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Administrative Review of the UK and its Inspirations: On A New Path for the Reform of Administrative Reconsideration of China

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Abstract

In the Chinese academia of administrative law, it is widely held that tribunal of the UK is equivalent to administrative reconsideration of China. A judicialization reform of administrative reconsideration of China, therefore, was launched based on the judicialization of tribunal of the UK. After examining the administrative dispute resolution system of the UK, this article suggests that what is equivalent to administrative reconsideration of China is administrative review of the UK, instead of its tribunal. The judicialization of tribunal, therefore, fails to provide any support for the judicialization reform of administrative reconsideration of China from the perspective of comparative law. On the contrary, administrative review is more exemplary for its non-judicial character. It resolves most of the straightforward disputes at low cost, leaving the ordinary disputes to tribunal and the most complex disputes to administrative court. Thus, the administrative dispute resolution system of the UK, which consists of the three parts above, embodies the concept of proportionate dispute resolution. Especially, administrative review allows most of the disputes to be resolved within the administrative agencies, facilitating the establishment of feedback mechanism to improve the original administrative service and to reduce the total number of administrative disputes. As a result, administrative review also embodies the ideas of "right first time" and learning organization, which are the guidelines for administrative reforms in many countries. It is inspiring for China that the judicialization approach is not the only path to reform administrative reconsideration. As administrative review of the UK, supplemented by the introduction of administrative merits to the spheres where administrative disputes are commonly seen, a non-judicialization reform of administrative reconsideration can be considered as well to fulfil the role of administrative reconsideration as the "main channel of administrative dispute resolution" in China.

Key words: Administrative reconsideration; Administrative review; Tribunal; Judicialization reform of administrative reconsideration

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1. BACKGROUND OF THE STUDY

The reform of administrative reconsideration has drawn much attention in the Chinese academia of administrative law. But the reform has been hindered by the lack of convention regarding the judicialization of administrative reconsideration. Despite occasional criticism and objection, (Yang & Zhu, 2014) the judicialization of administrative reconsideration has been the main path for the reform. It should be noted that the advocates usually regard the practice of other countries from the perspective of comparative law as proof for their argument. Zhou Hanhua (2004), the first advocate of judicialization, believes that the judicialization of administrative reconsideration is "the trend across the world". The most discussed example is the tribunal in the administrative law of the UK, which, with more than one hundred years of history, transformed from a quasi-judicial institution that laid between executive and judicial to a fully judicial

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institution defined by the legislative agency. (Elliot & Thomas, 2012) According to the advocates of the judicialization reform, it provides a valid model and valuable experience for the reform of administrative reconsideration of China. (Wang, 2013)

However, with judicialization of administrative reconsideration dominating the Chinese academia, administrative review of the UK, which is non-judicial in nature, is gaining popularity. As a mechanism of internal redress, administrative review refers to the mechanism that allows the citizen dissatisfied with the administrative decision to require the agency to reconsider or to review its decision. Although it remains insufficiently studied even in the UK itself, administrative review resolves more disputes than tribunal, ombudsman, and administrative court. (Thomas, 2016) Some even argue that administrative review is in fact a prepositive procedure for external redress, as administrative review, though not compulsory, is often encouraged and preferred in practice. (Cane, 2009)

Therefore, the notion that tribunal in the administrative law of the UK is equivalent to administrative reconsideration of China, and its judicialization can be applied to the reform of administrative reconsideration in China, is not only misunderstanding of the original function of tribunal, but also neglection of the administrative review, whose importance is growing in the system of administrative disputes resolution. After examining the related publications in China, the author found that the research on this issue in the academia of administrative law of China is still insufficient and many misunderstandings shall be corrected. This article aims at investigating administrative review of the UK and demonstrating its inspirations for the reform of administrative reconsideration of China.

2. INTRODUCTION TO ADMINISTRATIVE REVIEW OF THE UK

Administrative review refers to the mechanism that allows the citizen dissatisfied with the administrative decision to require the agency to reconsider or to review its decision. (Thomas, 2016) For instance, in the certain spheres such as social security, administrative review is also called reconsideration. For the difference of the two terms, Peter Cane suggests that reconsideration is accomplished by the original decision maker, while the administrative review, as an internal procedure, is executed by other officials of the same agencies. (Cane, 2009) In another textbook of administrative law, he clarifies that the internal review refers to the reconsideration of the decision by the same decision maker or other officials of the same administrative agency. (Cane, 2011) Some other scholars even highlight that the nature of internal review is reconsideration. (Harris & Partington, 1999) Therefore, in this context, the two terms are basically interchangeable.

As a mechanism of internal redress, administrative review covers significantly more disputes than external redress, including tribunal, ombudsman, and administrative court. For instance, in the sphere of tax, administrative review of the UK resolved 56228, 39156 and 38621 disputes in the years of 2011, 2012 and 2013 respectively. (HMRC, 2013) In the same period, the numbers of disputes resolved by tribunal are 4353, 4564 and 6626, which were from 1/5 to 1/10 of the numbers of the disputes resolved by the former. (HMRC, 2014)

In terms of spheres, the application of administrative review is mainly seen in the cases regarding social security, immigration, and taxation. (see Table 1) Regarding social security, the Department for Work and Pension introduced mandatory reconsideration procedure in 2013 with significant results. The number of appeals in this field has dropped dramatically in the next year. For instance, the rough monthly number of appeals against the decisions on granting financial aid for job hunters dropped from 3800 to 100 only. In terms of immigration, the right of appeal to the tribunal has been aborted. In 2014, the right of appeal has been aborted by the Immigration Act except those regarding asylum, human rights, and EU issues. Accordingly, the disputes were to be resolved by administrative review. Regarding the initial reason of the strict limitation on the right of appeal of immigrants, the Home Office explained that administrative review could correct the mistakes within the administrative agencies at lower cost, unlike appeal, which was overly complex, costly, time-consuming, and whose mistakes, even the most obvious ones, were difficult to eradicate in time. However, analysts demonstrated that the main reasons were political and financial. Politically, this move limited the right of redress of the immigrants and reflected the shift of immigration policies of the UK. Financially, it significantly reduced the cost of dispute resolution and relieved the financial pressure of the government. (Thomas, 2016) In terms of tax, administrative review is more complete institutionally. Applicants can choose between administrative review and appeal to tribunal. In this sphere, administrative review is subjected to a time limit of 45 days, which does not exist in the former two spheres.

Additionally, administrative review is applied by other institutions to resolve disputes, but they are working independently. Overall, there is no general regulation on administrative review in the UK. In many institutions, there is even no specific law on administrative review. However, although there is no motion of regulating administrative review in the UK yet, some institutions have provided suggestions to improve the mechanism within their spheres. For example, David Bolt, the independent observer of border and immigration has suggested the Home Office improve administrative review with actions that follow. 1) Quality assurance of administrative review should be provided. It includes efforts to design a strict and formal procedure of quality

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assurance for administrative review, by taking the position of the reviewer and the complexity of the case into consideration and sending quality assurance feedback to the reviewer to ensure the quality and continuity of administrative review. 2) The result of administrative review, including the reason of the reviewer's revocation of the decision should be delivered to the original decision maker to improve the quality of the original administrative service. 3) Training programs related to the original decision maker should be provided to the reviewer and the information of the structure of the reviewing stuff, their time of service, working experience, etc. should be routinely tracked to ensure the reviewer is independent and separate from the decision maker and eventually to improve administrative review. (Bolt, 2016)

Table 1
Administrative review in the spheres of tax, social security, and immigration of the UK

	Tax	Social Security	Immigration
Voluntary or mandatory	Voluntary and alternative to tribunal appeal	Mandatory before tribunal appeal	Internal review replaced many appeal rights
Who reviews	Another decision maker	Another decision maker	Another decision maker
Time limit for requesting internal review	30 days	One month	28 days for overseas decisions; 14 days for decisions taken in the UK; 7 days for detainee
Scope of review	Case working errors and to collect additional information	Case working errors and to collect additional information	Case working errors
Scope of evidence considered	additional evidence can be submitted	additional evidence can be submitted. Applicants will be contacted by reviewer to explain the decision and the collect additional evidence	additional evidence can be submitted
Fee	No fee	No fee	80 £
Time limit for review	45 days	N/A Simple cases are suggested to be resolved within 14 days	N/A Standard time of service is 28 days

3. THE EVALUATION OF ADMINISTRATIVE REVIEW OF THE UK

Although administrative review has not drawn enough attention in the academia of the UK, some preliminary research has been done by some scholars since 1990. Driven by the practical needs, some governmental institutions have also studied the mechanism. Sainsbury is one of the pioneering scholars of the study on administrative review of the UK. He argues that since it is regulated by law that administrative review is a prepositional procedure of appeal, it is a formal part of the system of appeal in practice. Accordingly, it is more of a means of redress than a means of correcting error. Furthermore, he highlights that the three standards for evaluating tribunal system in the Franks Report (1957), namely independence, impartiality, and participation, also apply to administrative review. (Sainsbury, 1994) His argument was soon challenged. For if the standards of independence, impartiality, and participation are generally applied to all disputes resolving mechanisms, then there is no qualified mechanism except the court, in which case, there would be even no need for tribunal, let alone administrative review. Thus, any impartial evaluation of administrative review shall be conducted under the preposition that administrative review, as a mechanism that resolves administrative disputes internally, reflects a trade-off between justice and efficiency.

Firstly, the efficiency and accessibility of administrative review are remarkable. Efficiency concerns the government. The high efficiency means that the administrative institutions resolve most of the simple disputes internally and reduce the number of unnecessary appeals, leaving only the most complex disputes to external agencies. Financially, it is estimated that in the field of social security, the total cost of compulsory reconsideration procedure is about 80 £. The procedure of appeal even cost 248 £. For this reason, administrative review was preferred by the government of the UK, who has been troubled by financial issue in the recent years and has become the foremost way of resolving administrative disputes in the country. It also embodies the concept of proportionate dispute resolution, which highlights the proportionality between cost of administrative justice and the importance of the dispute to be resolved. Moreover, administrative review is helpful with reducing the financial expense of the government due to its flexibility, which allows the government to manage its human resources according to the variation of the number of disputes in a certain field. Accessibility concerns the citizens. Compared with external mechanisms, administrative review is faster, more economic, and more convenient to resolve disputes. (Cane, 2009) However, the advantage of administrative review is severely hindered in practice. With the help of surveys among the applicants and interviews with them, David Cowan and Simon Halliday listed seven obstacles that the applicants may confront with when

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seeking internal redress, including ignorance of the right to internal review, internal review skepticism, applicant fatigue, etc. (Cowan & Halliday, 2003)

Secondly, administrative review can resolve the problems and disputes that the citizens are facing by building an accountable and transparent government. Administrative review was established and consolidated during the Citizen Charter movement in 1990s when administrative institutions were expected to eradicate errors internally by being customer-focused and putting things right. (Cane, 2009) However, there is no convention regarding whether administrative review functions as expected. For some, administrative review encourages the decision maker to provide decision that is more advantageous to the applicant to avoid any administrative review. Meanwhile, others believe that in complex cases, administrative review allows the decision maker to intentionally make decision that is disadvantageous to the applicant to leave the responsibility to reviewer.

Thirdly, administrative review drives the administrative institutions to improve their original decision by allowing feedbacks to be sent back from reviewer to the original decision maker in time. Generally, it is a convention that the goal of any review system, including administrative review and judicial review, is to improve original administrative decision making. In early 2000s, the "right first time" reform aimed to defend the interests of citizens, to reduce the number of disputes, and to lower the cost of the administration by encouraging the government to make "right first time" decisions. More precisely, administrative review establishes the liaison between decision maker and review to reveal the shortcomings and problems that exist in the procedure of administration. Eventually, administrative service will be improved if the agency reacts accordingly in time. As a result, administrative agencies will be able to generate a mechanism of learning and reflection to improve the service. However, the current ratio of successful administrative review is dramatically lower than that of administrative appeal, arousing much doubt among researchers over the effectiveness of administrative review.

It can be concluded that administrative review has a mixed reception in the academia of administrative law of the UK. On one hand, it embodies the prevalent concept of proportionate dispute resolution, which is helpful to improve administration service and to lower its cost. On the other hand, its flaws in independence, impartiality, and participation, as well as its effectiveness in practice have drawn much criticism. That said, it has become an inseparable part of the justice system in the administrative law of the UK. In certain fields, the number of disputes resolved by administrative review once decupled that of those resolved by tribunal. Its importance shall not be underestimated.

4. THE MISUNDERSTANDINGS OF ADMINISTRATIVE RECONSIDERATION MECHANISM OF THE UK IN THE CHINESE ACADEMIA AND REVISION

The discussion in the previous sections reveals many misunderstandings of administrative reconsideration in the Chinese academia of administrative law, due to the lack of comprehensive understanding of the administrative justice system of the UK, in which administrative review resolves most of the straightforward disputes, and tribunal covers most of the ordinary ones, with administrative court and court of appeal handling those most complex ones. (see Figure 1) In the Chinese academia, however, tribunal is widely mistaken as administrative reconsideration. Most of the articles in the field incorrectly include tribunal when introducing administrative reconsideration system and suggest the judicialization of tribunal be the model for the reform of administrative reconsideration in China without considering administrative review of the UK. This approach is apparently incorrect since tribunal of the UK defers from administrative reconsideration of China in terms of semantics and character. Semantically, in modern Chinese language, *fuyi* as in *xingzheng fuyi,* (administrative reconsideration), means "discuss again", which can be more appropriately translated as "reconsider". But in some fields, this is also the term for administrative review. Meanwhile, the term "tribunal" is not entirely distinguishable with "court". In terms of character, administrative reconsideration in China is a typical example of non-judicial mechanism, at least from the perspective of law. However, although tribunal is not any form of court, it is never the subject of government but rather the judicial mechanism established directly by the parliament. It functions in a very similar way as the court and is often regarded as "lower court". (Cane, 2011) Thus, if there is anything in the administrative law of the UK is equivalent with administrative reconsideration of China, it must be administrative review, rather than tribunal.

However, this does not mean administrative review of the UK and administrative reconsideration of China are the same. On the contrary, their differences are apparent in terms of supervision. For administrative reconsideration of China depends muchly on bureaucratized supervision, while administrative review of the UK depends on the supervision of its own. Based on this fact, some scholars argue that administrative review of the UK is never well-regulated, hence it does not deserve serious investigation. This argument was not entirely wrong some twenty years ago, and it justifies the lack of discussion of administrative review in Wang Mingyang's *Administrative Law of the United Kingdom*. However, in recent years, the number

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of disputes resolved by administrative review decuples that of the disputes resolved by tribunal. Accordingly, more and more academic publications dedicated lengthy discussions on administrative review, which is now inappropriate to remain neglected.

Due to these misunderstandings, some scholars in China take the judicialization of tribunal of the UK as successful model and theoretical support for the judicialization reform of administrative reconsideration in China, and some even claim that the reason for this reform is that the judicialization of administrative reconsideration is "a global trend". (Zhou, 2004) In terms of tribunal *per se*, this argument is undoubtedly right. After examining the history of tribunal in the UK, it is not hard to notice that it was highly administrative in the early days, as highlighted by Yu Lingyu, who convincingly demonstrates that the situation of the UK then is comparable to that of China today. (Yu, 2013) The flaws of the administrative character of tribunal drove the government of the UK to devote much effort in reforming tribunal, which was finally accomplished in 2007. However, as shown by the development of the administrative justice system of the UK, it is highly questionable to advocate the reform of administrative reconsideration of China based on the judicialization of tribunal of the UK, since in the process of judicialization of tribunal, a new administrative mechanism, namely administrative review, unexpectedly gained unparalleled popularity and importance, and eventually surpassed tribunal in terms of the number of cases resolved. This is inspiring for the Chinese reformers that even the tribunal can be judicialized, the non-judicial mechanism of administrative dispute resolution, such as administrative review, is essential and valid from the perspective of legal practice and theory.

Therefore, taking the judicialization of tribunal of the UK as model and guidebook for the reform of administrative reconsideration of China is groundless. The reason of the misreading is the lack of comprehensive and systematic investigation of the administrative justice system of the UK, which is not uncommon in the Chinese academia of comparative law. In fact, the non-judicial character of administrative reconsideration is the origin of the misreading, as pointed out by some scholars that "the non-judicial character of administrative reconsideration shall not be regarded as a flaw, for there is no positive connection between the institutional and mechanical flaws of administrative reconsideration and its non-judicial character." (Liang, 2013) Some scholars explicitly argue that in terms of the current administrative law of China, it is groundless to attribute the failure of administrative reconsideration to its non-judicial character, since even administrative litigation, which is the specific judicial mechanism of administrative dispute resolution, is widely criticized for its failure. (Ma, 2020) The defects of recent judicialization of administrative reconsideration are showing up, as argued by Liu Xin (2016), who investigates the experiments of judicialization reform of administrative reconsideration across China and concludes that "although the reform regulates the procedure of reconsideration, it lowers the efficiency of dispute resolution. The institutional advantages of administrative reconsideration are undermined, and the mechanism is hindered by homogenization judicial agencies." Granted, judicialization reform of administrative reconsideration is not without successful example, such as those in Japan and Taiwan, which prove that it is among the possibilities of the reform in China. However, the difficulties shall not be underestimated. As shown by the case of the UK, it is preferable to reform administrative reconsideration within the non-judicialization framework.

5. EVALUATION OF NON-JUDICIAL ADMINISTRATIVE RECONSIDERATION BASED ON THE CASE OF THE UK

The non-judicial character of administrative reconsideration of China is with a long history. In the early days after the foundation of the People's Republic of China, it was generally believed that there is no possibility of any disputes between the state and its people, thus administrative redress was mainly regarded as an internal mechanism. For instance, *Measures for the Establishment of Financial Inspection Institutions by the Ministry of Finance of the Central People's Government* issued by the State Council on November 15, 1950, regulated that "when the department examined regard the measure of the examiner dissatisfactory for valid reasons, it can apply to the upper authorities of the examiner for reexamination." *General Rules for the Organization of Tax Reconsideration Committees,* approved on December 19, 1950, applied the term "*fuyi*", or reconsideration, for the first time. These regulations were straightforward, but they marked the emergence of administrative reconsideration of China. From 1960s to 1970s, affected by the political turmoil, administrative reconsideration was severely undermined for "any complaint against administrative institute was then considered dissatisfaction with socialism." Administrative reconsideration did not develop until the reform and opening-up. In 1980s, administrative reconsideration became the ordinary mechanism for the government to resolve disputes, so that after the enforcement of *Administrative Appeal Law* in 1989, enacting the *Administrative Reconsideration Law* was also scheduled. The non-judicial character of administrative reconsideration was reflected by the *Statutes of Administrative Reconsideration and Administrative Reconsideration Law*. Later legislators explicitly emphasized the non-judicial character of administrative reconsideration. *Notes on the Administrative Reconsideration Law of the People's Republic of China (Draft),* submitted by the State Council

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to the National People's Congress, confirmed that "administrative reconsideration is a mechanism of internal supervision to correct error within administrative agencies. It reflects the character of internal supervision within administrative agencies so that it is inappropriate and unnecessary to follow judicial procedures or to judicialize administrative reconsideration". Furthermore, in *Notice of the State Council on Implementation of the Administrative Reconsideration Law of the People's Republic of China*, the State Council reiterates that administrative reconsideration is an important mechanism of internal supervision to correct errors within administrative agencies.

Unfortunately, the enforcement of administrative law was not satisfying at all for the mechanism eventually malfunctioned in practice. Advocates of judicialization reform of administrative reconsideration attributed the failure to the non-judicial character of administrative reconsideration. Therefore, they proposed a judicialization reform of administrative reconsideration. Zhou Hanhua (2004), for instance, argues that several years after the implementation of the administrative law, the shortcomings of defining administrative reconsideration as internal supervision within administrative agencies and intentionally avoiding judicialization are becoming increasingly apparent. In such context, judicialization of administrative reconsideration gained much popularity and dominated the academia with strong impacts on the experimental reforms of administrative reconsideration across China.

However, is the non-judicial character the real cause of the malfunctioning of administrative reconsideration as the advocates of judicialization as the advocates of judicialization reform claimed? This article argues to the contrary. Based on the experience of the UK, it articulates that the advantages of non-judicial administrative reconsideration are irreplaceable. The first reason is that it embodies the concept of proportionate dispute resolution, which originated from the civil litigation. Since the costs of many civil cases were proportionate to the values of the objects, Lord Woolf submitted a proposal of reform base on this concern in 1996, which was approved and incorporated in the *Access to Justice Act 1999*, and in the *White Paper Transforming Public Services, Complaints, Redress and Tribunals* implemented by the Department for Constitutional Affairs in 2004. Currently, this concept has been regarded as one of the main approaches for realizing procedural justice by Ministry of Justice. (Gao, 2019) According to this concept, in those straightforward cases, administrative agencies can encourage the parties to resolve disputes through administrative reconsideration to avoid wasting judicial resources. Therefore, the concept of proportionate dispute resolution is the key theoretical base for administrative review. The administrative justice system of the UK systematically embodied this concept because most of the straightforward cases are resolved within the administrative agencies through administrative review, a certain number of complex disputes are resolved by tribunal, and only the rarest and most complex ones are resolved by the court. The second reason concerns the concepts of "right first time" and "learning organization". "Right first time", which came into academic interest in the early 2000s, refers to the idea that administrative agencies shall be dedicated to improving first time decisions to improve administrative service overall and to reduce the total number of administrative disputes. "Learning organization", which was proposed by Robert Thomas, refers to the principle that government agencies shall reflect on their own services and to discover problems, especially the inconvenience brought by administration to the citizens, to improve administrative decision making by continuous reflection and learning. (Thomas, 2014) Administrative reconsideration combines both the concepts by allowing government agencies discovering the problems of original administrative decisions through internal supervision and sending feedbacks to the original decision makers. Therefore, they will be able to improve the administrative services and to formulate learning organizations accordingly to improve the experiences of citizens, to facilitate the implementation of policies and to legitimize the authority of administrative agencies.

Therefore, administrative review of the UK provides an opportunity to reconsider the theoretical background and practical value of the judicialization reform of administrative reconsideration of China. In fact, this approach is not without discussion. It is a convention among many scholars that the reform of administrative reconsideration shall highlight efficiency of administrative system. That is, with justice guaranteed, the efficiency of administrative reconsideration shall be the goal of any reform. (Yan, 2018) This convention exactly reflects the concept of proportionate dispute resolution. In the purpose provisions of *Proposal to Review the Administrative Reconsideration Law of the People's Republic of China* of 2020, it is confirmed that "the main channel role of administrative reconsideration to resolve administrative disputes", (Wang, 2021) so that "ideally the cases resolved by administrative reconsideration will reach roughly ten million, those resolved by administrative litigations will be one million and those resolved by petition will be limited to one hundred thousand or less." (He, 2016)

6. SYSTEMATIC COMPARISON BETWEEN THE MECHANISMS OF ADMINISTRATIVE DISPUTE RESOLUTION OF THE UK AND CHINA

There are two models of administrative dispute resolution world widely. One is the "weak administration & strong judicial" model, represented by that of Germany. The other is the "strong administration & weak judicial" model

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of the UK and the United States. In the United States, taking the sphere of social security as example, disputes are mostly resolved by the judge of social security and committee of appeal. Only when citizens' rights cannot be redressed by the two above, they can bring lawsuits to the court or the constitutional court. In the UK, as discussed above, this model is even more exemplary. Administrative review and the Social Entitlement Chamber are ready to resolve administrative disputes, leaving only the least and rarest cases to the judicial system, such as the court of administration. In Germany, with system of "weak administrative & strong judicial", disputes regarding social security are mostly resolved by the Social Court after pre-pleading administrative reconsideration, whose importance is growing for its capability of resolving disputes. The government of Japan, after systematic studies on both models, preferred the model of the UK and the United States. It has built advanced mechanism of pre-pleading dispute resolution and the results turned out to be encouraging.

Compared with any model mentioned above, administrative reconsideration of China appears primitive and less regulated. Unlike that of the UK and the United States, administrative reconsideration of China lacks the advanced institution of administrative merits. Compared with Germany, China lacks the advanced system of administrative court. As a result, a significant number of cases are eventually transferred to the system of *xinfang*, which is less, if not least, regulated by law. Most of these disputes, therefore, cannot be resolved properly, bringing many uncertainties and disturbance to the society in general. The problem in China is systematic, which can be solved only by top-level redesigning of administrative dispute resolution system including administrative reconsideration, *xinfang*, and administrative litigation, rather than blindly following any western example, as represented by the previous studies on the administrative reconsideration of the UK in the Chinese academia. Therefore, the situation of Germany, where most of the states are devoted to replacing administrative reconsideration with their advanced system of administrative court, is hardly realistic for China to learn from at this point for the absence of any specific administrative court.

Therefore, the path of reform shall be consolidated as the first step of the project overall, which concerns the choice between administration dominating and judicial dominating models. Accordingly, supplementary reform of the system and institution will be possible. This article proposes the administration dominating model for two reasons. First, reform as such is relatively flexible at a lower cost. The judicial dominating model as that of Germany means it is mandatory to establish an entire system of specific administrative courts, as demonstrated by Zhou Hanhua, that "the model of administrative court is a total reform of the current administrative reconsideration. It requires the combination of administrative reconsideration and administrative litigation, the abolishment of judicial supervision of the courts, and the establishment of independent administrative court based on the governmental legal agencies." (Zhou, 2004) This approach is difficult to follow from the perspective of legislation, far from being practical and overly costly and the changes installed are difficult to revoke. Second, the German model is achieved in a specific historical context. It is not without doubt even within Germany. For this reason, it is significantly rare world widely. Thus, it is not recommended for China.

However, the administration dominating model does not mean the reform of administrative reconsideration will be straightforward in China. On the contrary, compared with the situation of the UK, three problems are still the obstacles ahead for the Chinese government, including the malfunctioning of administrative reconsideration in practice, the lack of administrative merits and the abusive uses of *xinfang* mechanism. In terms of the functioning of administrative reconsideration, the monthly number of disputes resolved by administrative reconsideration in the UK decuples that of the disputes resolved by tribunal. However, in China, the number of disputes resolved by administrative reconsideration is even smaller than that of the disputes resolved by administrative litigation. The supposed "main channel role" of administrative reconsideration is far from being fulfilled. In terms of administrative merits, it is widely applied in the UK across various spheres. As a result, a significant number of disputes are resolved in an efficient and satisfying way. In China, however, the mechanism of administrative merits is insufficiently applied, resulting in its absence in most spheres. In terms of the relation between *xinfang* and administrative reconsideration, a huge number of cases stuck in *xinfang* mechanism with administrative reconsideration neglected, demotivating any reform of the latter. These three problems significantly hindered administrative reconsideration in China. Therefore, they shall be specially targeted by any reform in the future.

7. CONCLUSIONS

The improvement of administrative reconsideration, among other reforms of the administrative dispute resolution system, is one of the most complex issues that have troubled the governments of different countries across the world. The situation in the UK shows that administrative review is rapidly developing but the direction still deserves further observation and study, making it difficult to offer any conclusive judgement. In the United States, administrative cases are still countless in number. In the sphere of social security, for instance, there are still more than one million cases to be resolved

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until March 2016. According to the report published in November 2021, the average processing time proposed in April 2019 remains unachieved (Office of the Inspector General, 2021). In Germany, reform of administrative reconsideration is ongoing, with different states busy with dissolving the petition system. Confronted with the numerous cases to be resolved, the system of administrative court can barely keep functioning and must be reformed to "simplify the procedure". (Liu, 2010)

As shown by the various examples across the world, there is no perfect model for China to follow. Whether judicialization or non-judicialization reform of administrative reconsideration can be justified by successful examples from the perspectives of comparative law and legal theory. Thus, practical experiments and localized explorations are still needed. The ongoing reforms of administrative reconsideration in different places across China, though different in form and content, unanimously concern the subject of judicialization. Based on the example of the UK and non-judicialization framework, this article suggests a different path to reform administrative reconsideration in China. In the UK, where administrative actions are subjected to judicial reviews, administrative review, as a means of internal supervision, is indeed unusual. However, in China, where the administration is overly powerful and the power of judicial agencies remains to be strengthened, the approach proposed above may bring better results.

Specifically speaking, two methods can be considered. First, to establish a mechanism of quality control for administrative reconsideration and to ensure adequate training of the stuff. Whichever path is chosen to reform administrative reconsideration, the goal is its improvement. Although the reform of administrative reconsideration is ongoing across China, the current results are hardly satisfying. Thus, the aim of reform of administrative reconsideration shall be the improvement of mechanism with non-judicialization approach as the guide. Various supplementary methods can be taken, such as to take the quality of administrative reconsideration into consideration when assessing the performances of the related civil servants and government agencies, to improve the professional training of the stuff, especially on their legal awareness and administrative capabilities, and to enlarge to number of stuff and hardware in administrative reconsideration agencies. Second, to establish a mechanism of feedback giving and receiving between administrative reconsideration and administrative litigation agencies. The results and reasons of administrative reconsideration shall be sent back in time to the original decision maker, and reports shall be made when necessary, to allow the decision maker to correct errors in time and to improve their administrative performance, and to ultimately reduce the number of administrative disputes. In specific cases, agents of administrative reconsideration can work with the decision maker to improve administrative service together.

The reform of administrative reconsideration will not succeed without comprehensive reform of administrative dispute resolution mechanism. This article suggests that within the non-judicialization framework, the reformers can also introduce administrative merits, such as tribunal and councils of review or reconsideration, to certain spheres as supplementary methods. In fact, Zhou Hanhua has proposed this idea more than ten years ago, but it was never taken seriously. (Zhou, 2004) Compared with this approach, the judicialization of administrative reconsideration is not necessarily more effective in terms of effect and cost. It is time to consider introducing administrative merits mechanism to reflect the professional advantages and efficiency of administrative agencies, to improve the independence and professionality of administrative reconsideration, and eventually fulfil the main channel role of administrative reconsideration to resolve administrative disputes.

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