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Report on my internship at the Supreme People's Court of the People's
Republic of China

I – The Exchange Program

I was selected by AIHJA to participate in an exchange program in China, at the Supreme People's Court of the Republic of China (here in after: SPC); the program took place for 13 days, November 14 to 26, 2024.

The entire program took place in Beijing, where I visited the following institutions:

- Administrative Division of the Supreme People's Court of China (SPC), including the visit to Courtroom of SPC and the China Court Museum
- Digital Court Lab of SPC
- Environment and Resources Division of SPC
- The National Judges College
- The Beijing Internet Court
- Ministry of Justice
- Ministry of Ecology and Environment
- Beijing Financial Court
- The Beijing Xicheng District People's Court
- Ministry of Housing and Urban-Rural Development
- The Faculty of Political Science and Law of China University

Planning a trip and accommodations in China can be quite challenging due:

- to the vast size of Beijing, starting from the city's enormous airport;
- English is rarely spoken even in tourist areas and hotels (simultaneous translation apps are widely used by the Chinese; I downloaded an app before leaving, "dialogicom.com", which also translates texts taken from photos of signs, public notices, labels, and provides description of monuments or places with image recognition translation; it successfully replaces other platforms and services such as Google translator, which are not accessible in China);
- it is often necessary to pass through police checkpoints to access sensitive locations and judicial offices, so foreigners must not forget to carry their passport with them at all times;
- furthermore, it is necessary to have the doctor's certificates on transported medicine to show if requested during airport checks, with English and/or Chinese translation.

Having said that, the assistance I received from the Supreme Court, particularly its Administrative Division, was crucial in organizing my visit. They supported me from the beginning, from our initial correspondence, by arranging accommodation in a convenient location (a hotel located just a few steps away from the SPC building), and helping me greatly with travel paperwork (despite China's visa agreements with many countries, including Italy, my specific purpose of travel still required a visa).

Throughout my stay, dedicated staff accompanied me daily, providing interpretation and support in various activities. They were incredibly supportive in helping me understand and navigate my daily agenda.

During the exchange, I actively participated in knowledge sharing and discussions with administrative judges, university professors and public officials.

At the University (Faculty of Political Science and Law), I was invited to deliver a lecture on Italian administrative law to an audience of university students, master's degree graduates and professors.

The judges and assistants warmly greeted me, often in large groups, and had regularly prepared various materials in advance to make my visit more convenient. They were eager to answer my questions and showed interest in Italian administrative law and our work as judges. Additionally, they regularly invited me to join them for lunch between our morning and afternoon activities. Their hospitality was exceptional, as they checked in with me every day, often at the end of the day, to see if I needed anything, and worked diligently to resolve any issues that arose during my visit.

Here are some of the institutions I visited, in addition to the SPC, that I found most interesting:

- The Beijing Internet Court, founded on September 2018, that centrally governs the first-instance specific types of Internet cases within the jurisdiction of Beijing (such as disputes arising from the conclusion or performance of online shopping contracts through e-commerce platforms, online service contract disputes, infringement of copyright disputes, Internet civil and administrative cases). The Court has built an online e-litigation platform, where it is possible to get access to via mobile devices. The parties may conduct online litigation (mediation, case filing, delivery, trial, judgment, enforcement, appeal, etc.); and the public may attend public trials, consult adjudication documents and retrieve cases, laws and regulations. The parties use a built-in camera of a mobile terminal such as a mobile phone or a computer for facial recognition for identity authentication. The AI is used to help parties writing the pleadings and to be informed about the probability of winning a lawsuit. The litigation documents such as judgments can be sent to the parties at the same time via e-mail, SMS and WeChat, etc. The Court has set up an online litigation experience area, which is open to the public.

- The visit at the Ministry of ecology and environment, that has the leading role in ecological and environmental issues (to implement national ecological and environmental policies, to coordinate ecological and environmental protection efforts in key regions, river basins and sea areas, to supervise efforts to prevent pollution and national emission reduction targets, to promote the development of a circular economy and environmental protection industries, put together key strategies, plans and policies tackling climate change and greenhouse gas emissions etc.).
- The visit at the Beijing Financial Court (established in March 2021), that deals with civil cases within the financial sector, in areas like banking, insurance and securities, often involving overseas litigants from many different countries. This specialized Court is the second of its kind in China (the first was established in Shanghai in 2018).

Considerable resources have been employed to ensure public access to justice; the Court offers multiple online litigation services that interested parties can access without the need for legal representation. There is an online platform from which detailed instructions can be downloaded. Users can consult the statistical area of the platform and look up the success rate for a hypothetical case, examine different precedents, etc. There are also information desks available to the public. There are rooms dedicated to the court's mediation services in order to accelerate the resolution process, as well as hearing rooms (the parties can be connected from remote).

-The visit at the Ministry of Justice, that, inter alia, drafts or helps drafting laws and administrative regulations; interprets administrative regulations; deals with administrative reconsideration applications for the State Council's adjudication; conducts, guides and supervises the administrative reconsideration and administrative response across the country; conducts the selection, appointment, and management of people's jurors and supervisors; conducts the prison administration, supervises enforcement of penalties; supervises lawyers, legal aids, judicial appraisals, notarization and arbitration services, and grassroots legal services; organizes the national unified legal professional qualification exam; handles international judicial cooperation, etc.

- The Beijing Digital Court, that offers a free, fully computerized mediation system with a proven track record of successfully resolving disputes for citizens.

- The visit at the Ministry of housing and urban and rural development, where I had the opportunity to meet the head of the reconsideration office.

II - The Chinese administrative justice system and the comparative law aspects in my exchange

The Chinese Courts are organised within five main areas (article 12 of the Organic Law of the People's Court of People's Republic of China):

1. Supreme People's Court (SPC)
2. Local People's Courts at various levels, including High People's Court, Intermediate People's Court and Primary People Court (Article 13)
3. Specialised People's Courts, including Military Courts, Maritime Courts, Intellectual Property Courts, Financial Courts, and others.

According to article 19, the SPC can set up Circuit Courts to decide on cases which are determined by the SPC itself and for which the SPC will fix any boundary. Any ruling and decision coming from a Circuit Court has to be considered as originating from the SPC.

Six Circuit Courts have currently been established.

The People's Court has to set up the relevant administrative division to handle administrative cases: such task can be performed exclusively by the Supreme People's Court, by the High People's Court, by the intermediate People's Court and by the Primary People's Courts (Article 4.2).

In addition, article 18.2 of the Administrative Procedure Law of the PRC provides that, further to the approval of the SPC and in view of the actual situation of the adjudication, High People's Courts specify a number of People's Courts to hear administrative cases within administrative regions. Based on this provision, some specialised courts, for example the Railway Transport Court, can handle administrative cases.

In the PRC, the administrative litigation has its roots in the civil litigation.

On the 1st of October 1990, the administrative Procedure Law of the PRC came into force and it highlighted the independent development of the administrative litigation. Article 1 provides: *"This Law is enacted in accordance with the Constitution with a view to ensuring the correct and prompt hearing of administrative cases by the people's courts, protecting the legitimate rights and interests of citizens, juridical persons and other organisations and maintaining and supervising the exercise of administrative functions and powers by administrative organs under the law"*.

In addition, article 2 provides: *"Citizens, juridical persons or other organisation who believe that the specific administrative acts of administrative organs and personnel of administrative organs infringe upon their legitimate rights and interests shall have the right to file a lawsuit to the people's court in accordance with this Law"*. Meanwhile, article 5 provides: *"The people's court shall have administrative cases and review the legality of specific administrative acts"*. Furthermore, article 6 provides: *"The people's court hearing administrative cases shall, in accordance with the law, implement a*

system of collegiality, disqualification, public trial and two trials with final adjudications.”

The above provisions are fundamental as, within the administrative litigation, they establish the principle of legality review and the basic system of two trials with final adjudication. As a consequence, within the administrative litigation, the plaintiff is always the citizen, the legal person or the organisation, whereas the defendant is always the administrative organ.

A further important step for the administrative litigation system was made in 2015, when the Standing Committee of the 12th National People’s Congress adopted the Decision on Amending the Administrative Litigation Procedure Law of the PRC.

Later, on the 27th of June 2017, the Standing Committee of the National People’s Congress amended for the second time the administrative litigation law and established the administrative public interest litigation system.

Selection and security of administrative judges

The selection and guarantee of administrative judges involves the same selection process used for all other judges.

Judges are selected from individuals who have obtained all necessary professional legal qualifications and meet other conditions prescribed by law. Newly appointed judges shall be examined by the judge selection committee for professional competence.

The judges members of higher level courts are selected within the judges of the people’s courts at lower level.

Currently, there are more than 8,000 judges at all levels of people’s courts.

Judges have the following rights:

1. provision and terms of reference and working conditions necessary to perform their duties as judges;
2. right to hear cases under the law without interference from administrative organs, social organisations and individuals;
3. being free from being removed, demoted, dismissed, or punished without legal reasons or procedures;
4. labour remuneration and insurance and welfare benefits;
5. personal, property and residential safety protected by law;
6. provision of trainings;
7. right to lodge complaints or accusations;
8. right to tender resignation.

Scope of administrative litigation

Article 12.1 of the Administrative Procedure Law of the PRC provides for the criteria upon which lawsuit can be accepted. In particular:

1. dissatisfaction over administrative punishment;

2. refusal to accept mandatory administrative measures;
3. in applying for an administrative licence, the administrative organ refuses or fails to reply within the statutory time limit;
4. refusal to accept the administrative organ's decision confirming the ownership or the right to the natural resources use;
5. refusal to accept the decision on expropriation and requisition and its compensation decision;
6. the administrative organ refuses to reply when it is approached to perform its legal duties;
7. the administrative organ violates its autonomy or the right to contracted management of rural land and the right to rural land management;
8. the administrative organ abuses its administrative power to exclude or restrict competition;
9. the administrative organ illegally raises funds, apportion expenses, or illegally require other obligations;
10. the administrative organ fails to pay pensions, minimum living allowance or social insurance benefits according to law;
11. the administrative organ fails to perform according to law/ agreement;
12. the administrative organs infringe upon other legal rights.

However, in accordance with Article 13 of the Administrative Procedure Law of the PRC, some situations do not fall within the scope of administrative litigation:

1. national defence, foreign affairs, and other state acts;
2. administrative regulations, rules or binding decision issued by administrative organs;
3. decisions of the administrative organs on the rewards, punishments, appointment and removal of the staff of the administrative organs;
4. the administrative act prescribed by law to be finally decided by the administrative organ.

For specific types of administrative cases, the People's Court may conduct mediation (Article 60.1)

Administrative cases are adjudicated in accordance to article 63.1 of the Administrative Procedure Law of the PRC and people's court will handle cases based on laws, administrative regulations, and local regulations. In addition, "*people's courts shall hear administrative cases in ethnic autonomous areas on the basis of autonomous regulations and separate regulations of the ethnic autonomous areas*" (article 63.2).

For first instance cases, after assessing the legality of the administrative act under appeal, the people's court may make a judgement which includes:

- a. a judgement dismissing the claim
- b. a judgement of revocation
- c. a judgment of fulfilment of legal duties
- d. a judgement of confirmation of violation of the law.

Article 74.1 underlines a series of circumstances under which a people's court shall enter a judgement to confirm the illegality of the alleged administrative action, but not revoke it:

1. an administrative action shall be revoked according to the law but the revocation will cause and significant damage to the national interest or public interest.
2. a violation of the statutory procedures in taking an administrative action will not have any actual impact on the plaintiff's rights.

Duties of the Administrative Trial Division of the Supreme People's Court:

1. responsible for administrative cases of first and second instance;
2. adjudication administrative trial supervision cases against the effective decisions of the lower people's courts;
3. reviewing applications for compulsory execution by administrative organs;
4. handling administrative compensation cases;
5. directing the relevant administrative trial work.

More in detail, *“The Supreme People's Court shall have jurisdiction as a court of first instance over major and complicated administrative cases nationwide (article 17 of the Administrative Procedure Law of the PRC)”*. In addition, article 85 provides: *“Against a judgement of a people's court of first instance, a party shall have the right to file an appeal with the people's court at the next higher level within 15 days of the service of the written judgement. For a ruling from the people's court of first instance, the appeal may take place after 10 days. In case the party fails to appeal within the set time, the judgement or ruling of the people's court of first instance shall take effect”*. Finally, article 90 provides: *“A party to a case may petition the people's court at the next higher level for retrial if the party deems that the effective judgement or ruling for the case is erroneous, but the execution of the judgement or ruling shall not be suspended”*.

My thoughts on the Chinese system.

I believe it is important to highlight certain aspects of the Chinese judicial and administrative system. One key aspect is the emphasis placed on ensuring efficiency in Chinese administrative justice. This is achieved through the implementation of a modern, accessible system that not only serves the local population but also contributes to making China an appealing destination for foreign investors.

One of the most intriguing aspects is the use of the fully computerized system of mediation, as a form of alternative dispute resolution, that can be accessed directly by the parties involved without the need for intermediaries or lawyers. This system has a high success rate. At the Digital Court, I witnessed the cutting-edge, technologically advanced management that provides free and easily accessible support services to users. The virtual assistant aids in drafting and submitting appeals, assessing the

likelihood of success in a legal action, and determining the probability of the appeal being accepted, which typically aligns with the grounds for the appeal.

Therefore, the first major strength comes from the significant investment in creating an appealing and easily accessible justice system for all.

The second major strength they prioritize is the implementation of reconsideration acts, similar to our hierarchical appeals, to prevent litigation. This internal appeal process is presented to the same public administration that made the initial contested decision, but is decided upon, with full autonomy, by a separate department within that administration. Various public administrations have expedited deadlines for these procedures. Interested parties can appeal to these offices, claiming that the administrative act is detrimental to their legal situation. If the office accepts the appeal, they will investigate and decide whether to cancel or modify the act. This is a key focus in preventing disputes from reaching the courts. Additionally, as I said before, they prioritize alternative dispute resolution through mediation, which is conducted by divisions with technical expertise and oversight from judges.

I found the exploration of the reconsideration office appeal to be particularly intriguing because it seems to diverge from the path of Italian administrative law.

In Italy, appeals in opposition and hierarchical ones have not been very successful in deterring litigation, leading to the abolishment of their compulsory condition for proposing a judicial appeal. In contrast, in China, the reconsideration office appeal is relied upon to prevent litigation.

Another interesting aspect I found was the use of alternative dispute resolution tools for mediation. The mediation in Italy has played a significant role in the civil process, not in the administrative one.

In China mediation is widely used and it seems to meet the expectations and needs of the public.

III - Ideas and Benefits of the Exchange

My exchange experience in China, that gave me the opportunity to closely observe the development of the Chinese administrative system, was extremely interesting and positive.

The opportunity to closely observe the development of the Chinese administrative system and engage in discussions with Chinese colleagues about their significant legislative reforms in the field of administrative law was invaluable.

Comparing the administrative law jurisdiction in our respective countries, such as the differences in the organization of administrative courts, was another highlight of the experience.

We also delved into various topics including the management of proceedings, decision filing deadlines, workload, judicial appointment system, and the legal and economic treatment of judges. It was a truly enriching experience.

I was impressed by the Chinese government's attention to the needs of users and by their significant efforts, including financial ones, to make the justice system accessible at a much lower cost compared to Italy. Users can access the system without the need for intermediaries, lawyers or other experts, although in practice lawyers are often involved in complex disputes. However, for internal appeals and mediation, the system is designed to allow users to acquire all the necessary information to make informed decisions and independently propose appeals or mediation requests.

I also found it fascinating how much funding and energy has been invested in making the justice system modern and cutting-edge.

The buildings I visited are all newly built and all kept in perfect condition, thanks to the excellent organization, order and cleanliness. The staff's working conditions were also carefully considered.

Their technological system is top-of-the-line and highly computerized. In particular, the Beijing Financial Court, which I visited on November 20th, has an advanced telematics system where all files are digitized, allowing judges to download them directly from the system. There are user-friendly totems available to the public, where interested parties can independently access all necessary information and submit their appeals with the help of a virtual assistant.

I am extremely thankful for the chance to witness first-hand how this country effectively handles issues that also affect our justice system at home, such as an overwhelming number of disputes and the need for quick resolutions to keep foreign investors interested.

In summary, I found the exchange to be very engaging. The environment was greatly inviting and amicable, with a focus on helping me with any logistical issues I might face. During the visits, I observed a sincere willingness from my colleagues to explain any confusing aspects, considering how different our legal systems are. Overall, despite the challenges, this visit has been a beneficial experience that has enriched me both culturally and professionally. It has also given me a lot to think about in terms of how our judicial system is organized.

Rome, December 9, 2024