**Administrative Justice in China**

*"I forgot at once all the countries I had loved, all the legal and illegal geographical loves, and turned all over to the new erotic adventure – to the distant country with the slanted Mongolian eyes and the unwavering, hard, mysterious smile." "Is Beijing the most beautiful city I saw in the world, or did it happen to be a good time when my eyes first saw it?" (Nikos Kazantzakis, Traveling Japan-China)*

**I.** **The program for the exchange of judges between the Supreme Administrative Courts**

I began my narration regarding my visit to the Supreme People's Court of China in Beijing, in the framework of the AIHJA exchange program between Supreme Administrative Courts, with the "love confession" of the Greek writer N. Kazantzakis, which from the first pages of his book he addresses to China, which he adored and visited twice in his life, the first time alone in 1937 as a correspondent of the Athenian newspaper "Acropolis" and the second time in 1957 as a traveler, while immediately afterwards he died. The presentation of China in his work made me yearn to explore it as another Marco Polo, but on another level, legal, wondering several times before my departure whether this country would have something to give me or would be a "poor Ithaca".

 I started this two-week journey on Friday, 13th October 2023, defying the mass phobia about that day. The road was particularly long, a journey of ten hours or so, I arrived just before dawn in always foggy Beijing. Already from the airport I realized that it would not be an easy trip, communication in English was almost impossible, despite their best efforts, so I had to use the minimum Chinese I had taken care to learn myself or communicate through an automatic translation application that I had downloaded on my mobile, while internet access to European pages was absolutely forbidden, due to the censorship system imposed by the Government, which I slightly bypassed through a virtual private network that I had also installed on my mobile before leaving. All my concerns were of course allayed as soon as I found myself in the safe environment of the Judges of the Administrative Chamber of the Supreme People's Court, where I received a very cordial and warm welcome and hospitality, and mainly because of the decisive assistance of my tutor, Assistant Judge Gaishun Guo, from the International Relations Department of the Court, who literally became my shadow. At this point, I must mention that in China they have a single jurisdiction and there is no separation of powers in their constitution. From the outset, it was explained to me that the system of judicial review of administrative acts was established relatively recently, in 1989, when the Code of Administrative Court Procedure was adopted, except that no separate courts were established, but administrative disputes belong to divisions of the ordinary courts. My Chinese colleagues and I matched instantly, as if we had known each other for years, I always believed that our cultures have a deep connection, after all, the two countries are separately the hotbeds of civilization in East and West respectively, our languages are also the oldest in the world, and finally we discovered a common point from our historical past related to the looting of the Parthenon sculptures by the English Lord Elgin, whose son, Lord James Elgin, as representative of the then dominant great powers of the West in China had removed and transferred to England sculptures and paintings from the summer palaces of the Chinese emperors, continuing the .. family tradition.

My Chinese colleagues had made sure to organize a very rich, interesting, constructive and high-level program for me, taking into account my own interests, which included seminars with Vice-President Mr. LIANG Fengyun and the judges of the Administrative and Environmental Department of the Supreme People's Court, with whom we discussed a lot on the functioning of our Courts; We found our common points and differences, we analyzed the problems of justice in our country, I explained to them how the constitutional review of laws in Greece is carried out by the Greek Courts and that the Greek Council of State operates as a quasi-Constitutional Court. I was told that access to Chinese administrative justice is very easy, on the one hand because fees and other court costs are quite low and on the other hand because the party is not obliged to hire a lawyer to defend his case, even before the Supreme Court, and furthermore the court procedure is in favour of the plaintiff, since the rule applies that the burden of proof lies with the defendant. Furthermore, I visited the Intermediate Court and the First Instance Court of Beijing where I attended a trial of administrative interest and then spoke with the members of these Courts, and in addition I visited the smart and internet courts of Beijing, where I was transferred to the justice of the future, because their justice already since 2018 is fully digitallized and all trials are conducted through telematics, while the party may monitor and participate in the hearing of his/her case via his/her mobile.

 More specifically, all courts have an electronic service centre for the litigant party, where the latter can receive guides to self-service disputes, such as advisory services, court guidance on case law and other services through various advanced equipment. In China, they have achieved online case handling, so that every step from case filing, court hearing, deliberation, decision-making and preparation of award acts is performed online with traceability throughout the process. Blockchain technology has been introduced to further accelerate the simultaneous production and thorough processing of electronic case files. Any overdue case appears on the interface and the system is automatically warned, which can help judges handle cases on schedule.

In addition, the courts had arbitration and mediation rooms, which is a necessary stage especially for disputes of civil and commercial interest that usually end in this way, while administrative proceedings are mediated only on the amount of compensation awarded in civil liability cases of the organs of the State and, in addition, a voice recording system for automatic translation into Chinese on huge tables was installed in the courtrooms. At the Supreme People's Court I also visited the impressive Smart Court Laboratory. Already in 2014 they have built a large database that collects real-time information on all cases, as well as statistics per court throughout the country. Monitor on huge screens how many case files are filed per minute, how many cases are completed in real time in each court, how many of them are accepted or any notifications about technical problems in their digital system so that they rush immediately to correct the fault. The courts also have a very useful alert system in case of different judgments between similar cases. This system provides multiple functions, including automatic analysis of trial history and relevance, so that the analysis of the circumstances of each case intelligently helps to predict the effects of the sentence/sanction and to estimate the degree of deviation of the decision, thus promoting the unity of judgement standards while ensuring independent handling of cases by judges in accordance with the law.

Furthermore, an interesting visit to the museum of the Supreme People's Court on the history of justice in China followed, with exhibits such as historical objects related to justice, ancient writings, photographs, robes and other military uniforms of judges from time to time, etc. Finally, I visited the National School of Judges in Beijing, as well as the School of Law and Political Sciences, where I spoke with professors and doctors of administrative law, and finally I met with officials at the Ministry of Justice and the Ministry of Environment, where we had an hour-long discussion each of them on questions they had asked me to send them previously on justice and environmental issues, and I confess that I was impressed by the their detailed presentations on the issues raised, mainly of environmental interest. At all meetings I was accompanied by an assistant judge or interpreter of the Supreme People's Court. Each meeting was followed by a lunch of local cuisine with the judges in beautiful restaurant areas inside and outside the Courthouse.

The building infrastructure of their Courts was particularly imposing and state-of-the-art, captivating you causing you the necessary awe, prestige and respect. The judges' workplaces and libraries were of unparalleled beauty and order, while the walls were decorated with paintings of Mao's sayings about optimism, and everywhere you could see the characteristic Chinese porcelain, silks and many vases of natural flowers. Finally, it is noted that all the Courts had indoor small sports courts and gyms, because during their mandatory lunch break (12.00-14.00) Chinese judges either exercise or rest in spaces inside the Court, given that distances in China are particularly long. I should add that I had the opportunity during the two-week visit to visit, always with the valuable help of my tutor, Mr. Guo, the Great Wall, the Forbidden City and the Beijing Archaeological Museum in Tiananmen Square with a guided tour offered by the Director of the museum, as well as the areas of Xi'an, Shanghai and Quanzhou with domestic flights and trains running at over 300 km / h.

Furthermore, on 25-26.10.23, at the suggestion of the Supreme People's Court, I participated as a speaker representing my country at the 2nd Maritime Silk Road International Forum on Judicial Cooperation 2023 in the historic city of Quanzhou, Fujian Province in China. The topic I developed concerned "E-commerce in Greece and Europe and how to resolve emerging disputes". In this well-organized conference, apart from Greece, Presidents and Judges of the Supreme Courts of Qatar, Thailand, Honduras, Indonesia, Kyrgyzstan, Papua New Guinea, Samoa, Ethiopia and Venezuela participated as speakers.

**II. The Constitutions of the People's Republic of China from 1949 onwards and the review of the constitutionality of laws**.

It is disputed whether the term "constitution" in China has the binding content of the corresponding term in the countries of Europe. It is characteristic that the provisions on individual rights of the Constitution of the People's Republic of China are not directly applicable unless there is corresponding legislation. According to Article 62 of the '82 Constitution, Parliament has the power to amend the Constitution and supervise its implementation by article. 67 par. 1 and 4 the standing committee of the National People's Assembly has the power (exclusive competence) to interpret the Constitution and laws and to supervise compliance with the Constitution, yet no procedure appears to have been established by which that committee makes that interpretation. The Supreme People's Court does not in principle have the power to interpret and apply directly without relevant legislation the provisions of the Constitution, constitutional review exists only for acts issued by other state bodies and for administrative regulations. However, in some isolated cases the Supreme People's Court in the year 1986 ruled that local economic laws of autonomous regions of China were subject to the '82 Constitution. Furthermore, only the Supreme People's Court in court cases before it, either following inquiries from the lower courts, as well as the Supreme People's Procuratura (Public Prosecutor's Office) can interpret laws and decrees, and in case of disagreement between them, the final word rests with the National People's Assembly (Parliament) or its Permanent Standing Committee.

After Mao's victory in 1949, the "Joint Programme" was drawn up throughout China, except Hong Kong and Macao, which ran until 1954 as a constitution. Under art. 17 of which, all laws and courts were abolished in their entirety, new laws were promulgated, and the Supreme People's Court, the People's Procuratura (Public Prosecutor's Office) and the people's courts were established, in the absence of lawyers, initially staffed with officers of the police or public security. Subsequently, at the end of 1954, the first Constitution passed by Parliament and characterized as socialist came into force. The fundamental rights of citizens were again recognised in theory, but without the declarations being implemented in practice, and guarantees were put in place regarding the arrest and detention of citizens. It is worth mentioning the art. 78 which stipulated that courts are to judge independently and are subject only to the law. Subsequently, the Constitution of 1975 was drafted, which mainly formulated Mao's political slogans, which did not repeat the above provision on the independence of the judiciary and prosecutors, and further repealed the provisions on equality of citizens. Then, in 1976, after the end of the cultural revolution, the 1978 Constitution was passed, which did not repeat the declaration of fundamental individual rights of the '54 Constitution, nor did it repeat the declaration on the judicial independence of the people's courts. Finally, after Xiaoping came to power, a shift towards attracting foreign investment in China began to emerge, and in order to facilitate and strengthen these new political and economic directions, the Constitution of 1982 was drafted.

It is worth mentioning the art.126 which restored the principle of judicial independence of people's courts proclaimed by the '54 Constitution and stipulated that people's courts are governed by law and cannot be interfered with by administrative bodies, public bodies and individuals. The Constitution of 1982 rejects the explicit declarations of previous constitutions about control of the state by the Communist Party, its preamble stipulates that it is the fundamental law of the state and that all organs and authorities of China must abide by it. Furthermore, with the amendment made in 2004, stipulated that the state respects and guarantees human rights, in fact this amendment concerned in particular the rights of private property, inheritance and the expropriation or requisition of private property for reasons of public interest against compensation, while with regard to the individual rights of freedom of speech, assembly-association, etc. it was defined in art. 51 that these will give way to the concept of the general collective interest. Ιn reality, individual rights still do not exist without a relevant law, while real progress is the establishment of the principle of equality of citizens before the law in the Constitution of 82 (Article 33).

**III. Written Law in China**

In China during the imperial period there was a strong hesitation regarding the idea of written law and the judicial assertion of their rights by citizens, since according to the conceptions of Confucianism, the duty of every citizen is to consent to the compromise settlement of disputes and to set aside his own interest in the common interest. These different conceptions of the judicial exercise or non-exercise of rights distinguished the laws of the Far East from European laws, where the holder of a right is not only entitled but also morally obliged to assert his right in court. On the contrary, in traditional Chinese conceptions, laws and courts are not the smooth means of resolving disputes, and according to a well-known Chinese saying: "trial won, money lost". In China, traditions and customs substituted laws and established subordination to hierarchical superiors, the avoidance of all excess, and the avoidance of any rebellion or revolution. For centuries there was no organized legal profession, since justice was administered by organs of the administration, and even when during the Xia dynasty, before Christ, China organized some central judicial bodies, these simply had the role of advisers, which is why in China there was never really an independent judiciary.

The above ideal of a society without written law began to be called into question before the revolution of October 1911 for the liberation of China from the West and the restoration of democracy, so the new Government adopted the Constitution of 1912 and five codes (civil, criminal, commercial, civil and criminal procedure), modeled on Franco-German law, which were in force until 1949, when they were abolished – except in the Taiwan region – with the victory of Mao Tse-tung's communists and the establishment of the People's Republic of China, when the country began to prepare for the education of citizens in coercion. The above codes and laws were essentially not applied in China, especially when they conflicted with Chinese tradition. Chinese citizens did not go to court, either because they did not know their rights or because they did not want to be censured by Chinese society, and even when they did, Chinese judges tried to adapt the administration of justice to the teachings of Confucianism, instead of applying written law. However, the publication of these codes resulted in a proliferation of trials in China, which to the Chinese seemed to be a decline. Furthermore, the law already in force was formulated in the years 1978-79 by Xiaoping's group who took power and gradually began to implement the so-called socialist market economy to attract foreign investment. China had to take the leap forward, so in this context there was also a rich legislative output in order to adapt the country's legal system to the new conditions. Thus, in the years 1979-2003, 1,970 laws and legislative decrees were passed and put in force in China, while it should be noted that from 1978 onwards the role of the Communist Party as the sole factor in the ongoing legislative work began to decline, and this led to the relaxation of the tactic followed until then of providing instructions to the judges of the People's Courts and its interventions in the judicial function by replacing them with other institutions supervising the judges from extrajudicial bodies.

Indicatively, since 1979 the Law on People's Courts has been in force, in art. 4 of which stipulated that they shall exercise their judicial function independently and in accordance with the law and that no interference may be made by any administrative body, public body or individual. Since 1.1.1995, the Judges Act, amended in 2001, has regulated for the first time the institutional position of judges, their rights and obligations, their method of selection-appointment, evaluation, training and disciplinary responsibility. It should be said that in China the word "judge" had a broader meaning and content than in the countries of Europe and the USA. In China, until a very recent reform, a "judge" was considered not only one who tried cases, decided and had judicial power, but also one who dealt with the enforcement of judgments and who handled internal affairs of the court, as well as the Chief Judge or the President of the court, who may not hear cases in court, but sat on committees to review the "final" decision (adjudication supervision) and control it whether the court decision is "politically correct and socially acceptable". This explains the phenomenon that in China the number of judges is much higher than that of lawyers, which was changed in principle by the 1995 law. The trial judges were not the decision-makers and the decision-makers did not always try the case, especially in criminal cases, so it is often not known and clear who is the judge who decided and issued the decision. Perhaps, after all, this secrecy protects judges from judicial corruption, which is one of the major issues in China.

The Criminal Code and the Code of Criminal Procedure were adopted in 1979 and the Code of Civil Procedure in 1982. Finally, it should be noted that substantive administrative law, unlike procedural administrative law, had not developed in China and this was mainly due to the Chinese Communist Party's strict control over its various agencies. In particular, Article 3.2 of the Code of Civil Procedure (judicial procedure) provided that: *"The provisions of this Act shall apply to administrative cases heard by the people's courts as defined by law".* The competent bodies have been exercising administrative justice since the entry into force of the Act on 1 October 1982. Subsequently, in 1995, the law on the liability of the State for unlawful acts of its organs came into force in China, consisting of 35 articles. In the people's courts there is a special judicial compensation commission, consisting of 3 to 7 judges, which by qualified majority decides on the compensation due by the state to citizens who have suffered damage as a result of illegal acts of its organs (e.g. illegal detention or violation of property rights), with which the administration must comply. This law is also based on a constitutional provision (art. 41 par. 3 of the Constitution of 82) and was one of the most controversial laws in the post-Mao era. In 1989, the Act on Administrative Procedure before People's Courts, in which there is a separate division of administrative disputes, was adopted and entered into force.

This law includes 75 articles on which administrative acts can and cannot be challenged, the instances of jurisdiction of the people's courts in relation to administrative disputes, for the parties, procedure, enforcement of court decisions resolving administrative disputes, compensation. At this point, it should be noted that a Chinese researcher reports that until 2002 administrative litigation was incomparably fewer than civil-commercial litigation, because the parties either did not dare to confront the administration, withdrew their appeals or waived them. This situation seems to have improved considerably, especially since 2015, both in terms of the increase in administrative litigation and in terms of the increase in admissible appeals, and this is due to a reform that took place at that time, but resulted in a heavy workload for administrative judges. Furthermore, and in the year 2017, the legislator revised for the second time the Law on Administrative Court Procedure by establishing a system for resolving administrative disputes in the public interest.

 **IV. Court structure and authority of administrative judges**

In China there are people's courts of four instances of jurisdiction which, according to their constitution, are judicial organs of the State. The first instance people's courts, the intermediate people's courts, the higher people's courts (provincial, autonomous regions, municipal, etc.) and the Supreme People's Court. These Courts have general jurisdiction, while there are no Administrative Courts, but there is a special department in the above courts for adjudicating administrative disputes. Finally, there are courts of special jurisdiction, such as military, intellectual property, railway courts, maritime courts, fiscal courts, etc. Administrative proceedings include two instances of jurisdiction with the possibility of further review before the Supreme People's Court, while in very serious and complex administrative cases direct jurisdiction is provided at first instance for the higher people's courts and the Supreme Court of China. According to Art. 81 and 88 of the Code of Administrative Court Procedure, the period for hearing incoming cases for courts of first instance is six months, while for courts of second instance the corresponding time is three, with the possibility of extension after approval by the higher people's court. The people's courts consist of a large number (3 members) and a single judge for minor criminal or civil cases. Private citizens also participate as judges in large people's courts. A consequence of the concept of judicial independence is, on the one hand, the procedural tactic for difficult, and complex cases to have to be approved and signed by the President of the People's Court, whether or not he was a member of the trial court, and, on the other hand, the possibility of reviewing the final decision of the people's court by the existing and composed judicial commission of each court. According to Article 127 of the '82 Constitution, the Supreme People's Court supervises the other lower people's courts and is responsible for accountability by means of a report on its activities vis-à-vis the Parliament and its standing committee. According to Article 123 of the '82 Constitution, the people's courts are the judicial organs of the state, under art. 125 of which all cases are tried in public, except for special cases specified by law.

The Supreme People's Court has various administrative services and judicial chambers for hearing cases such as: Criminal Division, Political, Economic, Department for Cases relating to Transport and Transport, Administrative Division, Appeals Division, Department for the Enforcement of Judgments and Review of Final Decisions. The Supreme People's Court has the following jurisdictional powers: (a) supervises the lower courts and within this scope the formal or advisory answers-instructions to the lower courts on their questions on legal or procedural issues that are usually binding. The Supreme Court regularly publishes in issues judgments of lower people's courts, the content of which it endorses by attaching great value and urging other courts to follow them, (b) adjudicates at first instance criminal cases of great importance for the country, political as well as administrative cases of importance for the whole country, (c) hears appeals of parties or protests of the People's Procuratura (Public Prosecutor's Office) against decisions of the higher people's courts, (d) uphold or annul death sentences imposed by the higher courts in criminal cases, (e) interpret laws on issues raised in court proceedings, (f) participates in the drafting of judicial and other draft legislation, (g) organises national judicial examinations of candidates for judges and prosecutors, (h) determines the necessary number of judges for people's courts and their allocation to them. The Supreme Court is overseen by the Standing Committee of the Parliament and this is because in China there is no separation of powers, contrary to art. 3 of the '82 Constitution applies democratic centralism. According to Article 62 of the '82 Constitution, the Parliament and the Standing Committee appoint and recall the President, Vice-Presidents and judges of the Supreme People's Court, the latter on the proposal of the President of the Supreme Court, as well as the members of the Supreme People's Procuratura.

In general, the people's court does not directly change the administrative act in its decision on an administrative case, provided that the administrative organ fully respects the decision of the people's court and issues a further new administrative act in accordance with the opinion of the people's court. Meanwhile, article 77.1 of the Law on Administrative Court Procedure provides that: "If the administrative sanction is manifestly inappropriate or if other administrative acts involve the determination of the amount of money, the people's court may decide to change it." At the same time, Article 96 of the same law provides: *"If an administrative organ refuses to execute a court decision, decision or statement of compromise, the people's court of first instance may take the following measures: (1) require the bank to transfer the fine or payment to be paid by the administrative organ from its account; 2) impose a fine of between RMB 50 and RMB 100 per day against the person in charge of the administrative organ who fails to implement it within the prescribed period. (3) announce the management body's refusal to execute; 4) submit judicial proposals to the supervisory or administrative organ of the next higher level of the administrative organ; or (5) detain the person responsible or other responsible person of the administrative organ who refuses to execute the decision or mediation causing adverse social consequences, or declare him criminally liable if the circumstance is sufficiently serious to constitute a crime.”*

**V. Selection, appointment, promotion and removal of judges.**

In China, there are a total of more than 210,000 judges, of whom more than 65,000 are women, and administrative judges in people's courts of all levels were around 8,332 in 2023. The issues of selection-appointment, promotion, dismissal are regulated in the Constitution of '82 and the Law on Judges of '95. The judges to be appointed, in particular the senior, supreme and heads of the people's courts and public prosecutor's offices, are chosen by the central or local legislature (national and local people's assemblies) and since 2001 the annual uniform national judicial examinations for candidates for judges, prosecutors and lawyers, organised by the Ministry of Justice together with the Supreme People's Court, have been established and are quite strict and difficult. From among the successful candidates in the competition, the competent bodies shall select for appointment those who have distinguished themselves and those who possess competence and moral integrity. It was previously not mandatory for Chinese judges to have university legal studies, but the Judges Act of 1995, as amended in 2001, stipulated that judges, prosecutors and lawyers should have four years of university law studies or have attended other university programs and then acquire knowledge of the legal profession. Graduates who wished to obtain a Master of Law or PhD degree were required to take another three years of study and had to pass very rigorous examinations to be admitted. It is reported that in the first uniform national examinations held in 2002, their performance in Marxist-Leninist ideology played an important role in the candidates' success, now the importance of this ideology is decreasing, which demonstrates the trend that the legal profession has become more autonomous and independent of political ideology.

According to Art. 9 of the Judges Law in order to be appointed as a judge in China requires: a) to have Chinese citizenship, b) to be at least 23 years old, c) to accept the constitution of China, d) to have good political and professional quality and good behavior, e) to have a university or college law degree or to have another degree while possessing legal knowledge and in addition to have been in the legal profession for at least two years and if he is to be appointed to a higher or higher level for at least three years. Judges appointed before the entry into force of the above provisions, without the above legal knowledge, should attend legal training programs drawn up by the Supreme People's Court. Judges – with the exception of the President of the Supreme Court and the Presidents of the People's Courts who are appointed for a renewable five-year term – are not appointed for a fixed term, but have the service position of civil servants. They also have no life tenure and can be dismissed by the bodies that chose them (national or local parliaments), just like other administrative employees of the State. Article 40 of the Law on Judges provides, inter alia, that a judge may be dismissed if he has been assessed for two consecutive years as 'incompetent-inadequate'. As regards the rights enjoyed by judges, Article 8 of that law provides that: 'Judges shall have the following rights: (1) the provision of mandates and working conditions necessary for the exercise of their duties as judges; (2) the right to hear cases under the law without interference from administrative bodies, social organisations and individuals; (3) not to be removed, demoted, dismissed or punished without legal grounds or procedures; (4) remuneration for work and insurance and social benefits; (5) personal, property and residential security protected by law. (6) providing training; (7) right to lodge complaints or accusations; and (8) right of waiver."

Finally, articles 21-25 of the Law on Judges regulate the issues of the official evaluation of judges that takes place annually and are graded with one of the three service indications: "excellent", "competent – adequate", "inadequate". Until the end of the 20th century, judges in China wore military-style uniforms, something that changed in 2001-2003 when a kind of Western European-style judicial robe and a special symbol to distinguish them were introduced as dress for China's judges and lawyers. Also, the hammer began to be used in the courtrooms by the Presidents of the People's Courts.

**VI. Epilogue**.

The experience I gained from my visit to China was overwhelming in every way and the hospitality of my Chinese colleagues exceeded my expectations. They treated me as something exotic, perhaps looking for a way out to the West, without realizing their own uniqueness. The advantages of the exchange program are many both on a personal level and for the court in which the participating judge serves. May further cooperation and the creation of a strong link between the Courts included in the program be promoted and that as many judges as possible may participate in it. I will close my narrative on China with Nazim Hikmet's couplet as interpreted by Yiannis Ritsos: *"If half my heart is here, doctor, the other half is in China."*

***Athens, 2024***

***Theodora Markopoulou***

***Rapporteur Judge at the Hellenic Council of State***

***Email: tmarkopoulou@adjustice.gr***