

JUDICIAL REVIEW IN THE PEOPLE'S REPUBLIC OF CHINA: SELECTED LEGAL SOURCE MATERIALS FROM 1982 TO 1989 (in two parts: Part 2)

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2(b). General Features of the Laws and Regulations

The legal source materials from 1982 to 1989 whose elements we have expounded are linked together, in relation to the concerns of this paper, in the respect that there is provision made for the parties affected by the acts of administrative authorities to have recourse to the people's courts for the purposes of initiating legal challenges to the particular administrative acts at issue. In this respect, there is explicit recognition in the positive law sources of judicial review as a procedure available under administrative law. The materials as examined have been selected as representative materials, and it is to be emphasized that the recognition of the availability of the judicial review of administrative action is to be found present in many other of the laws and regulations from the period under discussion. Thus there may be cited the following: the Interim Provisions for the Administration of the Environment in the Economic Zones Open to the Outside World, as approved by the State Council on 4 March 1986 and promulgated by the State Administration for

Environmental Protection on 15 March 1986;¹⁴⁴¹ the Regulations of the People's Republic of China on the Administration of Traffic Safety on Inland Waters, as promulgated by the State Council on 16 December 1986;¹⁴⁵¹ the Measures for the Control of Narcotic Drugs, as promulgated by the State Council on 28 November 1987;¹⁴⁶¹ the Regulations of the People's Republic of China on the Administration of the Registration of Enterprise Legal Person Entities, as adopted by the State Council on 13 May 1988 and promulgated by the State Council on 3 June 1988;¹⁴⁷¹ the Measures for the Control of Psychotropic Drugs, as adopted by the State Council on 15 November 1988 and promulgated by the State Council on 27 December 1988;¹⁴⁸¹ the Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases, as adopted at the 6th Meeting of the Standing Committee of the 7th National People's Congress on 21 February 1989;¹⁴⁹¹ the Provisions of the People's Republic of China on the Administration of the Fruits of Cartography, as promulgated by the State Council on 21 March 1989.¹⁵⁰¹

The recognition that is given to the judicial review procedure in the terms and provisions of the laws and regulations that we have examined underlines the rapid development of the administrative law system in the PRC during the 1980s. In this, there is underlined also the no less rapid development of the rule of law itself, as forming the framework for government and public administration, and as in accordance with the general principles of socialist legal order that the Party-State leadership had in 1978 projected as one of the main essential conditions for political and economic reform. Here, it is to be noted that the laws and regulations, as selected, involve the extension of legal forms and legal categories to a broad range of the different sectors of political, social and economic organization in the PRC that, as it is intended, are to fall under the jurisdiction of the administrative authorities. Salient among the sectors at issue are the sectors of trade and commerce, communications, weights and measures, immigration, public health and safety,

and environmental protection. In all these contexts, the laws and regulations that we have considered serve to bring definition and specificity, as in strict legal terms, to the functions and powers of the administrative authorities which are designated as bearing the due responsibilities. In turn, there is through this provided proper determination, as a matter of strict positive law, as to the basis and justification for the powers that are to be exercised by the administrative authorities in the discharging of their respective tasks and functions. At the same time, the liability of the administrative authorities to legal challenges brought through the people's courts as to their actions is affirmed. Thus it is and as we have pointed to in detail, there is affirmed in the various positive law source materials the availability for the parties concerned of the procedure for the judicial review of administrative action, and hence the presence of judicial control of the government and administration, as in line with what are the essential principles of administrative law.

It is plain that in the terms that the judicial review procedure is given recognition to in the legal source materials from 1982 to 1989, as picked out for study, then a significant advance is to be acknowledged to have taken place, as in respect to the 1982 State Constitution, in the promoting of the cause of administrative law and the judicial review of administrative action in the PRC. In particular, the laws and regulations examined are such that there is brought out with them, as there is not with the State Constitution, the distinctness of judicial review in its character as a procedure involving the subjection of the administrative authorities to the jurisdiction of the people's courts and as relative to the procedures specific to the civil law and the criminal law.

Despite the explicit warrant that is present in the legal source materials examined for the judicial review procedure, it is nevertheless the case that the materials are limited in their reference to judicial review and that they leave unstated much that is quite essential to the complete rendering of the judicial review procedure. To

begin with, the laws and regulations that we have attended to are such that they restrict the occasions for judicial review to the challenges made by affected parties to the application of administrative sanctions and penalties. As against this, there is the consideration that not all acts of the administrative authorities involve the application of sanctions and penalties, and that, as is in fact so, the forms of administrative action other than the bare applying of sanctions and penalties are accepted to be subject to judicial review from the standpoint of administrative law. Going beyond this, it is to be observed that there is nothing in the laws and regulations discussed that indicates the precise grounds on which challenges are to be made by parties as to administrative action, or that indicates the precise grounds on which the people's courts are to intervene in administrative cases and to find against the administrative authorities. In addition to the absence of any formal specification of the grounds for the application for judicial review, there is the absence also of any formal specification of the actual details of the principles of procedure, such as those to do with submissions, hearings and rules of evidence, that the people's courts are to be follow for the purposes of the adjudication of administrative cases. Yet further, there is an absence from the selected laws and regulations of any reference to the matter of the remedies that are available to the people's courts in order to set right failures and improprieties in administrative action, and this as to the advantage of the affected parties. The principles relating to the grounds for judicial review, the procedures for judicial review and the remedies in judicial review: these constitute the core principles essential to the judicial review of administrative action as such. As we shall now see, it is these principles that are central to the authoritative elaboration of judicial review that comes in the Administrative Procedure Law of 1989.¹⁶¹¹

3. The Administrative Procedure Law

As we have explained, the Administrative Procedure Law of the PRC, or as here abbreviated the AP Law, was formally adopted by the National People's Congress as of 4 April 1989, and, as such, it stands as the foundational statute in the administrative law system of the PRC. For the AP Law describes the form of the adjudicative procedure through which the people's courts exercise control over the administrative authorities, and with this serving as a procedure that provides for the judicial review of the acts of the administrative authorities. The law comprises 75 articles, and with these being organized in the form of eleven separate chapters. In Chapter 1 (Articles 1-10), there are set down the general principles that apply to the procedure for the judicial review of the acts of the administrative authorities. Chapter 2 (Articles 11-12) provides a specification of the particular administrative acts that are held to be eligible for judicial review through the people's courts, and hence to be subject to the terms of the administrative procedure, in addition to a specification of the administrative acts that are beyond the control of the people's courts and hence that are not subject to the procedure for the judicial review of administrative action. In Chapter 3 (Articles 13-23), there are elaborated the principles relating to the form of the jurisdiction that is to be exercised in administrative cases, as by the people's courts at the various levels within the hierarchic structure of the judicial system.

Moving on to Chapter 4 (Articles 24-30), there are set out the principles that relate to the position of the parties to administrative cases, whereas in Chapter 5 (Articles 31-36) there are set out the principles relating to the forms of evidence which are to be accepted by the people's courts for the purposes of the judicial review of the acts of the administrative authorities. In Chapter 6 (Articles 37-42), there are stated the principles that relate to applications for judicial review and to their acceptance by the people's courts. Chapter 7

(Articles 43-64) elaborates the principles that govern the hearing of administrative cases by the people's courts, and the decision of the same through the judgments that are to be issued by the people's courts in administrative cases. Chapter 8 (Articles 65-66) concerns the sanctions that are available to the people's courts for ensuring the execution of their judgments in administrative cases, and hence for ensuring the compliance with these on the part of both the applicant parties and the administrative authorities. In Chapter 9 (Articles 67-69), there are stated the principles relating to the liabilities of the administrative authorities for the compensation of parties whose rights and interests have been unlawfully infringed through the acts of the administrative authorities in question. Chapter 10 (Articles 70-73) treats of the standing, and the rights and duties, of foreign parties in respect of cases that come under administrative law. Finally, there are two supplementary provisions in Chapter 11. Here, Article 74 provides for the awarding of costs by the people's courts as against one or both of the parties to administrative cases and relative to the extent of their liabilities and responsibilities. As for Article 75, this provides that the AP Law was to become effective as of 1 October 1990.

i. General Principles

The general principles set out in Chapter 1 of the AP Law serve to define the informing purposes of the law and its provisions. This is so particularly in respect of the rights of the parties making application for the judicial review of administration action, and in respect of the office of the people's courts with regard to cases falling under the administrative procedure. As to purposes, it is laid down that the law is enacted, as consistent with the State Constitution, to provide for the prompt and correct decision of administrative cases by the people's courts, the adequate protection of the lawful rights

and interests of ordinary citizens, entities bearing legal personality and other organizations, and the supervision of the administrative authorities in the exercise of their powers as in accordance with the laws (Article 1). As to applicant parties, the essential principle is that individual citizens, legal person entities and other organizations possess lawful rights and interests, and where these may be infringed through the acts of administrative authorities. In consequence of this, such parties that contend that their lawful rights and interests have in fact been infringed by administrative acts are to have recourse to the people's courts, as through the application for the judicial review of administrative action. (Article 2). As to the people's courts, the essential principle is that the people's courts are to adjudicate disputes as between the administrative authorities and the parties applying for judicial review, and that the people's courts are in this office to apply the law as against both the administrative authorities and the applicant parties. Hence, it is stipulated that the people's courts are to exercise judicial powers in accordance with the laws with full independence and free from interference by administrative authorities, public organizations and individual parties, and that, to give effect to this, the people's courts are to establish their own administrative law divisions for the hearing of administrative cases. (Article 3).

In addition to this, there are general principles stated that relate to the form of the procedure that the people's courts are to follow in the judicial review of the acts of the administrative authorities. Thus it is provided that in the hearing of administrative cases, the people's courts are to base their deliberations on the facts of the cases and to take the laws as the standard for their decisions (Article 4), and that they are to confine their attention to the matter of the lawfulness or unlawfulness of the administrative acts in respect of which applications for judicial review under the terms of the administrative procedure are made (Article 5). It is further provided, as to procedure, that the people's courts are to hear administrative

cases in accordance with certain principles of judicial organization. These include the principles relating to adjudication by panels of judges, the withdrawal of interested court personnel, public hearings and the finality of the decisions of courts of second instance (Article 6). Beyond this, there are stated certain standards of procedural fairness as at the level of general principles. Thus it is affirmed that the parties involved in administrative cases are to be considered to have equality in standing as to their legal position (Article 7), and that they are to be recognized as having the right to speak and to be heard in the proceedings of the people's courts as concerning administrative cases (Article 9). The ends of procedural fairness in the hearing of administrative cases are further given support to through the provision to the effect that all the members of the different nationalities bearing citizenship of the PRC are to be entitled to the use of their own spoken and written language in the adjudication of administrative cases. The same holds for the provision that the people's courts are to conduct the adjudication of administrative cases in the language or languages of the minority nationalities, as in those regional localities where the minorities in question predominate. (Article 8). As a last general principle, it is provided that administrative cases are subject to the form of legal supervision that is exercised by the people's procuratorates (Article 10).

ii. Administrative Acts Subject to Judicial Review

The principle that the administrative authorities are to be accountable to the people's courts for their actions, as in accordance with the machinery of the administrative procedure, gives rise to what is a quite crucial question. This is the question as to the particular acts of the administrative authorities that are to be considered as subject to challenge by affected parties through application to the

people's courts under the administrative procedure, and hence that are to stand as the acts of the administrative authorities that remain subject to the form of judicial review which is embodied in that procedure. In the event, the category of the acts of administrative authorities that are stated in Chapter 2 of the AP Law to be subject to challenge through the administrative procedure, and hence to be subject to judicial review, includes acts other than the ones to do with the application of administrative sanctions and penalties that, as we have found, are given prominence in the laws and regulations which predate the enactment of the AP Law. For there are included also in the AP Law such acts as the so-called compulsory administrative measures and the issuing of licences and other official documentation. It is to be noted that the acts of the administrative authorities that are confirmed in the AP Law to be the occasion for challenge through the administrative procedure are not only acts of commission, as with the application of administrative sanctions and penalties. In addition to this, there are acts of omission, as where it is claimed by affected parties that the administrative authorities are guilty of some failure to perform duties which are in law required of them. However, the key consideration with all the acts of the administrative authorities, as at issue here, is that these are acts that involve some defect or shortcoming in law, where it is their unlawfulness as acts that renders them, and the administrative authorities through whose agency they are performed, subject to challenge through the people's courts and so subject to the judicial review procedure.

The acts of the administrative authorities giving proper occasion for applications by affected parties to the people's courts for judicial review are summarized in Article 11, as follows: (i) administrative sanctions and penalties, as with detention orders, fines, revocations of licences and permits, orders for the suspension of business operations and confiscations of assets and property; (ii) administrative compulsory measures, as with the placing of restric-

tions on the liberty of persons and the seizure or freezing of assets and property; (iii) acts where, as it may be claimed, the administrative authorities violate the independent decision-making rights and powers of industrial enterprises; (iv) acts involving the failure of the administrative authorities to issue licences or other official documentation to applicants, as who may claim to be duly qualified to receive the same, or the failure of the administrative authorities to respond adequately to due and proper applications; (v) acts involving the failure of the administrative authorities to discharge their statutory duties of extending due and proper protection to personal rights and property rights as when legitimately requested to do so, or the failure of the administrative authorities to respond adequately to legitimate requests for this; (vi) acts where the administrative authorities fail to grant pensions and benefits, as where this is required by the laws; (vii) acts where, as it may be claimed, the administrative authorities impose unlawful demands on parties as to the performance of duties and obligations; (viii) acts that result in the infringement by the administrative authorities of the general personal and property rights of parties. It is further provided in Article 11 that the people's courts are able to apply the administrative procedure in respect of other like acts of the administrative authorities, as where there are explicit stipulations to this effect as contained in the available laws and regulations.

As it will be evident, the terms of the AP Law are such as to establish that the greater part of the activities and engagements of the administrative authorities are brought under the control of the people's courts. Even so, there are limits to the acts of the administrative authorities that are recognized to be subject to the people's courts, as for the purposes of the judicial review of administrative action. These limits are made clear in Article 12 of the AP Law, where there are listed the acts of the administrative authorities that do not admit of the possibility of challenges from the affected parties as to the people's courts, and hence that in effect remain ex-

empt from subjection to judicial review as through the administrative procedure. Thus it is stated that the people's courts are not permitted to accept administrative cases in respect of the following matters: (i) acts of the administrative authorities that have the standing of acts of state, such as acts to do with national defence and the conducting of diplomatic relations and foreign policy; (ii) acts of the administrative authorities that involve the drawing up and promulgation of administrative regulations, lower status regulations, and other decisions and orders such as possess a binding effect in law; (iii) acts of the administrative authorities that involve decisions relating to the appointment and dismissal of official personnel, and relating to the rewarding and punishment of the same; (iv) acts of the administrative authorities where stipulations set out in the relevant statutory legislation provide that the decisions of the administrative authorities as to the acts, as in question, are to be considered as final.

iii. Jurisdiction in Administrative Cases

The administrative procedure is an adjudicative procedure, and one where it is of its very essence that the administrative authorities are held to be subject to the jurisdiction of the people's courts as forming the judicial branch of government. The system of the people's courts is based in an hierarchic principle of vertical organization among courts which stand as superior or inferior in level as one to another. This hierarchic structure of judicial organization is reflected in the form of jurisdiction that is exercised by the people's courts, as in respect of the administrative procedure, at the different levels of their establishment. The jurisdiction of the people's courts, as through their hierarchic organization, is the subject-matter of Chapter 3 of the AP Law. Thus Article 13 provides that the basic people's courts are to have jurisdiction in administrative

cases as courts of first instance. However, there is also provision to the effect that certain administrative cases are to be reserved to the jurisdiction of courts other than the basic people's courts, as depending on the particularities of their respective competences. Accordingly, it is stated in Article 14 that the intermediate people's courts are to exercise jurisdiction as courts of first instance in the administrative cases as follows: (i) cases involving patent rights relating to inventions, and cases that involve the customs authorities; (ii) cases involving legal challenges brought in respect of the acts of the departmental organs of the State Council or those of the local people's government authorities at the level of the provinces, the autonomous regions or the municipalities directly under the central government; (iii) serious and complicated administrative cases specific to the competences of the intermediate people's courts. Then again, the higher people's courts are to exercise jurisdiction as courts of first instance with the serious and complicated administrative cases that are specific to their competences (Article 15). As for the Supreme People's Court, this is to exercise jurisdiction as the court of first instance with the serious and complicated administrative cases that are of national import and consequence (Article 16).

The terms of the AP Law are such as to provide for the judicial control of the administrative authorities at the local levels of jurisdiction, to the effect that the arrangements for the hearing of administrative cases will be tied to the actual circumstances of the applicant parties and the administrative authorities concerned. Thus it is stipulated in Article 17 that administrative cases are to come under the jurisdiction of the people's courts in the particular localities where the administrative authorities that performed the acts at issue are established (or, in cases involving appeal to the people's courts against reconsideration decisions, where the relevant administrative reconsideration authorities are established). As a practical illustration of this, it is stated in Article 18 that administrative cases relating to compulsory administrative measures providing for

the detention of persons are to come under the jurisdiction of the people's courts in the localities where the persons concerned are being detained. Likewise, it is stated in Article 19 that administrative cases relating to real property are to be heard by the people's courts having jurisdiction in the localities where the property concerned is situated. Yet further, there is the provision that in administrative cases where two or more people's courts have proper jurisdiction, then it is the people's court that first accepts the applications from the aggrieved parties involved which will have jurisdiction (Article 20).

Despite the strong emphasis placed in the AP Law on the maintenance of local-level jurisdiction in administrative cases, the law does still allow for a flexibility in jurisdiction sufficient to ensure that the people's courts that are to exercise jurisdiction will be appropriate as in regard to the specificities of individual administrative cases. Thus, for example, it is provided in Article 21 that in conditions where the people's courts discover that they have no jurisdiction over administrative cases that they have accepted for adjudication, then they are at liberty to transfer the cases concerned to such people's courts as have proper jurisdiction (but subject to the condition that the latter bodies are not through their own initiative to transfer the cases to other people's courts). Again, it is provided that in administrative cases where the people's courts have proper jurisdiction that they are nevertheless unable to exercise due to special factors, then jurisdiction is to be assigned to some other people's court at the discretion of the relevant people's courts at the next higher level within the judicial system. With administrative cases where there is dispute as to jurisdiction as between two or more people's courts, then this is to be resolved through consultation or through the decision of the relevant higher-level people's courts. (Article 22). Finally, the people's courts at the higher levels are recognized to have authority to act as courts of first instance in administrative cases where the people's courts at the lower levels

have proper jurisdiction, as they are recognized also to have authority to transfer administrative cases falling under their own jurisdiction to the people's courts at the lower levels. In addition, the lower-level people's courts may conclude that it is not appropriate for them to hear administrative cases where they have proper jurisdiction as the courts of first instance. In such circumstances, it is laid down that the people's courts of the lower levels in question are to refer the cases concerned to the people's courts at the higher levels for decision. (Article 23).

iv. Parties to Administrative Cases

The provisions set out in Chapter 4 of the AP Law, as concerning the parties to administrative cases, serve to ensure that the parties adversely affected by administrative action are afforded proper opportunities for redress before the people's courts. Thus it is provided that the parties who make application to the people's courts for the judicial review of the acts of the administrative authorities, as in accordance with the terms of the administrative procedure, are recognized to have standing as plaintiffs, and these may include ordinary citizens in addition to entities having legal person status and other such organizations. In circumstances where the citizens concerned are deceased, then their near relatives are able to apply to the people's courts in their place; and in circumstances where the legal person entities concerned have been terminated, then it is open to the legal person entities that are the successors to their rights and interests to make application to the people's courts. (Article 24).

At the same time, the relevant provisions of the AP Law serve to ensure that the administrative authorities are rendered fully and inescapably accountable to the people's courts for their acts. In this connection, it is provided that the administrative authorities whose

acts are the subject of applications to the people's courts for judicial review are to have standing as defendants. In the event that the acts of the administrative authorities concerned have been sustained on the decision of administrative reconsideration authorities, then the original administrative authorities will remain as defendants; whereas in the event that the original acts are amended through administrative reconsideration, then the status of defendant will belong to the administrative reconsideration authorities involved. In cases where the acts that are subject to applications for judicial review have been performed by two or more administrative authorities, as on a joint basis, then the administrative authorities concerned are to have standing as joint defendants. With cases where acts subject to applications for judicial review are performed by agencies or organizations empowered under general law and regulations, then these bodies will be the defendants; but where the agencies or organizations are empowered by administrative authorities, then the status of defendant will attach to the latter. Finally, there are the administrative authorities whose acts are subject to applications for judicial review, but which have been abolished prior to adjudication. Here, it is provided that the successor authorities within the system of government and administration will be defendants in respect of the acts in question. (Article 25).

As it would appear, the provisions of Chapter 4 of the AP Law have the effect that they serve to promote efficiency in the hearing of administrative cases. This is brought out with what is laid down as to joint actions and to the principles of representation. Thus the AP Law provides for joint actions to be presented by two or more parties: as when the cases involved are directed towards the same individual administrative acts, or are directed towards discrete administrative acts that have the same general character and that the people's courts having jurisdiction consider to be appropriate for being heard together (Article 26). In addition, such parties as have interests in administrative acts that are subject to judicial review

(vi) expert opinions; (vii) records made relating to the administrative acts as subject to judicial review. The materials so listed are to be verified by the people's courts, and they are to be used only in the ascertaining of the facts bearing on administrative cases. (Article 31).

As well as the specification of the forms of evidence, there are described the duties of the parties in administrative cases to furnish relevant evidence and the powers of the people's courts in relation to matters of evidence. One leading effect of the rules of evidence, here, is to underline the accountability of the administrative authorities, as defendants, in respect of the people's courts. Thus it is laid down that the administrative authorities, as the defendants in administrative cases, are to bear the burden of proof in respect of those of their acts that are made subject to applications for judicial review, and that the administrative authorities are obliged to provide all evidentiary materials and all official documentation relating to the acts in question (Article 32). Again, the administrative authorities, as defendants, are excluded from the initiating of the collection of evidence from the plaintiffs and from witnesses (Article 33). Yet further, it is laid down that the people's courts are empowered to require the parties to proceedings for judicial review to provide or to add to the evidence for administrative cases, and that they are empowered to collect at their own discretion relevant evidentiary materials from the administrative authorities and the other parties (Article 34). An additional effect of the rules of evidence stated in Chapter 5 lies in the enabling of the people's courts to ensure reliability and transparency in the hearing of administrative cases. Thus it is that the people's courts are empowered to call on expert opinion in the hearing of administrative cases, and with this to be either the expert opinion of the recognized official bodies having competence or the expert opinion of such authoritative bodies as are designated by the people's courts (Article 35). Also, the people's courts are empowered to act to preserve relevant eviden-

tiary materials in administrative cases, and to do this either on the application of the parties concerned or directly through their own initiative (Article 36).

vi. Applications for Judicial Review and the Acceptance of Administrative Cases by the People's Courts

There are six main provisions set out in Chapter 6 of the AP Law concerning applications for judicial review and the acceptance by the people's courts of administrative cases. For the greater part, the various provisions serve to rationalize the applications process without impeding proper access to the people's courts, and serve to determine what are, as it were, the institutional prerequisites for administrative proceedings as in respect of the standing of the parties and the jurisdiction of the people's courts. As to the rationalization of the applications process, it is to be emphasized that, as in line with the terms of the laws and regulations from 1982 to 1989 that we have examined, there is provision made for the parties aggrieved of administrative action to seek administrative reconsideration of the acts of the administrative authorities in question, as prior to making application to the people's courts for judicial review in accordance with the administrative procedure. Thus it is stipulated that with the administrative cases that come under the jurisdiction of the people's courts, the parties that are adversely affected by acts of the administrative authorities are to be permitted to apply to the relevant administrative authorities as at the next higher level, or as designated in the laws and regulations, for the reconsideration of the administrative acts at issue. In the event that the parties are not able to accept the decisions of the administrative reconsideration authorities, they are then able to apply to the people's courts for judicial review. It is recognized that parties may make direct application to the people's courts for judicial review, and so bypass the

procedure for administrative reconsideration. This is qualified in that it is accepted that the relevant laws and regulations may impose a requirement that administrative reconsideration is to be sought, before resort is had to the judicial review procedure. Even so, it is still affirmed that judicial review by the people's courts remains the option for parties for whom administrative reconsideration decisions in such circumstances are found to be unfavourable. (Article 37).

Further to the rationalization of the applications process, the provisions contained in Chapter 6 have the effect of minimizing delays that would be detrimental to the rights of parties affected by administrative action, while also preventing such delays as would militate against the efficient operation of the administrative machinery. So, for example, it is stipulated that the administrative reconsideration authorities are to issue their decisions within two months of receiving the due written applications from parties, save where the relevant laws and regulations make exceptions to the contrary. At the same time, the parties that do not accept administrative reconsideration decisions, and that seek judicial review, are required to make application to the people's courts within 15 days of their receiving notice of the decisions on administrative reconsideration, unless the relevant laws and regulations state otherwise. In conditions where the administrative reconsideration authorities fail to arrive at a decision within the prescribed two-month period, then the parties are required to apply to the people's courts within 15 days from the end of the two-month period. (Article 38). Moving beyond the arrangements for administrative reconsideration and in relation to time limits, it is further stipulated that parties electing to apply direct to the people's courts for judicial review are required to make their applications within three months of the administrative acts at issue, subject to such exceptions as are entered in the relevant laws and regulations (Article 39). Also, there is a stipulation to the effect that parties that are prevented through force majeure, or

through some other agency, from applying for judicial review within the prescribed three-month period are able to request from the people's court an extension to this period of up to 10 days from the time of the removal of the impediment in question (Article 40).

The key provision set out in Chapter 6 states the requirements for administrative proceedings relating to the parties and the people's courts and their jurisdiction. The requirements concerned set the conditions essential for applications for judicial review, and the conditions essential for the acceptance of administrative cases by the people's courts. Thus it is laid down first that applicant parties are to be ordinary citizens, legal person entities or other comparable organizations, and that the legitimate rights and interests of the applicant parties are to have been violated through the acts of the administrative authorities. Second, it is laid down that the administrative authorities whose acts are the subject of applications for judicial review are to be determinate and ascertainable: that is, it is required that there are to be specific defendants. Third, the applications of parties for judicial review are required to be directed towards specific claims regarding the acts of administrative authorities, and to be possessed of some specific basis in fact. Fourth, it is laid down that the administrative cases that arise through applications for judicial review are to be within the scope of the cases that are lawfully subject to adjudication by the people's courts, and that the cases are to be such as to fall within the proper jurisdiction of the people's courts to which the applications concerned are made. (Article 41). As to the acceptance of administrative cases by the people's courts, this is a matter for the decision of the people's courts as such and consequent on their proper examination of applications. However, it is affirmed that applicant parties do have the right to appeal in the event that the people's courts, as applied to, decide to reject applications for judicial review. (Article 42).

vii. Adjudication and Decision of Administrative Cases

The principles governing the adjudication and decision of administrative cases, as expounded in Chapter 7 of the AP Law, have application to such matters as the composition of the people's courts, the positive legal materials relevant to judicial deliberation in administrative cases, the remedies available to the people's courts and the process for appeals against decisions. The first concern, however, is with the procedures applying in the pre-hearing phase. Thus it is stated in Article 43 that the people's courts, when having accepted administrative cases for adjudication, are required within five days of the date of acceptance to send a copy of the relevant written applications for administrative proceedings from the plaintiff parties to the administrative authorities standing as the defendant parties. In turn, the defendants are required, as within ten days from the date of their receipt of the applications for administrative proceedings, to provide the people's courts concerned with all information relating to the administrative acts of which the plaintiffs are aggrieved together with written statements setting out a defence of the grounds for the acts in question. It then falls to the people's courts to deliver copies of the written defence statements to the plaintiffs, as within five days of receiving them. It is provided that the failure of defendants to file defence statements is not to prevent the people's courts from proceeding to hear administrative cases. On the other hand, there is also provision to the effect that the hearing of administrative cases is not to obstruct the work of the administration. Thus it is stipulated in Article 44 that for the duration of administrative proceedings, the acts of the administrative authorities that are the subject of proceedings will not be suspended, except in circumstances where the defendants consider suspension to be necessary, where the people's courts decide in favour of applications for suspension from plaintiffs, or where suspension is directed in the relevant laws and regulations.

The provisions of Chapter 7 on the adjudication and decision of administrative cases are such as to preserve the integrity and transparency of the people's courts in the conduct of administrative proceedings. So, for example, it is laid down that the people's courts are to hear administrative cases in public, except in cases where national security or privacy interests of persons are involved or where the laws stipulate to the contrary (Article 45). As to the form of the people's courts for the purposes of administrative cases, this is to be that of collegial panels consisting of judges, or of judges and assessors, and with these to be in an odd number of at least three (Article 46). In furtherance of the ends of integrity in the adjudicative process, it is laid down that in the event that the parties to administrative proceedings consider that judicial officials have some interest in the administrative cases before them or are related to them in some other way, as where this impairs the fair hearing of the cases in issue, then the parties are to have the right to apply for the withdrawal of the officials concerned. At the same time, judicial officials who find themselves having an interest in, or to be involved in, the administrative cases before them are required to apply for withdrawal. The rules regarding the withdrawal of judicial officials have application not only to judges, but also to such officials as court clerks, interpreters and specialist witnesses. As to decisions on withdrawals, these are to be made by the chief judges presiding in the people's courts having jurisdiction, save that the withdrawal of presiding judges is to be left to the adjudication committees as established in the people's courts. (Article 47).

The form of adjudication that is exercised by the people's courts in administrative cases is compulsory adjudication, and this is reflected in the powers that are assigned to the people's courts in the Chapter 7 provisions. To begin with, the failure of the parties to engage in administrative proceedings, once initiated, is understood not to qualify the competence of the people's courts to make appropriate decisions in administrative cases. Thus it is stated that where

plaintiffs refuse to appear in the people's courts after two summonses and without proper justification, then their non-appearance is to be taken by the people's courts as amounting to the application for withdrawal from the administrative proceedings. Likewise, the people's courts may decide administrative cases as appropriate in circumstances where the defendant parties decline to present themselves in court without proper justification. (Article 48).

In addition to this, the people's courts are armed with an array of sanctions and penalties to apply in the disciplining of those parties to administrative proceedings who act such as to impair, corrupt or undermine the proceedings. The sanctions and penalties specified include reprimands, orders to submit signed apologies, the imposition of fines of up to Yuan 1,000 and orders for detention of up to 15 days, and with the option of criminal investigation and prosecution in circumstances involving actual crimes. As for the offences to which the sanctions and penalties apply, these are stated to include the following: non-compliance in the execution of the terms of court notices; forging, concealment or destruction of evidence; suborning or intimidation of witnesses; interference with properties restricted through court orders; forcible obstruction of the personnel of the people's courts in the performance of their duties; the subjecting of court personnel and parties to administrative proceedings to insults, slander, defamation, assault and reprisals. It is provided that the approval of the presiding judges in the relevant people's courts is required for the imposing of fines and detention orders, and, further, that parties subjected to sanctions and penalties may apply for administrative reconsideration of these. (Article 49).

The administrative procedure, as this is aimed at the judicial review of administrative action, stands as a procedure of adjudication. Thus it is laid down that the people's courts are not to apply the method of conciliation in the hearing of administrative cases (Article 50). So also is it laid down that the authoritative decision of

the people's courts is essential for the ratifying of the voluntary settlement of administrative cases by the parties, as with withdrawals by the plaintiffs or with the modification of administrative acts on the part of the defendants (Article 51). In line with the adjudicative character of administrative proceedings, there are provisions to the effect that administrative cases are to be decided in terms of established law and administrative norms having legal effect. Thus it is required that the people's courts are to base their decisions in administrative cases in the laws and administrative regulations, and in such local regulations as are applicable. The people's courts are also to rely on the separate regulations in force in the national autonomous areas for the administrative cases as arise therein. (Article 52). There is the further requirement that the people's courts are to make reference to the rules and regulations adopted by the ministries and commissions of the State Council, and by the local government authorities and their departmental bodies at the various levels of government and administration, as where these rules and regulations are formulated and promulgated to give implemental effect to the laws and to the administrative regulations and other administrative norms laid down by the State Council. In the event that there are inconsistencies as between the rules and regulations adopted by the local government authorities and those of the State Council ministries and commissions, or as between the rules and regulations of the different State Council ministries and commissions, then it is for the State Council to provide an authoritative ruling and determination on this. (Article 53).

The adjudication of administrative cases by the people's courts is directed towards the decision of cases, as through the reaching of judgments and the provision of remedies in the event that the judgments reached involve findings for the plaintiffs. There is a detailed specification given in Article 54 as to the different judgments that may be made by the people's courts in administrative proceedings, and as to the substantive remedies that may be provided for plain-

tiffs in the course of the proceedings. First, it is open to the people's courts to find in favour of defendants, and so uphold and sustain the acts of the administrative authorities that are the subject of applications for judicial review. This form of judgment is to be reached in cases where the people's courts conclude that the evidence on which the acts of the administrative authorities at issue are based is adequate, that the administrative acts involve a correct application of the relevant laws and regulations, and that the performance of the administrative acts has been in conformity with the due legal procedures.

Second, it is open to the people's courts to find in favour of the plaintiffs, and so order the administrative authorities that are the defendants to annul in whole or in part the administrative acts subject to judicial review and to order the administrative authorities to undertake new, and remedial, administrative acts. This form of judgment is to be reached in cases where the administrative acts at issue are considered by the people's courts to fail, and to be rendered invalid on account of their failure. The failure of administrative acts occurs where the acts are held to be lacking in the evidence essential to their support, where the acts are based in an erroneous application of the relevant laws and regulations, where the acts are performed in violation of due legal procedures, and where the performance of the acts involves the administrative authorities in actions that are ultra vires or tainted through the abuse of powers. The third form of judgment that the people's courts are able to make in administrative cases, as this is stipulated in Article 54, comes where it is found not that the administrative authorities have performed acts that fail through the absence of proper evidentiary, legal and procedural foundations, but rather that the administrative authorities have failed to perform, or have delayed in performing, acts which they are subject to some obligation to perform. Here, the administrative authorities are to be ordered by the people's courts to perform the acts in fulfilment of their obligations

within a specified time period. Finally, there is the fourth form of judgment referred to in Article 54, and with this figuring in administrative cases that relate to applications for judicial review in respect of administrative sanctions and penalties. In this matter, the people's courts are to order the administrative authorities to set aside or modify the administrative sanctions and penalties that are made subject to judicial review, as in the event that it is concluded that the administrative sanctions and penalties are in some way unfair.

The remedies that the people's courts are to provide for the plaintiffs in administrative proceedings are intended to be effective. Thus it is stated that where the people's courts order the administrative authorities to perform a new administrative act, then it is required that the administrative authorities are to perform acts that are indeed new and not merely perform acts that are identical with the original acts which were ruled against (Article 55). The remedial aspect of judgments in administrative cases, as directed towards the situation of plaintiffs, is essential to the logic of administrative proceedings and to that of the judicial review of administrative action. However, the hearing of administrative cases may result in the discovery of misconduct on the part of administrative officials, where this necessitates a response from the people's courts that goes beyond the providing of remedies for plaintiffs. In this connection, it is stipulated that in the event that the people's courts find that the administrative authorities or their officials are in breach of the code on administrative discipline, then the materials relating to this are to be passed on for investigation to the administrative authorities in question, to the administrative authorities at the next higher level, or to the administrative authorities responsible for supervision and personnel discipline matters. In the event that the people's courts find that crimes have been committed by administrative officials, then the materials concerned are to be passed on to the administrative authorities responsible for public security or to

the relevant office of the people's procuratorial authorities. (Article 56).

The administrative procedure is a complex judicial procedure, and it comprehends a procedure for appeals against the judgments of the people's courts and the orders through which the judgments are to be given effect to. The appeals procedure is treated of in Chapter 7, as in a number of key provisions. Thus it is laid down that the people's courts that act as the courts of first instance in administrative cases are required to arrive at their judgments within three months of the acceptance of the cases for adjudication. The prescribed time limit is strict, and such extensions as may be necessary require the approval of superior courts: either that of the higher people's courts, or, where the latter are themselves the courts of first instance, that of the Supreme People's Court. (Article 57). The parties in administrative cases may refuse to accept the judgments, and the orders following from these, as issued by the people's courts as courts of first instance. In this circumstance, they have the right to appeal to the people's courts at the next higher level of the judicial system within 15 days from the date of the delivery to them of the written notice of the original court judgments. Likewise, the parties may appeal to the people's courts at the higher level against court orders in respect of them as issued by the people's courts of first instance, and as within 10 days from the date of their having notification of the original court orders. In the absence of appeals, the judgments and the related orders of the people's courts acting as courts of first instance are to have effect. (Article 58).

As to the hearing of appeals, it is provided that the people's courts acting as courts of appeal may, in cases where the facts involved are clear, make their determinations on the basis of the written court records (Article 59). The people's courts hearing appeals are required to deliver their final judgments within two months from the date of their receiving the applications for appeal. This

time limit may be extended in special circumstances, and with extensions to be approved by the higher people's courts, or, if the higher people's courts are hearing appeals, by the Supreme People's Court. (Article 60). The decisions that it is open to the people's courts to make in the hearing of appeals are specified as follows. First, appeals are to be dismissed, and the original judgments of the courts of first instance are to be sustained, in cases where the factual basis for the original judgments is held to be clear and where the original judgments are held to involve a correct application of the relevant laws and regulations. Second, appeals are to be upheld, and the original judgments of the courts of first instance are to be amended in accordance with the laws, as in cases where the factual basis for the original judgments is accepted to be clear, but where it is considered that the relevant laws and regulations have been erroneously applied. Third, there are the cases where the factual basis of the original judgments of the courts of first instance is held to be ambiguous, where there is found to be insufficient evidence, or where there is considered to have occurred some violation of due legal procedures which impairs the reliability of the original judgments. Here, the people's courts acting as courts of appeal may decide to annul the original judgments of the courts of first instance and order the latter to hold retrials, or they may decide to amend the original judgments consequent on their having clarification as to any ambiguities in matters to do with factual basis. In appeal decisions of this form, the parties have the right to appeal against orders for retrial. (Article 61).

The judgments and orders that are involved in the decisions of the people's courts in administrative proceedings are themselves legal acts, and there is the possibility that such judgments and orders may be flawed, and hence impaired as to their legal quality, through error or through a lack of conformity with the established laws and regulations. In recognition of this, it is provided that if parties in administrative cases consider that judgments and orders

of the people's courts that have already had execution contain errors, then they are to make appropriate representations to the people's courts that issued the judgments and orders in question or to the people's courts at the next higher level, but with the judgments and orders to remain in force (Article 62). Then again, the presiding judges may find that the executed judgments and orders, as effected through the people's courts where they sit, contain violations of the terms of established laws and regulations sufficient for a retrial to be given consideration. In this situation, the presiding judges may make reference to the relevant adjudication committees, in order to have a decision made on the question of retrial orders. In the event that the people's courts at a higher level discover that the executed judgments and orders of the people's courts at the lower level stand in violation of the terms of established laws and regulations, then the higher level people's courts may opt to have the cases concerned tried again in their own hearing, or they may opt to order the lower level people's courts to conduct retrials. (Article 63). Finally, it is provided that the people's procuratorial authorities may lodge formal protests, as in line with their statutory powers of legal supervision, in the event that the authorities discover that the judgments and orders of the people's courts, as already executed, are defective on account of their violating the terms of established laws and regulations (Article 64).

viii. Execution of Judgments in Administrative Cases

The provisions governing the execution of the judgments and orders of the people's courts in administrative cases, as set out in Chapter 8 of the AP Law, are closely related to the Chapter 7 provisions in the respect, among others, that they touch directly on the question of remedies in administrative cases and on the question of the rendering of court judgments and orders effective. The essential princi-

ple here, as affirmed in Article 65, is that the parties to administrative proceedings are to execute the judgments and orders of the people's courts as these have legal standing, but that a failure or refusal to do this by the parties will carry material consequences. This is so in cases where ordinary citizens, legal person entities or other organizations, as the plaintiffs in administrative proceedings, refuse to execute judgments and orders unfavourable to themselves. For, here, it is provided that the relevant administrative authorities have the right to apply to the people's courts, as having the status of the courts of first instance, for the compulsory execution of the judgments and orders at issue, or to make their own compulsory execution of the judgments and orders as administrative authorities.

There is also provision made in Article 65 for the remedies that are to be available to the people's courts in cases where the administrative authorities, as the defendants in administrative proceedings, refuse to execute court judgments and orders which go against their own position and interests. The following are the remedial measures that Article 65 states that the people's courts may adopt. First, the people's courts are empowered, as in cases involving the imposing of fines, to order the relevant banks to transfer from the accounts of the recalcitrant administrative authorities funds sufficient to cover the amount of the fines that are to be returned to the plaintiffs and the amount of due damages. Second, it is open to the people's courts to impose fines on administrative authorities that refuse to execute court judgments and orders. These fines are to range from Yuan 50 to Yuan 100 per day as calculated from the date when the execution of the judgments and orders falls due. Third, the people's courts may submit a judicial notice of recommendation for action to the administrative authorities at the next higher level to the administrative authorities that refuse to execute judgments and orders, or to the administrative authorities which have responsibility for supervision and personnel discipline. The administrative authorities receiving such judicial notices are then to

pass on the cases so referred to them as in accordance with the relevant legal stipulations, and to report back to the people's courts serving the judicial notices on the results of their examinations. Fourth, there are the cases where a refusal to execute judgments and orders in administrative cases may be of a sufficient seriousness for this to constitute criminal misconduct on the part of the administrative authorities concerned. In these cases, the people's courts are empowered to initiate the criminal investigation of the administrative officials bearing responsibility.

As a final matter, the position of the administrative authorities is safeguarded as where ordinary citizens, legal person entities or such like organizations fail to fulfil the obligations falling on them as under the requirements set through the acts of the authorities as within the due time limits, but where they also fail to bring administrative proceedings against the authorities as through the people's courts. Here, it is laid down in Article 66 that the administrative authorities concerned may apply to the people's courts to enforce the compulsory execution of the terms of their acts, or proceed to have the terms of the acts in question executed through their own initiative as in accordance with the laws.

ix. Compensation Liabilities in Administrative Cases

The provisions relating to compensation claims arising from administrative cases as contained in Chapter 9 serve to supplement the general schedule of remedies for parties aggrieved of administrative action that is set out in the AP Law. This is so in the respect that compensation awards are intended both to restore the rights and interests of parties where these have been violated through administrative action, and to ensure that the administrative authorities are made subject to proper and effective sanctions and penalties. Thus it is stated in Article 67 that where ordinary citizens, legal person

entities or like organizations have their lawful rights and interests infringed by the acts of the administrative authorities in circumstances occasioning damages, then the parties have the right to apply for compensation. The applications of the parties for compensation are to be addressed to, and considered by, the administrative authorities concerned, but with the proviso that if the parties are not satisfied with the decisions of the administrative authorities on compensation, then they are to initiate administrative proceedings in the people's courts. It is allowed that mediation is to stand as an acceptable procedure for settling compensation claims.

In Article 68, it is underlined that where the lawful rights and interests of parties are infringed through administrative action and damage is caused, then the administrative authorities concerned are to bear liability for compensation. The administrative authorities so liable are entitled to compel those among their personnel who are responsible for the offending administrative acts, either through intent or in negligence, to bear the costs of the compensation awards in part or in whole. Finally, there is Article 69, and with this treating of the arrangements for the funding of compensation in administrative cases which are to be followed within the system of government and administration. Here, it is stated that the overall costs for compensation awards are to be included as expenditure within the financial budget of the people's government at the various levels of administration in the PRC. The governmental bodies at the different levels are empowered to order the particular individual administrative authorities having liability for compensation to bear part or all of the costs, as in accordance with measures to be determined by the State Council.

x. Foreign Parties and Administrative Cases

The AP Law is intended to have a general application within the

territory of the PRC. In line with this, it is stated that, save where the laws stipulate to the contrary, the terms of the law are to apply to such parties involved in administrative proceedings in the PRC as are foreign nationals, stateless persons or foreign organizations (Article 70). Hence, foreign nationals, stateless persons and foreign organizations that bring administrative proceedings are to be considered to hold the same rights, and to bear the same responsibilities, as the citizens and organizations of the PRC (Article 71). To these principles there are two qualifications. First, it is laid down that if international treaties concluded or acceded to by the PRC contain provisions different from those given in the AP Law, then the provisions of the international treaties concerned are to have application unless the provisions are ones on which the PRC has declared reservations (Article 72). Second, it is laid down that when foreign nationals, stateless persons and foreign organizations bring administrative proceedings in the PRC and elect to appoint lawyers to act for them, then they are required to appoint lawyers who have membership in one or other of the associations for lawyers of the PRC (Article 73).

Conclusion: the Administrative Procedure Law Considered

The enactment of the Administrative Procedure Law of 1989 marks the decisive step in the creating of the system of administrative law in the PRC, as it marks the final rendering of the principles that are essential to the system and to the form of the judicial review of administrative action which lies at its foundation. To begin with, it is to be underlined that as an advance on the 1982 State Constitution, the AP Law provides for the accountability of the administrative authorities before the people's courts as in accordance with a procedure of judicial control that is fully separate from the procedures that are followed by the people's courts in respect of the

criminal law and the civil law. Indeed, the AP Law serves to establish the administrative law as a sphere of law that is distinct from the spheres of criminal law and civil law, and to establish the specificity of the administrative procedure as relative to the criminal procedure and the civil procedure. Thus it is that the AP Law stands in ranking, as within the law of the PRC, with the landmark statutes that are foundational for the criminal law and civil law divisions. For the criminal law, these are as follows: the Criminal Law of the People's Republic of China, as adopted at the 2nd Session of the 5th Session of the National People's Congress on 1 July 1979 and as subsequently adopted in revised form at the 5th Session of the 8th National People's Congress on 14 March 1997,^[52] the Criminal Procedure Law of the People's Republic of China, as adopted at the 2nd Session of the 5th Session of the National People's Congress on 1 July 1979 and as subsequently adopted in revised form at the 4th Session of the 8th National People's Congress on 17 March 1996.^[53] As for the civil law, the key statutes are the General Principles of the Civil Law of the People's Republic of China, as adopted at the 4th Session of the 6th National People's Congress on 12 April 1986,^[54] and the Civil Procedure Law of the People's Republic of China, as adopted at the 4th Session of the 7th National People's Congress on 9 April 1991.^[55]

The terms on which by statute the administrative authorities are rendered accountable to the people's courts within the contexts of the criminal law and the civil law are readily summarized. As to the civil law, it is evident from the relevant legal source materials that the administrative authorities, and the administrative personnel, are to be thought of as being subject to the general regime of rights and obligations specific to the civil law. This is so in principle in respect of contracts, as it is so also in respect of civil liabilities as relating to wrongs arising in connection with civil rights and civil obligations. Thus it is provided that the administrative authorities, and the administrative personnel, are liable for civil damages as

where they violate the rights and interests of ordinary citizens and non-state legal person entities. The form of adjudicative procedure applying here is, of course, the civil procedure, and in this connection it is to be noted that while the people's courts will hear civil cases involving the administrative authorities, it is nevertheless provided that the people's courts are not to hear such cases as fall within the scope of proceedings for the judicial review of administrative action.¹⁵⁶¹

As to the criminal law, the essential principle is that the administrative authorities as official state organs, and the administrative personnel, are capable of committing acts that have the standing of crimes, that the administrative authorities and the administrative personnel are in respect of these acts to bear criminal responsibility, and that in consequence of this they are liable to be investigated and punished as in accordance with the terms of the law of criminal procedure. In line with this core principle, there is provided in the criminal law code a clear definition as to the category of state officials as subjects of the law. There is provided also a detailed specification of the various forms of criminal misconduct in which state officials are capable of being involved, and for which they are to be required to answer as before the people's courts. Included, here, are crimes of an economic character, such as crimes of bribery and embezzlement. A further set of crimes that are specified as involving state officials are the crimes which relate to the matter of dereliction of duty, such as negligence in the loss of public monies and malpractice for personal gain and profit.¹⁵⁷¹

The AP Law provides for the judicial review of administrative action, and the judicial review procedure that the law describes serves to render the administrative authorities accountable through the people's courts on terms that are to be set apart from the terms of the adjudicative procedures which are bound up with the civil law and with the criminal law. As we have explained, the judicial review of administrative action is directed exclusively towards the

official powers of the administrative authorities as defined in law: or, in more particular terms, it is directed towards the acts of the administrative authorities where there is the exercise of official powers, and towards the basis in law for the acts in question as relative to both their form and substance. As such, the judicial review procedure does not concern the administrative authorities in the context of their implication in the transactions with ordinary citizens, and with other such parties, which form the subject-matter of the civil law. For if the administrative authorities are involved in civil transactions as parties that have the standing of official state bodies, as is so by definition, then it remains the case that this is not an involvement in respect of administrative tasks and functions and in respect of the exercise by the administrative authorities of their specifically official powers. As to the criminal law, it is to be emphasized that the terms of the AP Law are such that the judicial review of administrative action may indeed result in the exposure by the people's courts of criminal misconduct on the part of administrative officials, as say with cases of bribery and embezzlement or with cases of dereliction of duty. However, this outcome is, as it were, incidental to the judicial review procedure in and of itself, and where the exposure of crimes does occur then the relevant evidentiary materials for this are to be referred to the judicial authorities that exercise the due jurisdiction for criminal cases. For the judicial review procedure is focused on the lawfulness of the acts of the administrative authorities as involving the exercise of official powers, rather than on the criminal acts of administrative officials, and the procedure provides only for the remedies specific to administrative law rather than for the application of the forms of sanctions and penalties which are specific to criminal punishment.

There is proper recognition extended to the judicial review of administrative action, as a distinct form of adjudicative procedure, in the legal source materials from the period from 1982 and up to 1989, and immediately prior to the enactment of the AP Law, that

we examined in Part 2 of the present paper. In this respect, the laws and regulations concerned mark an important contribution in the development of the system of administrative law in the PRC. However, the terms of the laws and regulations are such as to leave it indeterminate as to the precise details of the form of the procedure for judicial review that is to be adopted by the people's courts. So also is there present an indeterminacy as to such matters as the precise scope of the administrative acts that are to be subject to judicial review, the precise grounds for applications for judicial review, and the precise remedies that are to be accepted as being available for the applicant parties as following the judicial review of administrative action. It is the signal achievement of the AP Law that the judicial review procedure is given full and adequate elaboration as in terms of the matters of procedure, scope, grounds and remedies. The achievement here is very great, and it is on account of it that the AP Law is to be adjudged as serving to bring realization to the administrative law system of the PRC and to establish, and to describe, its foundations.

The chief merit of the AP Law, and of the administrative law system that it founds, is that it provides for real and effective control by the people's courts of the administrative authorities and, hence, for the subjecting of the administrative authorities to real and effective legal constraints and limitations as to the exercise of their powers. This is so, for example, in respect of the range of the acts of the administrative authorities which are understood as being subject to judicial review as on the part of the people's courts. As we have seen, the laws and regulations treated of in Part 2 of this paper include reference to the judicial review procedure only in the context of the challenges of the affected parties to such administrative acts as involve the application of administrative sanctions and penalties. As against this, there is no such contextual restriction with the AP Law as to the administrative acts that are held to be subject to the judicial review procedure. The specification of the

relevant administrative acts set out in Article 11 of the AP Law does, of course, pick out all the different administrative sanctions and penalties as being open to applications for judicial review, and with these including fines, detention orders, revocations of licences, suspension orders relating to business operations, and confiscations of assets and properties. However, Article 11 goes far beyond administrative sanctions and penalties, and to pick out a number of other acts of the administrative authorities for the purposes of describing the scope of the judicial review of administrative action. These include the following: administrative acts involving restrictions on personal liberty and the seizure or freezing of assets and property; administrative acts infringing the lawful independent decision-making powers of business enterprises; the refusal or failure of administrative authorities to issue permits and licences, or to respond to due applications for the same; the refusal or failure of the administrative authorities to perform statutory duties in regard to the protection of personal and property rights, or to respond to requests for the due performance of duties; the failure of the administrative authorities to pay out certain benefits and pensions; the acts of the administrative authorities involving the imposing of unlawful requirements on parties as for the performance of obligations.

The material extent of the judicial control over the activities and engagements of the administrative authorities that is established through the terms of Article 11 of the AP Law is considerable. This control is further established with the provisions of the AP Law that describe the complex detail of the form of the procedure that is to be followed by the people's courts as with administrative cases. For these provisions serve to ensure the open access of aggrieved parties to the judicial review procedure, the inescapability of the jurisdiction of the people's courts in administrative cases as in respect of the administrative authorities that stand as defendants, and the availability to the people's courts of meaningful remedies as for the applicant parties, as plaintiffs, and of meaning-

ful sanctions and penalties as for the administrative authorities. To begin with, there are the provisions relating to the jurisdiction of the people's courts over administrative cases. These indicate how the various acts of the administrative authorities, as distinct one from another in terms of their form and substance and their place of performance, are all made subject to the people's courts as within the multi-level judicial system obtaining in the PRC, and with the jurisdiction exercised through this judicial system being such that it has application to the administrative authorities on a uniform and compulsory basis throughout the PRC. As to the provisions on the parties to administrative cases, these describe the essential form of the relationship holding in administrative cases as between the applicants for judicial review, as plaintiffs, and the administrative authorities as defendants. Here, it is underlined how ordinary citizens, legal person entities and other such organizations are eligible to present themselves before the people's courts as parties aggrieved of administrative action. So also is it underlined how the administrative authorities are to be bound to hold themselves accountable before the people's courts as for the purposes of the judicial review procedure.

As if to confirm the accountability of the administrative authorities in relation to the people's courts, and so through this the jurisdictional powers of the people's courts over the administrative authorities, there are the provisions concerning evidence in administrative cases. Thus it is held that the burden of proof in administrative cases falls on the administrative authorities, and that the administrative authorities are required to supply all evidentiary materials pertaining to those of their acts that are being made subject to the judicial review procedure. Above all, there are the provisions relating to the actual hearing of administrative cases by the people's courts. So, for example, it is provided that the people's courts may proceed to hear, and to decide, administrative cases in circumstances where the administrative authorities, as the defen-

dants, decline to appear before them. Then again, the administrative authorities remain subject to the sanctions and penalties that the people's courts are empowered to impose on the parties to administrative cases, as where the parties act to the detriment of the integrity of administrative proceedings as through the falsification, concealment or destruction of evidence or through the bribing or intimidating of witnesses.

The provisions on the hearing of administrative cases point to the remedies and the sanctions and penalties that the people's courts are to apply in respect of the parties. As to the remedies favourable to the plaintiffs as against the administrative authorities, it is provided that the people's courts may annul the acts of the administrative authorities that are subject to judicial review and order that new and remedial acts are to be performed by the administrative authorities concerned. Likewise, it is provided that the people's courts are able to order administrative authorities to perform their duties in due time as where there has occurred some failure to do this, and also to order the setting aside of those administrative sanctions and penalties which are considered to be unfair. The remedies that are available for the plaintiffs in administrative cases are given effect to, as under the terms of the AP Law, through the presence, and as required the application, of the sanctions and penalties to which the administrative authorities are liable as subject to the jurisdiction of the people's courts. Here, it is to be observed that the administrative authorities that are found to be delinquent are, in principle, liable to be referred to the supervisory organs of the state government for disciplinary measures and liable also to criminal investigation and punishment. In addition to this, the provisions relating to the executing of the decisions of the people's courts in administrative cases make reference to certain measures that the people's courts may adopt in order to compel the administrative authorities to comply with their decisions, as where the administrative authorities concerned are recalcitrant, and with these

measures including the drawing on bank accounts and the imposition of fines. Finally, it is provided that the plaintiffs in administrative cases are entitled to seek compensation from the administrative authorities, as in conditions where their lawful rights and interests are violated, and that it is within the competences of the people's courts to make compensation awards as against the relevant administrative authorities.

As we have brought out, the AP Law is virtuous in its providing for the administrative authorities to be accountable as before the people's courts and so for their control through subjection to legal constraints and limitations. In this, the AP Law conforms in its letter and spirit with the principles that are essential to what, in the Introduction to this paper, we identified as the ideal of the rule of law and the ideal of constitutional government. However, the question does still present itself as to the defects, if any, of the AP Law, and the judicial review procedure that it describes, as forming a legal-institutional framework for the effective control of the government and administration. In order to assess this, it is vital to keep in mind certain of the core defining purposes of the AP Law, as these are referred to in the statement given in Chapter 1 of its general principles. The purposes that are here of crucial relevance, as laid down in Article 1, are those relating to the office of the people's courts as follows: first, the protection of the rights and interests of citizens, legal person entities and other like organizations, as the parties affected by administrative action; second, the regulation of the administrative authorities in the exercise of their powers and the performance of their duties as in accordance with the laws. Thus as to the protection of the rights and interests of affected parties, the fundamental principle, as laid down in Article 2, is that parties are to have the right to apply to the people's courts for the judicial review of the acts of the administrative authorities where such acts are held to violate their rights and interests. As to the legal regulation of the administrative authorities, the fundamental

principles are that the people's courts are to exercise their powers in independence and in conformity with the laws, that they are in the hearing of administrative cases to base themselves on the facts of the cases at issue and on the laws as the controlling standard in adjudication, and that they are to confine themselves in administrative cases to the determination of the lawfulness of the acts of the administrative authorities which are made subject to the judicial review procedure (Articles 3-5).

The most notable respect where the AP Law is to be considered as defective, as in relation to its defining purposes, is that the control that it assigns to the people's courts over the administrative authorities is not presented as being a complete and comprehensive form of control. For there are certain acts of the administrative authorities that are expressly excluded from the scope of the judicial review procedure, as acts which fall outside the jurisdiction of the people's courts. The administrative acts in question are listed in Article 12 of the AP Law as follows. First, there are acts of state, such as those concerning national defence and diplomatic relations. Second, there are the administrative regulations, and the administrative norms such as regulations, decisions and orders, that are drawn up and issued by the administrative authorities and that, as such, are possessed of a binding legal effect. Third, there are the decisions of the administrative authorities as concerning their own personnel, as with matters to do with appointments and dismissals and with rewards and punishments. Fourth, there are the acts of the administrative authorities where it is stipulated, as under the terms of the relevant statutory legislation, that the administrative authorities concerned are to possess a final and ultimate discretion.

Of the acts of the administrative authorities that are exempted from the jurisdiction of the people's courts, it is only the acts belonging to the third category whose exclusion from the scope of the judicial review procedure is to be regarded as uncontroversial from the standpoint of what are the defining purposes of the AP Law.

For it is hardly essential to the protection of the rights and interests of parties affected by administrative action, or essential to the regulation of the conduct of the administrative authorities, that the people's courts should exercise judicial review powers in respect of the terms and conditions of the service of administrative personnel. Indeed, the service of administrative personnel is a matter that relates more to the principles of civil law, such as for example the principles of contractual obligation, and so it is a matter that would appear more properly to concern the people's courts in the application of the civil procedure.

However, the exclusion of the administrative acts in the first, second and fourth categories from the scope of the judicial review procedure is surely to be viewed as controversial, and to be counted as something that involves an impediment to the adequate fulfilment by the people's courts of the purposes of the AP Law. To begin with, it is evident that acts of state may affect profoundly the situation of ordinary citizens, legal person entities and like organizations, and that acts of state may therefore carry great and detrimental consequences for the rights and interests of such parties. Hence the exempting of acts of state from judicial review imposes a substantial restriction on the people's courts in the matter of the protection of the rights and interests of parties affected by administrative action, as it restricts the people's courts also in the matter of the regulation of the administrative authorities as to their duties and powers as in accordance with the laws.

There are similar considerations in play with the exclusion of the people's courts from exercising the powers of judicial review in respect of administrative regulations and other administrative norms, and in respect of the acts of the administrative authorities that are to do with the issuing of these. For administrative regulations and related administrative norms set the general policy parameters for the administrative authorities, and in doing so they impact directly on the rights and interests of affected parties (as

they also reflect on, and involve consequences for, the conduct of the administrative authorities). Once again, the excluding of judicial review militates against the fulfilling of the purposes of the AP Law on the part of the people's courts. Most serious of all perhaps in terms of implications, there are the administrative acts that fall within the fourth category of exclusions from the scope of the judicial review procedure. These, of course, are the acts of the administrative authorities where the authorities themselves are by statute law specified to be the final arbiters, and so where, in effect, the jurisdiction of the people's courts as for the ends of administrative law is set aside through the acts of the legislative power of the state government. In this context, the terms of the exclusion of judicial review are such that they serve not only to curtail the competences of the people's courts, and in frustration of the defining purposes of the AP Law. At the same time, the exclusion of judicial review here serves also to undermine the separation of governmental powers, and so departs from the principles of the rule of law and the principles of constitutional government which, as we have suggested, are intimately related to the first principles of administrative law as such.

The Article 12 exclusion of challenges to administrative regulations and administrative norms from the scope of judicial review points to, and goes together with, what is a further limitation of the AP Law, and the administrative law system that it founds, considered in its status as an instrument for the control of the institutions of government and administration. This is that the judicial review procedure involves no powers belonging to the people's courts to review the general policy engagements, and the general conduct and practices, of the administrative authorities. To the contrary, the judicial review procedure involves for the people's courts only the power to adjudicate cases arising from the substantive acts of particular and ascertainable administrative authorities, and as these affect the rights and interests of particular and ascertainable par-

ties. Thus Article 41 of the AP Law provides that the adjudication of administrative cases by the people's courts requires the fulfilling of the conditions as follows: first, the presence of specific parties standing as plaintiffs and with lawful rights and interests violated by the acts of administrative authorities; second, the presence of specific administrative authorities to have standing as defendants; third, the presence of specific claims regarding the administrative acts that are to be reviewed, and with some factual basis for these; fourth, the presence of proper jurisdiction as exercised by the people's courts. Of course, the conditions for administrative cases, as here stated, are fully consistent with the ends of judicial review as a procedure that is directed towards the protection by the people's courts of the rights and interests of parties which are adversely affected by administrative action. However, these are conditions that render the judicial review procedure entirely dependent, as to its operationalization, on the context set by the existence of plaintiffs, the infringement of plaintiff rights and interests, the performance of administrative acts and the agency of administrative authorities. In consequence of this, the judicial review procedure holds out what is the real prospect of remedies for parties aggrieved through administrative action, but nevertheless with the form of the overall control of government and administration provided through the procedure being limited to the extent that it is context-determined in the respects to do with specific plaintiffs, plaintiff rights and interests, administrative acts and administrative authorities as referred to.

The final matter where the AP Law stands as defective, as in relation to its defining purposes, is to do with the character of the judicial review procedure as a procedure where the people's courts are concerned with the lawfulness of the acts of the administrative authorities. This concern is fundamental for the people's courts, and this in the respect that deliberation as to the lawfulness, or the unlawfulness, of administrative acts is the critical determining factor, as for the people's courts, in their intervening to protect the rights

and interests of the parties affected by administrative action or to impose regulation on the activities of the government and administration. That the people's courts are to concern themselves with the lawfulness of administrative action is reflected in the terms of Articles 52-53 of the AP Law, where it is stated that the people's courts are to apply the laws, administrative regulations and local-level regulations, and the related administrative norms, in the adjudication of administrative cases. There is also the statement contained in Article 54 of the AP Law of the grounds for the application for judicial review, and the grounds for the decision of administrative cases as against or for the providing of remedies for applicant parties. Thus it is laid down that the people's courts are to sustain the acts of administrative authorities in conditions where the acts are based in sufficient evidentiary materials, and based in the correct application of the relevant laws and regulations and in the correct application of the relevant legal procedures. At the same time, it is laid down that the people's courts are to annul, and to set aside, the acts of the administrative authorities where the acts concerned are lacking in a sufficient evidentiary basis. The same holds where the administrative acts involve an erroneous application of the relevant laws and regulations or a violation of relevant legal procedures, and where the administrative authorities exercise their powers *ultra vires* or otherwise abuse their powers. In addition to this, the people's courts are empowered to require the administrative authorities to perform their legal duties where there is failure of performance, as they are empowered also to order the setting aside of those administrative sanctions and penalties which are adjudged to be unfair.

The grounds for judicial review stated in Article 54 of the AP Law are such that with the exception of the evidentiary basis for administrative acts, and with the exception of the unfairness of administrative sanctions and penalties, these are all grounds where the essential consideration for the people's courts is the fidelity (or

otherwise) of the administrative authorities to the terms of the established legal sources and to the terms of the due legal procedures.^[58] There is little doubt that the law-focused form of the adjudication of administrative cases is consonant with, and serves to promote, the functions of judicial review understood as the protection of the rights and interests of parties affected by administrative action, and as the proper regulation of the administrative authorities in the exercise of their powers and the performance of their duties. Even so, there remain inherent limitations to this. As to the regulation of the administrative authorities, the judicial review procedure is directed towards the consistency between administrative action and established law and legal procedure, but without this enabling the people's courts to pass as such on the matter of the form and substance of the legal norms and procedures that the administrative authorities are to go by in the performing of their acts. As to the protection of the rights and interests of the parties affected by administrative action, the judicial review procedure is directed towards this, but with it being so, as in the terms of the AP Law, only where the rights and interests of the parties possess some basis in conventional law or where these are implicit in the procedural law applying to the administrative authorities. There is not, however, any recognition conveyed in the AP Law as to the relevance of independent normative standards of justice and political morality for the determination by the people's courts of the legitimate rights and interests of parties in administrative cases.^[59] The absence of this recognition is a critical feature of the administrative law system in the PRC, as this is founded in the AP Law, and, as we may note by way of a final observation, it is something that will increasingly come to weigh with the jurists and legal commentators given what is now the explicit commitment of the PRC, at the level of constitutional law, to the principles of human rights.^[60]

Notes and References

*The article the second part of which is here published was completed on 5 July 2004, and with Part 1 of the article being published in Volume 37 of *The Tsukuba University Journal of Law and Political Science* (September 2004). The article was written as a unified whole, and, in consideration of this, the numbering for the notes and references has been left to stand as continuous as between the two parts. Thus the numbering for the notes and references for Part 1 runs from 1 to 43, while the numbering for the notes and references for Part 2 runs from 44 to 60. Charles Covell and Shahzadi Covell.

44. Interim Provisions for the Administration of the Environment in the Economic Zones Open to the Outside World.

Duiwai Jingji Kaifang Diqu Huanjing Guanli Zanxing Guiding.

Compilation, January-December 1986, pp. 579-82.

45. Regulations of the People's Republic of China on the Administration of Traffic Safety on Inland Waters.

Zhonghua Renmin Gongheguo Neihe Jiaotong Anquan Guanli Tiaoli.

Compilation, January-December 1986, pp. 688-98.

46. Measures for the Control of Narcotic Drugs.

Mazui Yaopin Guanli Banfa.

Compilation, January-December 1987, pp. 965-9.

47. Regulations of the People's Republic of China on the Administration of the Registration of Enterprise Legal Person Entities.

Zhonghua Renmin Gongheguo Qiye Faren Dengji Guanli Tiaoli.

Compilation, January-December 1988, pp. 900-10.

48. Measures for the Control of Psychotropic Drugs.

Jingshen Yaopin Guanli Banfa.

Compilation, January-December 1988, pp. 1089-95.

49. Decree No. 15 of the People's Republic of China.

Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases.

Zhonghua Renmin Gongheguo Zhuxi Ling (di 15 hao).

Zhonghua Renmin Gongheguo Chuanranbing Fangzhi Fa.

Compilation, January-December 1989, pp. 639-49.

50. Provisions of the People's Republic of China on the Administration of the

Fruits of Cartography.

Zhonghua Renmin Gongheguo Cehui Chengguo Guanli Guiding.

Compilation, January-December 1989, pp. 755-61.

51. For the purposes of maintaining completeness in the account here provided of the selected legal source materials, it is to be noted that it is the application of administrative sanctions and penalties that is specified as the occasion for affected parties to initiate proceedings in the people's courts, as against the administrative authorities, in the various laws and regulations that we have made reference to but without as such expounding them in detail. For the relevant provisions, see: Article 11 of the Interim Provisions for the Administration of the Environment in the Economic Zones Open to the Outside World; Article 50 of the Regulations of the People's Republic of China on the Administration of Traffic Safety on Inland Waters; Article 34 of the Measures for the Control of Narcotic Drugs; Article 32 of the Regulations of the People's Republic of China on the Administration of the Registration of Enterprise Legal Person Entities; Article 25 of the Measures for the Control of Psychotropic Drugs; Article 36 of the Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases; Article 20 of the Provisions of the People's Republic of China on the Administration of the Fruits of Cartography.

52. Decree No. 83 of the President of the People's Republic of China.

Criminal Law of the People's Republic of China.

Zhonghua Renmin Gongheguo Zhuxi Ling (di 83 hao).

Zhonghua Renmin Gongheguo Guoxing Fa.

GSC, 4 April 1997, Issue No. 10, Serial No. 862, pp. 419-94.

53. Decree No. 64 of the President of the People's Republic of China.

Criminal Procedure Law of the People's Republic of China.

Zhonghua Renmin Gongheguo Zhuxi Ling (di 64 hao).

Zhonghua Renmin Gongheguo Xingshi Susong Fa.

GSC, 18 April 1996, Issue No. 10, Serial No. 824, pp. 378-413

54. Decree No. 37 of the President of the People's Republic of China.

General Principles of the Civil Law of the People's Republic of China.

Zhonghua Renmin Gongheguo Zhuxi Ling (di 37 hao).

Zhonghua Renmin Gongheguo Min Fa Tongze.

Compilation, January-December 1986, pp. 1-34.

55. Decree No. 44 of the President of the People's Republic of China.

Civil Procedure Law of the People's Republic of China.

Zhonghua Renmin Gongheguo Zhuxi Ling (di 44 hao).

Zhonghua Renmin Gongheguo Minshi Susong Fa.
GSC, 15 May 1991, Issue No. 13, Serial No. 652, pp. 481-520.

56. The provision of the General Principles of the Civil Law that is crucial here comes in Chapter 6 as part of the statement of the basic principles of civil liability. Thus it is laid down in Article 121 that where state bodies and the personnel of these, as in the discharging of their official duties and powers, act in such a way as to harm the lawful rights and interests of ordinary citizens or of legal person entities, then the state bodies and state personnel involved are to be thought of as bearing liability for damages under civil law. As to the distinctness of the form of adjudicative procedure followed in civil law cases, as relative to the procedure for the judicial review of administrative action, there is the key provision to be found in the statement of the principles governing the trial procedures to be adopted in civil cases by the people's courts of first instance that comes in Chapter 12 of the Civil Procedure Law. This is the provision to the effect that in circumstances where the people's courts are presented with civil suits by parties that have the aspect of administrative cases, and that fall within the province of administrative law, then the people's courts are to decline to hear the suits in question and are to advise the parties to initiate administrative proceedings (Article 111).

57. It is clearly provided among the principles relating to crimes set out in Chapter 2 of the Criminal Law that state organs are capable of committing such acts endangering society as are to be ranked as crimes, and that they are in consequence of this and as appropriate to bear criminal responsibility and to be made subject to criminal sanctions and penalties (Articles 30-31). As to the specification of state officials as persons who discharge public functions within state institutions, and as for the purposes of the ascription of criminal responsibility in accordance with the terms of the law, this is given in Chapter 5, Article 93. The elaboration of the various crimes of bribery and embezzlement comes in Chapter 8, and the particular criminal offences within this category that are referred to in connection with the misconduct of state officials include the following as are here summarized: embezzlement of public funds (Articles 382-383); misappropriation of public funds (Article 384); extortion and acceptance of bribes (Article 385-389); retention of gifts accepted in the public service (Article 394). The crimes to do with dereliction of duty on the part of state officials are elaborated at length in Chapter 9, and with these being presented as involving the causing of substantial losses to the state through negligence and through the engaging in malpractice for the purposes of personal gain and enrichment (Article 397). The state officials whose dereliction of duty as along these lines is affirmed to be subject to criminal punishment are those responsible for such administrative tasks and functions as follows: the judicial office and law enforce-

ment (Articles 399-402); the regulation of corporations and corporation shares (Article 403); the taxation system (Articles 404-405); the maintenance of forests (Article 407); the protection of the environment (Article 408); the prevention and treatment of infectious diseases (Article 409); the customs (Article 411); the quarantine inspection of animals and plants (Article 413); the control of border crossings (Article 415).

58. To underline this as the position taken in the AP Law as to the standards for judicial decision-making in administrative cases, it is to be noted that the correct or incorrect applications of laws and regulations, and the conformity or non-conformity with legal procedure, are referred to in Article 61 as the principal factors in appellate adjudications concerning administrative cases.

59. There is a nod towards some such independent normative standards of justice and political morality, as in relation to the judicial review of administrative action, with the reference that comes in Article 54 of the AP Law to the matter of the unfairness of administrative sanctions and penalties, as something that is to lead the people's courts to find for the plaintiffs in administrative cases and as against the administrative authorities concerned. However, the relevant considerations of unfairness at issue here are left indeterminate. So, for example, there are no rules and principles of adjudication specified in the AP Law that correspond to the rules and principles that are familiar, as from the English common law, as the rules and principles of natural justice that serve to guarantee the right of the parties adversely affected by the acts of administrative authorities to a hearing which will be unbiased.

60. The commitment of the Party-State leadership authorities in the PRC to the principles of human rights has come as part of the latest set of amendments to the State Constitution, which were adopted at the 2nd Session of the 10th National People's Congress as of 14 March 2004. Thus it is that Article 33 of the State Constitution, as the first of the articles comprising Chapter 2 on the fundamental rights and duties of citizens of the PRC, is now amended to the effect that it provides not only that citizens are equal under the law and are the bearers of the rights and duties prescribed in the Constitution and the laws, but also that the state is to respect and to guarantee human rights. The precise implications and consequences of the entrenching of human rights in the constitutional law of the PRC remain to be seen, but that there will be implications and consequences for the future development of the administrative law system in the PRC is something that is not open to doubt. The reference details for the constitutional amendments adopted on 14 March 2004 are as follows:

Amendments to the Constitution of the People's Republic of China.

Constitution of the People's Republic of China.

JUDICIAL REVIEW IN THE PEOPLE'S REPUBLIC OF CHINA: SELECTED LEGAL
SOURCE MATERIALS FROM 1982 TO 1989 (in two parts: Part 2)

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GSC, 10 May 2004, Issue No. 13, Serial No. 1120, pp. 4-17.

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