Observations on the First Draft Revision of the Administrative Reconsideration Law

BY JHORSLEY ON 2023/01/23

The National People's Congress Standing Committee (NPCSC) is substantially revising the Administrative Reconsideration Law (ARL), which provides an underutilized procedure to challenge government actions through internal agency review. Reconsideration decisions can in turn be appealed to the courts, under China's Administrative Law, which aggrieved parties can generally and often do turn to resolve disputes with the government.
Vith courts feeling overwhelmed by large caseloads and emerging new [1] a first draft for public comment on October 27, 2022 (the Draft) of a
make reconsideration the preferred channel for resolving administrative
(1) enhancing the credibility of the reconsideration process to encourage
the carrot, and (2) expanding the situations under which reconsideration
stick).

itsly quicker option, its disadvantage is the apparent bias inherent in the
it agency decisions within the vertical administrative hierarchy of, or
as, the agency that made the original decision. The reported rate at
rected through reconsideration has averaged only 14.3 percent.

few existing situations under which reconsideration is a condition
it. The ARL currently stipulates that disputes over ownership and rights
consideration before appeals to the courts, and that reconsideration
:ial level are final. It also refers to situations where other laws or
o reconsideration, which currently include disputes over taxes, customs,
, film screenings, religious affairs, and demonstration permits. In some
anagement of foreigners, the reconsideration decision is final. The Draft
re to perform its statutory duties and where administrative punishments
than going through normal procedures to the list of issues that must
undergo reconsideration.

To encourage greater voluntary selection of reconsideration to resolve disputes for which reconsideration is not
mandatory, the Draft proposes to, among other suggested changes:

- Expand and clarify the scope of cases that can be handled through reconsideration, including disputes over
administrative agreements with the government, government information disclosure, and abuse of authority that
restricts competition, but also excluding acts that do not actually impact rights and obligations;

- Centralize reconsideration authority, removing it from local government departments to place it in specialized
offices of people's governments at the city, county and provincial levels; State Council departments will handle
reconsideration cases involving them in some way; disputes involving vertically-integrated departments such as
customs, tax, foreign exchange and national security will continue to be handled by the next-higher level
departments;

- Hear directly from the parties rather than rely on the traditional "paper hearing," except in some cases subject to
new summary procedures, and provide for more formal hearings for major, difficult, and/or complex cases;

- Authorize the use of mediation, as had been permitted under 2007 implementing regulations, although only in
cases where the administrative action in dispute involved the exercise of discretion; and

- Stipulate evidence rules.

The period for public comment ended in late November, and a second, further revised draft may be published for
comment this year, before the revision is finalized.

[1] The Ministry of Justice, on behalf of the State Council, published an earlier, longer proposed ARL revision for public
comment in November 2020, and the State Council approved a draft in September 2022 to submit to the NPCSC for
consideration.

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