

Discussion on the Effectiveness of Chinese Administrative Relief System

A Status Analysis and Rational Proposal

Name: Kai Gao

Department: Law Faculty – Public International Law

Thesis Supervisor: Nancy, Yue Liu

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1 Introduction

1.1 Magnitude of Problem and Subject Matter of the Thesis

Relief (or remedy) usually refers to national or social relief, including providing rescue, security, or material assistance to individuals, as well as the relief of sudden disaster¹. Relief right asks for constant standard change to the constant perfection of the domestic relief system. As an important part of the system, the administrative remedy mechanisms are set against the improper intrusion of the administrative power to the civil rights, avoiding the latter be squeezed by the government. The administrative relief system is vital to the balance between power and right, as well as to the protection and promotion of the basic human rights and freedoms.

China, as a country with rapid economic development, has not proven its improvement of relief mechanisms. Although there is no explicit claim that Chinese administrative system is inefficient among other countries, there are still many reports, for example some world-well known news and articles, which indicate that Chinese citizens' case might not be equally treated, especially when the individuals' right is in conflict with the governments' reputation and interest².

It has never been an easy task for the State Party to fulfill its obligation to offer citizens effective administrative remedy. A good system should be compatible with the local environment in a long-term process. China does not have an independent judiciary or a legal

¹ Wei, Zhang. The right of relief and the right to obtain relief - legal interpretation of obtaining relief right. In: Journal of Northwest University of Political Science. Vol.3 (2008), pp.20

² For example, human rights watch describes China human rights situation in 2013: Despite the country's three decades of rapid modernization, the government remains an authoritarian one-party system that places arbitrary curbs on freedom of expression, association, religion, prohibits independent labor unions and human rights organizations, and maintains party control over all judicial institutions. See <http://www.hrw.org/world-report/2013/country-chapters/china>

system that operates outside the influence of the Chinese Communist Party³. Under Chinese society and social condition, the design and operation of the administrative relief system in China are always trapped by impediments from many sorts. Thus the effectiveness criteria have special meaning to China.

The subject matter of this thesis is to analyze current Chinese administrative relief system effectiveness; answer the substantial and formal shortcomings of current Chinese administrative relief system. Furthermore thesis would compare other relief framework and provide appropriate recommendations for enhancement of Chinese administrative relief system in the future.

1.2 Objectives

As the above overview describes, the introduction of relief has close relationship with state's government. It has been claimed that the Chinese administrative relief system is not effective enough to protect the individual's right. The fundamental objective of this thesis is to provide practical and appropriate recommendations for improving the effectiveness of the Chinese administrative relief system. In order to achieve this goal, we need to clarify following questions to support our conclusion:

1. How does the administrative relief system function in China nowadays?
2. How many relief channels does the Chinese administrative relief system have? Are these channels effective enough according to international standard?
3. Under current social environment, what should be the standard to verify if the relief system is effective?

³ The Communist Party of China (CPC), also known as the Chinese Communist Party (CCP), is the founding and ruling political party of the People's Republic of China (PRC). Although nominally it exists alongside the United Front, a coalition of governing political parties, in practice, the CPC is the only party in the PRC, maintaining a unitary government and centralizing the state, military, and media. The legal power of the Communist Party is guaranteed by the national constitution, though due to the Party's Leninist roots, it stands above the law. The current party leader is Xi Jinping, who holds the title of General Secretary of the Central Committee. See https://en.wikipedia.org/wiki/Communist_Party_of_China

4. What should be the most appropriate approach to deal with Chinese administrative relief cases?

In order to answer the questions above, the thesis would introduce the current China's social structure and legal development trend, and the relationship between China's culture, social background and current Chinese administrative relief system. The illustration intends to introduce the current system and the effectiveness of Chinese administrative relief system.

Furthermore, the thesis would explain the current Chinese remedy mechanism and relief channels, and compare them with international relief effectiveness standards, such as International Convention on Civil and Political Rights, Universal Declaration of Human Rights and the European Convention of Human Rights. The aim would be to explore the shortcomings of the current Chinese administrative relief system and try to draw a fundamental legal standard of enhancing the framework.

Finally according to the analysis above, the thesis would try provide practical suggestions for improvement.

1.3 Methodology

The thesis will essentially follow a theoretical legal research methodology. It will analyze the Chinese legal and culture background, Chinese administrative relief system currently effectiveness situation, and its proposed reform.

The thesis uses sub-units analysis to present major administrative relief channels in China individually. In the thesis, readers would understand how Chinese administrative relief channels functions and cooperation condition among each other. Through analysis, we would summarize the shortcomings of system channels, and figure out different channels need to be surveyed and enhanced from different angles.

Case study will be adopted. The thesis would introduce a very well-known and typical relief case in China: Putian Land case. In this case we would analyze the case background, Court decisions and the final result. Through the case analysis the Chinese administrative relief system's current status, shortcomings and the various Chinese relief channels could be illustrated more concretely.

Comparative method will also be adopted to analyze the pros and cons of Chinese administrative relief system. The thesis will include the analysis, implementation and application range of Article 13 of the European Convention on Human Rights (ECHR). The thesis also compares Chinese administrative relief system with administrative remedy mechanism in US and Germany. These are in sharp contrast with current Chinese administrative relief system.

1.4 Challenges

The major challenges we encountered is the scarce material about Chinese administrative relief system. As Chinese legal system's special structure and information block, there are not massive amount of well-documented Chinese cases which can prove the current Chinese administrative relief status. There are also not many foreign researchers who had studied Chinese relief mechanism elaborately. Under this circumstance, how to clearly and logically present the thesis' objective becomes the biggest challenge.

1.5 Thesis structure

The thesis is structured in the following manner:

Chapter 1 is thesis introduction.

Chapter 2 would quote conventions from international law and explain why an effective remedy is strongly needed. The purpose is to settle the reason of the significance and necessity of this thesis.

Chapter 3 introduces what obligations does the state, as the subject party under administrative relief system, have towards effective remedy.

Chapter 4 will take the European human rights operation mechanism as the model and analyzes the detailed standards of the effective remedy. Through concrete cases, we would reveal the procedural and substantive standards of effective remedy, which could be introduced and used as a reference for Chinese administrative relief system.

Chapter 5 introduces Chinese culture backgrounds. The reason is that Chinese culture is quite different from European cultures. This analysis could indicate the unique characteristic of Chinese culture and its relevant factors towards Chinese administrative relief system.

Chapter 6 focuses on the Chinese administrative relief system. By analyzing three major relief channels in China: administrative reconsideration, administrative litigation and petition, the characteristic of these three channels will be reviewed, and the defects which exist in Chinese administrative relief system will be analyzed. Case study will be adopted to find out the actual shortcomings of Chinese administrative relief system.

Chapter 7 would explore administrative relief system in US and Germany and aim to compare and figure out how to enhance Chinese relief system under current Chinese society.

In Chapter 8, the thesis would gather what had been analyzed and discussed in thesis, combine Chinese administrative relief system shortcomings and conclude how should the administrative organization improves, while some rights need to do be reinstructed.

Chapter 9 will summarize final conclusion.

2 Why is Effective Remedy Needed

The term "relief" (or remedy) is common in social life, which generally refers to "financial or practical assistance given to those in special need or difficulty"⁴. It usually refers to which national or social relief, including providing rescue, security, or material assistance to individuals, as well as the relief of sudden disaster⁵.

Effective remedy, as one of the fundamental right of human rights, has been widely included in many international conventions and. For example: International Convention on Civil and Political Rights⁶ (ICCPR), Universal Declaration of Human Rights (UDHR⁷), and case Law from the European Court of Human Rights and the regulations in the European Convention of Human Rights (ECHR⁸). This standard should be universal and could indicate advice for improving administrative relief systems, for example China. In this chapter, we will introduce the regulations about effective relief under international law and indicate why effective remedy is needed.

2.1 Implication of effective remedy on international law

In the context of international human rights law, the relief right has been described as "Right to an Effective Remedy"⁹ and it has got a more profound meaning. It states:

⁴ See definition of "relief" from Oxford Dictionary.

⁵ Wei, Zhang. The right of relief and the right to obtain relief - legal interpretation of obtaining relief right. In: Journal of Northwest University of Political Science. Vol.3 (2008), pp.20

⁶ People's Republic of China Government had signed the ICCPR at United Nations on 5 October 1998. PRC repeatedly announced that it would implement the ICCPR, but because ICCPR has many conflicts with the existing laws of Chinese legal system, (such as on the usage of death penalty, ICCPR regulate that only the "most serious crimes" can only be sentenced to death, which to exclude property crime, economic crime and political crime, but according to Chinese criminal law in 1997, it provides for a total of 68 kinds of crimes which can apply the death penalty, half of them are related with Politics economic crime), the State Council has not made its report, so the Chinese National People's Congress was not able to ratify the Convention

⁷ UDHR: Universal Declaration of Human Rights. UDHR is a declaration adopted by the United Nations General Assembly on 10 December 1948 at Palais de Chaillot, Paris

⁸ ECHR: European Convention on Human Rights. ECHR is an international treaty to protect human rights and fundamental freedoms in Europe, drafted in 1950 and force on 3 September 1953

⁹ James Darcy. Human rights and international legal standards: what do relief workers need to know. In: Relief and rehabilitation network. February 1997, pp.1

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law (UDHR article 8).

Article 13 of the ECHR also reiterates that:

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

These rules indicate that effective remedy's applicable objects should be everyone. Relief is not just an expression of the willing, it also refers to a legal system. The State has strong responsibility for effective remedy.

In addition, there is a more detailed presentation about State's role within remedy scope. Under Article 2 of ICCPR, it mentions each State party should all undertake these covenants:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted¹⁰.

These requirements require the State party to provide the appropriate relief where there are violations of individuals' rights, and the relief they provide must meet the requirement of effectiveness.

¹⁰ICCPR. Article 2. pp.174

2.2 Proposition of effective remedy on international law

From traditional sense, relief right is relatively taken as the second layer of right based on the original rights. It derives from violations as a precondition. However with the development of law, relief right has gradually begun to have its own independent value. The Grand Chamber of the European Court of Human Rights pointed out that “On the contrary, the place of Article 13 (from ECHR) in the scheme of human rights protection set up by the Convention would argue in favor of implied restrictions of Article 13 being kept to a minimum¹¹”.

The primary responsibility for implementing and enforcing the guaranteed relief rights and freedoms is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court¹². Therefore, the right to obtain effective relief is used for the main protection of domestic systems from the Member States to provide the appropriate relief. The question now is when the European Court of Human Rights faces such relief cases, should they first confirm whether the parties in related cases have been violated by other Convention rights, or the parties can begin to advocate the right to obtain effective relief? The European Court of Human Right¹³ (ECtHR) pointed out that, in the case of *Klass v. Germany*: “Where an individual claimed that his rights and freedoms under the Convention had been violated, Article 13 guaranteed a remedy before a national authority in order to have his claim decided and, if appropriate, to obtain redress.”¹⁴. Thus this confirms the right to an effective remedy could be taken as the independent status of a procedural right.

¹¹ *Kudla v. Poland* (App.30210/96), Judgment of the Grand Chamber of 26 October 2000; (2002) 35 EHRR 198, para. 152 of the judgment

¹² Same as above

¹³ ECtHR: The Court was established on the 21 January 1959 on the basis of Article 19 of the European Convention on Human Rights when its first members were elected by the Consultative Assembly of the Council of Europe. The Convention was adopted within the context of the Council of Europe, and all of its 47 member states are contracting parties to the Convention. The Court is based in Strasbourg, France.

¹⁴ *Klass and others v. Germany*. Judgment of 6 September 1978. EHRR 214. para. 63 of the judgment

So the right can advocates together with Convention rights entities, and also can be a separate proposition in the case of no violations entity Convention rights. However, although for most of the time, when there is the lack of effective remedies at the domestic level, the Article13 would be taken as a supplement to the main ideas. But under certain circumstances, such as in the absence of special relief channels, there has been no breach of Article 13 as regards the other complaints of the applicants, but would directly focus on the violation of the Convention rights instead¹⁵.

Article 13 ensures that the availability of relief right under domestic dimensions. The strategy which court now adopted means that the case should be properly dealt with in the domestic courts (or other eligible institutions.)¹⁶ If there is an absence of this pathway, it may lead to a violation of Article 13. Therefore, the existence of such procedural rights means another relief channels. Even the parties' substantive rights was dismissed, the court may notice the State's fails and provide effective channels for relief decision on his breach of the obligations under the Convention, so that parties will not fully dismissed, and thus it's more conducive to the protection of substantive rights. In addition, the scope of the States parties under Article13 depends on the specific nature of the proposition, while its core is to ensure that the relief could be provided by the prescribed level. And the right to an effective remedy is not only reflected in the text of Article 13, the effectiveness of relief has always been the spirit in the Strasbourg mechanism¹⁷.

2.3 Concluding Remarks

"Right to an effective remedy" is one of the basic human rights which calling for realization in the context of international human rights law. In the view of International ICCPR, UDHR and, ECHR, effective remedy is clearly defined. Everyone is supposed to possess effective remedy right. State, as what is clearly declared in ECHR Article 13, should pro-

¹⁵ De Wide, Ooms and Versyp v. Belgiumt. Judement of 18 June, 1971. EHRR 373.

¹⁶ Clare Ovey and Robin White. Jacobs and White: The European Convention on Human Rights. (fourth edition). UK, (Oxford Press) 2006. pp.461.

¹⁷ Explanation: As Strasbourg is the seat of European Court of Human Rights, so mechanism of hearing case is also called Strasbourg mechanism.

vide effective channels to fulfill its obligation. A more clear state's obligation would further explain in next Chapter.

3 State's Obligation towards Effective Remedy

A national obligation in the field of international human rights law is an important content. The civil rights outlined the scope of the national commitment to effective remedy obligations. The actual performances of the national obligations also reflect the realization of the civil rights situation. Therefore, this chapter would start with the corresponding state's obligations for an effective remedy rights. The domestic obligation should not be taken negatively, but positively. It should protect and promote human rights from different levels.

3.1 State's obligation level on International Human rights

Article 2 of ICCPR requires:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”¹⁸.

"International Covenant on Economic, Social and Cultural Rights¹⁹" (ESCR) article 2 mentions:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”²⁰

¹⁸ ICCPR. Article 2-1

¹⁹ ESCR: The International Covenant on Economic, Social and Cultural Rights is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 3 January 1976. It commits its parties to work toward the granting of economic, social, and cultural rights (ESCR) to individuals, including labor rights and the right to health, the right to education, and the right to an adequate standard of living. People's Republic of China Government had signed the ESCR on 27 Oct 1997 and ratified on 27 Mar 2001

²⁰ ESCR. Article 2-1

These two conventions focus on different aspects. ICCPR focuses on objects. It emphasizes on all kinds of color, sex and religion's individuals should obtain same right. ESCR underlines the subjects that the State should try to exhausted available resources to assist its citizen. Furthermore, state's obligation can be further subdivided into three dimensions²¹:

1. Respect: Respect obligation is regarded as the state's negative obligation, which is under category of the traditional obligations. It requires the state not to hinder individuals to exercise their rights, and not to use violations to influence individuals' specific behavior.
2. Protect: The focus of protect obligation is to protect individual's rights against other private infraction. The essence of the protect obligation is a positive intervention. It is the embodiment of the horizontal effect of the international human rights law. For example, countries could take positive measures to eliminate discrimination. As well as taking legislative acts to constrain such as incitement to racial hatred. These are all the embodiment of "affirmative obligation".
3. Fulfill: 'Fulfill' obligation is typically the positive aspects of obligations, which contains the following two aspects: First is the obligation to facilitate. State has to promote the implementation of specific obligations, for example to enhance people's access to resources through positive behavior and enjoyment of the capabilities, such as the countries to improve food distribution. Second is the obligation to provide. It means the State is obliged to provide certain production. This type of obligation applies to the individual who does not have the ability to enjoy certain situation, such as the state provides individuals with the necessities of life Goods.

3.2 State's obligation scope under effective remedy

The right to get effective remedy is a procedural right under State's legal system. The states' scope of the specific obligations could potentially be limited by procedural right.

²¹ International Human Rights Law Tutorial Project Group. International Human Rights Law Tutorial. (first edition). Beijing. (China University of Political Science and Law Press), December 2002. pp.5-6

Generally speaking, States Parties shall personally think that when litigants received improper treatment due to their violation of the Convention, state should provide a channel to the propositions of the referee by domestic institutions to individuals, in appropriate cases and with appropriate remedy. From this sense, Article 13 takes positive obligation of the State's commitment to higher requirements. So state not only needs to handle entities by qualified institution, but also should be able to provide appropriate relief. When an individual has an arguable claim to be the victim of a violation of the rights set forth in the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress²². To obtain the right to effective relief, it requests the State party to undertake some obligations.

3.2.1 Contracting state should supply adequate procedure or forum

In general, the contracting states have the obligation to supply adequate procedure or forum for individuals. More precisely, the contracting state should ensure that relief channels and places' availability and accessibility. This obligation has requisition from the relief procedure. Specifically the Court will check conditions as follows²³:

1. Whether the relief organizations are independent.
2. Whether relief organizations have the authority to trial specific cases, whether relief organizations have capacity to trial all the human right proposition from the party.
3. When relief agencies is adjudicating cases, whether the use of the procedural requirements and the rules of evidence are sufficient.

In addition, there should be legally available relief. The State party should bear a greater share of the positive obligation to ensure the availability and accessibility of these channels for relief on the practical level. For example, if the parties' economy is really difficult, State should provide legal assistance to the parties in appropriate circumstances according

²² Silver and others v. the United Kingdom, Judgment of 25 March 1983. Strasbourg. EHRR 347. paragraph. 113

²³ Howard, Davids. Human Rights Law Directions. (2nd edition). UK, (Oxford Press) 2007. pp.96.

to the complexity of the case itself or stakes. Also State could take appropriate measures to eliminate language barriers. For example, State should fulfill the obligation to make sure parties are able to understand the language or translation, or to provide citizens with basic legal training to carry out human rights education.

3.2.2 Contracting state should supply adequate remedies

Different from first point, this layer's obligation emphasis on party essentially get adequate, effective relief. There are two aspects of the meaning for adequate, first is appropriate, and second would be sufficient. This requires the appropriate relief agencies have the permissions to give specific case appropriate and adequate remedy, and the remedy can be get effectively. If the case is about deprivation of the freedom right, the court or the referee agencies should have the power to order the parties the release. Or in some cases which need some economic compensation to the rights, the judicial organizations should be the appropriate authority to make the relevant economic compensation referee, and to ensure the realization of the judgment²⁴.

In addition, to identify whether the State party fully fulfills the obligation depends on the nature of the claim based on its own unique circumstances on a case-by-case basis. The most appropriate way to effective relief is to carry out an effective investigation, investigate the responsible persons and compensate the loss of the victims and their relatives. In fact, the ECHR itself, and the Strasbourg mechanism did not make in the form of certain relief requirements during the trial, but to give the State parties fully margin of appreciation or procedural autonomy²⁵. State can set up its own domestic legal order in the form of relief that may need to meet the obligations under the Convention. Therefore, adequate relief does not require certain judicial remedies. Administrative remedies or other form of relief may also meet the obligations under Article 13 requirements in specific cases²⁶. In addition,

²⁴ Same as last footnote.

²⁵ Clare Ovey and Robin White. *Jacobs and White: The European Convention on Human Rights*. (fourth edition). UK, (Oxford Press) 2006. pp. 463

²⁶ Same as last footnote.

the referee authorities provided relief effective access for the parties. At this point, the State party was able to successfully fulfill the obligations assumed under Article 13 of the Convention.

3.3 Concluding Remarks

State, as the subject of relief right relationship, has strong obligation to effective remedy. State need to "respect", "protect" individual's right against other private infraction, and fulfill obligation to establish guarantee for an individual to ensure that he or she effectively enjoys remedy rights. China, as a responsible state, should assume more responsibility from both international level and domestic level. Although China has not ratified all International Laws (for example ICCPR), but China should definitely develop towards a more rational and responsible role on the international stage.

4 Effective Relief at ECHR

This chapter will study ECHR cases and conclude the European human rights operation mechanism as reference. We would like to analyze necessary factors for an effective remedy and referred it back when discussing Chinese administrative relief system.

4.1 Introduction of ECHR

To complete its existing goals, the Council of Europe creates a series of regulatory and institutional systems, which further promotes the realization of human rights in Europe. Countries in the Europe form “The European Convention for the Protection of the Human Rights and Fundamental Freedoms”. The Convention was concluded in Rome in 1950.

The ECHR is the world's first regional human rights conventions. It is a response to the request of the UDHR within European human rights protection, which provides for collective security and the implementation of the UDHR including both civil rights and political rights. It requires the member countries to follow the minimum standards of human rights. So far, the ECHR has received 13 supplementary protocols, which gradually expanded the scope of protection of rights. The Court must also recall that the Convention is a living instrument which, as the Commission rightly stressed, must be interpreted in the light of present-day conditions²⁷. It eventually obtains the status of the European Basic Law.

4.2 European Court of Human Rights’ review process of effective relief

European Court of Human Rights reviews the effectiveness the domestic administrative relief system when dealing with cases involving Article 13 and related provisions. Moreover, court will follow the standard of exhaustion of domestic remedies in all cases. Therefore, we can start from the existing judgment of the European Court of Human Rights, and explore conditions that the effective relief should meet.

²⁷ Tyrer v.the United Kingdom. Judgment of 25 April 1978. ECHR. Para 31.

In many cases, the European Court of Human Rights developed a general path of a context which can be taken when handling similar cases. For example in *Conka v. Belgium*²⁸ case. The applicants say that on several occasions between March and November 1998 they were violently assaulted by skinheads in the Slovakian Republic. In November 1998 Mr Čonka had been so seriously injured in an assault that he had to be hospitalized. The police had been called but refused to intervene. Several days later Mr and Mrs Čonka was subjected to renewed insults and threats by skinheads, but the police again refused to intervene. As a result of those constant threats, the applicants decided to flee from Slovakia and travel to Belgium. The result of asylum request was rejected, Conka family was asked to leave the territory of Belgium and was sent to transit centers and waiting for deportation. The applicant (Conka family) prosecute that Belgium had violated their freedom right according to European Court of Human Rights: Article 5 of the ECHR (the first paragraph, the second paragraph and fourth paragraph) and Article 4 of Protocol 4 (prohibition of the collective expulsion of aliens). After meticulous review, the Court makes the following observations about Article 13:

"The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order."

Article 13 requires the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief. The scope of the Contracting States’ obligations under Article 13 varies depending on the nature of the applicant’s complaint; however, the remedy required by Article 13 must be “effective” in practice as well as in law. The “effectiveness” of a “remedy” within the meaning of Article 13 does not depend on the certainty of a favorable outcome for the applicant. Nor does the “authority” referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether

²⁸ *Conka v. Belgium*. Judgment of 5 February 2002, Strasbourg.

the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so"²⁹

Apart from this general path, the European Court of Human Rights also constantly replenished the validity of the details of the requirements in the specific case. According to this, we can define the effectiveness of the relief from two aspects: One is that relief should get safeguards with procedural guarantees; another is whether relief was sufficiently effective in essence, which means a substantive standard. Although it is difficult to identify two levels separately, theoretically, building this model will bring more benefits with combining more detailed standards.

4.2.1 Procedural guarantees for administrative relief system

Procedural guarantee is a prerequisite for substantive justice. As ECHR Article 6.1 says:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Relief agencies need to be guarantee that they are independent, impartial and make no bias. The standard of impartial determination should be considered from two factors - subjective factor and objective factor³⁰:

1. Subjective factor: whether refereeing officials' individual opinion could cause suspicion of fairness and independence in the individual cases.
2. Objective elements: whether the referee institutional has achieved independence and fairness. For example, if the judge and litigant are from the same party, it may

²⁹ Conka v. Belgium. Judgment of 5 February 2002, Strasbourg, para.75

³⁰ Clare Ovey and Robin White. Jacobs and White: The European Convention on Human Rights. (third edition). UK, (Oxford Press) 2002. pp.220-221.

give rise to the suspicion of favoritism. Nevertheless, it is not possible to prove the performance of the judge is affected or not, and thus it is not able to prove the fairness and independence. The criteria can be set up as: the referee cannot show any presence of pre-judgment on the real problem.

4.2.2 Substantive standard of relief effectiveness

The conditions listed above can only provide procedural guarantee for effective relief. Relief which follows the procedures above may still be ineffective in specific circumstances. Thus, we need to explore the real relief effectiveness standards. In a series of precedents, the Court repeatedly stressed that relief should be provided and be valid in law and in fact³¹. There are also similar expressions in the context of the United Nations Human Rights Council³². Generally speaking, this effectiveness of the remedy should meet three major requirements: availability, accessibility and adequacy³³.

4.2.2.1 Availability and accessibility

Only with the relief agencies procedural guarantee is not enough. We also need to ensure that the litigants can effectively participate in effective relief procedures. Thus whether the relief is available and approachable is a prerequisite for the validity. In addition, the court should be valid for substantive judgments of relief when the first problem has been solved. The difference between the two requirements is that availability generally emphasizes the existence of facilities including the responsible agencies and the valid procedures; Accessibility emphasis on practical ways to actually access and obtain the remedies. This requires the remedies of relief should not only exist, but also attainable.

³¹ Kudla v. Poland. The European Court of Human Rights, sitting as a Grand Chamber, Strasbourg, 26 October 2000. Para.157.

³² Dermot Barbato v Uruguay. International Covenant on Civil and Political Rights, 21 October 1982, para 9.4 mentioned: "They are either inapplicable de jure or de facto and do not constitute an effective remedy, within the meaning of article 2(3) of the Covenant"

³³ ECHR. Article 6. Para.1

4.2.2.2 Adequacy

Adequacy means the relief requirements should provide appropriate help and the injured rights can be fully recovered. According to the relief availability and accessibility requirements in the legislation, adequacy should not be limited at relief channels, but in some special cases which are difficult to review, it still need certain restrictions involving national security. Relief should be as effective as possible and meets the minimum requirements of Article 13 of ECHR. For adequacy, there are some points we need to pay attention to:

1. The adequate remedy is not necessarily to be judicial relief, other administrative relief, such as Ombudsman³⁴, may be adequate based on their own characteristics and to take care of the needs for specific cases. Thus, we must exhaust all reasonable judicial and administrative channels for relief. However, reconsidering the opportunity with another method and makes a decision itself does not necessarily constitute an effective relief. The unconventional relief can be taken into account, but not necessarily exhausted. Moreover the decision of the relief channels should be carefully considered; otherwise the fairness of the relief is questionable. In addition, if the available relief is non-judicial remedies, we should take the procedural guarantee as a standard also³⁵.
2. Although judicial relief is not the only choice, but judicial relief is generally considered as the most effective relief, especially when the importance of the claim is taken into account, for instance when torture or the right to freedom is concerned, judicial remedy is regarded as the most appropriate choice.
3. If we are in the case that individual's rights are damaged and difficult to recover, for example the offenders who may be sentenced to death and need extradition cas-

³⁴ Ombudsman means: An official appointed to investigate individuals' complaints against a company or organization, especially a public authority. See oxford dictionary.

³⁵ Clare Ovey and Robin White. *Jacobs and White: The European Convention on Human Rights*. (third edition). UK, (Oxford Press) 2002. pp.464

es, only preventive protection is (such as temporary rights protection measures) the only adequate remedies; Relief afterwards is inadequate and is not effective³⁶.

4. When ECHR Article 2 (right to life), Article 3 (the right of freedom from torture) and the Article 6 (right to a fair trial) is concerned, the Court pointed out that provide economic compensation relief is necessary. Such as in the case *McGlinchey v. the United Kingdom*³⁷, the victim died in prison. The United Kingdom Government stated that remedies were available as required by Article 13 of the ECHR. Judith McGlinchey could have used the internal prison complaints system to complain about her treatment. Intolerable conditions of detention were also the proper basis for an application for judicial review. However, the court found that the applicants acting on her behalf after her death should have been able to apply for compensation for the non-pecuniary damage suffered by her. As there was no remedy which provided a mechanism to examine the standard of care given to Judith McGlinchey in prison and the possibility of obtaining damages, there has, accordingly, been a breach of Article 13 of ECHR, which makes the other possible relief also meaningless. So adequacy of relief is a combination of the specific nature of the claims and case's environment.

4.3 Concluding Remarks

In this chapter, through concrete cases, we discussed the procedural and substantive standards of ECHR when processing and implementing an effective remedy. These standards can be very useful when comparing with Chinese relief standards.

Challenge for China to reach effective remedy can be found from different dimensions, not only front administrative relief system level. The topic of thesis is to discuss effectiveness of Chinese administrative relief system. So before we formally start to analyze Chinese administrative relief system, we would introduce some Chinese cultures as background

³⁶ *Lubicon Lake Band v. Canada*. No. 167/1984 : Canada. CCPR .Para 13.2

³⁷ *McGlinchey and others v. UK*. Judgment of 29 April 2003. Para 61, 67

knowledge and thus have better understanding of Chinese administrative relief system's formalization and shortcomings.

5 Chinese Culture Backgrounds

China, as the second largest economy, largest developing country and largest populous country, is obtaining global attention on multiple aspects, including right to effective remedy. During the last decades, multinational researchers had tried to analysis the reason. But until now, people still could not get an explicit view of China's human right situation. One of the reasons is because the Chinese culture background and society structure are quite different from western countries. This makes it much harder to have a thorough understanding of China's basic condition or state without knowing most basic knowledge of China, which could lead to rather unilateral consideration and conclusion.

So before analyzing Chinese administrative relief system status, we would introduce Chinese legal culture background and social background and analysis their influence to Chinese legal system. It would illustrate the reason why Chinese legal systems are so non-transparent and so hard with execution.

5.1 Chinese legal culture background

Chinese culture is one of the world's oldest cultures³⁸. Chinese traditional legal culture is the result which reflects thousands of years of Chinese legal practice activities. Chinese modernization of legal culture can be traced back from antiquity until the late Qing Dynasty³⁹, and it is widely spread in the vast land of China with a high degree of stability and continuity of legal culture⁴⁰.

³⁸ Chinese Dynasty Guide - The Art of Asia - History & Maps. Minneapolis Institute of Art. Retrieved 10 October 2008.

³⁹ The Qing Dynasty (1644–1911) was the last imperial dynasty in China. Founded by the Manchus, it was the second non-Han Chinese dynasty.

⁴⁰ Liming, Hu. The Modernization of the Traditional Law Culture of China. In: Journal of Southwest Jiaotong University – Social & Science. Vol.1 (2004), pp.1.

Chinese traditional legal culture gradually formed a unique character and institutional features of public law in the long process of its evolution. This strong sense of public law and private property features can be concluded in the following areas⁴¹:

Firstly, the legal concept of culture emphasizes on the "unity of etiquette and law" and "Etiquette is Primary and law is Secondary". Etiquette is taken as statecraft within Chinese administrative system. The ancient Chinese emphasis more on the role of criminal law and punishment, while ignoring the prevention functions of the law. The law is mostly taken as the second layer under ethics, which let moral become a major adjustment rules of society. Law only takes an adjuvant role in this case.

Secondly, the legal system in China emphasize on national power dimension. The imperial supremacy is above the law. The legal right gets constraints from power of domination at that time. The reasons are:

1. The legislative law is published by the king. The king has sovereign rights for the Supreme origin.
2. In Chinese ancient law system, chief executive has both judicial and executive authority, judicial and administrative rights are unified.
3. Under ancient Chinese legal architecture, the performance of public law and private law is rather ambiguous. Procedural law and substantive law are not separated, which formed an enclosed legal system and ran criminal law as the only single core functionality.

Thirdly, from the cultural psychology point of view, citizen has a common mentality to compromise and let everyone have peace. It is common to leave the legal proceedings ended by psychology of not disputing. On the one hand, Chinese philosophical basis initiated traditional Chinese legal culture and created the pursuit of order and harmony, resulting in

⁴¹ Same as last reference.

a non-litigation legal psychology. On the other hand, China is a home-based traditional Chinese society, which focuses on people's social obligations, while ignoring the rights of individuals. Chinese society emphasizes on collective interests of the overall situation instead of individual's situation. This makes the individual members of the litigation bounded by social, family and family values.

5.2 Chinese social culture background

Chinese society, as other types of societies, has similar social attributes. But indeed, Chinese society has one special word which takes central place in Chinese society comparing to the others. This special element is Guanxi. Basically speaking, Guanxi is a Chinese word for which the closest English synonyms are connections and relationships, although neither of these words best encapsulates the broader cultural implications that guanxi represents. It refers to the dynamic and complex nature of friendships, trust, interpersonal relationships, and the construction of closed family relations, or a joined network, which are all deeply rooted in Chinese society⁴².

In China, guanxi can play an “essential” role in Chinese legal system. For example for members in a family tree, it's common to see that several family members is serving in one firm or government organization, and one of them might be one of the leaders in organization. If someone from family breaks the law, we could imagine how hard it could be to investigate the case under what we call: Guanxi Network. Guanxi Network also applies for relationship between “friends”, and can be rather huge, deep and complex. In some cases, guanxi can even override law. That brings much trouble for Chinese legal system, especially for administrative execution. Thus it's necessary to take Guanxi into consideration when discussing Chinese administrative relief system.

⁴² Wankel, Charles. Encyclopedia of Business in Today's World. New York, (SAGA Publications, Inc) 2009.

5.3 Current Chinese citizen's awareness of law

Besides Chinese unique culture and social background, Chinese citizen's legal awareness also influences the development of Chinese administrative relief system. In modern China, with the popularization of legal knowledge, legal awareness of citizens has been greatly improved, but comparing to other developed countries, we see there is still a long way to go. The reasons can be concluded as following⁴³:

1. The origin culture and social history has impact on Chinese legal system, including Chinese administrative relief system. These factors have been described in last two sections in detail.
2. The imbalance between economics development and legal system development. China has been a self-sufficient natural economy in the past, and under this economy development form, legal system has not been greatly developed. Nowadays, China is changing from self-sufficient natural economy towards market economy. Rapid change in economy is not compatible with the development of the legal system. In some ways, not all Chinese citizens have got prepared to receive the new economy and legal transition. This could lead to an abruptness of citizens' legal consciousness.
3. The imperfection of legal system. With the development and improvement of market economy in China, many shortcomings of the China's legal system become magnified, especially concerning the citizens' basic freedoms and rights protection. Regulations and rules in many fields are insufficient and incomplete, especially when it comes to implementation. Chinese administrative relief system, which plays an important role in Chinese legal system, also has similar problem. At following chapters, thesis would state how the Chinese administrative relief system is organized and what the system's situation is for now.

⁴³ Jing, Wang. Discussion about legal awareness of citizens. In: Journal of science and technology consulting herald. Vol.2 (2007).

5.4 Concluding Remarks

This Chapter briefly describes some special Chinese cultures. For example, Chinese think that “Etiquette is Primary and law is Secondary” and they would like to “Let everyone to have peace”. Also Chinese society has extremely complex social relationships network: Guanxi. When these concepts take into consideration of administrative relief system, it would affect the state to build trustable, justice tribunal. So when we discuss of building an effective remedy mechanism, enhancing administrative system organs’ legal concept and attitude can be very essential also.

6 Chinese Administrative Relief System Analysis

In this chapter, we would analyze the Chinese administrative relief system specifically. The current Chinese administrative relief mechanism is established from the eighties and nineties last century. Since the mechanism was established, it had been operating smoothly in general. However, there are many flaws and unreasonable place in this structure, and also relationships within the various components of system. System's functionalities cannot meet its requirement of constraining abuse of public power and protecting individual rights⁴⁴.

In general, Chinese administrative relief system includes following channels: the administrative reconsideration system, administrative litigation system and petition system.

6.1 Chinese relief case study

6.1.1 Putian Land case study⁴⁵

Before discussing individual administrative relief channels, let's look at one relief case in China. This case happens in a place called Putian, which locates in Chengxiang District, Putian City, Fujian Province. Farmers from Yanshou village complains about the compensation standard of their land expropriation is too low (government provides compensation of 9,000 yuan per acre, while they believe that according to "Land management law of China⁴⁶" and according to other relevant laws' provisions, compensation should be much

⁴⁴ Anming, Jiang, Improve the administrative relief mechanism and build a harmonious society. In: Journal of the Law. Vol.5 (2005).

⁴⁵ Putian Land case began in May 2003, Yanshou village, Putian City, Fujian Province in China. Case is not recorded in Chinese national Court, on contrary, leader of the case: Huang Weizhong had been sentenced to three years in prison for "gathering crowds to disturb public order". Some electronic online newspaper sources can be visited:

<http://www.hrw.org/Chinas-rights-defenders>. [Last visited 07 July 2013];

<http://www.weiqianwang.org/?p=5162> [Last visited 07 July 2013];

<http://www.scmp.com/article/546460/land-fight-farmers-case-delayed> [Last visited 07 July 2013];

⁴⁶ PRC Land administration law, Article 47 declares that: Compensation for expropriated cultivated land shall include compensation for land, resettlement subsidies and compensation for attachments and young crops on the requisitioned land. Compensation for expropriated of cultivated land shall be six to ten times the average annual output value of the expropriated land.

more than it (about 30,000 per acre). Farmers refused to accept the deviation of compensation to the municipal government. According to the regulation in the PRC Administrative Review law⁴⁷, the farmers had an official conversation with the municipal government and applied for reconsideration. The city government informed farmers that: for relative land acquisition compensation, according to the provisions of Article 25 of the "Regulations on the Implementation of Land Administration Law"⁴⁸, this case should be approved by the reconsideration of "People's Government of land Expropriation" and requesting approval from the People's Government of the land acquisition awards. Yanshou village farmers have land acquisition approved by the Fujian Provincial People's Government, so the Fujian Provincial People's Government should apply for a reconsideration decision. So, farmers wrote application to the Fujian Provincial People's Government for reconsideration. But the Fujian Provincial People's Government mentioned that its approval behavior belongs to "internal behavior" inadmissible. The specific reason was: "The fifth batch of land acquisition Minzheng ground [2003] No. 159, which is published by the provincial government of Putian City in 2003. The file of land acquisition was approved by the Putian municipal government and the referral was made by internal approval, however, it does not occur directly law effect". In this case, the reconsideration will not be entertained.

According to the provisions of the Administrative Review Law, the farmers have two options: One is that they can take the revocation request to the court, the other is they can take the revocation to the organization which is assigned by the upper legislative Affairs Office of the State Council. The farmers chose the both way. First they applied to the Fujian Provincial Government that hopes they can order the Fujian provincial government to accept the case; second they brought an administrative lawsuit to the Intermediate People's Court in Fujian Province." However both are failed: there was no reply from the Legislative Affairs Office of the State Council and Intermediate People's Court in Fujian Province reject-

⁴⁷ PRC Administrative review Law. Adopted at the 9th Meeting of the Standing Committee of the 9th National People's Congress and promulgated on 29 April 1999, and effective as of 1 October, 1999

⁴⁸ Regulations on the Implementation of the Land Administration Law of the PRC. Promulgated by Decree No. 256 of the State Council of the People's Republic of China on December 27, 1998

ed the case too. The Court did not take any action, what could the farmers do? According to the judicial interpretation of the Supreme People's Court on the Administrative Procedure Law, when the Court of Appeal is neither filing nor ruling, prosecutors could apply to a higher court to file a complaint or prosecution, if the court held that the conditions are fulfilled, complaint shall be accepted. After accepting the complaint, the case could be transferred or a lower court could be required to accept the case. So farmers bring the case to the Fujian Provincial Higher People's Court and Fujian Provincial Higher People's Court but were also rejected.

Finally, farmers have to sue to the Supreme People's Court, the Supreme People's Prosecution Court judge recommends farmers to Petition letters and visits. So farmers have to find the petition Office of the National People's Congress (NPC) Standing Committee, the Standing Committee of the National People's Congress Petition Office received them, and introduced them to the General Office of Fujian Provincial People's Congress Standing Committee and then talked about treatment. During the procedure, two years have passed the farmers met many obstacles and the case remains unsolved.

6.1.2 Putian Land case analysis

In Putian Land case, we see the Farmers from Putian followed Chinese administrative relief system and exhausted their possibility to fight for their right. During the process, they used three major Chinese administrative relief channels: administrative reconsideration, administrative litigation and petition the operation channels.

Firstly, when they tried to utilize reconsideration remedy, municipal government did not accept the case, instead it's transferred to a higher level of organization, Fujian Provincial People's Government. But Fujian Provincial People's Government is redirecting the case back to its original place: municipal government. The two government organs passed the buck nicely to each other, which makes the process very confusing and proves the irresponsible characteristic.

Secondly, for administrative litigation relief channel, farmers utilized both available litigation organs: Fujian Provincial People's Government's, and also Intermediate People's Court in Fujian Province. But both of the organizations refused to use their executive right to help the parties. In fact this is reasonable in this specific case, it is because Fujian Provincial people's Government had made a decision before as reconsideration, one organization is taking the same case as litigation and reconsideration, and it did not make difference each other. So from this point, we can see it is a waste of resource both from parties' perspective, and from administrative system perspective.

Finally, the parties managed to get chance to have petition with National People's Congress in Fujian Province. But during the last two relief channels experience, we can see that too much time and resources has been wasted during the procedure before the concerned parties get a clear response. In addition, the final executive process is still responsible by first two channels. So we can conclude that petition is a flexible channel to receive the voice from citizens, but as an assistant role within the system, it could not resolve the system defect from reconsideration and litigation channels.

6.2 Current administrative relief system status in China

In China, there are various ways of available relief methods. Among them, the administrative reconsideration and administrative litigation system have become the main petition and administrative arbitration. This is due to their advantages, as well as the higher the institutionalization of a form. Petition forms another major relief channel in China, because it is quite a direct communication channel between government and normal citizens.

6.2.1 The operation status of Chinese administrative reconsideration system

The Administrative Reconsideration Law of the People's Republic of China, was adopted at the Ninth Session of the Standing Committee of the Ninth National People's Congress on April 29, 1999, and hereby promulgated and shall come into force as of October 1, 1999. This Law is enacted pursuant to the Constitution for the purpose of preventing and correcting any illegal or improper specific administrative acts, protecting the lawful rights and

interests of citizens, legal persons and other organizations, safeguarding and supervising the exercise of functions and powers by administrative organs in accordance with law⁴⁹.

Administrative reconsideration system is the most typical administrative remedy system. Comparing with other administrative proceedings, reconsideration system has many advantages. Reconsideration system is an internal correction mechanism and it has executive power. It puts more emphasis on administrative behavior and verifies whether it fits administrative law requirements. From the performance point of view, it takes more on efficiency and economic into considerations. With development of the state's welfare system, reconsideration has been more and more actively involved in public life. Therefore reconsideration has played an irreplaceable role for the judicial cases in discretionary areas.

Reconsideration system has got an outstanding advantage, but in reality, the reconsideration system has not played quite an important role in the whole administrative relief system in China. Administrative reconsideration proceeding has always been taken as subsidiary program and be neglected. It is unreliable because it is designed as an internal mechanism. In addition, if administrative procedures and administrative proceedings are mature enough, there is no need for the existence of reconsideration system⁵⁰. These lead to the result that acceptance rate of reconsideration case has being decreasing. People have gradually abandoned this channel, which wakens the administrative reconsideration procedure.

The first year (2000) after administrative reconsideration law was published, administrative cases which are received from different national levels of administrative reconsideration organs surged rapidly. For example, the local organs received 74448 administrative reconsideration cases, which is more than two times amount last year. But in 2002, the growth trend of reconsideration system has been slow down and received case dropped down sig-

⁴⁹Administrative Reconsideration Law of the People's Republic of China. Effective since 1st October 1999, by National People's Congress of China.

⁵⁰Hanhua, Zhou. Administrative reconsideration judicialization: Theory, Practice and Reform. Beijing, (Peking University Press) 2005. pp.407.

nificantly. The overall drop reached 8.4%⁵¹. This proves that citizens have gradually given up reconsideration relief channel. The weakening of reconsideration relief channel is a fact.

The negligence of reconsideration system is due to operation defects. The consequences of negligence exacerbate the ineffectiveness of reconsideration system. Briefly, the consequences of reconsideration channel negligence are:

1. It leads to more adoptions of non-normative dispute resolution mechanism such as appeal and street protest.
2. It affects back to the administrative reconsideration policy. The formation of the system channels becomes useless, while non-institutional channels are expanding in a vicious cycle.
3. Many of the problems which should be solved by the administrative reconsideration, is pushed to the administrative litigation. This would lead to the dislocation of the judiciary roles⁵² which eventually lead to the ineffectiveness of administrative remedies. This is a waste of resources, and is far from healthy competition of the administrative relief systems. Under such conditions, the litigant would rather count on the intervention of the causal factors. Then the cost of relief is greatly increased.

6.2.2 The operation status of Chinese administrative litigation system

PRC, Administrative Litigation Law is legislation passed in 1990 that authorized private suits against administrative organs and personal on the grounds of infringement of their

⁵¹ Jun, Fang. Reconstruction of Chinese administrative reconsideration concept and system. In: *Journal of Global Law Review*. Spring 2005. pp.41

⁵² Hanhua, Zhou. *Administrative reconsideration judicialization: Theory, Practice and Reform*. Beijing, (Peking University Press) 2005. pp.6

rights. These regulations provide for the right of citizens to launch administrative actions against state organs for any infringement of civil rights⁵³.

Administrative litigation system's characteristic is objective and equitable. Comparing with other relief approaches, litigation should be able to provide the parties with more protection. Frankly speaking, administrative litigation had played an important role both at the conceptual level and at the operational level. In reality, there are always many obstacles for plaintiff during investigation, and the plaintiff in the litigation process is still facing great pressure of suing the government. The huge cost of litigation for the plaintiff is another major problem.

The problem is related with Chinese culture. With the deep impact from Chinese culture history, it's prevalent that plaintiff dare not to sue the government. Some of the plaintiffs are psychologically scared of the governmental power. While some of them would rather swallow the anger and injustice, and replace them with peace. There are also plaintiffs want to fight for their obligations and rights, but because they lack the general knowledge of law, or communicating channel, plaintiffs do not know where to sue or how to sue.

From the litigation system design point of view, there are also problems like: the scope of the case is not clear enough; the plaintiffs need to gets enough material qualifications before starting to sue; or the litigation issues are difficult to judge and implement.

In practice, the plaintiff might not get proper protection of their rights, especially during the administrative proceedings. Even when the plaintiff are lucky enough to win the case, implementation of the case may still be quite problematic. This renders the administrative relief in effective in the end. In the recent years, the number of litigation cases in China has not increased significantly, which indicate that the Chinese administrative litigation system

⁵³ PRC, Administrative Litigation Law. Effective since 1st October 1990, by National People's Congress of China.

has not been utilized effectively due to the above reasons. In fact, the administrative reconsideration system is facing similar problems also⁵⁴.

6.2.3 The operation status of Chinese petition system

In contemporary China, ‘petition’ or ‘Xinfang’ refers to citizens’ political participatory activities, such as sending letters and paying visits to designated government institutions, in order to address their economic and political needs along with policy⁵⁵. Comparing to the situation for Chinese administrative reconsideration and administrative litigation proceeding, petition proceeding has been chosen more often. But this does not indicate that the Chinese petition system functions normally. The Chinese petition system has its own characteristics and a long history in Chinese local culture. It allows people to express their feelings and resolving grievances. In many cases, petitions and personal visits have become common measures for ordinary people to communicate directly with the Government. It promotes the role of political participation. With rapid development of the Chinese society, the petition has become a popular relief measure. The total number of petitioners to the Party-Government organization at the county and above (municipality and province) levels reached about 11 million in 2002 and 13.3 million in 2004, before it began to decrease to 12.5 million in 2005⁵⁶. These enormous numbers vividly demonstrate how extensive mass participation through petitioning is in market reform China.

Comparing to professional administrative reconsideration, which has strict regularity of the administrative proceedings, the petition is rather a cheap supplementary administrative relief system and rather flexible. However in China, the petition lacks of clear operating specifications. For currently petition regulations, it lacks clear operational norms⁵⁷. There is

⁵⁴ LiHong, Lin. Locating modification of Administrative Procedure Law - refinement and improvement. In: Journal of Henan Institute of Politics Management. Vol.6 (2004), pp.13-14.

⁵⁵ Wooyeal, Paik. Economic development and mass political participation in contemporary China: Determinants of provincial petition (Xinfang) activism 1994 -2002. In: Journal of International Political Science Review. Vol.1 (2012), pp.100

⁵⁶ Same as last reference.

⁵⁷ For petition norms, in 2005, the State Council of the people’s republic of China has published: Regulations on Letters and Visits. But the major content of this regulation focuses on petition activities, but not the regu-

high contingency with the result. So it is difficult to play an independent role of the administrative remedy⁵⁸.

6.2.3.1 Confusion of institutional settings and functions in petition system

From political committee to local government, petition institutions have been set up on different levels. Within the system, there is an extremely complex mechanism which is lack of coordination. For ex. petition does not require a step by step procedural, and doesn't have much restrictions. Consequently, the litigant tends to raise one petition case in several places and different level. Sometimes the petition could even directly visit Beijing, which is the central petition institute. These kinds of repeating petitions and leapfrog petition have actually offset the advantage of the petition system. It is common to see cases like "petition – interruption - and re-petition." in practice. Moreover constant petition does not actually help to resolve the dispute. On the contrary, it further intensifies the conflicts. The petitioners become difficult to think rationally or choose appropriate relief resolution.

6.2.3.2 Disordered petition process and low cases resolve rate

The flexibility is the main feature of petition. However, current petition process in China does not have quite a clear program specification. The current petition regulation: "Regulations on Letters and Visits" does not have detail provisions about procedures, which renders the petition process irregular and lacks transparency. Also it follows a process in accordance with fuzzy, floating and special hidden rules. Hence it raises much criticism.

On another hand, petition cases' resolving rate is very low. Many cases do not get any response due to petition authorities' delaying tactics. Otherwise there will not be long petition and repeated petition. Repeated petitions further exacerbated the backlog of cases and the relief channel blockage, which makes it even more difficult to solve.

lation for relief channel. So this regulation still does not protect relief from effectiveness point of view. English version of Regulations on Letters and Visits could be found here:

<http://xinfang.shaanxi.gov.cn/0/1/6/23/294.htm>

⁵⁸ Lihong, Lin. Administrative relief basic theoretical analysis. Beijing, (China Law) 1999. pp.47

Thus, our Petition mechanism cannot be properly bond with reconsideration and administrative litigation, but also gives much burden for the remedy efficiency.

6.2.3.3 Power conflict between petition, administration and judicial system

The scope of the petition procedure could be quite wide to cover cases in different fields, for example: enterprise restructuring, land acquisition and resettlement or even family conflicts, neighborhood disputes. This is the advantage of petition, and also the main cause of its high utilization rate. But it also causes problems. For example, many disputes which suppose to be covered by administrative reconsideration and administrative litigation, all rush into the petition. On the one hand, the petition organizations do not have sufficient capacity to deal with all the cases. On the other hand, petition creates conflicts between the executive right and judicial right. This confusion leads to ineffectiveness of Chinese administrative relief system.

So in general, current Petition mechanism cannot be properly bond with reconsideration and administrative litigation, and also gives much burden for the relief efficiency.

6.3 Shortcomings of the Chinese administrative relief system

From the analysis of different Chinese administrative relief channels' status, we see that each relief channel has its own shortcoming which needs to be enhanced. In addition, linkage among these relief channels is not efficient enough also. So we could conclude shortcomings as following problems:

1. The status of reconsideration system is weakening.
2. During administrative litigation channel, judgment execution and implementation can be very ineffective.
3. There are shortcomings in the petition mechanism, such as the disordered processing process and low resolve rate etc.
4. Confused linkage between reconsideration, administrative litigation and petition.

This case is not only exposing the shortage of Chinese relief system, it also reveals the State obligation, according to international law's standard, has not been successfully covered, at least in this case. We did not see the farmer's right is respected and protected. The farmers' reasonable requirement was totally not fulfilled by State's organization. Thus we might could focus on these four aspects and try to analysis the effectiveness of standard according to these four points.

Based on the introduction above and case analysis for Chinese administrative relief system, we could see that within the framework of current Chinese administrative remedies system, The different individual parts of systems' operations are also important to ensure the effective functioning of the entire relief system.

6.3.1 The shortcoming of reconsideration system

As mentioned above, the current reconsideration system of relief has been weakening and lost its place and obligation. If reconsideration lacks its own independent status, it would be easily swallowed by surrounding system and become its vassal. In this case, that part which reconsideration system can effectively protect lost its stand by, but at the same time it will divert to the surrounding system. This leads to other system with increasing pressure and seriously huge consumption of resources. Thus it cannot effectively protect other rights.

Therefore in general, we need to find a way to rebuild independence position of reconsideration channel.

6.3.2 The shortcoming of litigation system

Most people might focus on the execution of litigation, while the implementation of litigation is rarely involved. In fact, implementation and execution could not be mentioned separately. Effectiveness of relief ultimately settles to the practical execution of the relief. Therefore the judgment for the full implementation has always been an important measure. Implementation and execution which cannot meet the effective remedy standard would not be seen as an effective relief. Because if the execution failed to comply with or perform,

best judgment is still useless for the victims of human rights violations. In general, the reasons which lead to ineffective execution are:

1. The executive attitude of administrative proceedings may not been able to shift. Administrative organization reacts very passive and indifferent when they become defendant and there are no effective measures to change this situation due to the ineffective enforcement and prolonged procedures.
2. The executive authorities lack of respect for the Court judgment and the sense of obedience, even ignoring the Court's functional authority.
3. The Judiciary lack of independence from the administration, which leads to the imbalance in the distribution of power and constraints.
4. The qualification of judges is not guaranteed and hard to have judicial judge⁵⁹.

As administrative litigation process, plaintiffs are often in a weaker position. So the key of implementation would be on administrative organs.

6.3.3 The shortcoming of petition system

Petition system is quite a special relief channel in China. It should have been a cheaper attainable relief channels. But in reality, petitioners repeated petition actions which does not certify as effective administrative relief system. Our existing petition system has not deliberately meant to increase the cost and burden of a party, but indeed due to the lack of correct guidance of leapfrog petition and repeated petitions, it makes the cost for a significant relief very high.

Also, Petition has a disorder way of executing, which is a delaying implementation of relief. It especially is contrary comparing with rapid achieve of relief requirements. Low case-solving rate and large backlog of cases is the outstanding performance of petition.

⁵⁹ Kun, Hai and Zhiyuan, Zhang. Thematic Studies on administrative litigation. Beijing, (Chinese Democracy Legal Publishing House) 2006. pp.569

6.3.4 The shortcoming of administrative relief channels linkage

If we discuss the shortcoming of Chinese administrative relief channels linkage, we would rather evaluate it as the shortcoming of system itself. In chapter four, we analyze the relief case at ECHR and conclude the procedural and substantive standard of effective relief. If we evaluate the linkage of Chinese relief system with the substantive standards, combine with the four points we mentioned in last paragraph, we can conclude that Chinese administrative relief system has following shortcomings:

First, Chinese administrative relief system reveals improper administrative behavior and poverty of relief channels. Current system's behaviors are lack of proper fulfillment and redress for infringement consequences, and thus the availability and accessibility of channel are being questioned.

Second, the Chinese reconsideration administrative relief system failed to meet the adequacy requirements. On the one hand, administrative dispute has its particularity. It might involve professional technical matters. They often involve the collision of public interests and individual interests. Administrative proceedings procedural should treat issues with more legal experience. On the other hand, administrative reconsideration system should be flexible, professional and rapid. These two scopes have their own division. The administrative reconsideration is an excellent complement to the Administrative proceedings, which is to expand the opportunities and the scope of the litigant's relief significance. In order to treat complex administrative tort, we should design more appropriateness convergence for the litigants and guide the parties to meet to the rights of the nature and requirements of the relief channels. Thus, we could get the perfect reply from litigants.

Third, the Chinese administrative channels for relief were set imperfectly. There is one point which expresses that for the convergence relations between reconsideration and litigation, improving the administrative procedures and administrative litigation system is already adequate and enough for protecting the rights of the parties. But the fact is that even if the administrative procedures are mature, it is impossible to put an end when administra-

tive disputes occur. There are inherent limitations of the administrative proceedings, so it might not be necessarily the best choice to resolve all disputes by administrative proceedings. In addition, if one single mode of relief cannot meet the need, there should be variety forms of relief, according to diversity requirements of relief channel, to let the damaged go right back to a satisfactory state. However, final decision in the administrative case, due to the lack of the ultimate judicial protection, is difficult to give full play advantages of different channels for relief. On the contrary, comparing to the linkage among petition, reconsideration and litigation, there are channels repeating and conflicting issues, which is another manifestation of imperfections and inconsistent of economy principle.

Fourth, it is very extravagant to talk about the realization of the right, if we could not have full investigation. With a cumbersome and intricate system, even if the right is likely to achieve its ability, it is quite doubtful that people could get relief assistance with attainable economic and expeditious manner. In fact, due to the simplicity of its procedures, the reconsideration potentially has the capacity to effectively speed up the relief process

6.4 Concluding Remarks

In this chapter, we use a case study to draw out three relief channels in Chinese administrative relief system. Then we discussed the operation statuses of the Chinese administrative relief channels and their shortcomings. We see that not only each relief channel has their key shortcoming to enhance; linkages between different reliefs channels also need to adjusted and enhance system's efficiency.

7 Administrative Remedy Mode from Other Countries

When trying to discuss the pros and cons of one mode of administrative relief system, it is necessary for us to distinguish from different administrative channels or principles. This chapter will focus on administrative system in comparison with US and EU case. Hopefully this could provide some guidance for enhancing administrative relief system in China.

7.1 American administrative remedy mode

The primary administrative remedy mode in US is “exhaustion of administrative remedies” principle which requires that administrative remedies must be exhausted before resort to the federal courts⁶⁰. Litigant should not apply to administrative decisions against him before he exhausted all possibilities within relief system. The purpose of the establishment is to avoid unnecessary judicial proceedings and untimely intervention of administrative procedures, and to safeguard the autonomy of the executive authorities and the implementation effectiveness of the judicial office. This also avoids possible contradictions between the courts and administrative agencies⁶¹.

1. Congress established the executive authorities are to let the statutory scheme implement in a specific fact situation. Exhaustion of administrative remedies could guarantee administrative organs of the administrative remedies are able to complete this task. In particular, the administrative organs can take advantage of their expertise and to exercise the discretion granted by law.
2. In order to let administrative procedures get continuous development without obstruction, the court could only review the results of the administrative procedures, which is more effective than running judicial intervention at every stage.

⁶⁰ Berger, Raoul. *Exhaustion of Administrative Remedies*. U.S., (The Yale Law Journal Company. Inc) 1939. pp.981

⁶¹ Mingyang, Wang. *American administrative law*. Beijing, (China Legal Publishing House) 2005. pp.646

3. The administrative authority is not part of the judicial system, which is established by the Congress to perform specific duties entity. Exhausted administrative remedies principles could protect the autonomy of the executive authorities.
4. When there is no exhaustion of administrative remedies, judicial review may be hampered. Because at this moment, the executive authorities has not collected and analyzed the relevant facts and reasons for taking administrative act, which is precisely the object of judicial review. The principle of exhaustion of administrative remedies within the administrative system have the opportunity to correct errors beforehand, reduce the need of judicial review, It let the Court with limited human and financial resources can be used more effectively.
5. If people do not require judicial review of the principle of exhaustion of administrative remedies, it may reduce the administrative efficiency, and encourage the litigant to go beyond administrative procedures. This could potentially increase the difficulties and expenses of the administrative organs.

Also, U.S's legislation is under the construction of the Separation of The Three Powers (executive, legislative and judicial). The courts retain a great respect for the executive power. Hence a comprehensive judicial review system is necessary to ensure the flexibility of the executive power. Thus it could maximize its performance while cooperating with the executive power.

7.2 German administrative remedy mode

German administrative remedy model is based on the type of administrative litigation process. It decides whether to go through administrative litigation according to the preposition of administration reconsideration type. This administrative model contains highly sophisticated litigation types and maturity of the administrative procedures for the design. According to the "German Federal Administrative Court Act", the German administrative litigation types include: revocation lawsuit, Obligation Imposing Lawsuit, general payment law-

suit and confirmation lawsuit⁶². When applicant files of general payment lawsuit and confirmation lawsuit, there is no need to go through the objection procedure (widerspruchverfahren, which is similar as administrative Reconsideration in China) and can be sued directly, but when filing of revocation lawsuit and Obligation Imposing Lawsuit, applicant must go through the objection procedure⁶³.

Obviously, the German administrative reconsideration and administrative litigation convergence model is closely related to the types of administrative litigation. Which means the type of administrative litigation would decide the linkage between administrative reconsideration and administrative litigation. This mode currently is still followed by many civil law countries and regions.

German model is different from the American model, as it specially focuses on resolving administrative disputes through administrative reconsideration. It relies on the developed administrative litigation system and specialized administrative court system. It not only emphasizes on the utilization of preposition of administration reconsideration to properly handle certain administrative disputes, but also gives applicant certain extent of freedom to choose administrative reconsideration or administrative litigation.

7.3 Concluding Remarks

In this chapter, we briefly introduced U.S. and German administrative relief systems' most obvious characteristics. From the description, we can see both administrative relief systems all prioritize the litigants and applicants' human rights at a rational sense. This can be a valuable reference for Chinese administrative relief system.

⁶² German Federal Administrative Court Act, Article 42 and 43

⁶³ German Federal Administrative Court Act, Article 68

8 Discussion on Enhancing Chinese Administrative Relief System

From chapters above, we have discussed the defects of Chinese administrative relief system, and some examples which are helpful for enhancing this system. In this chapter, we'll try to apply the international human rights standard into the Chinese context, and provide practical suggestion to the Chinese administrative relief system.

8.1 The preposition of administrative reconsideration

According to the basic principles of administrative remedies we enumerated before, it is appropriate to consider the preposition of administrative reconsideration under appropriate conditions. German model is the most direct and clear. In Germany relief system, reconsideration is depended on the type of subsequent administrative litigation proceeding. Preposition of administration reconsideration is needed in Chinese relief system also. The reasons are⁶⁴:

1. It can make the administrative reconsideration get respect and unify with administration.
2. It can assist the litigants to clarify the doubts, help the litigants to get correct assertion and appropriate evidence within the highly technical and complex theoretical administrative legal system.
3. It can expand remedies opportunity. On one hand, the administrative reconsideration may make up for the court's limitations on the scope of review. On the other hand, the administrative reconsideration can play a role of argument filter, which ensure that the litigation relief channels are not cloggy. Then the court could leave assigned resources to concern about the cases it needs to. From another point of view, another individual party will increase their relief opportunities accordingly.

⁶⁴ ZhiFang, Cai. Administrative relief and administrative law. TaiWan, (Taiwan Sanmin bookshops) 1993. pp.119-121

4. It can lighten the burden of the court. The administrative internal relief process can digest a lot of controversy, and it is also easier for the court to get benefit from auxiliary function of reconsideration.
5. It can accelerate the relief program process. If the fact and doubt in the evidence are already clarified in the administrative reconsideration stage. The court may directly go for trial with mature point of contention, which avoids lots of barriers and uses least cost to resolve the dispute.

This design is intended to improve the administrative reconsideration system's position in the administrative remedies system. If the preposition of reconsideration is implemented properly, litigant can understand the advantage of reconsideration system and provide more appropriate and adequate relief.

8.2 The linkage between reconsideration and litigation

Throughout the US and Germany sample of administrative relief system, no matter how to handle the relationship between reconsideration and litigation, the object should be to ensure the litigants obtain a more convenient and effective relief rights and interests⁶⁵.

The reconsideration system functions to avoid undue delay. As reconsideration has advantage of low cost and high efficiency, if the reconsideration can be effectively utilized, it would not be an obstacle and can effectively promote the protection of the citizens' rights. In another word, "if we blindly allow litigant to skip reconsideration, and to sue directly, then the litigants might not get the right protection⁶⁶".

⁶⁵ Zhiyuan, Zhang. Linkage for administrative reconsideration and administrative litigation convergence. In: Journal of Study of administrative law. Vol.4 (2005). pp75

⁶⁶FuJun, Shen. Chinese administrative relief program. Beijing (Peking University Publishing house) 2008. pp.201

But from another point of view, reconsideration is still an internal relief system, regardless of the perfection level of the internal mechanism. We cannot reject the judicial protection of civil rights eventually. In another word, we should left space for judicial review.

Therefore, in order to avoid the abuse of administrative reconsideration, there must be some certain circumstances to limit excessive reconsideration step. So in the following occasions, reconsideration should be limited:

1. When the executive authorities supply improper delay, especially when the executive authorities simply do not have any execution. In this case, the reconsideration would not have any actual progress, but only wasting of time.
2. Litigant can choose to skip reconsideration, in order to avoid punishment or execution which might continuously produce significant damage to litigant.
3. If the relief case purely controversial legal issues and can only be resolved by litigation system.
4. When the case type is designed for litigation. For example, when the case needs a public hearings.
5. If administrative process is executed by rather special administrative organs (for example the country's highest administrative organ), then reconsideration might just be formalism.

So in this case reconsideration and litigation need to ensure protection of the litigant's rights is under the conditions of healthy competition. Then we could guarantee this reconsideration system is available, accessible, and adequate.

8.3 Suggestion for Chinese administrative litigation system

As we discussed, execution and implementation has been the most difficult part for Chinese administrative litigation system. There are also lots of theoretical and practical discussions accordingly. But it still has not been able to put forward effective solutions. With the current settings of administrative system, if we simply add enforcement to enhance execu-

tive power, the effect might not be so obvious. Under current Chinese circumstance, rather than tangling in the subsequent litigation execution, we may put effort on contributing with a more positive attitude.

8.3.1 Concept Transformation of executive authorities

One of the reasons for ineffectiveness of litigation system's execution is that executive authorities do not want to be in a role of defendant. But from a more positive perspective, it is essential for judicial administration to provide administrative supervision services. Administrative right and judicial right do not have real conflict in this sense. Judicial right should find a balance of Administrative right between the effectiveness and civil rights protection. The administrative proceeding does not meant to interfere the executive process, but rather to promote and develop its operation. Although administrative and judicial functions have their own different responsibilities, the interaction can still be found. Thus, the administrative authorities should change their negative attitudes in the administrative proceedings and participate with more cooperative attitude. Only this could eliminate opposition between the courts and plaintiff.

8.3.2 Judgment quality improvement and judicial authority establishment

If the quality of judgment is low, even though it is produced by a rigorous program, the litigant would most possibility appeal. At the same time, lacking of judicial professional of the staff will also be detrimental to the authority of the judiciary. Under existing distribution of power, it's hard for judicial power to obtain the respect of the executive power. If judicial power lacks legal literacy in the referee process, it cannot be responsive to the professional requirements of the administrative dispute. Moreover, administrative defendant contrastively has legitimacy to the disregard of the judgment. In fact, there is a delicate contact between the judicial authority and judgment. Promising judicial authority and judgment is a prerequisite for successful compelling performance. Performance delay would directly damage the credibility of the judiciary and its authority. Therefore during the investigating process, the court should be strengthened on the basis of neutrality. The interaction of the government agencies should understand the exercise of the executive power and the operational characteristics of judgment. According to the legal regulations,

the court should make more realistic request to administrative organization and avoid resentment. This should be the attitude of respect, protect and fulfill, which is also the state's obligation under international law's standard.

8.3.3 Judicial advice system improvement

As China is a one-party state, so it more or less gives an impression of monopoly in many fields, including judicial system. In order to enhance execution the judgment from administrative litigant, Chinese judicial organs strongly needs a communication channel to link with masses of the people. Hence, enhancing judicial advice system can be an effective way of communication between organs and people.

Judicial advice refers to: when some problem which does not belong to the People's Court's adjudication work, people can put forward reasonable proposals to the relevant units and individuals which can help to solve the problem⁶⁷. The relevant units can be administration organs from all levels in this case. Judicial advice system provides a legal opinion system outside the judicial judgment. It helps judicial system to eliminate negative factors, plug loopholes and implement self-improvement. In order to build acceptable and operable judicial advice system, we can set out from following aspects:

1. Establishing the record and revocation mechanism for judicial advice system. This guarantees that if the advices are found as lacking maneuverability, judicial advice should be corrected or revoked promptly⁶⁸.
2. Improving the quality of judicial advices and establishing a communication mechanism. The advice issued by the Court of Justice should be objective and accurate. The advice should be given after specific research, and the Court should maintain interactive communication with the specialized administrative organs.

⁶⁷ Zhiyuan, Zhang. Analysis on Judicial Advice System to Administrative Litigation. In: Studies of Law. Vol2 (2011)

⁶⁸ Hongbo, Xu. The reconstruction and reflection of the judicial advice system – from constructing a Harmonious Society Perspective. In: Journal of Applicable Law. Vol.1 (2008), pp.155.

3. In appropriate circumstances, judicial advice system could set up compulsory requirements for feedback in the corresponding period. Administrative organs should respond whether to accept judiciary proposal and to clarify the specific reasons if the advice is not accepted. Meanwhile, for the advice which is accepted, administrative organs need to implement timetable to feedback to the Court for an ongoing constructive dialogue, until the advice is adopted and get satisfied by both parties⁶⁹.
4. The advice should be objective, exercisable, specific and feasible⁷⁰.

Judicial advice is taken during a dynamic process. It is based upon the administrative and judicial organs communication mechanism. The design of judicial advice system could eliminate opposition between each other and lead to the effective and efficient executive procedure. The administrative litigation right and citizen's individual right can all be taken care and thus form a double win pattern.

8.4 Suggestion for petition system

Although the petition system has many incomparable advantages comparing to administrative reconsideration and litigation systems, but these advantages need to regulated in order not to conflict with other relief channels.

Firstly, petition should be limited as complementary remedies. Its functionality should be relatively simple and clear. Thus, we should put limitation to the current petition system and not allow it to accept complex matters. This would also reduce overlapping between petition and other relief channels. In fact, the "Regulations on Letters and Visits"⁷¹ (which is the Chinese petition regulation) Article 21 regulates for letter-or-visit matters case, they

⁶⁹ Same as last reference.

⁷⁰ Yanjun, Dai. When the judicial advice could jump out f embarrassment. In: Journal of China Judgment Digest trial. October 2007, pp.7

⁷¹ Regulations on Letters and Visits, adopted at the 76th Executive Meeting of the State Council on January 5, 2005, promulgated by Decree No. 431 of the State Council of the People's Republic of China on January 10, and effective as of May 1, 2005.

could be transferred to the most appropriate organ according to their statutory functions and duties.

Secondly, the scope of petition should be limited to the matters which are related with improper administrative behavior of administrative organs. This is what petition can truly be effective at, and also the range which administrative reconsideration and litigation relief are difficult to cover. "Improper administrative behavior" is a broad concept. According to Hong Kong "the Ombudsman Ordinance", inefficient, bad or improper administration includes:

1. [...] unreasonable conduct, including delay, discourtesy and lack of consideration for a person affected by any action;
2. abuse of any power (including any discretionary power) or authority including any action which:
 - a. is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or
 - b. was based wholly or partly on a mistake of law or fact; or
3. unreasonable, unjust, oppressive or improperly discriminatory procedures;

In general, petition system should emphasis on the improper administrative behavior. It is good for split petition's administrative scope from administrative reconsideration and litigation, and it also help litigant to find another relief channel for getting effective help.

8.5 Concluding Remarks

This chapter concludes the enhancement of Chinese administrative relief channels. Based upon the suggestions above, administrative reconsideration, litigation and petition channels would follow several standards and supply more effective relief to litigants. While we also see according to China's characteristics and current judicial environment, the enhancement would be a long term process. Problems can be found from both system design and admin-

istrative execution aspects. These problems should all be considered from effective remedy perspective and to be consummated.

9 Conclusion

In this thesis, we have discussed and proved that the Chinese administrative system has not been the most suitable administrative system for Chinese citizens. When the individual's right is violated, current system has not proven to be able to implement effective relief. Indeed, the system itself, which is the subject we are discussing in this thesis, has not illustrated its applicability and effectiveness. Chinese's unique culture, social background, and insufficient legal awareness of Chinese citizens bring absolute obstacle for administrative relief system in China.

China currently has three major administrative relief channels for citizens: administrative reconsideration, litigation and petitions systems. But through discussion, we see that these relief channels have various system defects and the administrative responsibilities sometimes conflict or disordered. This cannot be described as effective remedy. Also, the execution and implementation of judicial decision sometimes cannot be reached effectively also. Comparing with the European human rights protection mechanisms from European Court of Human Rights, we see administrative relief system in China has not attained its procedural and substantive standards.

The administrative relief system in China has institutional barriers and technical difficulties. During the analysis based upon Chinese rational condition, we are able to eventually extend the spirit of effective relief and give rational and appropriate suggestions of the actions which Chinese administrative organizations could use as reference. For example: clarify the preposition of Chinese reconsideration system, change administrative organs attitude and improve judgment quality, improve judicial advice system and adjust the linkage between reconsideration, litigation and petition system. These suggestions are very practical and should give the administrative organs a certain degree of flexibility to govern these changes.

Finally, writer want to emphasize that, to get effective relief is not the right which is good to have, but basic human rights that everyone supposes to get. It's not only a realization of a right, but it also need to effectively help the realization of other human rights' entities. With the development of sociality and the constant awakening of the law conscious, people will gradually aware the importance of administrative relief right. So the states should exhaust what they can to build an effective, reliable and promising administrative relief routine. This definitely requires states' participation and pay out. Only if the State's organizations face the fact and strive against the difficulties they currently have and adjust their relief procedurals, citizens in states would get their proper human rights and contribute more to society. China, as the country with most population on the earth and "immature" administrative relief system, has a longer way to go. But we hope they could properly face the fact and bring all citizens ideal and effective relief right. Hope that the effective relief system would be building perfectly and brings equality to more Chinese citizens.

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ICCPR International Covenant on Civil and Political Rights (Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966). 999 UNTS 171

ICESCR The International Covenant on Economic, Social and Cultural Rights (adopted by the [United Nations General Assembly](#) on 16 December 1966)

ECHR European Convention on Human Rights (ECHR is an international treaty to protect human rights and fundamental freedoms in Europe, Drafted in 1950 and force on 3 September 1953)

ESCR The International Covenant on Economic, Social and Cultural Rights is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 3 January 1976

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