

Balancing Scales: How Stability Policies Shape Judicial Independence and Administrative Litigation in China

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Abstract

Judicial review in China has evolved within a governance framework that privileges social stability over judicial autonomy. This study examines how stability-maintenance policies affect the impartiality, transparency, and independence of administrative litigation. Drawing on doctrinal analysis, legislative review, and selected case studies, the paper traces reforms to the Administrative Litigation Law and shifts in the Supreme People's Court's accountability mechanisms, highlighting the formal introduction and limited application of standards such as "obvious impropriety" and the proportionality principle. Empirical and doctrinal evidence indicates that hierarchical supervision, performance metrics, and stability-oriented dispute-resolution practices constrain judicial discretion in practice. Court strategies increasingly favor mediation and dispute absorption to pre-empt mass incidents, narrowing substantive review and marginalizing challenges to abstract administrative acts. As a result, judicial review functions more often to legitimize administrative decisions than to robustly protect individual rights. The study concludes that while maintaining social order is not inherently incompatible with the rule of law, the institutionalization of stability priorities systematically compresses the substantive space for independent adjudication. The paper offers targeted policy recommendations for aligning proportionality-based reasoning with judicial autonomy.

Keywords

Judicial Independence, Administrative Litigation, Stability Maintenance Policy, Proportionality Principle, Judicial Review

1. Introduction

In September 2015, the Supreme People's Court issued the Opinions of the Supreme People's Court on Improving the Judicial Accountability System of the People's Courts, a document that is seen as an important milestone in China's judicial reform journey. It aims to further promote judicial transparency and reform of the accountability system for judges. While some legal scholars have noted that China has made significant progress in judicial review of administrative actions, others also have pointed out that China's obsession with social stability has actually prevented deeper judicial reform.

According to Benjamin L.Liebman, although past reforms have shifted Chinese courts from serving as tools of the ruling elite toward institutions aimed at effective dispute resolution, political influence continues to permeate judicial appointments and core aspects of adjudication [1]. Under the present leadership of the Supreme People's Court, the judiciary remains deeply intertwined with political authority. The Chinese Constitution grants a certain degree of independence to the court system, but in practice the courts are still directly subordinate to the legislature [2]. Hence, The existing judicial framework continues to oblige judges to fulfill a political role in upholding social stability. This not only affects the legal judgement of the case, but may also erode the court's freedom of judgement, which makes it difficult to achieve true judicial independence.

The purpose of this research is to provide an in-depth analysis of how the policy of maintaining social stability affects the independence and impartiality of administrative litigation in China, and to assess the strategies and effectiveness of courts in addressing social stability issues in this context. We will analyze the amendments to the Administrative Litigation Law and related judicial interpretations in recent years to reveal the gap between the expansion of the scope of judicial review and its actual effect. This paper will also examine how courts balance the policy requirements of maintaining social stability with safeguarding judicial independence and impartiality, especially the challenges and choices they face when hearing cases involving socially sensitive issues. How can the impact of stabilization policies and practices on administrative litigation in China be assessed? What does the court's strategy for addressing social stability look like in this context, while avoiding the trial becoming a game of avoiding mistakes and 'toeing the party line'? These are all questions that we need to explore in depth in our research.

2. Old Wine in New Bottle? The Evolution of the Scope and Standards of Judicial Review

In China, Judicial oversight of administrative actions is frequently regarded as an indicator of the government's genuine commitment to the rule of law [3]. Administrative litigation, which provides judicial review of government agency actions, was formally introduced in China with the passage of the Administrative Litigation Law (ALL) in 1989 and was subsequently revised in November 2014 and July 2017 [4]. In 2018, China's Supreme People's Court (SPC) issued a comprehensive Interpretation of the Application of the Administrative Litigation Law, which replaced previous interpretations and introduced significant revisions and brought about substantial doctrinal and institutional changes. More specifically, since 2014, reforms to the Chinese judicial system – particularly the centralization of court funding at the provincial level, the redistribution of jurisdiction to higher courts, the establishment of new circuit courts at the provincial level and above, and significant changes to the professional incentives for judges – have had a direct impact on the handling of litigation against government agencies by administrative courts. These reforms have been instrumental in enhancing the efficiency and fairness of administrative litigation. Unlike China's Taiwan region and Germany, mainland China does not have a special administrative court system [5], and the authority to review administrative actions is entrusted to ordinary courts across all judicial levels. This article will focus on two aspects of judicial review: the scope of judicial review and the criteria applied in such review.

2.1 The Scope of Judicial Review

Professor Weidong Yang believes that “With regard to the scope of cases accepted, the promulgation of the Administrative Litigation Law is only the beginning of the problem, not the end [6].” Hence, from the perspective of comparative administrative law, the scope of the review provided for in the practice was not extensive before 2015.

According to the Administrative Litigation Law amended in 2015, individuals, organizations or legal persons may file a lawsuit if they believe that an administrative action has violated their lawful rights and interests under Article 2. The term “administrative act” here replaces the expression “concrete administrative act” in the 1989 Administrative Litigation Law, but this change in wording itself does not substantially expand the scope of the trial [7]. More specifically, Article 2 expands the definition of “administrative act” to include decisions made by organizations authorized to exercise administrative authority (such as universities and certain regulatory agencies [8]). In addition, Article 12 provides an exhaustive list of 11 areas in which lawsuits may be filed against the government. It explicitly mentions violations of land and housing compensation agreements, illegal changes or revocations of government franchise agreements, and illegal restrictions on personal freedom. Although government actions that violate the personal and property rights of the plaintiff can be challenged before and after 2015, the newly added statutory enumerations seem to clearly indicate the areas where social discontent and potential unrest that need to be addressed most [9].

It is worth mentioning that, based on the clear provisions of Article 12, the court only has jurisdiction over concrete administrative actions. This means that abstract administrative actions, such as administrative regulations, rules [10], and generally binding decisions and orders (Normative Documents [11]), cannot be the subject of administrative litigation. The court does not have the power to declare them illegal and revoke or annul their effect. Professor Zhang Qianfan believes that “this is one of the few ‘Chinese characteristics’” [12].

However, China has been reforming the scope of judicial review in administrative litigation gradually [13]. Instead of taking no action or expanding the review to encompass all abstract administrative actions, it is considered more prudent to extend judicial review to normative documents. In December 2014, the Standing Committee of the National People's Congress passed the revised Administrative Litigation Law, which, through Articles 53 and 64, explicitly established judicial review of normative documents. Although courts can only review normative documents in conjunction with specific administrative actions, rather than accepting standalone requests to review normative documents, this reform is regarded as a major innovation in the administrative litigation system. It represents a significant step forward in enhancing oversight of administrative agencies and lays the groundwork for strengthening judicial authority and improving the relationship between courts and administrative bodies.

2.2 The Criteria of Judicial Review

In the administrative law practice of a liberal democracy, the standard of review applied by the court when examining the legality of government action is a central issue. However, this issue often fails to receive sufficient attention in China's institutional reform and academic discussions.

It is generally accepted that judicial review aims to ensure that administrative decisions are lawful, fair and reasonable [14]. UK Administrative Law has developed the Wednesbury Principle [15] to set a standard of “unreasonableness” for judicial review of public administrative decisions. According to this principle, an administrative decision may be quashed in judicial review if it is “so unreasonable that no reasonable person could have come to such a decision” [16]. UK Administrative Law extends the concept of “unlawful abuse of power” to irrationality. Lord Diplock further explained this standard by stating that an administrative decision is an unacceptable act of irrationality under this situation. The court should revoke it when it “defiance logic or accepted standards of morality” and reaches an “outrageous” level [17].

In China, judicial review standards have undergone significant development and adjustment in recent years, and have become increasingly refined, especially in the field of administrative litigation. The 2014 revision of the Administrative Litigation Law included “obvious impropriety” as an independent standard for revoking or changing administrative actions, marking a gradual transition from a single “legality review” to a more complex multi-dimensional standard [18]. This standard requires that administrative actions not only be unbiased at the factual level, but also comply with the law and achieve a balance of interests in terms of value judgments. Accordingly, scholars have pointed out that although early administrative litigation in China was dominated by “legality review,” in practice the review standard has gradually transitioned towards “correctness review.” “Correctness review” requires the court to conduct a rigorous and comprehensive review of factual and legal issues, in pursuit of the only correct answer. Although this standard improves the intensity of the review, it also leads to the drawback of rigidity in the review [19].

3. The Traditional Administrative Law Framework and the Pursuit of Social Stability in the Socialist System with Chinese Characteristics

In the traditional legal framework, administrative law mainly concerns rules that constrain government action. This control benefits not only the rulers but also the citizens [20]. According to Mathew McCubbins, Roger Noll, and Barry Weingast, administrative law can be regarded as an effective tool for rulers to regulate and guide the policy decisions of bureaucrats. They believe that administrative law provides rulers with an institutional means to supervise and control the operation of administrative power [21]. Furthermore, Matthew McCubbins and Thomas Schwartz liken administrative litigation to a “fire alarm oversight” mechanism, meaning that such litigation procedures are activated when necessary to correct government deviations or abuse of power in policy implementation [22]. It is a system of rules and procedures that enables people or interest groups to challenge administrative actions, allege violations of law and policy by administrative agencies, and seek remedies from agencies, courts, and Congress [23].

Economic decentralization, market-oriented reforms, and the model of a developmental local government have brought about rapid development in China's economic construction in the contemporary era. However, with the gradual fading of the reform dividend, various social conflicts associated with local economic decentralization have gradually increased. In particular, local public policy issues such as land expropriation, social security policies, the restructuring of state-owned enterprises, and environmental pollution have sparked a large number of mass events and social protests [24]. In this background, maintaining social stability has become one of the most important governing principles of the China. In response to the growing pressure of social conflicts, on February 15, 2011, the Supreme People's Court issued the Several Opinions on Further Strengthening the Grassroots Infrastructure of the People's Courts under the New Situation, which clearly proposed to “establish a risk assessment mechanism for major sensitive cases”. At the same time, relevant laws and regulations also continue to emphasize the importance of social stability. Article 8 of the Regulation on Open Government Information stipulates that information related to national security, public safety, economic security or social stability may not be disclosed, and this exemption is precisely to prevent unnecessary social unrest. In addition, Article 18 of the Regulations on the Formulation Procedures for Administrative Regulations requires that any government regulations involving public interest and potentially causing social instability must fully consider the risk of social stability and formulate corresponding preventive measures.

China's social stability, as a governance objective, manifests itself as a “spillover” in the legal system. It is a social control measure adopted when democratic mechanisms and judicial remedies cannot properly resolve social conflicts [25]. Fundamentally, social stability focuses on the weighing of “interests and harms,” rather than the “right and wrong” judgments of traditional law. Although the two sometimes converge in terms of outcome, they are inherently different in terms of their value dimensions. The core of the law lies in the value framework of fairness, justice and the rule of law, while the other focuses on maintaining social order and government authority. Although in some cases the balance of “interests” and the results of “right and wrong” judgments may be the same, this kind of “interests” trade-off often sacrifices the individual rights of citizens and erodes the rule of law. This is especially true in cases involving maintaining stability, where court decisions often favor the collective or national interest. For example, in the case of *Yu Zhujun v. The Traffic Police Brigade of the Public Security Bureau of Wujing District, Changzhou Municipality*, the court pointed out that the conflict between public and personal interests is a difficult problem for the court clearly. The court believes that in the handling of individual cases, a reasonable balance must be found between public interest and individual rights. The court follows the principle that public interest takes precedence over private interest, while at the same time doing its best to protect individual rights and interests, to achieve a relatively reasonable basic balance between the two [26]. This preference is deeply influenced by the Chinese understanding of human rights, which places “Gong” (public and collective interest) above “Si” (individual rights and interests) [27].

In a communist state deeply influenced by Confucianism, the role of the China's judiciary remains politicized under the current leadership of the Supreme People's Court. The main objective of the administrative litigations is to “maintain (social) stability” and prevent cases from evolving into “disputes involving the masses” or literally “mass events” [28].

As a result, substantive judicial review of administrative action is significantly limited in practice. First, administrative litigation is only one of many tools to ensure that the actions of the bureaucracy are consistent with its governing objectives [29]. This is done in parallel with other oversight mechanisms such as the National Supervisory Commission [30]. Second, China relies on the bureaucracy to drive economic development and maintain social stability, and its governance model is deeply rooted in the operation and support of these institutions [31]. In order to ensure the smooth

implementation of policies, China must prevent excessive judicial interference in administrative affairs, as the bureaucracy, rather than the courts, is the central force in implementing state policy [32]. The effective implementation of policies, even at the expense of the rule of law or individual rights in some cases, is still considered a priority. From the central and local levels, administrative litigation should not become an obstacle to the implementation of national policies. Instead, they tend to legitimize administrative actions through the judiciary in order to promote the maintenance of social stability on a larger scale, thus ensuring the continuity of their rule [33].

More importantly, the judiciary has shown an ambiguous and evasive attitude towards administrative acts that violate social stability. The state has more often dealt with political issues through administrative accountability models, rather than making adjustments through judicial means of administrative litigation. This further demonstrates the special nature of judicial review between “law and politics” under the national conditions of socialism with Chinese characteristics, making its future institutional direction uncertain.

4. The Impact of the Stability Maintenance Policy on Administrative Litigation and Analysis of Court Strategies

4.1 The Infiltration of Judicial Independence and Administrative Litigation by the Stability Maintenance Policy

In China's political and legal system, the stability maintenance policy, as an important tool of state governance, has had a profound impact on administrative litigation, especially regarding the independence and impartiality of judicial review. Although in 2015 the Supreme People's Court issued the Opinions of the Supreme People's Court on Improving the Judicial Accountability System of the People's Courts, which clearly emphasizes judicial transparency and accountability of judges, the stability maintenance policy has limited the effectiveness of these reforms in practice, resulting in a certain degree of weakening of the function of judicial review. The stability maintenance policy not only be affected by the institutional environment outside the court, but also further penetrates into the trial mechanism within the court.

From an external perspective, judicial independence means that the entire judicial system can independently perform its functions without interference from other institutions or groups. This independence ensures that the judiciary can perform its duties objectively and impartially, free from the influence of external powers. However, much literature criticizes China's courts' reliance on the intervention of the CCP party committees and local administrative departments in their actual operations, especially at the local level [34]. From an internal perspective, judicial independence emphasizes that judges should enjoy autonomy when handling cases and be able to make decisions freely based on law and facts without fear of being punished or rewarded unjustly. However, in judicial practice in China, judges' discretion is often constrained by internal hierarchies. Sometimes, judges' decisions are not based on legal principles, but are subordinate to the hierarchical system and instructions from higher-ups. Judgments and rulings reflect the voice of power more than the logic of the law [35]. In addition, the establishment of the Trial Management Office has made the court a tool of social control, which, combined with the Case Quality Assessment System, has further weakened the independence of judges [36].

4.2 Stability Maintenance Behind Judicial Performance and Strengthened Dispute Resolution Function

It is worth noting that if viewed from a macro perspective, the overall performance of China's judicial institutions appears to be positive and unexpected. In 2019, courts nationwide concluded a total of 29,058,498 cases of various types, an increase of 15.3% compared to 2018. At the same time, in 2019, each judge concluded an average of 228 cases, a slight increase compared to 201 cases in 2018 [37]. These figures reflect the efficiency of China's judicial system in handling a large number of social disputes, and further demonstrate its important role in maintaining social stability.

In addition, the World Bank's global report on business environment assessment highly praises the performance of Chinese judicial institutions. In particular, in the key indicator of contract enforcement, China ranked 5th among all economies in 2020, while in the indicator of the quality of judicial procedures, China surprisingly ranked first [38]. The outstanding performance of Chinese judicial institutions in key indicators such as contract enforcement and the quality of judicial procedures shows that despite institutional deficiencies, they have performed outstandingly in responding to social needs, promoting economic development, and maintaining social order. The outstanding performance of judicial institutions in dispute resolution is closely related to the Chinese government's governance goal of attaching importance to social stability. The penetration of the stability maintenance policy in the judicial field has made judicial institutions assume an important role in maintaining social harmony and order. It is this practical need that has promoted the effective operation of the judicial system in the dispute resolution mechanism, although challenges remain to its independence and institutional integrity.

4.3 Limited Application of the Principle of Proportionality and Weakening of the Judicial Review Function

As Yifan Xian pointed out in his research, general people's court often adopt different strategies such as the “approval model”, “operator model” and “postponement model” in the decision-making process to balance external pressures and judicial independence [39]. These models reflect the survival wisdom of the court under the pressure of maintaining stability, but also reveal the deep-seated dilemma of the administrative litigation system. This article will focus on the limited application of the principle of proportionality.

In the context of the stability maintenance policy, the application of the principle of proportionality in administrative litigation in China has obvious limitations. Although in theory the principle of proportionality requires a comprehensive review of the legality, appropriateness, necessity and proportionality of administrative actions, in practice courts usually only focus on the necessity and balance analysis, while the review of the legitimate purpose and appropriateness is relatively weak. This phenomenon stems from the fact that when dealing with cases involving public interest, courts give priority to maintaining social stability and tend to support the legality of the actions of administrative organs rather than strictly reviewing their rationality.

The first milestone case in China for the principle of proportionality was the Huifeng Case [40], in which the Supreme People's Court applied the proportionality analysis method for the first time and declared an administrative penalty decision invalid. Subsequently, in 2010, the Administrative Tribunal of the Supreme People's Court announced the first batch of typical administrative litigation cases and commentaries. In the commentary on the case of *Chen Ning v. Zhuanghe City Public Security Bureau* [41], the court elaborated on the formula for proportionality analysis, including the appropriateness test, the necessity test and the balancing test, the meaning of which is consistent with the standard proportionality analysis model. However, it is worth noting that the formula does not include the legitimate aim test. This choice ostensibly reduces the risk of social conflict and helps maintain short-term social order, but in the long run, assessments have shown that it undermines the judicial supervision function that administrative litigation should have.

According to scholar Ma & Yu, in cases where the court applies the balancing test, the proportion of cases in which the administrative organ successfully defends its actions is as high as 70% [42]. This phenomenon shows that in administrative litigation, citizens are at a significant disadvantage compared to administrative organs. The limited application of the principle of proportionality has led courts to rely more on broad standards such as “abuse of power” or “manifestly inappropriate” when reviewing administrative actions, which in fact reserves greater discretion for administrative organs. Although this practice helps courts avoid direct confrontation with administrative power in sensitive cases and ensure the safe operation of the judicial system, it also weakens the substantive constraints of judicial power on administrative power, which in turn undermines the protection of individual rights.

5. Conclusion

The relationship between judicial review and the policy of maintaining stability in China reveals a deep-seated contradiction in the process of establishing the rule of law in contemporary China. On the one hand, the revision of the Administrative Litigation Law in recent years and the reform opinions on judicial accountability issued by the Supreme People's Court have indeed provided theoretical support for enhancing judicial transparency, improving the accountability of judges, and promoting judicial independence. To a certain extent, these reform measures have expanded the scope of judicial review, enabling courts to evaluate administrative actions within a framework of legality.

However, the policy of maintaining stability has become a key factor restricting the effectiveness of these reforms in actual practice. When dealing with cases involving government actions, public interests and socially sensitive issues, courts often give priority to maintaining social stability. Against this background, the application of the principle of proportionality is significantly restricted. Although these strategies can alleviate social conflicts in the short term and prevent escalation, in the long term it is difficult to effectively guarantee the supervisory function of the courts and judicial fairness, especially the weakening of the power of the administrative authorities to exercise checks and balances. This not only undermines the protection of individual rights, but also may weaken public trust in the judicial system.

The pursuit of social order, stability, and long-term peace is inherently one of the primary objectives of the rule of law. Therefore, maintaining social stability, in itself, is neither inherently aligned with nor opposed to the rule of law. The crucial factor lies in whether the mechanisms used to achieve this goal are consistent with the spirit and principles of the rule of law. If an effective balance cannot be found, any effort to reform the judicial system and implement the “rule of law” will be an uphill battle.

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