

# *Comparative Study on the Mediation System of Administrative Reconsideration between China and the United States*

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**Abstract:** The regulations on the implementation of the Administrative Reconsideration Law promulgated by the State Council in 2007 for the first time stipulates that mediation is one of the ways to settle administrative reconsideration cases, which shows that China has fully affirmed the important role played by mediation in the practice of administrative reconsideration, and at the same time, at the legislative level, it has established the legal status of mediation, which is a non litigation dispute settlement method. The establishment of mediation system of administrative reconsideration is beneficial Yu Pinghe solved administrative disputes, realized the balance of interests and guaranteed social stability. When we focus on the mediation system of administrative reconsideration in China, we should not neglect a system similar to that of administrative reconsideration in China -- the system of administrative law judges in the United States. The United States is an early country that applies the non litigation dispute resolution (ADR) to the administrative field to resolve administrative disputes. Nowadays, mediation has become the most frequently used non litigation dispute resolution method in the system of administrative law judges, With the advantages of perfect mediation mechanism, professional mediation judge and perfect supervision system, the litigation pressure is relieved to a great extent and the administrative efficiency is improved. As a model of non litigation dispute resolution mechanism, the mediation system of American administrative law judges is worth learning and learning from in China. This paper analyzes the mediation system of administrative reconsideration in China and the mediation system of administrative law judges in the United States from the perspectives of basic theory, historical reasons and functional orientation. After that, it introduces the principles, scope, legal procedures and other aspects of the mediation of American administrative law judges. While introducing the current situation of the mediation of administrative reconsideration in China, it analyzes the main problems existing in the mediation system of administrative reconsideration, and tries to find out the rules and experience suitable for the improvement of the mediation system of administrative reconsideration in China through the comparison between China and the United States Put forward suggestions on the improvement of the mediation system.

## 1. Introduction

Administrative Reconsideration Mediation is a way of administrative dispute resolution mechanism. At present, in China, there are not many researches on Administrative Reconsideration Mediation. From the current situation of academic research, scholars' research on the administrative reconsideration system is more in-depth and specific, but the mediation system lacks a comprehensive and systematic discussion, and does not form a complete, systematic and rigorous theoretical system. Mediation in the administrative reconsideration system has always been the concern of scholars at home and abroad. Under the background of a harmonious society, the regulations for the implementation of the administrative reconsideration law in 2007 stipulated that mediation should be included in the reconsideration procedure, which means that mediation in administrative reconsideration has become a new way in the settlement mechanism of non litigation disputes in China. The United States is the birthplace of the mechanism of non litigation dispute resolution, with a set of perfect and effective systems. Since the 1990s, the field of administrative procedure in the United States has introduced non litigation dispute resolution into the administrative process, and achieved great success. In view of the same function of American administrative law judge system and that of China's administrative reconsideration system, this paper intends to start from the perspective of China's administrative reconsideration system and the American administrative law judge system, mainly using comparative research methods, on the basis of introducing China's Administrative Reconsideration Mediation System and the American administrative law judge mediation system, try to discuss the mediation principles and scope of China's Administrative Reconsideration Mediation System , and put forward their own views and opinions on the improvement of institutional setting.

## 2. A Comparison of the Characteristics of Administrative Reconsideration Mediation between China and the United States

### 2.1 Starting Point of Solution

In the United States, the starting point of mediation is to pay attention to the future coexistence of the parties. Therefore, in the process of mediation, mediators fully listen to the views and opinions of the parties, consider whether the mediation results will affect the future situation of the parties, try to weigh the impact of the mediation results on the future interests of the parties, and reach a mediation agreement on this basis. In contrast, in our country, the starting point or focus of mediation is to solve the administrative disputes that have occurred. This is because the purpose of Reconsideration Mediation is to solve the administrative disputes through mediation, resolve the administrative conflicts, calm down the situation, calm the situation, and make both parties accept the mediation results. The conclusion of mediation agreement is based on the interest needs expressed by both parties and the mediator's understanding and judgment of the facts of the case, and then under the guidance of the mediator, the parties can reach a mediation agreement. In this process, there is no effective social effect or political effect analysis on the conflicts of interest between the parties, only realizing the formal justice of mediation, while ignoring the substantive justice<sup>[1]</sup>.

### 2.2 Professionalism of Mediators

In the American system of administrative law judges, the person who presides over the mediation is a special mediation judge appointed by the administrative law judges. Mediation is a very challenging and professional art of dispute resolution. Therefore, the American mediation system

requires a high quality of mediators. To be competent for the position of mediators, I need to be familiar with the law, be good at identifying the facts of cases and have good personality. After systematic learning and training, I need to master skilled mediation skills and interpersonal communication skills. It can be said that the professional level of mediators will directly affect the effect of dispute resolution, or the quality of mediators will directly affect the “success or failure” of dispute resolution. In China, the role of mediators is played by the chief adjudicator of administrative reconsideration. In the administrative field, there are few professional training for mediators, no clear legal provisions for the selection and appointment of mediators, and no corresponding constraint mechanism for the exercise of mediation power, which will have more or less an impact on the results of mediation<sup>[2]</sup>.

### **2.3 Confidentiality of Mediation Process**

As mentioned above, the mediation procedure of American administrative law judges has the characteristics of confidentiality, which runs through the mediation procedure all the time. This is to protect the privacy of the parties, to ensure that the parties can exercise their litigation rights without obstacles, and to ensure the stability and fairness of the mediation procedure. In the mediation regulations of administrative reconsideration issued by the central and local governments, there is no regulation on whether the mediation procedure is open. The issue of confidentiality in mediation affects the parties' trust in mediation, their enthusiasm to use mediation as a way of settlement, as well as the justice and fair value of mediation itself. Therefore, the issue of confidentiality in mediation is an urgent practical issue in the practice of administrative reconsideration<sup>[3-4]</sup>.

### **3. A Comparison of the Functions of the Mediation System of Administrative Reconsideration between China and the United States**

The application of diversified dispute resolution methods, such as mediation, has a great impact on the traditional mediation system, the qualification requirements of legal professionals and the entire administrative system. For the United States, diversified dispute resolution methods have been legalized, standardized and popularized, playing an important role and forming an unshakable social status. With its silent influence, mediation and other diversified ways of dispute resolution profoundly and meticulously affect the overall picture of the administrative system of China and the United States. There are different reasons for the formation of Administrative Reconsideration Mediation in China and the United States, but the two systems contain the requirements of mediation for substantive justice and the pursuit of democratic value. Therefore, it can be said that the social functions of the mediation system of administrative reconsideration in China and the United States are basically the same. First of all, it also has the functions of equal consultation and respect for agreement. Mediators play an important role in the mediation process Color, to help both parties to effectively communicate, find common ground in differences, use mediation skills to find and promote agreement. Secondly, it has the function of reducing dispute cost and reducing court pressure. This is determined by the characteristics of mediation itself, embodied in the administrative reconsideration system, which saves the cost of administrative reconsideration and improves the efficiency of administrative reconsideration<sup>[5-6]</sup>.

The biggest difference between China and the United States lies in the differences of political functions. At present, China is striving to build a harmonious society with democracy, rule of law, fairness and justice, honesty, friendship, stability and order. In the administrative field, it is still the main way to solve administrative disputes and maintain social fairness and justice through administrative litigation. However, the time limit of litigation is long and the cost is high.

Comparatively speaking, administrative reconsideration has high degree of specialization, timely and effective settlement of problems and no charge. Therefore, we should give full play to the role of administrative reconsideration as the main channel in resolving administrative disputes and social contradictions. The application of mediation in administrative reconsideration can make the advantages of administrative reconsideration play a more important role and promote the stability of a harmonious society. Different from the situation of our country, the function of mediation of American administrative law judges is more focused on the restoration of social cohesion. The United States is facing “multiple origins, ethnic diversity and social heterogeneity, which lead to uncomfortable tensions and pressures”. Thirdly, legislators seek effective ways to balance the sound development of the right order and civil rights through external means. Professor Steven subEn, an American scholar, once said that mediation (reconciliation) is the most valuable development in ADR. Now, all sectors of society have fully recognized the value of mediation, and more and more social factors have emerged to promote the development of mediation. Therefore, the use of mediation increases the possibility and opportunity of autonomy of the parties involved in disputes, which is conducive to promoting social cohesion, autonomy and self-discipline. It is conducive to the formation and maintenance of community norms and common moral system<sup>[7-8]</sup>.

#### 4. Conclusion

For the first time, mediation has been brought into the administrative reconsideration system in the regulations for the implementation of the administrative reconsideration law, which has attracted the attention of the academic community. Mediation is widely used in the practice of administrative reconsideration, and has achieved good results, showing its unique advantages in the process of resolving administrative disputes. At the same time, in the United States, mediation has been widely and comprehensively used in the administrative field, especially in the administrative law judge system, which benefits from the United States' complete non litigation dispute resolution mechanism and sound mediation rules and procedures. In view of the similarity between the judicial system of administrative law in the United States and the system of administrative reconsideration in China, this paper makes a comparative study of the “mediation” in the two systems, makes a comparative analysis from the aspects of nature, characteristics and functions, and introduces the practice and specific legal procedures of the mediation systems of the two countries. In the analysis process, it tries to find a theory that adapts to the mediation mode of administrative reconsideration in China Model and application experience.

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