

## The New Development of “Substantial Rule of Law” in China: Substantive Settlement of Administrative Disputes

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### Abstract

The current reform of China’s judicial system is carried out under the background of the rule of law construction from the “formal rule of law” to the “substantial rule of law.” Therefore, the substantive settlement of administrative disputes has become one of the criteria for the value judgment of China’s judicial system reform. The substantive settlement of administrative disputes depends on the following two ways: administrative reconsideration, letters and visits, administrative appeals and other non-litigation mechanisms; administrative litigation. Of course, Chinese scholars are also increasingly aware that the substantive resolution of administrative disputes cannot be accomplished in a single way. At present, while improving the above various systems themselves, China has begun to pay more attention to the construction of the connection mechanism among the above systems.

**Key words:** Formal rule of law; Substantive rule of law; Administrative dispute; Judicial system of China

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The settlement of administrative disputes is of great significance to the protection and relief of civil rights. It is also an important part of the administrative power supervision mechanism. At present, with the continuous expansion of administrative power, the authority of the

administrative organs has been continuously extended, and administrative affairs have become more and more specialized and complicated. This puts new demands on the administration of governments around the world and brings new challenges to global governance. China is in the period of drastic changes in social and economic transformation. Social contradictions are becoming increasingly acute and prominent, and traditional administrative dispute resolution mechanisms are increasingly difficult to function effectively. In the past, the theoretical research and practice of administrative dispute resolution in China mostly constructed relevant theories and systems from the perspective of “ought to be” in “legal hermeneutics”, but ultimately did not achieve the expected results. The transformation from “formal rule of law” to “substantial rule of law” has made the field of academic research and practice begins to focus on the substantive resolution of administrative disputes. “To-be” is the value orientation of this solution concept, and the “result” is its practical orientation. It includes out-of-litigation settlement and litigation settlement of the administrative disputes. The former focuses on the discussion of diversified dispute resolution mechanisms, while the latter settles in the reform of the national judicial system and is inextricably linked with the reform of administrative trials, focusing on solving the problem of idling administrative trial procedures. The settlement of administrative disputes is conducive to the settlement of the traditional “contradictions between the government and the citizens”, which is conducive to the construction of a harmonious society, and also contributes to the construction of a country ruled by law, a government ruled by law and a society ruled by law. It is an important aspect of the modernization of the state’s governance system and governance. It is also an inevitable requirement for building a service-oriented government.

## 1. THE CONNOTATION OF THE RULE OF LAW AND CHINA'S CHOICE

The connotation of the rule of law and the method of building the rule of law have always been the basic subjects of legal research. At present, the understanding of the rule of law can be roughly as follows: formal rule of law; substantive rule of law.

### 1.1 Formal Rule of Law

In Joseph Raz's view, the rule of law is merely a formal concept, it has nothing to do with the person or institution that made the law, whether it is a tyrant or a democratic majority. As long as the law meets the requirements such as openness, transparency, non-retroactivity, stability, etc., it should be observed. This is also the main connotation and characteristics of the formal rule of law.

### 1.2 Substantive Rule of Law

Aristotle believes that the rule of law should contain the following two meanings: the statute law is universally obeyed; the law itself should be a good law. Hayek further pointed out that the law should protect citizens' private rights from public power. All in all, the formal rule of law advocates Governing the country by law, regardless of the content and quality of the law, as long as it conforms to formal conditions such as unity, stability, and openness, both good law and evil law should be strictly enforced, that is, the rule of law. The substantive rule of law is the rule of good law. The substantive rule of law is the rule of law that restricts public power and guarantees citizens' freedom and rights. The organic unity of the moral purpose of the rule of law and the substantive content of the law is the proper meaning of the rule of law.

### 1.3 China's Choice

After the development of the formal rule of law has developed to a certain extent, the form of the rule of law in the country will move toward the stage of substantive rule of law construction which is a higher level than the formal rule of law. (Gao, 2013) Since the founding of the Communist Party of China, her ruling philosophy and history have experienced and are undergoing four stages: "party-government", "rule of man", "legal system" (formal rule of law), and "substantial rule of law". The Fourth Plenary Session of the 18th CPC Central Committee proposed "sound lawmaking, strict law enforcement, impartial administration of justice and the observance of law by everyone". This puts different requirements on the four major links of the rule of law, such as legislation, law enforcement, justice and law-abiding. This indicates that the construction of the rule of law begins to shift from formal rule of law to substantive rule of law in China (Li, 2015).

## 2. THE SUBSTANTIVE SETTLEMENT OF ADMINISTRATIVE DISPUTES

Whether it is ancient or modern, in all countries of the world, administrative disputes, that is, the settlement of the contradictions between the government and the citizens, have always been a major event that the politicians cannot avoid. In the process of the rule of law construction from "formal rule of law" to "substantial rule of law" in China, the solution mode of administrative disputes will also be re-examined. To a certain extent, the substantive resolution of administrative disputes is one of the inevitable requirements of the substantive rule of law.

### 2.1 The Concept of Administrative Dispute

As is known to all, according to Article 1 of the Administrative Procedure Law of the People's Republic of China which has been amended in 2014, the interpretation of the purpose of administrative litigation has added a statement of "solving administrative disputes". However, there are few definitions of administrative disputes both in the field of academic research and practice. In China, some scholars believe that administrative disputes are disputes between administrative subject and administrative counterparts (citizens, legal persons and other organizations) in the process of exercising public power, and need to be resolved according to public law. Factors such as subject, public power, rights and obligations are used as criteria for judging administrative disputes (Yang, 2004). From this point of view, the administrative subject and the administrative counterpart constitute the two sides of the administrative dispute. However, if the administrative subject does not use the public power for the administrative counterpart in the related activities, at this time, the relationship between them is equal. In this case, the dispute is a civil dispute. There are also views that administrative disputes are these disputes between "state administrative organs and other organizations that exercise state administrative powers" and "citizens, legal persons and other organizations" in the process of administrative management. Administrative disputes in a broad sense also include the dispute between different state administrative organs and the dispute between state administrative organs and their staff. The administrative dispute has the following characteristics: the subject is the administrative subject and the citizens, legal persons and other organizations; the legal status of the subject is unequal; the dispute is caused by the implementation of administrative activities; it involves national interests, collective interests and personal interests; Based on the specific act or omission of the administrative subject; The dispute has a certain legal significance which will cause the increase or decrease of the legal rights and obligations; its resolution will lead to a corresponding legal evaluation of the legality and rationality of the controversial behavior.

## 2.2 Substantive Settlement Mechanism for Administrative Disputes

### 2.2.1 The Connotation of Substantive Settlement of Administrative Dispute

The substantive settlement of administrative disputes is a concept corresponding to the traditional administrative dispute resolution mode. It emphasizes the “results”-oriented, which breaks through the “should to be” limit of “legal hermeneutics”. Its purpose is to realize the actual and effective settlement of administrative disputes, among which there is also the value orientation of legal sociology, and it is also an inevitable requirement for the transition from “formal rule of law” to “substantial rule of law”. The ideal dispute resolution should include the following three aspects: (I) Formally, the dispute is resolved and eliminated; (II) Substantially, the rights and obligations involved in the dispute are restored, and the social order is restored; (III) The parties in the dispute have reached an agreement on the matters involved in the dispute and voluntarily accepted the results and will not create new conflicts. The legal settlement of administrative disputes refers to the end of the corresponding legal process, that is, the legal procedure for handling administrative disputes has ended. However, in reality, the following situations often occur: “The factual dispute still exists when the case has been tried”, “When the administrative organs believe that the dispute has been dealt with, the administrative counterpart has the opposite view.” In the context of substantive rule of law, the substantive settlement of administrative disputes should include the following three meanings: (I) the case has been tried and terminated; (II) the contradiction between the parties has been truly resolved, leaving no sequelae; (III) The trial of the case clarifies the processing boundary of the same type of case, and the administrative organs and members of society can automatically adjust their behavior according to the judgment of the court (Jiang, 2011).

### 2.2.2 The Main Non-litigation Resolution Paths of Administrative Disputes in China

At present, in China, in addition to administrative litigation, administrative disputes are mainly resolved through administrative reconsideration, letters and visits, and administrative appeal.

#### Administrative reconsideration

Since the implementation of the *Administrative reconsideration regulations*, the administrative reconsideration system has made a great contribution to the settlement of administrative disputes. According to the data released by the former legal Affairs Office of the State Council and the Supreme people’s Court, there were a total of 164190 administrative reconsideration cases from provinces, autonomous regions, municipalities directly under the Central Government and departments of the State Council in 2016. The number of cases increased by 11.17% compared with 2015. In the same year, a total

of 225,485 administrative first instance cases were heard by all courts throughout the country. The ratio between the number of administrative reconsideration cases and the number of administrative litigation cases in China is 7:10. Its primary problem is that the scope of accepting cases is too narrow. Although the scope of administrative reconsideration stipulated in the Administrative reconsideration Law has a certain breakthrough compared with the original scope of administrative litigation, it is still not enough, so that many administrative disputes cannot be relieved by the administrative reconsideration system. For example, the infringement caused by abstract administrative acts is not necessarily objective; this kind of infringement may put the legitimate rights and interests of citizens, legal persons or other organizations in a dangerous state. When it is put into practice, this dangerous state will immediately become a reality (Gao, 1997). Therefore, many scholars believe that the scope of administrative reconsideration should include abstract administrative acts. The non-independence of administrative reconsideration organs is also a key factor restricting the development of administrative reconsideration system. For example, although some administrative reconsideration procedures have been concluded, executive heads continue to forcibly intervene and change the outcome of the handling of cases. It can be seen from this that in order to give full play to its role in resolving administrative disputes, it is far from enough to reform the administrative reconsideration organization, and the reform of the administrative reconsideration committee should be regarded as the core and opportunity. This includes the establishment of the pre-principle of administrative reconsideration, the non-attendance of administrative reconsideration organs as defendants, the expansion of the scope of administrative reconsideration, the simplification of the jurisdiction of administrative reconsideration and so on. Finally, through its reform to promote the reform of the whole administrative reconsideration system (Wang, 2013).

#### Letters and visits

Letters and visits are commonly referred to as “people’s visits”. According to the relevant provisions of the *Regulations on Letters and Visits* amended by the State Council of China in 2005, “letters and visits” means that citizens, legal persons or other organizations give information, make comments or suggestions or lodge complaints to the people’s governments at all levels and the relevant departments of the people’s governments at or above the county level through correspondence, E-mails, faxes, phone calls, visits, and so on, which are dealt with by the relevant administrative departments according to law.<sup>1</sup> The system of letters and visits in

<sup>1</sup> Article 2 of the 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).



China has roughly gone through the following three stages: "mass mobilization" letters and visits, "correcting chaos" letters and visits, "stable and unity" letters and visits (Ying, 2004). The work orientation of letters and visits can be divided into two types: the formation of social mobilization and conflict resolution. The current letter and visit system aims at the latter, but it has a limitation so that it cannot effectively respond to the needs of people's political participation (Feng, 2012). Bringing letters and visits into the track of the rule of law is something that the government of China has been trying to do. The legalization of the system of "letters and visits" mainly refers to the legalization of the behavior of the people and the working mechanism of "letters and visits". The legalization of the petition system mainly refers to the legalization of the behavior of the people and the working mechanism of the petition. Its reform should make a moderate distinction between the rule of law work and the mass work, starting from specific aspects, which is helpful to resolve disputes. China is now in a period of economic and social transformation, and there are many new problems in the the system of the "letters and visits". Therefore, it is necessary to carry out in-depth reform of the petition system in order to establish an effective and orderly interest expression mechanism. For example, the establishment of the hearing system of "letters and visits" will contribute to the realization of the relief function of the right of "letters and visits" and the effective settlement of related disputes. In addition, it is necessary to improve the administrative dispute handling mechanism within the administrative system and strengthen the authority of the rule of law. The department of letters and visits should also avoid direct intervention in the internal administrative acts. There are great differences between the "letters and visits" system and the administrative reconsideration system in terms of function, scope of accepting cases and procedure, but the purpose of both of them is to resolve the contradiction between the government and the citizens and to supervise the administrative power. Therefore, how to deal with their relationship as well as possible is very important to realize the substantive settlement of administrative disputes.

#### Administrative appeal

At present, there are mainly three legal forms of administrative appeal system in China: the administrative appeal of civil servants, the administrative appeal of teachers and the administrative appeal of students. In addition, citizens, legal persons or other organizations may also file administrative appeals directly in according to the Constitution, which is referred to as a non-statutory appeal, but such a appeal generally cannot directly cancel or change the administrative acts which is illegal or improper. Thus it can be seen that China's administrative appeal system is mainly used to resolve administrative disputes under the relationship of the special power of administrative law. The core function of administrative

appeal is to promote administrative fairness. Compared with administrative litigation, the content of administrative appeal also includes the supervision of efficiency in administrative supervision. The relatively independent organization, the authoritative organization power and the staff quality with both morality and ability are the premise that the administrative appeal system can play a good role and promote administrative justice.

#### 2.2.3 Administrative Litigation: The Final Settlement of Administrative Disputes

Administrative litigation, also known as administrative trial, which has different names and connotations in different countries and regions. It is a judicial system dedicated to the settlement of administrative disputes, and its core function is to examine the legality of administrative acts. Of course, the purpose of administrative trial is to protect the legitimate rights and interests of citizens, which should also be reflected in the design and practice of the specific system. The resolution of social contradictions, the innovation of social management and the fairness and integrity of law enforcement are the focus of the trial justice of the court. The article 1 of the revised Administrative procedure Law of the people's Republic of China has added the content of "resolving administrative disputes", which indicates the legislative trend and reform direction of administrative litigation in China in the future. The scope of accepting cases of administrative litigation has always been an important part of the administrative litigation system, which directly determines the width and breadth of administrative disputes that can be resolved through administrative litigation. At present, the scope of accepting cases of the administrative litigation in China is still too narrow, which is obviously not conducive to the protection of the rights of citizens. Expanding the scope of accepting cases of the administrative litigation is of great significance to the reform of administrative trial in China. Some scholars have demonstrated the legality of expanding the scope of accepting cases of the administrative litigation from the perspective of objective law maintenance, and believe that internal administrative acts, administrative final adjudication acts and abstract administrative acts should be conditionally included in the scope of accepting cases of the administrative litigation. It is worth noting that the scope of accepting cases of the administrative litigation is not the qualification of plaintiff of the administrative litigation. Generally speaking, the qualification of plaintiff of the administrative litigation is an important aspect of the scope of accepting cases of the administrative litigation, and the scope of accepting cases of the administrative litigation is the premise of the qualification of plaintiff of the administrative litigation, but the two are not the same. The interest relationship between the prosecutor and the administrative act that causes administrative dispute is the central content of the plaintiff qualification of the administrative litigation,

and the identification of “interest relationship” includes the following three points: the prosecutor has rights and interests; The rights and interests of the prosecutor must be unique to the prosecutor himself; the rights and interests of the prosecutor are directly affected by the administrative act. (Gao, 1997) To a certain extent, expanding the scope of plaintiff qualification in administrative litigation will help to resolve administrative disputes and protect the legitimate rights and interests of citizens. In addition, the improvement of administrative litigation procedure is also one of the key points of the reform of administrative trial system in China. Some scholars have pointed out that the standard of review of the administrative litigation of China is based on the “correctness review standard” rather than the “legitimacy review standard”. And the standard of the judicial review should be based on distinguishing the factual, legal, and procedural issues of the different type of administrative acts, which is, insisting on legality review, establishing rationality review, and introducing due process review. At present, in China, the summary procedure of administrative litigation, the pre-trial preparation procedure of administrative litigation and the procedure of the administrative lawsuit of public interest filed by procuratorial organs have been widely concerned by administrative law scholars.

In China, administrative trial is deeply influenced by authoritarianism. The review of legality is the focus of the reform of administrative trial mode, and regulating the mode of trial is the key to the reform of administrative trial mode. The reform of administrative trial mode should mainly focus on carrying out direct trial, paying attention to legality review, strengthening the burden of proof of the defendant, implementing the collegial system and improving the status of judges (Zhou, 2001). Some administrative law scholars have analyzed the choice of the administrative trial mode of China from the point of the view of litigation values, legal cultural tradition, essence and purpose of administrative trial, and finally pointed out that it is not advisable for the reform of the mode of administrative trial to be oriented towards the litigant principle, but it is advocated that the administrative trial should adopt the authority principle. Scholars who hold this view believe that the key to the reform of the administrative trial mode is to grasp the procedures and methods of the factual trial and the legal trial respectively, adopt the judge-led trial mode, and establish the correct standards of court investigation and evidence examination, in order to realize the correct and proper exercise of administrative judicial power. In addition, when it comes to the reform of the mode of administrative trial, it is necessary to mention cross-administrative regional jurisdiction. It is advocated to explore the establishment of a special court of cross-regional administrative trial, which has once become a hot spot in the field of administrative law in China. Moreover, scholars of China are also very concerned about the

type of administrative litigation and the distribution of burden of proof. They advocate that the classification of administrative litigation types should not only learn from overseas experience, but also be based on the practice of China. Some people advocate the reconstruction of the type of administrative litigation in our country, which can be divided into seven categories: the lawsuit of revocation, the lawsuit of duty, the lawsuit of payment, the lawsuit of confirmation, the lawsuit of public welfare, the lawsuit of organ and the parties lawsuit. They believe that the construction of the distribution system of the burden of proof should take the plaintiff’s claim as the starting point, the subjective right relief and the objective legal order maintenance as the path, and the litigation type as the analytical framework, so as to construct a complete distribution system of burden of proof.

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### 3. RELEVANT SYSTEMS OF COUNTRIES OUTSIDE CHINA

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In recent decades, with the development of society and the rapid expansion of administrative power, there have been many new changes in administrative law. In this process, it has put more and more emphasis on administrative self-regulation. However, in the United States, the basic consensus that the judiciary should control the executive power has not changed from the beginning. Since the economic crisis of the 1930s, the establishment and expansion of the Independent Commission indicates that the original judicial review system has been difficult to meet the needs of the development of modern administration. When faced with professional administrative act disputes, judges often lack the corresponding knowledge and experience, and a large number of administrative disputes can not all resort to the courts. Since the promulgation of the *Administrative Dispute Resolution Act* and other relevant laws in 1996, the government of America has become more and more inclined to use mediation, negotiation and arbitration as a way to resolve administrative disputes in order to save costs and resolve contradictions quickly. In addition, the administrative judge system and informal procedure of administrative adjudication created by the United States are also established by the United States in order to promote the effective settlement of administrative disputes. The United Kingdom has always attached importance to the out-of-litigation settlement of administrative disputes. As we all know, the number of administrative litigation cases in Britain is also very small. Moreover, in the United Kingdom, if a citizen wants to file a lawsuit, an additional pre-litigation reminder procedure is necessary, that is, an action can be brought only if the lawsuit is inevitable. Out-of-litigation settlement mechanisms include appeals to ministers, seeking relief from parliamentarians, the system of administrative tribunals,

the Parliamentary Commissioner for Administration, and so on. The Administrative Tribunal is a special system for administrative dispute resolution in the United Kingdom. The vast majority of administrative disputes in the United Kingdom are resolved by the Administrative Tribunal. It is affiliated with the administrative organ, but it retains its independence in its activities. At present, the United Kingdom is accelerating the reform of the system of the Administrative Tribunal. In order to effectively manage different types of administrative tribunals, legislation will be unified. Unlike the common law countries, in Germany and France, which belong to the civil law system, the out-of-litigation settlement mechanism for administrative disputes is not well developed. Germany has always attached importance to the role of administrative courts in resolving administrative disputes. Its external administrative dispute resolution mechanism is not developed, and it also regards administrative reconsideration as a pre-procedure for administrative litigation. Traditionally, administrative law of France does not distinguish administrative reconsideration from administrative litigation. However, in recent years, although the administrative court belongs to the administrative organs, it is becoming more and more independent. Although France has developed the bona fide relief and hierarchical relief system similar to the administrative reconsideration system in China in recent years, it is still not developed enough. In Asia, in addition to administrative litigation, Japan has also established an administrative system of dealing with bitterness and a appeal system, both of which are for the simple, rapid and effective settlement of administrative disputes. The administrative adjudication system established after World War II is also one of the important measures taken by Japan to promote the substantive settlement of administrative disputes. In order to realize the substantive settlement of administrative disputes, Taiwan of China has constructed an administrative petition system and a reconciliation system of administrative litigation that does not violate public interest.

#### **4. PROBLEMS AND REFLECTIONS ON THE EXISTING SYSTEM OF ADMINISTRATIVE DISPUTE RESOLUTION IN CHINA**

As mentioned above, In China, the administrative disputes is mainly solved through administrative reconsideration, letters and visits, administrative appeals, administrative litigation, and so on. China's administrative reconsideration system has both administrative and judicial characteristics. It is not only the internal supervision system of the administrative organs, but also has the characteristics of judicial justice procedures. Since the implementation of the "Regulations on Administrative Reconsideration of the People's Republic of China" in

1990, the administrative reconsideration system has played a significant role in the resolution of administrative disputes. However, there are a large number of defects of the system and practical difficulties, including the narrow scope of administrative reconsideration, the insufficient degree of review of abstract administrative acts, the difficult to guarantee the independence of administrative reconsideration organs, The low professional quality of the administrative reconsideration staff and the insufficient credibility of the administrative reconsideration organ. As a result, its fairness in resolving administrative disputes has been questioned by the public. In recent years, although China has introduced the system of administrative Reconsideration committees, it still does not effectively solve these problems. Letters and visits are a unique system in China, that is, the masses report the situation to the people's governments at all levels and the working departments of the people's governments at or above the county level through letters, e-mail, faxes, telephone calls, visits, and so on, and put forward suggestions, opinions, or requests for complaints. Activities handled by relevant departments in accordance with the law. As a dispute resolution mechanism with Chinese characteristics, letters and visits have gradually become one of the important ways to resolve disputes in recent years. However, there are still many problems that need to be improved now. For example, the law does not make clear provisions on the authority and procedures of the department that dealing with letters and visits, and the department and its staff that dealing with letters and visits do not have the independent power to deal with the issue of letters and visits. The protection system of the rights of letters and visits is not perfect. In addition, although letters and visits have consumed very high social costs, they have not achieved the expected results. Therefore, some scholars and political officials have always proposed to abolish the system of letters and visits. Administrative litigation is a system in which the court reviews the legitimacy of administrative acts and makes judgments according to the request of the administrative counterpart. Since the establishment of the administrative litigation system, many administrative disputes have been effectively resolved through it, but compared with a large number of administrative disputes, this is still far from enough. In addition, there are many problems, including the narrow scope of administrative litigation, the difficult to guarantee the judicial independence of the court and its judges, the lack of professionalism of administrative judges in dealing with professional administrative disputes, and so on. All these restrict the effect of administrative litigation system in resolving administrative disputes. In a word, in China, the existing administrative dispute resolution mechanism is still very imperfect. For example, For example, various administrative dispute resolution systems operate independently; rarely cooperate with each other, so there is no combination of



advantages. All administrative dispute resolution systems are also faced with the dilemma of lack of authority, which makes it difficult to convince the parties. (Ying, 2007) It is an inevitable requirement for effectively resolving administrative disputes and effectively maintaining social stability to construct a diversified relief mode of administrative disputes with complete system, clear hierarchy and various functions. In China, different scholars have studied the diversified resolution of administrative disputes from different fields and perspectives. For example, some scholars believe that only by defining the functions and powers of letters and visits, perfecting the system of letters and visits, and building a diversified and complementary dispute resolution mechanism, can we promote the substantive settlement of administrative disputes. As far as administrative litigation is concerned, it is considered that the legal status of pre-litigation mediation should be established, the scope of pre-litigation mediation should be refined and expanded, the connection between pre-litigation mediation and administrative litigation should be strengthened, and the mechanism of "complicated and simple diversion" should be improved. Improve the professional level of pre-litigation mediation. Some scholars believe that the establishment of a judicial evaluation mechanism before the issuance of the administrative mediation statement in the process of pre-litigation mediation will help to explore a diversified dispute resolution mechanism and substantially resolve administrative disputes. Some scholars have summarized the characteristics of social conflict administrative disputes and put forward the criteria for substantive settlement, thinking that in order to resolve such disputes substantially, It is necessary to design a conciliatory procedure of class action specifically aimed at resolving such disputes in accordance with the three principles of judicial activism, procedural cooperation and judicial finalism (Gao, 2013).

## CONCLUSION

The establishment of the socialist system with Chinese characteristics, the modernization of the national governance system and governance capacity, and the transformation from management to good governance all require the effective and substantive settlement of administrative disputes. To a certain extent, the substantive settlement of administrative disputes and the transformation of the mode of administrative trial are closely related to each other. Furthermore, the substantive settlement of administrative disputes needs to seek and establish a set of out-of-litigation settlement mechanism, and the existing administrative trial mode, its procedure and even its theory, they all need to have new development and breakthrough. Whether compared with its own criminal law and civil law system, or compared with developed countries, the development of China's current

theory and practice of administrative dispute resolution are both backward. Traditionally, China pays attention to the design of administrative dispute resolution system from the perspective of judicature and value evaluation criteria, neglecting the analysis of the cost and effectiveness of the system, which is, ignoring the substantive settlement of administrative disputes. For example, "mediation is not applicable to administrative litigation". But this theory has been criticized in its birthplace. China is now experiencing a painful period of economic and social transformation, administrative contradictions and disputes have also entered a high incidence period, but the existing settlement mechanism has not played a good role. With the change from "formal rule of law" to "substantive rule of law", the substantive settlement of administrative disputes has been widely concerned by the administrative law scholars and practical departments in China. Administrative trial as the final relief of administrative dispute resolution, the improvement of administrative trial mode and its theory is also an unavoidable topic to promote the substantive settlement of administrative disputes.

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