renmin University of China' (2012) Vol.3 Journal of Henan Administrative Institute of Politics and Law 17-52,30.

<sup>25</sup>Huang Renyu, China—A Macro History (2edn SDX Joint Publishing Company 2006) 218-355.

<sup>26</sup>Jin Guantao, Liu Qingfeng, *the Origin of Chinese Modern Ideology---the super stable structure and the evolution of Chinese political civilization* (1<sup>st</sup> edn Chinese University Press 2000) xi.

amendment of the law.

## II Comparison of the 1990 ALL and Its Amended 1<sup>st</sup> and 2<sup>nd</sup> Versions

### 1. Facts Analysis and Comments Based on Comparison

In December, 2013, the NPC has reviewed the first draft of amendment. From 31<sup>st</sup> Dec. 2013 to 30<sup>th</sup> Jan. 2014, the NPC collected suggestions from the general public on its official website ([www.npc.gov.cn](http://www.npc.gov.cn)) for the first draft. Based on the suggestions, the Legal Council of Standing Committee of NPC compiled a second draft. By 27<sup>th</sup> August, 2014, the 10th meeting of the 12th session of the standing committee of the NPC has finished reviewing the second draft and is arranging to have it posted on the website for further suggestions. On 1<sup>st</sup> Nov, the final amendment will be passed. In the following chart, the numbers of articles in the three versions of the law are juxtaposed.

Chart5: Comparison of articles in the two versions by section

| Section \ Number of Articles            | Original | 1 <sup>st</sup> reading            | 2 <sup>nd</sup> reading            |
|---|----------|------------------------------------|------------------------------------|
| 1. General Principles                   | 10       | 11                                 | 11                                 |
| 2. cases subject to review              | 3        | 4                                  | 3                                  |
| 3. Jurisdiction                         | 11       | 11                                 | 11                                 |
| 4. Participants in Proceedings          | 7        | 8                                  | 8                                  |
| 5. Evidence                             | 6        | 10                                 | 10                                 |
| 6. Bringing a Suit and Accepting a Case | 6        | 11                                 | 11                                 |
| 7. Trial Procedures and Judgments       | 22       | 35                                 | 36                                 |
| 8. Enforcement                          | 4        | 4                                  | 4                                  |
| 9. Liability and Compensation           | 2        | Deleted (removed to other section) | Deleted (removed to other section) |
| 10. Foreign interests involved cases    | 1        | Deleted                            | Deleted                            |
| 11. Supplementary                       | 2        | 3                                  | 3                                  |

|            |  |  |  |
|------------|--|--|--|
| Provisions |  |  |  |
|------------|--|--|--|

As far as the comparison goes, we can see from the above chart that: The basic structure is kept mostly. There are eleven sections in total in the original one; after two rounds of amendments, most of the sections were kept except for two: Liability and Compensation, and Foreign interests involved cases. The former article about Liability was removed to Sec. 2 (which delegates to the *State Compensation Law*), while the latter was completely deleted. The article numbers of each section are more or less the same, except section 5 *Evidence*, section 6 *Bringing a Suit and Accepting a Case* and Section 7 *Trial Procedures and Judgments*. There are over 68 points of revision made to the original one.<sup>27</sup> But the most significant points could be listed as follows:<sup>28</sup>

(1) In Sec. 1 *General Provisions*, addition of “solution of disputes” to the General Principles in Article 1, therefore increase the purpose of this law to four, besides, ① ensuring the correct and prompt handling of administrative cases by the people's courts, ② protecting the lawful rights and interests of citizens, legal persons and other organizations, ③ and safeguarding and supervising the exercise of administrative powers by administrative organs in accordance with the law.

(2) In Sec. 2 *Cases Subject to Review*, replace “specific administrative act” from article 11 by “administrative act”. The former was regarded as the main ground for dismissal cases because the requirement of “specific” has put numerous restraints on administrative acts and greatly narrowed down the scope of reviewable cases. In the 2<sup>nd</sup> draft, the scope of case reviewability is further broadened by expanding the category list in article 12, specifically by adding 3 new types of reviewable cases.

(3) In sec. 4 *Participants of Litigation*, the plaintiff is further clarified by stipulating “counterpart of administrative act, or citizens, legal persons or institutions with related interests may bring a litigation”, instead of the vague description of “citizens, legal persons or other institutions who bring a suit in accordance with this law” in the original version. Besides, a new article is added for class action case—for cases involving multiple litigants on either side, representatives should be elected. One article stipulates the rights of representatives in class actions, and the effects of the verdicts on them.

Another issue is the status of administrative reconsideration institutions, which were only put into the defendant position when the previous administrators' decision is changed by reconsideration. This rule is highly controversial, because many believe it is the main reason for administrative reconsideration institutions to maintain the previous decisions to

<sup>27</sup>[http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2014-08/31/content\\_1876208.htm](http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2014-08/31/content_1876208.htm), accessed 1st Sept, 2014.

<sup>28</sup>[http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2014-08/31/content\\_1876208.htm](http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2014-08/31/content_1876208.htm), accessed 1st Sept, 2014.

avoid the possibilities to be put in a defendant position. The revised version changes it to “For reconsidered cases, if the original administrative act is maintained, the original administrative agency and the reconsideration institutions should be co-defendant; if it is changed, and the reconsideration institute should be the defendant.”

Besides, originally authorization of administrative power/duty is only effective when there is explicit stipulation by laws and regulations. After amendment, administrative acts could be defined as conducted by organizations at the commissioning of administrative institute with or without explicit articles in law, which could be treated as the defendant in case of administrative litigation, thus expanding the scope of defendants.

(4) In Sec. 5 *Evidence*, 4 new articles have been added. But there is nothing new here, because most of the articles are taken from previous judicial interpretations by the Supreme Court. Usually, judicial interpretation has been an important way of making revisions to laws. The principle that “*the defendant shall have the burden of proof for the administrative act he has undertaken and shall provide the evidence and regulatory documents in accordance with which the act has been undertaken*”<sup>29</sup> remains. The revision has added “...*the plaintiff shall provide proof for subsequent damages resulted from ...*”<sup>30</sup> which makes this article more reasonable.

(5) In Sec. 6 *Bringing a Suit and Accepting a Case*, it has seen addition of 5 new articles, which could be regarded as an enormous effort in dealing with “the difficulties to file a suit”.

a. The time limit has been extended to 6 months, and for real estate cases, the limit is 20 years.

b. The counterpart could file a case orally if writing proves to be difficult.

c. The requirements for registering and issuing acceptance notice are explicitly promulgated. The article even has details stipulating that if the documents are incomplete, the counterpart should be informed by instruction or explanation once and for all. If the court fails to do so, the counterpart could lodge a complaint to the superior court. The superior court will give an order and punish the staff directly responsible for or his immediate superior.

(6) In Sec. 7 *Trial Procedures and Judgments*, it has 14 new articles; the important revisions are mostly focused on the following points:

a. addition of two exception conditions to the principle of “continued enforcement during the trial proceedings”, including ① For the purpose of protecting public interests, the enforcement could be intermediately suspended. ② The enforcement could be advanced before the judgment, for cases involving pension, minimum living subsidies, social insurance and etc.

b. addition of one exception to the principle of “no intercession in administrative litigations”, stipulating that “for administrative compensation cases, cases in which compensation has

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<sup>29</sup>Chinese Administrative Litigation Law.

<sup>30</sup>Amendment to Chinese Administrative Litigation Law(2<sup>nd</sup> Reading).

been offered according to law, and with discretions exercised by the administrative agency in accordance with the stipulations of laws, rules and regulations, the principle of no mediation does not apply.”

c. addition of two articles address on civil issues involved administrative cases, which will be clearly divided into two categories. One is for the main issue on administrative disputes, which falls into the jurisdiction of the Administrative Division, and the other is for cases of civil disputes, which is under the supervision of civil division.

d. Stipulation of limited discretion on the review of “regulatory documents”<sup>31</sup>, i.e. when the court (should he) finds the “regulatory documents” unlawful, he should not regard it as the basis of certain administrative decisions and should hand his opinion to the relevant legislative authority for review and wait for its further opinion.

e. The most important part in this section is the addition of 7 articles on judgments, which has gone into great detail about the requirements for application of each judgment. There are 6 types of judgments in total, namely rejection, revocation, implementation, payment, declaration (of nullity or illegality) and alteration. Each article makes detailed conditions for the prerequisites for application of every judgment. Take revocation for example, the judgment of revocation gives specific grounds of application: no sufficient proof, wrong application of law, violation of procedures, ultra vires and abuse of power. The court could order for a new decision from the authority. Despite the fact that he could not decide how to make a new one, the article prohibits the administrative authority to make the same decision based on the same facts.

f. Diversification of the procedures by adding simplified procedures. For simple, clear and small disputes, simplified procedures are applicable.

(7)Sec. 9 *Liability and Compensation* has been deleted and delegated to the National Compensation Law; as stipulated in article 14, the National Compensation Law is applicable whenever such circumstances occur during the process of administrative litigation.

### III Comments from the Academic and Practicing Circles

#### 1. The Law that carrying too much functions

Apparently, the litigation law in China has its unique characteristics compared with that in any other country. It's might not match for the litigation law in Germany, UK or US; however, by making comparisons, it comes as a relief to find that considerable progress has been made. We are trying to transfer a judicial system on the background of Administrative supremacy and planned economy into a modern and open one that is accessible to foreign regimes and adaptable to socialist market economy.<sup>32</sup> So the amendment is not merely improvement of legislative skills or judicial advancement; instead, it is more a reflection of changes in the political ideology and revolution of culture, the diversified interest as well as the social transition. These entire features determine that the revision of ALL has its restraints and prerequisites. Therefore, we listed as many as four purposes of the law; because there are

<sup>31</sup> It is usually documents under bylaws in legislative hierarchy.

<sup>32</sup>Xin Chunying, ‘Which kind of judicial power is need in China for the 21st Century?’(2006), <<http://www.yfzs.gov.cn/gb/info/xsll/flx/2006-06/13/2231023014.html>> accessed 27 Sept. 2014.

many difficulties emerge during this transitional period and we have high expectations on this law. We push forward judicial reform for the purpose of government by law and building of a socialist nation of laws. Besides, the many disputes are in urgent need to be addressed by proper way. So the previous goals of the Law remain basically untouched, and emphasis the necessity by the addition of “solving disputes” in its function.

The previous version was criticized for its inconsistency and tendency to cause frictions due to the targeting of a unitary procedure at two purposes. However, the multi-purpose design of the law remains unchanged after amendment. Despite the fact that it endeavors to improve this disadvantage by adding specific articles in the procedure and judgment sections, it hardly achieves the purpose. For one thing, the main concept of “administrative act” is still kept as the central clue for all sections. The counterpart may sue “administrative acts”, and then the review will focus on “administrative acts”, or its legality to be specific, and as a result the judgment will also be directed at them. Is it a proper reaction to anyone who sues for remedy? The key issue is that the review is not based on individual rights. It can hardly be taken as a complete reaction to relief. Apparently, the amendment intends to take supervision as one of the major goals in law. Admittedly there is an indispensable link between the purposes of supervision and those of remedy, but there must be some kind of difference (in structural design, for instance) between them.<sup>33</sup> However, the new amendment reveals a fact that the change may not have achieved this goal. Compared with UK’s judicial review, two categories of writs are introduced to provide relief for grievances. However, judicial review is still not the best way to seek remedy. Historically, there is no constitutional court in UK, and judicial review has a long tradition of being used as way of central government controlling the local government, a means of governance. So when it enters into “Administrative Country Era”, the old judicial system can hardly meet the demand of social development, hence there arises of tribunals of different category. There are tribunals which could provide fast, efficient and affordable judicial services for most of the administrative disputes. The old judicial review system could never hope to compete with the newly developed tribunal system in provide remedies.

According to the latest amendment in article 13, it stipulates “*Administrative Law, regulations or other binding regulatory decisions or orders with universal validity issued by Administrative Authorities*” are unreviewable. While in latest amendment in article 54, it reads “If the regulatory documents other than the rules and regulations promulgated by the departments of the State Council and the local people’s government and its departments on which administrative acts are based are believed by citizens, legal persons and other organizations to be illegal, applications might be submitted for concurrent review of those documents, excluding rules and regulations.”, that means regulatory documents under the regulation level are reviewable. However, the court only has the discretion to submit those documents to the relevant legislative authorities. The supporting argument that if

<sup>33</sup>Yang Weidong, ‘On the Purposes of Administrative Litigations’ (2004) Vol.3 Journal of Chinese Academy of Governance 36-38, 37.

administrative laws and regulations are reviewable, there would be much confusion about which law to apply in trial, ②and there is much discretion in exercising administrative function, so some decisions relates to policies which are regarded not reviewable. ③It will stimulate a flood of trials.④Some points out that the courts are unable and not ready to review these laws, to get involved with legislative powers in some degree. These two articles in amendment reflect that the Chinese judicial review has not yet reached to the US strict overall judicial review standard or even the UK's moderate Wednesbury unreasonableness. The Chinese judicial review is still struggling at solving disputes and providing remedies. If there is a linkage between the subjective function and objective function, the review of laws, regulations, decisions, orders or documents are vital. It is a channel for the relief to individual effect on the general public or social orders. Take for example, it is advisable to subject "*other binding regulatory decisions or orders with universal validity issued by Administrative Authorities*" should be reviewable. The argument is that many actions are based on those regulatory documents, some of which are formulated without much public participation or proper procedures. There more chances of illegal points are high. If they are not reviewable, there is no chance for relevant acts to be remedied. <sup>34</sup>What was worse, it might be applicable repeatedly in the future. When the judge has power to decide on individual case, the litigation only serves subject purpose or function, while it comes to the power of judicial review on partial legislation it may fulfill the objective purpose. From this perspective, the standard/principle of review is unable to meet the function it rules out in Section 1 of the new amendment.

## **2. Systematic design in trying to solve court problems----The Structure of Court System**

The court system is the most sensible topic during the litigation. The malfunction of court procedure couldn't be predicted at legislation in the very beginning, but can only be discovered after application in numerous cases. They are two different views: one argues that the establishment of Independent Administrative Court is a factor for measuring the success of this amendment. It could greatly solve the "difficulties in filing cases", as well as the problem of "receiving fair trials" and "executing verdicts". An independent Administrative court would mean financial and personal independence from the local government and freedom from the influence and interventions of administrative authorities. According to A. 124 of the Constitution and A.2 of the People's Court Organization Law, the legislature could establish an Independent Specialist Court by act. Therefore, in China, we have martial court, maritime court, property court and etc. It is also observable that there are independent Administrative Courts in Germany or French. A lot of experiences have been accumulated and success of independent administrative courts has been proven. The opposing opinions hold that, if by chance the Independent Administrative court is established, its independence might not be secure. The common court traditionally harbors all the judicial branches,

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<sup>34</sup>Mahuaide, 'Several Issues to Be Addressed in Amending the Administrative Litigation Law' (2006) Vol.6 Jiangsu Social Science Review 111-115, 114.

enabling it to be on a par with the powerful administrative branch. The lonely administrative court might not be so strong as the previous structure. It is true that the court has seen visible or invisible interventions from the Administrative Branch. However, it is questionable whether such interventions have been the main reason for the failure of Administrative Litigations. In some cases, the judge is also blamed for not being responsible, lack of special Knowledge and skills of balancing. So if without statistics as proof, this argument has no substantial ground.

The revision also reveals its earnest intention of solving the disadvantages in court systems, it has reached in consensus as the most needed point. As far as the 2<sup>nd</sup> amendment goes, the idea of independent administrative court has not been supported. By making new rules in Sec.6 *Bringing a Suit and Accepting a Case* and Sec. 7 *Trial Procedures and Judgments*, the legislators want to make sure ①it is possible for every case to be brought to court for review according to law, including case previously excluded according to law. ②the remedy to counterpart will be improved, by specifying the applicable conditions of each judgment. ③equal and fair trial will be exercised, by increasing the publicity of the judgment and supervision mechanisms. ④the trial system is further diversified, by introducing simplified procedures to overcome the disadvantages of unitary court system. To prevent any possible inappropriate influences, the revision has set great store by new rules to ensure a proper court system to run the trial instead of a completely new court system

But is it a question of either or, i.e., is there any certainty that one system is far superior to the other? There has been no systematic research done or cost-benefit analysis made. It will definitely cost a lot in establishing another set of court system, considering the vast territory in China. A host of questions might surface. Is it a sole separation from the current court system? Will there be increase of judges and courts? Should the employment of judge be conducted according to special standards? What management hierarchy should be taken to ensure its independence? <sup>35</sup>By simulating the design for independent administrative court, could we find very convincing reasons for its separation from the common court? Unlike Property Court or Maritime Court, which deals with cases requiring one type of specialty and of the same characteristics, the administrative cases are different in variety and may require a wide range of administrative specialties. So it is sensible to consider introduction of specialist into administrative cases as lay judge and to differentiate cases by matters at first instance, especially while dealing with facts disputes. For example, one division focuses on employment cases and the other on land disputes. That is to say, sole separation from the common court and direct financial and personnel management from government of upper level is far from enough. Possession or demonstration of some characteristics of administrative cases could be considered. For example, the tribunals in UK now function more

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<sup>35</sup>Those are questions of systematic design, and will not be detailed here.



like the local Administrative court in China and it differentiate the cases based on matters at first instance. And the disputes of facts issues are primarily dealt with at the first trial. The upper tribunals and administrative court are mainly dealing with legal issues. So by comparing with overseas experiences, we can find many reasons to argue for its establishment. This amendment has been reluctant to establish an administrative court this time, but it is still worth waiting for in the long run.

### 3. More skillful categorization by specified judgments

In the previous version, there are only articles about the types of judgment. In revision, legislative skills and approaches to make legislation more applicable are added. The judgments are designed in correspondence with administrative actions, the standard of review or proof of evidence, improving the internal coherence of the law. The preliminary attempt to realize litigation categorization by specifying the preconditions and requirements for application of judgment is also quite obvious. The previous four judgments, namely maintenance, revocation, implementation and alteration, have been changed into 6, namely rejection, revocation, implementation, payment, declaration (of nullity or illegal) and alteration. The evolution could be illustrated by the following chart.

| Before amendment | After amendment<br>(according to 2 <sup>nd</sup> draft) |
|------------------|---|
| Maintenance      | Rejection   |
| Revocation       | Revocation  |
| Implementation   | execution<br>Payment                                    |
| Alteration       | Alteration  |
|                  | Declaration (of nullity or illegitimacy)                |

The judgment of Declaration (of nullity or illegitimacy) is introduced which refers to the situation that the administrative action is illegal but revocation will greatly damage state or public interest, so the court will take into consideration the plaintiff's loss and ways of compensation. In this case, the judgment might be a balance between revocation and declaration. However we still lack the judgment of injunction, which are regard as crucial in circumstances that execution of the specific act might entail great and unrecoverable losses to the plaintiff.<sup>36</sup> It could be regarded as an intermediary remedy similar to the writ of injunction in the UK. The reason is that the second type might be in contradiction with the principle of "no suspension of specific administrative acts during execution" in A. 87 2<sup>nd</sup>

<sup>36</sup> Li Guangyu, Wang Zhenyu, Liang Fengyun, 'Ten Issues to Be Dealt with in Revising the Administrative Litigation Law' (2013) Vol.3 Journal of Law Application 69-73, 72.

Amendment.

Through the five judgments involved in this amendment, it is shifting from the purpose of rule of law toward rescue and remedies of individuals. In certain cases, the remedies are only directed at offering rescue, such as payment and alteration. In others, for instance in some civil issue related cases, declaration functions well.

#### 4. The Standings (*locus standi*)

The development on standing is illustrated as above. Rules on standings are A. 2, A.24 and A.41 in 1989 ALL, in which the first two could be regarded as restrictions on subject qualification, "...his or its lawful rights and interests have been infringed upon by a specific administrative act of an administrative organ or its personnel...", and the last one set limitations on three relevant factors, requiring it corresponding the rules on scope of review, jurisdiction and reviewability. In 2000 Judicial Interpretation, A.12 stipulate as "...has legal rights or interests affected by the specific administrative acts...", and A.13 specify four category of legal interest as listed above. It is believed that the concept of "legal rights or interests" has lowered that standard of Standing.<sup>37</sup> It is almost the same with the standing standard of "third party". What's more, theoretically the rights or interest only include personal rights and property right, by the judicial interpretation it might also include other civil rights or even constitutional rights.<sup>38</sup> Before amendment, the standing only cover those with direct interest, like the standard taken by civil litigation, and under the scope of personal rights and property rights, which completely reflect the subject function of providing relief. As far as the amendment goes, it reads in A. 26 "the counterpart of Administrative Acts, citizens, legal persons or other institutions with related interests may have standing to fill a suit." The introduction of "related rights or interest" could be regarded as tremendous progress. Although in S. 2 the *Scope of Review* in the amendment it still has the restriction of protecting personal rights and property rights. The conclusion in A.12 has been an open one "...or stipulated otherwise..." So by combining these two rules it provides with the potentials of public interest litigations as well as the standing for interest NGO or groups. Viewed from the overall structure, the regulation of standing corresponds with the purpose of supervision or objective review from certain aspect by amendment.

Apparently, the standing needs to be categorized according to the purpose of litigation. When personal rights are solely involved, the one under direct influence should be granted the standing. While public interests or group interests are at stake, the standing principle should be more liberal and open. Take environmental pollutions cases for example, if the victims are all illiterate peasants, qualification for participating in litigation of an environmental protection association on behalf of the peasants should be an option. If a citizen finds his right infringed by the local government in certain acts which are directed at all the local citizens, could he file the case despite the fact that he has no special interest over others? In an attempt to argue who has the standing, one has to start with the scope of cases subject to

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<sup>37</sup>Gan Wen, *Comments on Judicial Interpretation of Administrative Litigation Law---Reasons, Views and Problem* (1<sup>st</sup> edn China Rule of Law Publisher 2000) 55-63.

<sup>38</sup>Yang Ying, 'New Theory on the Standing of Administrative litigation' (2002) Vol.5 Legal Science 16-20, 18.

review. Since the scope of cases subjected to review is outlined mostly according to the nature of administrative acts, then determine whether the plaintiff has related powers or rights. Determination of standing is mostly easy for the parties directly affected, but not in cases involving general public interests. The amendment has not been able to give a clear answer. This rule gives the court much discretion to decide in the future and many possibilities.

It has not yet reached the liberal standard in UK or US, and review of standing in china is always a prerequisite. Take UK for example, it has gradually abandoned the standard of “sufficient interest”<sup>39</sup>, and taken standard of standing as “comprehensive balancing skill”<sup>40</sup>In the early writ of certiorari, the citizen could even file a case on the ground that it damages the power of the crown. In this way, the central government keeps an eye on the actions of local government. With evolvement, the modern judicial review in UK has always been liberal on the standing issue, in modern UK Judicial Review; it is not taken as an independent question but considered from the perspective of the whole case. When it is of great public interest, and there is no better plaintiff to represent, and then the standings will be awarded.<sup>41</sup> Standing is not an individual issue that might be dealt with in isolation before substantial review, a more sensible way is to be treated together in the whole case. So it is not wise to decide whether you have standing when considering whether to accept or reject a case before substantial review.

## 5. The Principles of Evidence

The principle of evidence gets the most applause. It has added several articles, most of which are judicial interpretations from the Supreme Court. By incorporating those into law, this amendment has been greatly enhanced in applicability.

Firstly, the burden of proof is on defendant’s side according to stipulations of the original version. This principle has long been recognized as the golden rule in the Chinese ALL.<sup>42</sup> However, there are certain situations that the plaintiff should take the burden of proof. And this amendment has put it into the law. For example, in lawsuit of neglect to perform public duties, the plaintiff should provide the proof of application for performance. In cases of damage, the plaintiff should provide evidence of the damage. (If due to defendant’s reason, the plaintiff cannot provide proof, the burden will shift to the defendant.) Generally speaking, it has divided the burden of proof by the category of litigations (or judgment) as proposed by some judges.<sup>43</sup>

Secondly, it sets a principle for the courts’ right in taking evidences. According to the stipulation in Article 41, People's Courts are empowered to investigate and to take evidence

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<sup>39</sup>Civil Procedure Rules.

<sup>40</sup>*R.v North SomersetDC Ex p. Garnett* [1998] Env.L.R.91 (Popplewell J.).

<sup>41</sup>Harry Woolf, Jeffrey Jowell, Andrew Le Sueur, *De Smith's Judicial Review* (6<sup>th</sup> edn Thomson, Sweet & Maxwell, 2007) 80.

<sup>42</sup>Mahuaide, ‘Several Issues to Be Addressed in Amending the Administrative Litigation Law’ (2006) Vol.6 Jiangsu Social Science Review 111-115, 115.

<sup>43</sup> Li Guangyu, Wang Zhenyu, Liang Fengyun, ‘Ten Issues to Be Dealt with in Revising the Administrative Litigation Law’ (2013) Vol.3 Journal of Law Application 69-73, 72.

from the relevant administrative authorities and other organizations and citizens. However, evidences other than those taken by the defendant in making the administrative acts shall be taken to demonstrate the legality of those acts. According to the stipulation in Article 42, application should be made to the People's Court for taking evidences that are relevant to the case, but the plaintiff or the third party is unable to collect, including,

- (1) Evidences kept by state authorities and thus must be obtained by the People's Court,
- (2) Evidences relevant to state secrets, commercial secrets and personal privacy,
- (3) Other evidences that could not be obtained due to objective causes.

Both Article 41 and Article 42 are aimed at protecting the rights of the counterpart, and preventing abuses of administrative interventions. So judged from the perspective of purposes, it is more on the protection side.

## 6. The scope of review are still too narrow

The expansion in scope of review is too moderate. Only 3 categories have been added and the possibility of "any case that as stipulate by other law or regulations are also under review" is low. It kept the way of "explicit enumeration of cases reviewable, while general classification of unreviewable". The criticism is ① because it is impossible to list all the possibilities, and

there must be situations not included in the enumeration during the long run, ② that there must be a gap between the two, therefore, "loopholes in law" are formed.

The fundamental principles for legality review in administrative litigation have also been stipulated. The amendment indicates that administrative review remains primarily to deal with lawfulness. As for reasonableness, except for article 74 stipulating "administrative penalties grievously deviated from fairness can be altered,"<sup>44</sup> as an indirect reference to reasonableness, it is not explicitly mentioned in the ALL. It is proven in practice that mere review of lawfulness would entail a narrowed scope. Accordingly, there is the proposition that administrative litigation should be subjected to both legality review and reasonableness review. However, such a view would mean an unduly broad scope of review. Therefore, further deliberation is required, in order to specify which issues constitute reasonable issues via imposition of certain restrictions.<sup>45</sup>

## Conclusion

This revision has been burdened with expectations and many great achievements. However, like many legislation, criticisms still exist. First and for most, Structural Problem unsolved, because the current design to meet the demand of four goals of systematic construction is far from enough. The system that is meant to provide remedy differs from those designed to keep public order or rule of law in some extent or there should be a linkage between two different

<sup>44</sup> Amendment to Chinese Administrative Litigation Law (2<sup>nd</sup> Reading)

<sup>45</sup> Ying Songnian, 'Relevant Issues of Amending the Administrative Litigation Law' (2011) Vol.8 Legal Information 39-41, 40.

functions. Secondly, the court has not been given sufficient power to check administrative branch or enough authority to keep the public management order, since the regulatory documents are not subject to review. Even it has many articles meant to help the counterpart in suing administrative institutes; the court still has very limited means to enforce the judgment. It is considerably hard to give a fair trial, even though the court accepts the case. Because the finance, personnel or resources are all under the control of government at the same level, it is hard to keep impartial or get rid of improper influences.

Despite the many unsatisfactory, we still regard it as great advancement to the current ALL. Compared with the previous version, substantial revision has been made: from 75 to 102 articles, over 80% articles have been revised. The revision will greatly improve the accessibility, justice and efficiency, providing more effective means to solve disputes and relief to the aggrieved. In this sense it is great achievement.

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