

*My two-weeks internship at the Supreme People's Court, Administrative Trial Division,  
of the People's Republic of China*

**I – The Exchange Program**

I spent 15 days in China, from July 1 to July 16, 2017, hosted by the Supreme People's Court, attending an Exchange Programme organized by A.I.H.J.A .

Over this period, during which I lived in Beijing with the exception of two days in Shanghai, I visited, apart from the administrative trial division of the Supreme Court, various local courts: primary, intermediate and high courts.

I also visited the Legal Affairs Office of the State Council (the Chinese Government), the Ministry of Commerce and the General Administration of Customs.

I completed my internship going to the Beijing Foreign Studies University and to the Chinese University of Political Science and Law, delivering a speech at National Judges College (the major institution for the education and training of Chinese Judges) about the Italian system of administrative trial and, finally, I had a meeting with a large private law firm.

For two times, before the Beijing Primary Court and the High Court, I was able to attend the hearings of an administrative trial.

During this series of visits I was always assisted by the efficient organization of the International Department of the SPC – from my early Sunday arrival at the airport of Beijing until my departure - and very often accompanied by my tutor Mr. Wang Xiaobin or by some assistant or interpreter. Therefore, I had several interesting discussions with a large number of administrative judges, professors and senior civil servants. Most of the time I spoke in English and on one occasion, at the University of Political Science and law, also in Italian, thanks to the translation of a Chinese professor who has worked some years in Italy.

In this way I had the opportunity to know the bases of Chinese judicial review of administrative action and, more in general, to better understand the Chinese law system.

Many times I was invited to have lunch or dinner with judges and assistants, in the Courts' or universities' canteens as well as around Beijing and in Shanghai, thus discovering various and interesting places of these big cities.

I travelled by car or taxi, very often kindly paid by my hosts, or by subway, particularly during the rush hours. Sometimes also by bike or walking, being my hotel very close to the SPC.

## **II - The Chinese Administrative Justice System and the Comparative Law Aspects in my Exchange**

Since the first day of my exchange it was stressed to me that the Chinese System of Judicial review of administrative action is quite recent if compared to the much older European experiences, being set up only in 1989, as a part of more general reforms focusing on strengthening functions of court trial and promoting judicial protection. Reforms closely related, as it is well known, to the changed situation of China's economy and society after the end of the controversial cultural revolution era. The changes occurred in Chinese administrative law can be attributed also to China's accession to WTO and to the substantive requirements of the TRIPS agreement, where the obligation to provide independent judicial review is explicitly referred to.

We can add that the development of the administrative justice system is one of the most relevant answers to people's new needs and expectations, arisen over the 1980s, when the public began to ask for large scale reforms.

The system born in 1989 - with the adoption, at the Second Session of the Seventh National People's Congress, of an Administrative Procedure Law – follows the civil law model, without establishing special or different courts but being based on a single jurisdiction, so that administrative disputes belong to the ordinary courts. More exactly, according to the article 4 of the cited Law, the people's courts have set up administrative divisions for the handling of administrative cases.

It is useful to remember that, in accordance with the Constitution, the people's courts are judicial organs of the State.

The State establishes the Supreme People's Courts, the local people's courts at various levels and the specialized people's courts to adjudicate civil, criminal and administrative cases in accordance with the law.

The SPC, as the highest court, is responsible for hearing various cases that are of significant influence nationwide or subject to its jurisdiction by law, formulating judicial interpretation, and supervising and guiding the adjudication work of the local courts at various level.

The president of the SPC is elected and removed by the National People's Congress and all the others judges are appointed by the Standing Committee of the NPC upon recommendation of the President of the SPC.

The local courts at various levels include (32) high courts, (413) intermediate courts and (3.129) primary courts, while the specialized courts include maritime courts, intellectual property courts and military courts, etc.

By the end of 2015 there were altogether about 211.000 judges in China; of these, about 66.000 are female judges. While the administrative judges (sitting at administrative divisions of ordinary courts) are approximately 9.000.

The high courts sit at the level of provinces, autonomous regions and municipalities directly under the central government.

The intermediate courts sit at the level of prefectures. The primary courts sit in the counties and districts under cities.

In 2016, the SPC accepted 22.742 cases and concluded 20.151. In addition, it formulated 29 judicial interpretations and issued 21 guiding cases.

Local courts at all levels accepted around 23 million cases and concluded or enforced 19.722 million involving a total of RMB 4.98 trillion.

For what concerns the adjudication of administrative cases and State compensation, in 2016 courts at all levels concluded 225.000 cases of first instance, with a year on year increase of 13,2%.

Since 2013 a general judicial reform has been advancing, justified in the name of satisfying an increasing demand for judicial justice. Judicial reform involves many aspects and is policy-oriented. For instance, in order to maintain the unification of national legal system, have been established by the SPC the circuit tribunals, thus realizing the shift-down of the exercise of judicial power of the SPC.

In order to solve the vulnerability of the cross-administrative-division cases to local (government) influence, in 2014 two new types of courts have been set up, in Beijing and in Shanghai. The building of these courts was strengthened to promote remote and centralized jurisdiction over administrative cases. The premise of this reform – as it is evident in the paper “Judicial Reform of Chinese Courts”, SPC, February 2016, reading at page 55 - is that “Judicial power belongs to the

Central Government so that local courts are not courts belonging to local government but the judicial courts established by the State at the local level to exercise judicial power on behalf of the State”.

As I’m going to explain soon later, in my opinion there is a link between this more general profile and the specific reforms regarding administrative litigation.

Indeed, a thorough and specific reform of the young Chinese system of administrative justice occurred in 2014 and entered into force in 2015, after its first 25 years of activity.

According to the article 12 of the Administrative Procedure Law, as modified in 2014, the system is based on the principle of general enforceability before the administrative courts. Today, acts of the local and provincial administrative authorities and administrative acts issued by the ministries – but not yet, generally speaking, those of the Government (also known as the State Council) – can all be impugned.

There are, however, some important exceptions regarding acts of greater political importance for the People’s Republic of China, as many acts of the State Council.

The boundaries of these significant exceptions to the general principle of the impugnability of administrative acts still seem to be the subject of interpretative activities by the Administrative Trial Division of the SPC. It can be interesting to somehow compare this system of exemption from judicial control to that which in Italy traditionally excluded the possibility of challenging so-called "political acts". *Political acts* – in this sense – is probably to be understood in a much broader meaning than the one it has nowadays in Italy, according to the code of administrative trial of 2010; that is, as it was considered in the nineteenth century, when administrative jurisdiction was first established in Italy.

The relevance and depth of the 2015 reform is further demonstrated by the fact that, as a result of it, actions are allowed in China not only for the annulment of administrative acts prejudicial to the interests of the citizen (such as the expropriation of assets and settlement of the relevant compensation); but also against the lack of government response to the requests made by citizens and against the failure to obtain the required documents (as in Italy, where actions are allowed against silence and for access to administrative documents), with the possibility to act in virtually every case in which the plaintiff complains of the failure to comply with their duty by various public entities.

Two reported examples of this, related to the material expropriation and violation of the duties of the public officers have been indicated as the most frequent ones and amount to about two-thirds of the administrative litigation processed at one of the courts that I visited. Summary procedures for

these types of proceedings exist in China, as well as mediation processes which, unlike in Italy, are carried out with the aid of the court, seeking to avoid trial or to close proceedings by agreements between the city and the authority. This is a particularly strong theme (despite the uniqueness of the jurisdiction; which is articulated in specialized sections for administrative law established at each Court) in China: connecting administrative and civil matters.

Alternative solutions to jurisdictional resolutions on administrative matters are far more developed in China than they are in Italy. In particular, I was brought on a tour of the “Reconsideration Office” of the State Council’s Department for Legislative Affairs Office, a sector of the principal legislative office of the Government that, upon request by the interested parties, reviews and amends (as necessary) acts of the administrative authorities (also local ones). The office appeared to be quite efficient and useful, probably thank to the centralization of all administrative power by the Chinese Government.

In general terms, however, the use of administrative courts is not conditional upon the prior implementation of a mandatory appeal to the administration which adopted the contested measure, or to a superior body, except in cases relating to tax and customs disputes. In fact, in China (unlike in Italy) such disputes fall under the jurisdiction of the Administrative Divisions of the Courts.

Almost every time I had a meeting with Chinese Administrative Judges, they underlined the great increase of litigation in the last years, and the need to implement a series of solutions to control this growth,

A related topic, which I’ve so often discussed with my hosts over my internship, is that the access to administrative justice in China is very easy and very cheap too.

It is not compulsory to hire a lawyer, as the plaintiff is entitled to sit alone before the court defending by himself (even before the SPC!), and the fees are low as well as the other costs of the trial. Those are, in my opinion, some of the principal reasons of the easy access to administrative justice.

Not only the access is quite easy, and visiting the offices in various courts I noticed a large number of facilities like support staff, information sheets, instructions for completing the forms, designed to help the presentation of judicial claims; but also the legal proceedings seem to be actually pro-plaintiff, if we consider that, as a general rule, the burden of proof belongs to the defendant, who has to demonstrate that the act undertaken is in accordance with law (see article 34).

The administrative trial takes place, basically, in two degrees of proceedings, with a potential for further review before the SPC (in cases of particular importance there are provisions which allow the process to be introduced directly before the High Court and even the SPC "shall have jurisdiction as a court of first instance over grave and complicated administrative cases in the whole country"). For each degree of judgement there is a maximum duration period for the process of a few months (six months for the first instance and three months for the second one). The effective compliance with such terms constitutes one of the main concerns for all Chinese administrative courts. This is especially true in the face of the explosion of administrative litigation, which derived from the 2015 reform, particularly as there has not yet been an appropriate increase in the number of judges employed by the Administrative Divisions of the various courts (including the SPC). This increased workload doesn't look likely to slow down and this is one of the biggest concerns of the Chinese judges with whom I spoke: at the moment, they don't predict any solution to this problem.

My impression is that the system encouraged citizens and enterprises bringing suits before administrative judges; as if, through the singular and episodic administrative disputes, the central government could realize an indirect control over the (functioning of) different local authorities, in order to discover and repress general phenomena of abuse, deviation or corruption, otherwise more difficult to be known.

In brief, administrative justice as a tool to enforce the centralization of all administrative powers by the Chinese Government, for the primary purpose of assuring the stability. The attention paid to administrative justice, in the name of a sort of administrative liberty, can also be seen as a kind of compensation for the persistent lack of a complete political liberty (despite a very strong economic liberty), as it is experimented in the Western world. It can be remembered how the rule of law and the foundation of an administrative justice were part of the ambitious agenda of general reforms demanded in the 1980s. Of that agenda it has been preferred, until now, to carry out only a part and not all the requests.

### **III - Ideas and Benefits of the Exchange**

Chinese administrative justice is enjoying a period of great development and this explains the attention paid to comparative law, as it is confirmed also by the curiosity and the attention showed to me for the Italian experience of administrative law.

Every time I met Chinese judges, indeed, I was invited to speak about the Italian system of judicial review. The most frequent questions were about procedural matters as the costs of the administrative litigation in my country and the existence of time limitation for the trials; or about the recruitment and the wage of the judges, as well as their career. Other questions were about substantial topics of administrative law regarding, in particular, expropriation, public agreement and the partnership between public and private sectors (PPP).

These latter questions reflect very well the evolution of the Chinese society and the new tendencies in act as, for example, the frequent (and not uncontroversial) demolition of old areas of the biggest cities – let's think to the historical “hutongs” in Beijing – to construct modern and expensive new buildings or new quarters. Therefore, the need to balance the public interest with the legitimate rights and interests of displaced people is evident, as well as the search (besides the public funding) of private investments, to reconstruct villages.

Although a large number of Chinese administrative law scholars have been advocating for a comprehensive national administrative procedure law since the 1980s (looking at the US model of the 1946 Administrative Procedure Act) and despite the great development of the administrative litigation law, until now there has been no significant progress in developing administrative procedures rule at national level. There have been, however, local administrative procedure rules, as well as the State's Council Regulations. There are, at the national level, individual laws concerning wide areas of administration, such as the Law on administrative punishment passed in 1996, and the Law on administrative licensing passed in 2003.

For all these reasons, my experience in China has been truly very interesting and I have to thank the AIHJA and the generous and kind hospitality of the SPC.

I consider my stay in China of great cultural benefit, not only at a personal level, but also for the institution I belong to.

In this context, I hope that in an early future there will be other occasions to organize more exchange visits, even at the level of presidents and vice-presidents of Chinese and Italian administrative courts of last instance.

In conclusion, and despite the fact that China is far from being a European country, its administrative law system looks rather similar to that of the continental European tradition, and it is quite useful for all countries to better know each other and their most relevant juridical topics, problems and solutions.

Therefore, my exchange experience in China has been extremely positive. My sole regret is that I haven't had more time.

It allowed me not only to gain a general knowledge of the practical workings of the Chinese administrative jurisdiction, but it also gave me the opportunity to work closely with my new Chinese colleagues who were very welcoming every day. I really hope to be able to participate in another exchange program in the future.

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