

Improving Public Security Administrative Mediation System in China

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Received 29 October 2017; accepted 18 December 2017
Published online 26 January 2018

Abstract

Public security administrative mediation is an important part of Chinese administrative legal system. It plays an important role in maintaining social order and stability, and preventing and resolving social disputes. A positive attitude by public security authorities towards social disputes is very important, while if public security authorities use its power to lead mediation to a certain way, or force mediation onto the disputants, the impacts can be quite negative. Public security should use administrative mediation on a wide range of civil disputes, and regulate the use of mediation through the establishment of appropriate procedures and disclosure of information and process related to the mediation. The court should also strengthen its monitoring and oversight of administrative mediation. Rather than reviewing the specific disputes that were mediated, the court should focus on whether mediation was conducted under the free will of the disputants, whether mediation results reflect an agreement by the disputants, whether mediation was carried out according to legal procedures, and whether mediation results were detrimental to public interests or the lawful interest of others.

Key words: Public security; Administrative mediation; China

Ji, H. B. (2018). Improving Public Security Administrative Mediation System in China. *Canadian Social Science*, 14(1), 20-27. Available from: <http://www.cscanada.net/index.php/css/article/view/10075>
DOI: <http://dx.doi.org/10.3968/10075>

INTRODUCTION

Public security administrative mediation is an important part of Chinese administrative legal system. It plays an important role in maintaining social order and stability, and preventing and resolving social disputes. Public security should use administrative mediation on a wide range of civil disputes, and regulate the use of mediation through the establishment of appropriate procedures and disclosure of information and process related to the mediation. The court should also strengthen its monitoring and oversight of administrative mediation.

1. OVERVIEW OF PUBLIC SECURITY ADMINISTRATIVE MEDIATION

1.1 Concept and Scope of Public Security Mediation

Public security administrative mediation is divided into the broad and narrow sense. The public security administration mediation in the narrow sense refers to the public security mediation, that is, in the process of administration, the public security organ mediates between the person committing an act against the administrative laws and regulations of public security and the victim. That is, the mediation of public security organ presupposes “the existence of acts that violate the administrative laws and regulations of the public security administration”. There are two legal relations in the process of mediation, namely, the administrative penalty relationship between the public security organ and the offender and the damage compensation relationship between the offender and the victim. The public security administrative mediation in the broad sense refers to the mediation of public security organ in the “various contradictions and disputes that occur within its jurisdiction, cases that meet specific conditions,

including ordinary civil disputes, compensation cases for road traffic accident damages, public security cases and reconcilable criminal cases”.¹ In addition to the above-mentioned cases that are mediated by public security at basic level, the public security administrative mediation in the broadest sense may also include the mediation of public security administrative reconsideration cases by administrative reconsideration organs (Yu & Ding, 2014). This article mainly discusses the public security mediation and the administrative mediation of ordinary civil disputes by public security organs.

As stipulated in Article 29 of the *Regulations of the People's Republic of China ("PRC") on Administrative Penalties for Public Security* promulgated on October 22, 1957,

compensation or medical expenses shall be borne by those who violate the administration of public security due to any loss or injury caused by the violation of public security administration; if those who cause injury or loss are under eighteen years old or mentally disordered persons, the compensation or medical expenses shall be borne by their parents and guardians.

Therefore, it has been a long time that the civil disputes due to public order violations are solved by the public security organs. As stipulated in Article 5 of the *Regulations of the PRC on Administrative Penalties for Public Security* amended on September 5, 1986, “Acts caused by civil disputes which violate the administration of public security, such as brawling and damaging or destroying another person's property, if the adverse effects are minor, may be handled by public security organs through mediation.” It is further provided in Article 38 thereof “Whoever is required by a ruling to make reparations for the loss or to bear medical cost shall deliver the cost to the organ making the ruling for transmission within five days after receiving the written ruling. Payments by instalments may be accepted if the amount is large. In case the offender denies responsibility, the organs making the ruling shall notify his work unit to deduct the reparations from his salary or retain his property to be converted into payment” As expressly stipulated in Article 21 of Chapter 3 “Obligations and Disciplines” of the *People's Police Law* revised in 1995, “they shall, upon express request, help citizens in settling their disputes” “Comparatively speaking, prior to the release of the *People's Police Law*, the public security organs need to make a distinction among various civil

disputes filed with them to distinguish whether these cases are relevant to public order disputes or not. For purely civil disputes, the public security organs usually deal with them by “refusing” or “transferring”. After the release of the *People's Police law*, it has become a function of the public security organ to resolve all kinds of disputes according to laws (Gao, 2008). On January 1, 2004, the *Procedural Rules for Administration Cases Handled by Public Security Organs* (“Procedural Rules”) came into force, which sets forth the police mediation system in a special chapter and abolishes administrative adjudication and related enforcement procedures. It is stipulated in Article 151 thereof, “for the disputes over compensation for damage caused by illegal activities, the parties to the dispute shall be informed to bring a civil lawsuit to the people's court.” A major breakthrough of the *Regulations on police mediation* is that it makes it clear that the public security mediation can be used conditionally instead of public security punishment. According to the *Provisions on Handling Cases of Injury by the Public Security Organ* issued by the Ministry of Public Security in 2005, the cases involving minor injury “of minor adverse effect and insufficient for criminal penalties” are included in the scope of mediation. Article 9 of the *Public Security Administration Punishment Law* promulgated in 2006 continued to follow the practice of the *Procedural Rules* of 2004. In August 2006, the Ministry of Public Security revised the *Procedural Rules* again. On November 27, 2009, the Ministry of Public Security further issued the *Code of Conduct for Public Security Mediation by Public Security Organs*.

According to the existing provisions, public security mediation refers to the mediation conducted by the public security organs in acts caused by civil disputes which violate the administration of public security, such as brawling and damaging or destroying another person's property of minor adverse effects. As to how to define civil disputes, it is stipulated in the *Measures for Handling Civil Disputes* released by the Ministry of Justice on April 19, 1990, “Civil disputes refer to disputes between citizens relating to personal and property interests and other disputes in daily life.” It is stipulated in Article 20 of the *Provisions Concerning the Work of People's Mediation* released on September 11, 2002, civil disputes mediated by the People's Mediation Committee include various disputes between citizens, citizens and legal persons, citizens and other social organizations concerning civil rights and obligations. It is stipulated in Article 9 of the *Law on Administrative Penalties for Public Security* in 2006,

In respect of acts against the administration of public security, such as brawling and damaging or destroying another person's property, which is caused by civil disputes, if the circumstances are relatively minor, the public security organ may dispose of them through mediation. Where the parties concerned reach an agreement through mediation by the public security organ, no penalties shall be imposed. Where no agreement is reached

¹ The light injury behaviors that constitute a criminal offense should fall in the scope of private prosecution of the victim according to law. However, if the injury appealed to the public security organ is really a minor injury after the disability assessment, the police officer may also mediate the case and sort it to the scope of public order disputes, and then it should be handled according to the mediation process for public order disputes. See Gao, W. Y. (2008). *Research on the police mediation system*. *Journal of Chinese People's Public Security University (Social Science Edition)*, (4).

through mediation or the agreement, although reached, is not executed, the public security organ shall, in accordance with the provisions of this Law, impose penalties upon the persons committing the acts against the administration of public security and notify the parties concerned that they may, according to law, bring a civil action before a people's court in respect of the civil disputes.

Therefore, acts in violation of security administration caused by civil disputes, if the circumstances are relatively minor, can be subject to mediation. First of all, the public security administrative mediation is a mediation conducted under the premise of sanctioning and handling administrative violations according to law, and is a necessary condition for the mediation on any loss or injury caused by the illegal act (Hui, 1996). Second, "the relatively minor circumstances", according to the *Law on Administrative Penalties for Public Security*, refer to that the means of acts against the social security administration is not abominable, the consequences are not serious, the harm done to the society is not severe and the subjective culpability is not great, etc. Third, as to the disputes can be resolved by public security mediation, it is provided in Article 153 of the *2012 Procedural Rules*,

assaulting others, intentional injury, insult, defamation, false accusation and deliberate destruction of property, interference with the normal life of others, invasion of privacy, illegal invasion of residential and other acts against the public security administration as a result of civil disputes, if the circumstances are relatively minor and meet one of the following, can be disposed through mediation: (a) arising from trivial disputes among relatives, friends, neighbors, colleagues, and school students; (b) the act of the offender arising from the wrongful conduct of the victim beforehand; (c) the other contradictions that are inclined to be resolved through mediation.

Similar provisions are also set forth in Article 30 of the *Provisions on Handling Cases of Injury by the Public Security Organ* in 2005 also has similar provisions.² It is stipulated in Article 1 of the *Interpretation on*

² Article 154 of *Procedural Rules* also excludes cases that do not apply to mediation: "(a) hire someone to assault others; (b) gang fight or other behaviors of picking quarrels and provoking troubles; (c) multiple violations of the public security administration regulations; (d) the parties clearly express their unwillingness to mediate; (e) the parties violate the public security administration in the process of public security mediation; (f) the suspects escape during the mediation process; (g) other cases that are unsuitable for mediation." It is stipulated in Article 31 of the *Provisions on Handling Cases of Injury by the Public Security Organ*, other cases that are not subject to mediation include: "(a) hire someone to assault others; (b) the cases involving a gangland-alike organization; (c) Picking quarrels and provoking troubles; (d) gang fight; (e) recidivism; (f) Injure others' bodies for multiple times; (g) other cases that are unsuitable for mediation." Some local provisions on mediation of public security cases also rule out some other cases, such as attacking and retaliating with the excuse of civil disputes; when a party re-provokes incidents and deliberately creates new contradictions or violates public security management again during mediation or after reaching an agreement; assaulting and injuring the disabled, pregnant women, persons under the age of fourteen or over the age of 60. See the Provisional Regulations of Shanghai Public Security Bureau on Mediation of Cases on April 21, 2009.

Issues Related to the Implementation I of the Law on Administrative Penalties for Public Security of the People's Republic of China by the Public Security Organs in 2006, "according to Article 9 of the *Law on Administrative Penalties for Public Security*, in respect of acts against the administration of public security, such as brawling and damaging or destroying another person's property, which are caused by civil disputes, if the circumstances are relatively minor, the public security organ shall dispose through mediate as possible in accordance with the requirements of resolving contradictions and disputes, maintaining social stability and building a harmonious society. In particular, in respect of acts against public security administration caused by disputes among families, neighbors or colleagues, if the circumstances are relatively minor, and the parties involved agree on conciliation, cases such as making noises, sending messages, raising animals that interfere with the normal life of others, letting animals intimidate others, insult, defamation, false accusation, invasion of privacy, driving motor vehicle without owner's permission and other public security cases, may be handled by the public security organs through mediation. In the meantime, in order to ensure good results in mediation, it is necessary to conduct in-depth and detailed investigation and evidence collection in accordance with laws before the mediation in order to ascertain the truth, collect evidence and clarify responsibilities. If an agreement is reached through mediation, a mediation statement shall be prepared and signed by both parties." The public security mediation and "plea bargaining" in the criminal field overseas have similar function, that is, if a party actively takes civil liability, he may be exempted or lessened from administrative liabilities, which is named by some scholars as "transaction of punishment". However, can transaction of punishment be justified? "There is no dispute about mediation as a means of law enforcement, but the question is how such means of law enforcement similar to "judicial adjudication" can be widely applied in the area of police enforcement which is generally regarded as rigid law enforcement". "Police mediation combines police enforcement with dispute settlement (service function) and provides both legitimacy and authority." (Gao, 2008)

1.2 Role of Public Security Administrative Mediation

The public security mediation and civil dispute mediation by the public security organs actually function in at least three aspects.

The first role is to maintain social order and stability. After careful and thorough investigation and analysis, some scholars have found that the habitual language "intervention", which is more official, and can describe more accurately than the "public security mediation" about the public security organs' handling over disputes

ex officio. Besides the public order disputes, with the consent of both parties, the public security organs may also engage in the mediation of acts against the public security administration and a considerable number of civil disputes, including economic disputes, labor disputes, consumer disputes, marital family emotional disputes, compensation disputes, trivial affairs disputes, traffic disputes, neighboring disputes and property management disputes. Regarding the source of cases, some cases are filed by the parties with the public security organs, and there are still a considerable number of cases encountered and intervened by the police in routine work, and in some cases when disputes are still in the bud, the police should “detect” and settle the contradictions and disputes in their infancy, and some other cases are reported by calls or visits of general public not involved in the cases, or directions of higher authorities or government. The civil disputes are of different types, sometimes the parties seek for help or request the public security organs to handle, or the fundamental reason for the engagement of public security organs is the existence of violent conflicts. It is precisely because of the feature that most of time the parties involved in the dispute have violent conflicts such as brawling or pulling, which justifies the public security organs to handle such disputes (Zuo et al., 2010). Although the administrative mediation of the public security organs has been criticized for its aim at maintaining stability, it does objectively settle a number of social disputes at an early stage and “give full play to the role of ‘pressure-reducing valve’ of public security mediation to promptly prevent the transformation of a large number of civil disputes into criminal cases” and avoid greater conflicts. Therefore, administrative mediation has become one of the means of social governance.³ The public security organ tries to reshape its image through the convenient, efficient and economical way of dispute settlement. The ultimate goal is to obtain the universal support from the community during the grassroots work of public security and criminal investigation (Meng, 2008).

The second role is to prevent and to settle social disputes. Administrative mediation by public security organs plays a part in conciliating conflicts and disputes for some parties. “In reality, even though the mediation under the auspices of the police is obviously defective, the demand of the masses is still on the increase. Mediation is applied not only in public order disputes, but also in civil

disputes”. The motives and purposes of dispute mediation by public security organs are mostly to maintain order and stability, therefore, the scope of the public security organs’ involvement in civil disputes in practice is wider than the statutory scope, which seems that there is a lack of legitimacy in terms of form. However, the parties voluntarily hand over the disputes to the police station or are willing to go to the police station for dispute resolution. For the public security organs, conciliation of disputes is one of the means to achieve the goal of administrative management. The process of dispute settlement shows a rather strong “repressive” color, even though some disputes are not settled (Zuo et al., 2010, p.101), due to police intervention, conflicts are interfered, the power of the parties balanced, the intensification of conflicts avoided, or the channel provided to ease the mood and find other ways to resolve the dispute (Ibid., pp.118-120).

In addition, mediation of disputes by public security organs also replaces the role of grassroots autonomy. The grass-roots political power is weak so that neither the villagers’ autonomous organization nor the residents’ autonomous organization can assume the responsibility of settling disputes at the grass-roots level. The intervention of the public security organs has filled the gap of grassroots autonomy.

2. IMPROVEMENT OF PUBLIC SECURITY ADMINISTRATIVE MEDIATION SYSTEM

2.1 Problems of Public Security Administrative Mediation

The public security administrative mediation aims at mediation of civil disputes and the principles of voluntariness and the principle of autonomy of will are also explicitly listed as the basic principles in the relevant legal grounds. It seems to be same with administrative mediation, and the public security organs function in the mediation of disputes as a neutral party. However, in practice, under the pressure of maintaining stability and order, the public security organs on the one hand, open the doors for the civil disputes with an open attitude, and without any rejection, and on the other hand, they lead the mediation or even replace the will of the parties. Mandatory mediation frequently occurs. This brings both positive and negative significance.

First, the public security organs’ open attitude is more positive than negative.

The police power has truly become a kind of public goods the masses are used to enjoying, which, to a large extent, can be regarded as the result of the public security organs’ practice of the philosophy of being affectionate to the people in the early 1980s.

Especially after 110 police calling service was established and promoted at various levels nationwide, the image of

³ As shown by data statistics in 2010, the number of public security mediation cases in China has increased by an average of 39.4% over the past three years. In 2009, the public security organs mediated a total of 3.72 million public security cases, accounting for 33.7% of the total number of public security cases investigated and dealt with. *Ministry of Public Security: Public Security Organs Made Significant Achievements in Public Security Mediation*, October 5, 2010, http://www.gov.cn/jrzq/2010-10/05/content_1715777.htm, last visited: July 17, 2015.

the police has been transitioned to both the law enforcer and service provider (Ibid., p.60). It is stipulated in Article 21 of the *People's Police Law* 1995,

the people's police should immediately come to the rescue when a citizen's safety of the person or property is encroached upon or is in other dangerous situations; they shall, upon request, help citizens in settling their disputes; they shall handle without delay cases reported by citizens

The public security organs shall classify the disputes reported, and mediate those that fall in the scope of public security administration and traffic accident mediation within the scope of their duties, or refer those that are not in the scope of their responsibility to the relevant organizations and agencies to deal with: For the general civil disputes that cannot be resolved through mediation, the parties concerned are advised to submit to the people's mediation organization for mediation or file with the people's court. Acts against the *Law on Administrative Penalties for Public Security*, if found, should be handled in accordance with laws and should be no longer subject to mediation. Intentional offences that are suspected of infringing on personal rights, democratic rights and property encroachment caused by civil disputes and may be sentenced three-year imprisonment, should be subject to criminal reconciliation according to the *Criminal Procedure Law*.⁴

⁴ It is stipulated in Article 277 of the Criminal Procedure Law "In the following cases of public prosecution, if the criminal suspect or defendant has showed genuine repentance and obtained forgiveness from the victim by making compensation or an apology to the victim, and the victim voluntarily agrees on a settlement, both parties may reach a settlement: (a) a case regarding a crime which arises from civil disputes as described in Chapter IV or V of the Specific Provisions of the Criminal Law and is punishable by fixed-term imprisonment of three years or a lighter penalty; or (b) a case regarding a negligent crime, other than a crime of malfeasance, which is punishable by fixed-term imprisonment of seven years or a lighter penalty. If a criminal suspect or defendant once committed any intentional crime in the past five years, the procedures in this Chapter shall not apply." It is stipulated in Article 278 "When both parties have reached a settlement, a public security organ, a people's procuratorate, or a people's court shall hear the opinions of the parties and other relevant persons, examine whether the settlement is reached voluntarily and legally, and preside at the preparation of a settlement agreement."

Article 279 stipulates that "For a case where a settlement agreement is reached, a public security organ may provide a leniency suggestion to the people's procuratorate. A people's procuratorate may provide a leniency suggestion to the people's court; and, if the circumstances of a crime are minor and no criminal punishment is necessary, may decide not to initiate a public prosecution. A people's court may render a lenient sentence to a defendant in accordance with law." Article 29 of the Provisions on the Public Security Organ's Handling of Cases Involving the Crime of Injury ([2005] No.98) stipulates that according to Article 13 of the PRC Criminal Law and Paragraph 1, Article 15 of the PRC Criminal Procedure Law, the cases where minor injury is intentionally caused to others, and therefore, should not be regarded as a crime due to slight circumstances and little harm, and the cases where the victim's injury is lighter than minor injury, should be subject to public security punishment. It is stipulated

From the perspective of public security law-enforcement practice, civil disputes that may be encountered by police at the grassroots level involve all aspects such as contracts, debts, minor infringements, real estate, land, marriage, inheritance, support, neighborhood relationship and so on.

Originally it was not part of the public security organ's duties to settle such disputes. However, once a party files with the public security organ, the people's police must offer assistance to the parties according to of the *People's Police Law*. In practice, the common way for the public security organ to help with such disputes is to mediate. (Yu & Ding, 2014, p.322)

Although according to the interpretation of the public security organ, the taking-on-everything mode of social management in the traditional public security administrative mediation and the masses' mindset of "turning to the police in case of any difficulty" have caused the situation where police stations have to accept all cases regardless of their civil nature or public security nature. This not only affects the work efficiency of the public security organs, but also easily leads to people's dissatisfaction with the public security organs if the cases are handled improperly, and even leads to the superimposition and transfer of conflicts, which is not conducive to social stability (Ministry of Public Security, 2010).

Interestingly, in the public perception of the police's role, the public security organs mainly engage in disposing illegal acts, investigating crime and carrying out administrative management, and dispute resolution is not regarded as their main function. However, a considerable number of the cases that police stations answer in practice are related to disputes. The reason for this is that violent conflicts or potential violent conflicts between the parties to a dispute cause the nature of the incident to change. To some extent, the dispute becomes a public event, so that the parties or outsiders submit the dispute to the police station. Western scholars also believe that the work of the police is neither social service nor law enforcement, but

in Article 30, for the behaviors of assaulting others or intentional injury to other's body due to civil dispute, if the circumstance is minor and insufficient for criminal penalty, the public security organ may mediate according to law with the agreement of the parties in one of the following circumstances: (a) the dispute occurs between relatives, friends, neighbors or colleagues due to trivial matters, and both parties have fault; (b) minors or school students assault others or intentionally injure others' body; (c) the perpetrator's injurious act is caused by the victim's prior misconduct; (d) other conflicts that are more easily resolved through mediation. As stipulated in Article 31, other cases that are not subject to mediation include: (a) hire someone to assault others; (b) the cases involving a gangland-alike organization; (c) picking quarrels and provoking troubles; (d) gang fight; (5) Recidivism; (e) injure others' bodies for multiple times; (f) Other cases that are unsuitable for mediation.

[British] Robert @ Reiner, translated by Yi Jicang, Zhu Junrui: *The Politics of the Police*, Intellectual Property Press, 2008 edition, p.234.

maintaining order, that is, to settle the conflict in various ways.⁵

Public security organs are important participants in the dispute settlement in social practice in China. Mediation, to some extent, has become an important way for public security organs to solve public security cases and dispute settlement has become an important part of daily police work at the grass-roots public security organs. The reasons why the parties choose police stations include: Firstly, the factor of rank, they choose organizations or persons of higher rank than themselves to settle the dispute. Secondly, the geographical factor, they choose a police station that is close in terms of distance. In fact, turning to the police station is also more convenient in terms of time. The differences between the conciliation by public security organs and mediation by courts, arbitration or people's mediation lie in that the public security organs are available around the clock rather than just working hours, and the disputes dealt with by the public security organs are mostly sudden disputes, and mostly occur beyond the normal working hours of governmental authorities. Thirdly, the economic factor, the police station deals with disputes free of charge. Fourthly, the factor of authority switchover, the police station has a relatively high authority (Zuo et al., 2010, pp.58-59). The recognition of authority in culture and ideology is the root cause of the vulnerable groups turning to the public security organs after the disputes have taken place (Huang, 2008). The groups turning to police stations for dispute resolution are rarely civil servants, teachers, white-collar workers, but are mostly migrants, unemployed and individual vendors, as well as some of the local laid-off or retired workers (Huang, 2011). Moreover, the public security organs can make use of the administrative power to investigate and collect evidence to better identify the facts of disputes and make intervention in a more timely and convenient manner. In addition, such disputes involve less economical and most parties do not mind obtaining certain economic or other rights through the intervention of police stations, so they prefer police stations over the court (Zuo et al., 2010, pp.61, 64-65).

In summary, for the public security organs, the government and even individual citizens, the advantages outweigh the disadvantages if the public security organs are open to and resolve conflicts over social disputes. At present, other channels for solving social disputes are not yet well-established, and the social stratification and social structure adjustment are still not completed, the administrative mediation of public security organs should cover a wide range.

Second, mediation conducted by public security organs in a repressive way is more negative than positive.

The main function of the public security organs is to maintain social order. The roles of the police contradict one another in presiding over the mediation and making punishment in the same public security case. The police have different goals when engaging in mediation from the parties. In addition to counseling between two parties, the administrative mediation by public security organs also comprise a lot of reprimands, warnings, moral criticisms of the parties, warning of the consequences of dispute deterioration and the threat of the consequences of negative attitude of responsible parties towards mediation. The main objective is to maintain stability, make best effort to suppress the signs of crimes, calm down the incident, stifle social disputes in the early stages and eliminate social unstable factors. This kind of administrative mediation characterized by repressiveness not only disregards the parties' interest, but also ignores the purpose of reaching an agreement for mediation between the parties through education and with voluntariness as a precondition, creating a gap between the design and practice of public security mediation system (Huang, 2011; Wang, 2010).). Some of disputes are settled and stopped from further deterioration, while some disputes may lead to grudges and resentment in the future due to absence of the agreement and willingness from the parties and the parties' claim not being met. Still some disputes are overlooked, and concluded in a haste simply due to lack of time and effort. In some cases, the parties should have been exempted from administrative penalties through the administrative mediation, but the public security organs directly impose penalties without trying mediation. The system of administrative mediation by public security organs is still roughly designed, leaving law enforcement officials with ample room for discretion. In the absence of an effective monitoring and control mechanism, the possibility of mandatory enforcement in the name of administrative mediation is greatly increased. Moreover, long-term ignoring and neglecting the agreement and voluntariness of the parties concerned is unfavorable to the cultivation of citizens' self-awareness and ability, delays the development of civil society and has caused many drawbacks, which is also the reason why some experts and scholars even propose to compress and cancel the administrative mediation by the public security organs. However, we must realize that the current pattern and mode of administrative mediation by the public security organs are the product over a long history. With the development of market economy and the transition from an acquaintance society to a stranger society in the past 30 years, the fading of the people's mediation and unestablished autonomy at the grassroots level, coupled with the people's trust in the authority of the police and the need for public security administrative mediation, it is undoubtedly unnecessary to negate the positive role of public security administrative mediation because of the overuse of police power in public security administrative mediation.

⁵ [British] Robert @ Reiner, translated by Yi Jicang, Zhu Junrui: *The Politics of the Police*, Intellectual Property Press, 2008 edition, p.234.

2.2 Improvement of the Public Security Administrative Mediation System

As a special type of administrative mediation, the public security administrative mediation not only has the characteristics of general administrative mediation, but also has its own unique content. The discussion on the public security administrative mediation cannot be divorced from the overall framework of administrative mediation, but also helps and inspires the improvement of administrative mediation.

First is about the scope of the public security administrative mediation. The scope of the public security administrative mediation is unclear in two aspects. On the one hand, the provisions of the *Law on Administrative Penalties for Public Security* on the cases applicable to administrative mediation, what type the case is, whether the circumstances of the case is “minor” according to law are unclear, which will be at the grass-roots police’s discretion in administrative mediation. Practice shows that “the public security mediation has become a safe-harbor for evasion of law enforcement duties and personal professional responsibility, and thus has lost its legitimacy.” (Pei & Zhang, 2009) On the other hand, public security organs in fact intervene in various types of civil disputes. Therefore, it is suggested that

It is not the main function of the police station to mediate and resolve contradictions and disputes. To limit the police station’s mediation function within a relatively small cope, operate in strict accordance with law and implement mediation triage should be the direction of effort. (Liu, 2014)

As mentioned above, the advantages outweigh the disadvantages if the public security organs, especially the police stations, as the “window” and “defense line” for contacting grass roots, are open to all kinds of disputes. Therefore, the status quo can be maintained. However, it is also necessary to emphasize that after accepting various disputes, the public security organs shall handle the cases by category and coordinate with other ways. When the disputes cannot be resolved in other ways, the public security administrative mediation is a complement to other ways. In terms of public security mediation, since the object of administrative penalties for public security itself is minor offense, the administrative mediation can be expanded to all the public security violations caused by civil disputes and no longer limited to “circumstances which are minor”. In terms of civil disputes, it is not limited to the scope of legal provisions, as long as the parties voluntarily choose or agree to submit to the public security organs for mediation, the dispute can be incorporated into the scope of public security administrative mediation. There has been some feasible experience in practice, such as the collaboration between public security administrative mediation and people’s mediation or judicial mediation, connection between the public security administrative mediation and the

court. These practices can continue to be implemented in light of conditions so that various social disputes have corresponding ways of settlement. For example, Article 18 of the People’s Mediation Law stipulates that “In cases where people’s mediation is the suitable way to resolve a dispute, the related people’s court and public security organ at the grassroots level can tell the persons involved to apply for mediation with the related people’s mediation committee before taking up the case”, which reflects connection and cooperation among different parties to the dispute.⁶

Second is about the nature of public security administrative mediation and judicial review. Is the public security mediation a specific administrative act or an administrative and judicial act? The scholars differ in their opinions. Some believe that it is a specific administrative act, because the public security organs may exercise at their own discretion, and are in the dominant position either in the initiation or termination of the mediation process, while and some believe the public security organs act as a neutral party, and the mediation is subject to the parties’ willingness and consensus. However, officers from the practice department pointed out,

There are many cases conditions of which are in line with the requirements of statutory public security mediation and the parties reach consensus thereon, but the police refuse to start the mediation procedure, so that the freedom of exercising the parties’ rights is limited and they cannot obtain the expected “legal interests”. However, due to the judicial relevance of public security mediation, the ways of judicial remedies are legally blocked. (Huang, 2011)

This point of view misunderstands the nature of administrative mediation and the judicial review issue. Public security administrative mediation, like other administrative mediations, is a non-mandatory administrative act. Same as administrative guidance, it is not actionable under normal circumstances. However, if it is in fact mandatorily enforced, it will become “a

⁶ The mechanism of “public security and mediation” refers to the completion of the linkage between the public security organs and the “grand mediation” mechanism. It is “a new mechanism for social operation where the public security organs discover, investigate, receive and accept various types of social conflicts and early warning information in all police activities, take the initiative to intervene, deal with them in time, and by integrating social resources, resolve and defuse the complex and complicated contradictions and disputes that have not yet caused any immediate danger to the order of public security and cannot be properly disposed on the spot in accordance with the normative procedures, and under the unified leadership of the party committees and governments and the interaction among multiple parties.” On the one hand, the mechanism eases energy consumption so that the burden of public security mediation at the grassroots level has been obviously relieved and the police calling rate for the same contradiction or dispute has dropped significantly. On the other hand, the public security forces and social forces are combined together to form the resultant force of resolving social conflicts and disputes. Yu, D. M., & Ding, Z. G. (2014). *Security Administrative Mediation* (p.35). People’s Public Security University Press.

wolf in sheep's clothing", and then the court can make a judicial review of it. In other words, the court's review of administrative mediation focuses on major issues such as whether the parties' willingness and consensus are respected, whether the procedure of administrative mediation is legal and whether the administrative mediation hampers public interests and other legal rights and interests, etc., regardless of the specific contents of the administrative mediation agreement.

Third is about disclosure of the public security administrative mediation. There are disputes over whether administrative mediation should be made public or not. If the government information disclosure is mechanically interpreted, then both the process and results of the administrative mediation must be made public. However, full disclosure cannot facilitate mediation, besides, conversely, it will dispel the parties' enthusiasm and confidence in mediation. The administrative mediation process itself should not be disclosed, but should be kept confidential. The result of administrative mediation, instead of the details of the administrative mediation agreement can be made public in order to better urge the parties to fulfill the agreement. In fact, for the general public, making public the main contents of the results of the administrative mediation agreement has achieved the purpose of disclosing information, and has realized the purpose of supervising the exercise of administrative power through information disclosure. However, the whole process of administrative mediation and the entire contents of the mediation agreement can be subject to supervision by judicial review. In particular, the court should review whether the administrative organ has forced the parties to reach a mediation agreement, whether the administrative organ and its staff have power rent-seeking and corruption issues, whether there are major violations in the administrative mediation process, whether the public interests and the legitimate rights and interests of other subjects are damaged. The administrative mediation can be subject to ex-post supervision, needless

of disclosing the process and details of the administrative mediation, which further refines and improves the system of government information disclosure.

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