

The Administrative Litigation Law of the People's Republic of China (2017 Revision)[Effective]

中华人民共和国行政诉讼法(2017 修正) [现行有效]

Issuing authority:	Standing Committee of the National People's Congress, Standing Committee of the National People's Congress	Document Number:	Order No. 71 of the President of the People's Republic of China
Date issued:	06-27-2017	Effective date:	07-01-2017
Level of Authority:	Laws	Area of Law:	Administrative Litigation

The Administrative Litigation Law of the People's Republic of China (Adopted at the 2nd session of the Seventh National People's Congress on April 4, 1989; and amended for the first time in accordance with the Decision of the Standing Committee of the National People's Congress on Amending the Administrative Litigation Law of the People's Republic of China adopted at the 11th session of the Standing Committee of the Twelfth National People's Congress on November 1, 2014; and amended for the second time in accordance with the Decision on Amending the Civil Procedure Law of the People's Republic of China and the Administrative Litigation Law of the People's Republic of China as adopted at the 28th Session of the Standing Committee of the Twelfth National People's Congress on June 27, 2017)

Table of Contents

Chapter I General Provisions

Chapter II Scope of Cases Accepted

Chapter III Jurisdiction

Chapter IV Primary Litigation Participants

Chapter V Evidence

Chapter VI Filing a Complaint and Accepting a Case

Chapter VII Trial and Judgment

Section 1 General Rules

Section 2 Formal Procedure at First Instance

Section 3 Summary Procedure

Section 4 Procedures at Second Instance

Section 5 Trial Supervision Procedure

Chapter VIII Enforcement

Chapter IX Foreign-Related Administrative Litigation

Chapter X Supplementary Provisions

Chapter I General Provisions

Article 1 To ensure the impartial and timely trial of administrative cases by the people's courts, settle administrative disputes, protect the lawful rights and interests of citizens, legal persons, and other organizations, and oversee administrative agencies' exercise of power according to the law, this Law is developed in accordance with the Constitution.

Article 2 A citizen, a legal person, or any other organization which deems that an administrative action taken by an administrative agency or any employee thereof infringes upon the lawful rights and interests of the citizen, legal person, or other organization shall have the right to file a complaint with a people's court in accordance with this Law.

The term "administrative action" as mentioned in the preceding paragraph includes administrative actions taken by an organization empowered by a law, regulation, or rule.

Article 3 The people's courts shall protect the right of a citizen, a legal person, or any other organization to file a complaint, and accept, according to the law, administrative cases that shall be accepted.

Administrative agencies and the employees thereof may not interfere with or impede the acceptance of administrative cases by the people's courts.

The person in charge of an administrative agency against which a complaint is filed shall appear in court to respond to the complaint, or, if he or she is unable to appear in court, authorize a relevant employee of the administrative agency to appear in court.

Article 4 The people's courts shall independently exercise judicial power over administrative cases, without any interference by any administrative agency, social group, or individual.

The people's courts shall establish administrative divisions for the trial of administrative cases.

Article 5 The people's courts shall try administrative cases based on facts according to the law.

Article 6 In the trial of administrative cases, the people's courts shall examine the legality of administrative actions.

Article 7 In the trial of administrative cases, the people's courts shall apply the collegial bench, disqualification, open trial, and "final after two levels of trial" rules according to the law.

Article 8 In administrative litigation, the parties shall have equal legal status.

Article 9 Citizens of all ethnicities shall have the right to use the spoken and written languages of their respective ethnicities in administrative litigation.

In an area where an ethnic minority is concentrated or several ethnicities cohabit, the people's courts shall conduct trial and publish legal instruments in the spoken and written languages commonly used by the local ethnicity or ethnicities.

The people's courts shall provide interpretation for litigation participants who are not familiar with the spoken and written languages commonly used by the local ethnicity or ethnicities.

Article 10 In administrative litigation, the parties shall have the right to debate.

Article 11 The people's procuratorates shall have the authority to exercise legal supervision over administrative litigation.

Chapter II Scope of Cases Accepted

Article 12 The people's courts shall accept the following complaints filed by citizens, legal persons, or other organizations:

- (1) A complaint against any administrative punishment, such as administrative detention, suspension or revocation of a license or permit, ordered suspension of production or business, confiscation of illegal income, confiscation of illegal property, a fine, or a warning.
- (2) A complaint against any administrative compulsory measure, such as restriction of personal freedom or seizure, impoundment, or freezing of property, or administrative enforcement.
- (3) A complaint against an administrative agency's denial of, or failure to respond within the statutory period to, an application for administrative licensing or any other administrative licensing decision made by the administrative agency.
- (4) A complaint against an administrative agency's decision to confirm the ownership or the right to use any natural resource, such as land, mineral resources, water, forest, hill, grassland, wasteland, tidal flat, or sea area.
- (5) A complaint against a decision on expropriation or requisition or a decision on compensation for expropriation or requisition.
- (6) A complaint against an administrative agency's refusal to perform, or failure to respond to an application for the administrative agency to perform, its statutory duties and responsibilities in respect of protecting personal rights, property rights, and other lawful rights and interests.
- (7) A complaint claiming that an administrative agency has infringed upon the plaintiff's autonomy in business management, right in the contractual operations on rural land, or right in operations on rural land.
- (8) A complaint claiming that an administrative agency has abused its administrative power to preclude or restrict competition.
- (9) A complaint claiming that an administrative agency has illegally raised funds or apportioned expenses or illegally required performance of other obligations.
- (10) A complaint claiming that an administrative agency has failed to pay consolation money, minimum subsistence, or social insurance benefits according to the law.
- (11) A complaint claiming that an administrative agency has failed to perform according to the law or as agreed upon, or illegally modified or rescinded, an agreement, such as a government concession agreement or a land and building expropriation compensation agreement.
- (12) A complaint claiming that an administrative agency has otherwise infringed upon personal rights, property rights, or other lawful rights and interests.

In addition to those as set out in the preceding paragraph, the people's courts shall accept administrative cases which may be filed as prescribed by laws and regulations.

Article 13 The people's courts shall not accept complaints filed by citizens, legal persons, or other organizations against the following:

- (1) Actions taken by the state in national defense and foreign affairs, among others.
- (2) Administrative regulations and rules or decisions and orders with general binding force developed and issued by administrative agencies.
- (3) Decisions of administrative agencies on the rewards or punishments for their employees or the appointment or removal from office of their employees.
- (4) Administrative action taken by an administrative agency as a final adjudication according to the law.

Chapter III Jurisdiction

Article 14 The basic people's courts shall have jurisdiction over administrative cases as courts of first instance.

Article 15 An Intermediate People's Court shall have jurisdiction over the following administrative cases as a court of first instance:

- (1) A case filed against an administrative action taken by a department of the State Council or by a people's government at or above the county level.
- (2) A case handled by the Customs.
- (3) A major or complicated case within its territorial jurisdiction.
- (4) Other cases under the jurisdiction of an Intermediate People's Court as prescribed by the law.

Article 16 A Higher People's Court shall have jurisdiction as a court of first instance over major and complicated administrative cases within its territorial jurisdiction.

Article 17 The Supreme People's Court shall have jurisdiction as a court of first instance over major and complicated administrative cases nationwide.

Article 18 An administrative case shall be under the jurisdiction of the people's court at the place where the administrative agency taking the original administrative action is located. A case that has undergone reconsideration may also be under the jurisdiction of the people's court at the place where the reconsideration agency is located.

With the approval of the Supreme People's Court, a Higher People's Court may determine several people's courts that have jurisdiction over administrative cases across administrative regions.

Article 19 A complaint against an administrative compulsory measure that restricts personal freedom shall be under the jurisdiction of the people's court at the place where the defendant or the plaintiff is located.

Article 20 Administrative litigation involving real property shall be under the jurisdiction of the people's court at the place where the real property is located.

Article 21 Where two or more people's courts have jurisdiction over the same case, the plaintiff may file a complaint in one of these people's courts. If the plaintiff has filed a complaint in two or more people's courts that have jurisdiction over the case, the people's court that first docketed the case shall have jurisdiction.

Article 22 Where a people's court finds that a case accepted is not under its jurisdiction, it shall transfer the case to the people's court that has jurisdiction over the case, and the people's court to which the case is transferred shall accept the case. If the people's court to which the case is transferred deems that the case is not under its jurisdiction either according to the relevant provisions, it shall report to the people's court at a higher level for designated jurisdiction, and may not transfer the case to another people's court on its own initiative.

Article 23 Where a people's court which has jurisdiction over a case is unable to exercise its jurisdiction for any special reasons, the people's court at a higher level shall designate another court to exercise jurisdiction over the case.

Where any dispute over jurisdiction arises between the people's courts, the dispute shall be resolved by such people's courts through consultation. If such consultation fails, the dispute shall be reported to the common people's court at a higher level of them for the designation of jurisdiction.

Article 24 A people's court at a higher level shall have the power to try administrative cases over which a people's court at a lower level has jurisdiction as a court of first instance.

Where a people's court at a lower level deems that it is necessary for a people's court at a higher level to try an administrative case over which the people's court at a lower level has jurisdiction as a court of first instance or to designate jurisdiction over the case, it may report the case to the people's court at a higher level for decision.

Chapter IV Primary Litigation Participants

Article 25 A person subjected to an administrative action or any other person which is a citizen, a legal person, or any other organization with an interest in the administrative action shall have the right to file a complaint against the administrative action.

If a citizen who has the right to file a complaint is deceased, his or her close relatives may file the complaint.

If a legal person or any other organization which has the right to file a complaint is terminated, the legal person or other organization which succeeds to its rights may file the complaint.

Where the people's procuratorate finds in the performance of functions that any administrative authority assuming supervision and administration functions in such fields as the protection of the ecological environment and resources, food and drug safety, protection of state-owned property, and the assignment of the right to use state-owned land exercises functions in violation of any law or conducts nonfeasance, which infringes upon national interest or public interest, it shall offer procuratorial recommendations to the administrative authority, and urge it to perform functions in accordance with the law. If the administrative authority fails to perform functions in accordance with the law, the people's procuratorate shall file a lawsuit with the people's court in accordance with the law.

Article 26 Where a citizen, a legal person, or any other organization directly files a complaint with a people's court, the administrative agency taking the alleged administrative action shall be the defendant.

For a case that has undergone reconsideration, if the reconsideration agency's decision sustains the original administrative action, the administrative agency taking the original administrative action and the reconsideration agency shall be co-defendants; or, if the reconsideration agency's decision modifies the original administrative action, the reconsideration agency shall be the defendant.

If the reconsideration agency fails to make a reconsideration decision during the statutory period, and a citizen, a legal person, or any other organization files a complaint against the original administrative action, the administrative agency taking the original administrative action shall be the defendant; or if a complaint is filed against the inaction of the reconsideration agency, the reconsideration agency shall be the defendant.

For an administrative action taken by two or more administrative agencies, the administrative agencies jointly taking the administrative action shall be co-defendants.

For an administrative action taken by an organization as authorized by an administrative agency, the authorizing administrative agency shall be the defendant.

Where an administrative agency is abolished or its powers are modified, the administrative agency that succeeds to such powers shall be the defendant.

Article 27 Where one side or both sides in an administrative case arising from the same administrative action consist of two or more parties, or, where the people's court deems that two or more administrative cases arising from the same type of administrative actions may be concurrently tried upon consent of the parties to such cases, such a procedure is a joinder of proceedings.

Article 28 Where one side in a joinder of proceedings consists of a large number of parties, such parties may elect a representative or representatives from among them to proceed. The conduct of such a representative in the proceedings shall be binding upon all the parties represented; however, to modify or relinquish any claims or admit any claims of the opposing party, such a representative must obtain the consent of the parties represented

Article 29 Where a citizen, a legal person, or any other organization with an interest in the administrative action alleged in a complaint does not file a complaint against the administrative action, or where a citizen, a legal person, or any other organization has an interest in the outcome of the case, the citizen, legal person, or other organization may, as a third party, file a request for participating in the proceedings or participate in the proceedings as notified by the people's court. Where a people's court enters a judgment that imposes any obligation on a third party or impairs the rights and interests of the third party, the third party shall have the right to file an appeal according to the law.

Article 30 The legal representative of a citizen without the capacity to litigate shall litigate on behalf of the citizen. If the legal representatives of such a citizen try to shift their representative responsibilities onto each other, the people's court may designate one of them to litigate on behalf of the citizen.

Article 31 A party or a legal representative may retain one or two persons as litigation representatives.

The following persons may serve as a litigation representative:

- (1) A lawyer, or a legal service worker at the basic level.
- (2) A close relative or staff member of a party.
- (3) A citizen recommended by a party's community or employer or by a relevant social group.

Article 32 Lawyers who represent the parties to a case shall have the right to consult and copy materials related to the case according to the relevant provisions and the right to investigate and collect evidence related to the case from relevant organizations and citizens. Materials which

involve any state secret, trade secret, or individual privacy shall be kept confidential according to the law.

The parties and other litigation representatives shall have the right to consult and copy materials related to the court trial, except the portions involving any state secret, trade secret, or individual privacy.

Chapter V Evidence

Article 33 Evidence includes:

- (1) documentary evidence;
- (2) physical evidence;
- (3) audio and video recordings;
- (4) electronic data;
- (5) witness testimony;
- (6) statement of a party;
- (7) opinion of a forensic identification or evaluation expert; and
- (8) survey transcripts and on-site disposition transcripts.

The aforesaid evidence must be verified in court before being used as a basis for finding the facts of a case.

Article 34 The defendant shall have the burden of proof for the administrative action taken, and provide evidence for taking the administrative action and regulatory documents based on which the administrative action was taken.

Where the defendant fails to provide, or provides beyond the prescribed time limit without a good reason, any evidence, it shall be deemed that the evidence does not exist, unless the evidence is provided by a third party because the alleged administrative action involves the lawful rights and interests of the third party.

Article 35 In the course of litigation, the defendant or a litigation representative thereof may not directly collect evidence from the plaintiff, a third party, or a witness.

Article 36 Where the defendant had collected evidence when taking the administrative action, but is unable to provide such evidence for a good reason such as a force majeure, with the permission of the people's court, the time limit for the defendant to provide such evidence may be extended.

Where the plaintiff or a third party provides any ground or evidence that was not provided in the defendant's administrative disposition procedures, with the permission of the people's court, the defendant may provide additional evidence.

Article 37 The plaintiff may provide evidence to prove that the alleged administrative action was taken in violation of the law. The inadmissibility of evidence provided by the plaintiff shall not relieve the defendant from the burden of proof.

Article 38 Where a complaint is filed for the defendant's failure to perform its statutory duties and responsibilities, the plaintiff shall provide evidence to prove that it has filed a request for such performance with the defendant, except under either of the following circumstances:

(1) The defendant shall actively perform its statutory duties and responsibilities as required by its powers.

(2) The plaintiff is unable to provide evidence for a good reason.

In a case of administrative compensation or indemnity, the plaintiff shall provide evidence on the damage caused by the administrative action. If the inability of the plaintiff to provide such evidence is caused by the defendant, the defendant shall have the burden of proof.

Article 39 A people's court shall have the power to require a party to provide evidence or provide additional evidence.

Article 40 A people's court shall have the power to subpoena evidence from the relevant administrative agencies, other organizations, and citizens, but may not, for the purpose of proving the legality of an administrative, subpoena any evidence that had not been collected by the defendant when taking the administrative action.

Article 41 The plaintiff or a third party in a case may apply to the people's court for subpoenaing the following evidence related to the case which the plaintiff or third party is unable to collect independently:

(1) Evidence preserved by a state organ which may be obtained by a subpoena of a people's court.

(2) Evidence which involves any state secret, trade secret, or individual privacy.

(3) Other evidence which the plaintiff or a third party is unable to collect independently for objective reasons.

Article 42 Where any evidence may be extinguished or may be hard to obtain at a later time, a primary litigation participant may file a motion to the people's court for evidence preservation, and the people's court may also take preservation measures on its own initiative.

Article 43 Evidence shall be presented in court and cross-examined by the parties. Evidence involving any state secret, trade secret, or individual privacy may not be presented in an open court.

A people's court shall comprehensively and objectively examine and verify evidence under the statutory procedures. For inadmissible evidence, reasons for inadmissibility shall be stated in the written adjudication.

Illegally obtained evidence may not be used as a basis for finding the facts of a case.

Chapter VI Filing a Complaint and Accepting a Case

Article 44 For administrative cases within the scope of cases accepted by the people's courts, a citizen, a legal person, or any other organization may first apply to the administrative agency for reconsideration, and then file a complaint against the reconsideration decision with a people's court; or directly file a complaint with a people's court.

Where any law or regulation provides that an application for reconsideration shall be filed with the administrative agency before a complaint against the reconsideration decision is filed with a people's court, such a law or regulation shall apply.

Article 45 Against a reconsideration decision, a citizen, a legal person, or any other organization may file a complaint with a people's court within 15 days of receipt of the written reconsideration decision. If the reconsideration agency fails to make a decision during the statutory period, the

applicant may file a complaint with a people's court within 15 days of expiry of the reconsideration period, except as otherwise provided for by any law.

Article 46 To directly file a complaint with a people's court, a citizen, a legal person, or any other organization shall file the complaint within six months from the day when the citizen, legal person, or other organization knew or should have known that the administrative action was taken, except as otherwise provided for by any law.

A people's court shall not accept a complaint involving real property filed more than 20 years after the alleged administrative action was taken or a complaint involving any other dispute filed more than five years after the alleged administrative action was taken.

Article 47 Where a citizen, a legal person, or any other organization applies to an administrative agency for its performance of statutory duties and responsibilities in respect of protecting the personal rights, property rights, and other lawful rights and interests of the citizen, legal person, or other organization, and the administrative agency fails to do so within two months of receipt of the application, the citizen, legal person, or other organization may file a complaint with a people's court. Where any law or regulation provides otherwise for the period for an administrative agency to perform its duties and responsibilities, such a law or regulation shall apply.

Where a citizen, a legal person, or any other organization requests an administrative agency to perform its statutory duties and responsibilities in respect of protecting the personal rights, property rights, and other lawful rights and interests of the citizen, legal person, or other organization in case of emergency, and the administrative agency fails to do so, a complaint filed by the citizen, legal person, or other organization shall not be subject to the periods as mentioned in the preceding paragraph.

Article 48 Where a citizen, a legal person, or any other organization delays in filing a complaint during the time limitation for filing a complaint for a force majeure or any other reason not attributable to the citizen, legal person, or other organization, the time of delay shall not be counted in the time limitation for filing a complaint.

Where a citizen, a legal person, or any other organization delays in filing a complaint during the time limitation for filing a complaint under any special circumstances other than those as mentioned in the preceding paragraph, the citizen, legal person, or other organization may apply for an extension of the time limitation within ten days after the obstacle is eliminated, and the people's court shall decide whether to grant extension.

Article 49 A complaint to be filed shall satisfy the following requirements:

- (1) The plaintiff is a citizen, a legal person, or any other organization as mentioned in Article 25 of this Law.
- (2) There must be a specific defendant.
- (3) There must be specific claims and factual basis for the complaint.
- (4) The complaint must fall within the scope of cases accepted by the people's courts and under the jurisdiction of the people's court with which the complaint is filed.

Article 50 The plaintiff shall file a written complaint with a people's court, and provide the copies thereof according to the number of defendants.

Where it is difficult for a plaintiff to write a complaint, the plaintiff may verbally file a complaint, and

the people's court shall transcribe the complaint, issue a dated certification in writing, and notify the opposing party.

Article 51 A people's court receiving a complaint shall docket it if it meets the conditions for filing a complaint as set out in this Law.

Where a people's court is unable to determine on the spot whether a complaint meets the conditions for filing a complaint as set out in this Law, the people's court shall receive the complaint, issue a written certification showing the date of receipt, and decide whether to docket the complaint within seven days. If the complaint does not meet the conditions for filing a complaint, the people's court shall enter a ruling not to docket the complaint. The written ruling shall state the reasons for not docketing the complaint. The plaintiff may file an appeal against the ruling.

Where a complaint is incomplete or otherwise erroneous, a people's court shall offer guidance and explanation, and notify the party of all necessary supplements and corrections at one time. Without such guidance and explanation, the people's court may not refuse to receive the complaint on the ground that it fails to meet the conditions for filing a complaint.

Where a people's court refuses to receive a complaint, refuses to issue a written certification after receiving a complaint, or fails to notify a party of all necessary supplements or corrections to a complaint at one time, the party may report it to the people's court at a higher level, which shall order corrective action to be taken by the people's court and take disciplinary action against its directly liable supervising official and other directly liable persons according to the law.

Article 52 Where a people's court neither docketed nor enters a ruling not to docket a complaint, the plaintiff may file a complaint in the people's court at the next higher level. If the people's court at the next higher level deems that the complaint meets the conditions for filing a complaint, it shall docket the complaint and try the case, or designate any other people's court at the lower level to docket the complaint and try the case.

Article 53 Where a citizen, a legal person, or any other organization deems that a regulatory document developed by a department of the State Council or by a local people's government or a department thereof, based on which the alleged administrative action was taken, is illegal, the citizen, legal person, or other organization may concurrently file a request for review of the regulatory document when filing a complaint against the administrative action.

The term "regulatory document" as mentioned in the preceding paragraph does not include administrative rules.

Chapter VII Trial and Judgment

Section 1 General Rules

Article 54 The people's courts shall try administrative cases publicly, except those involving any state secret or individual privacy or as otherwise provided for by any law.

A case involving any trade secret may be tried in camera if a party to the case files a motion for trial in camera.

Article 55 Where a party to a case deems that a judge has an interest in the case or is otherwise related to the case, which may affect the impartial trial of the case, the party shall have the right to request the disqualification of the judge.

Where a judge deems himself or herself to have an interest in the case or be otherwise related to the case, the judge shall request disqualification of himself or herself.

The provisions of the preceding two paragraphs shall also apply to court clerks, interpreters, identification or evaluation experts, and surveyors.

The disqualification of the president of a people's court as the presiding judge shall be decided by the judicial committee of the people's court; the disqualification of judges shall be decided by the president of a people's court; and the disqualification of other persons shall be decided by the presiding judge. Against such a decision, a party may apply for reconsideration once.

Article 56 During litigation, the execution of the alleged administrative action shall not be suspended; however, under any of the following circumstances, a ruling shall be entered to suspend execution:

- (1) The defendant deems it necessary to suspend execution.
- (2) The plaintiff or an interested party files a motion for suspending execution, and the people's court deems that the execution of the alleged administrative action will result in irreparable losses and that its suspension will not damage the national interest or public interest.
- (3) The people's court deems that the execution of the alleged administrative action will cause any major damage to the national interest or public interest.
- (4) The suspension is required by any law or regulation.

Against a ruling to suspend or not to suspend execution, a party may apply for reconsideration once.

Article 57 For a complaint against an administrative agency for its failure to pay, according to the law, any consolation money, minimum subsistence, or social insurance benefits for work-related injury or medical treatment, a people's court may enter a ruling to grant advance enforcement if the plaintiff files such a motion, the rights and obligations between the parties are clear, and a denial of advance enforcement will seriously affect the subsistence of the plaintiff.

Against a ruling on advance enforcement, a party may apply for reconsideration once. Pending reconsideration, the execution of the ruling shall not be suspended.

Article 58 Where a plaintiff refuses to appear in court without a good reason after being subpoenaed or leaves the courtroom during a court session without the permission of the court, the court may deem that the plaintiff has withdrawn its complaint; and where a defendant refuses to appear in court without a good reason or leaves the courtroom during a court session without the permission of the court, the court may enter a default judgment.

Article 59 Where a litigation participant or any other person commits any of the following conduct, a people's court may, according to the severity of the circumstances, reprimand the person, order the person to sign a personal statement of repentance, impose a fine of not more than 10,000 yuan on the person, or detain the person for no longer than 15 days; and if the conduct constitutes a crime, the offender shall be subject to criminal liability according to the law:

- (1) As a person with an obligation to assist in investigation or enforcement, evading or refusing without reasons the performance of such an obligation or obstructing investigation or enforcement after receiving an investigation assistance decision or an enforcement assistance notice from a people's court.
- (2) Forging, concealing, or destroying evidence or providing false certification materials to obstruct the trial of a case by a people's court.

(3) Instigating or, by bribery or intimidation, causing any other person to commit perjury, threatening a witness, or preventing a witness from testifying.

(4) Concealing, transferring, selling, destroying, or damaging any seized, impounded, or frozen property.

(5) Causing the plaintiff to withdraw its complaint by deception, intimidation, or any other illegal means.

(6) Obstructing a staff member of a people's court from performing his or her duties by violence, threat, or any other means, or disturbing the order of a people's court by clamoring in a courtroom, attacking a courtroom, or any other means.

(7) Intimidating, insulting, defaming, framing up, assaulting, attacking, or retaliating on a judge or any other staff member of the people's court, a litigation participant, or a person assisting in investigation or enforcement.

For an entity committing any of the conduct as mentioned in the preceding paragraph, a people's court may fine or detain its primary person in charge or directly liable persons in accordance with the preceding paragraph; and if the conduct constitutes a crime, the offender shall be subject to criminal liability according to the law.

Any fine or detention must be subject to the approval of the president of a people's court. Against such punishment, a party may apply to the people's court at the next higher level for reconsideration once. Pending reconsideration, the execution of such punishment shall not be suspended.

Article 60 In the trial of an administrative case, a people's court may not conduct mediation, unless the case involves administrative compensation or indemnity or involves an administrative agency's exercise of discretionary power prescribed by any law or regulation.

"Mediation shall be conducted under the principle of free will and legality, without detriment to the national interest, public interest, or lawful rights and interests of others.

Article 61 Where a party to an administrative procedure involving administrative licensing, registration, expropriation, requisition, or an administrative agency's ruling on a civil dispute applies for settling the relevant civil dispute concurrently, the people's court may try the civil dispute case concurrently.

Where, in administrative litigation, the people's court deems it necessary to base the trial of the administrative case upon an adjudication to be made in a civil procedure, it may enter a ruling to suspend the administrative litigation.

Article 62 Where, before a people's court pronounces its judgment or ruling for an administrative case, the plaintiff requests the withdrawal of the case, or the defendant modifies its administrative action and, as a result, the plaintiff agrees to and applies for the withdrawal of the case, the people's court shall enter a ruling on whether to allow the withdrawal.

Article 63 The people's courts shall try administrative cases based on laws, administrative regulations, and local regulations. Local regulations shall be applicable to administrative cases occurring within the respective administrative regions.

For administrative cases in an ethnic autonomous region, the people's courts shall also try such cases based on the regulation on autonomy and the separate regulations of the ethnic

autonomous region.

In trying administrative cases, a people's court may refer to administrative rules.

Article 64 Where, in trying an administrative case, a people's court deems that any regulatory document as mentioned in Article 53 of this Law under its review is illegal, such a document shall not be used to determine the legality of the alleged administrative action, and the people's court shall provide the authority developing the document with disposition recommendations.

Article 65 A people's court shall publish effective written judgments and rulings for public inspection, except the parts involving any state secret, trade secret, or individual privacy.

Article 66 In trying an administrative case, if a people's court deems that the supervising official or any directly liable person of an administrative agency has violated any law or discipline, the people's court shall transfer the relevant materials to the supervisory authority, the administrative agency, or the administrative agency at the next higher level; or if it deems that any crime has occurred, the people's court shall transfer the relevant materials to the public security authority or procuratorial authority.

Where a defendant refuses to appear in court without a good reason or leaves the courtroom during a court session without the permission of the court, a people's court may announce it to the public, and provide the supervisory authority or the administrative agency at the next higher level of the defendant with judicial recommendations on the disciplinary action to be taken against the primary person in charge or directly liable persons of the defendant.

Section 2 Formal Procedure at First Instance

Article 67 A people's court shall, within five days of docketing a complaint, serve a copy of the written complaint on the defendant. The defendant shall, within 15 days of receipt of a copy of the written complaint, provide evidence for taking the alleged administrative action and the regulatory documents based on which the administrative action was taken, and submit a written statement of defense. The people's court shall, within five days of receipt of the written statement of defense, serve a copy thereof on the plaintiff.

The defendant's failure to submit a statement of defense shall not affect the trial of the case by the people's court.

Article 68 To try an administrative case, a people's court shall form a collegial bench consisting of judges or a collegial bench consisting of judges and assessors. The members of a collegial bench shall be in an odd number of three or more.

Article 69 Where the alleged administrative action has been taken under statutory procedures with conclusive evidence and correct application of laws and regulations, or the grounds for the plaintiff's application for the defendant to perform its statutory duties and responsibilities or make payment are unfounded, the people's court shall enter a judgment to dismiss the plaintiff's claims.

Article 70 Where the alleged administrative action falls under any of the following circumstances, a people's court shall enter a judgment to entirely or partially revoke the alleged administrative action, and may enter a judgment to require the defendant to take an administrative action anew:

- (1) Insufficiency in primary evidence.
- (2) Erroneous application of any law or regulation.
- (3) Violation of statutory procedures.

(4) Overstepping of power.

(5) Abuse of power.

(6) Evident inappropriateness

Article 71 Where a people's court enters a judgment to require that the defendant take an administrative action anew, the defendant shall not take an administrative action which is basically the same as the original administrative action based on the same facts and reasons.

Article 72 Where, through trial, a people's court holds that the defendant has failed to perform its statutory duties and responsibilities, it shall enter a judgment to require the defendant to perform its statutory duties and responsibilities during a specified period.

Article 73 Where, through trial, a people's court holds that the defendant has a legal obligation to pay, it shall enter a judgment to require the defendant to perform the payment obligation.

Article 74 Where the alleged administrative action falls under any of the following circumstances, a people's court shall enter a judgment to confirm the illegality of the alleged administrative action but not to revoke it:

(1) An administrative action shall be revoked according to the law, but the revocation will cause any significant damage to the national interest or public interest.

(2) A petty violation of the statutory procedures in taking an administrative action will not have any actual impact on the plaintiff's rights.

Where the alleged administrative action falls under any of the following circumstances, a people's court shall enter a judgment to confirm the illegality of the alleged administrative action, if it is not necessary to revoke it or enter a judgment to require the defendant to perform:

(1) An administrative action is illegal, but there is nothing revocable.

(2) The defendant has modified the original illegal administrative action, but the plaintiff still requests confirmation of the illegality of the original administrative action.

(3) The defendant fails to perform or delays the performance of its statutory duties and responsibilities, and it is meaningless to enter a judgment to require the defendant to perform.

Article 75 Where the alleged administrative action has been taken by a party other than an administrative agency, is baseless, or otherwise seriously and evidently violates the law, a people's court shall enter a judgment to confirm the void of the alleged administrative action if the plaintiff so requests.

Article 76 Where a people's court enters a judgment to confirm the illegality or void of the alleged administrative action, it may concurrently order the defendant to take remedial measures; and, if the plaintiff has sustained losses from the alleged administrative action, order the defendant to assume compensatory liability according to the law.

Article 77 Where an administrative punishment is evidently inappropriate, or any other administrative action is erroneous in determining or recognizing an amount, a people's court may enter a judgment to modify it.

A modification judgment of a people's court may not aggregate the plaintiff's obligations or impair the plaintiff's rights and interests, unless the plaintiffs include any interested party with opposing claims.

Article 78 Where the defendant fails to perform according to the law or as agreed upon or illegally modifies or rescinds an agreement as mentioned in item (11), paragraph 1, Article 12 of this Law, a people's court shall enter a judgment to require the defendant to continue to perform, take remedial measures, or compensate for losses, among others.

Where the defendant legally modifies or rescinds an agreement as mentioned in item (11), paragraph 1, Article 12 of this Law, but fails to provide indemnity as required by the law, the people's court shall enter a judgment to require the defendant to provide indemnity.

Article 79 Where the reconsideration agency and the administrative agency taking the original administrative action are co-defendants in a case, a people's court shall adjudicate concurrently on the reconsideration decision and the original administrative action.

Article 80 Whether a case is tried openly or in camera, a people's court shall, without exception, pronounce its judgment publicly.

If a judgment is pronounced in court at the end of a trial, a written judgment shall be served within ten days; or if the pronouncement of a judgment is scheduled for a later date, a written judgment shall be served immediately after pronouncement.

When a judgment is pronounced, the parties must be informed of their rights to appeal, the period for filing an appeal, and the appellate court.

Article 81 A people's court of first instance shall enter a judgment within six months from the day when a complaint is docketed. Any extension of the aforesaid period as needed under special circumstances shall be subject to the approval of a Higher People's Court. Where a Higher People's Court trying a case as a court of first instance needs to extend the aforesaid period, the extension shall be subject to the approval of the Supreme People's Court.

Section 3 Summary Procedure

Article 82 In trying the following administrative cases, a people's court of first instance may apply the summary procedure if it deems that the facts are clear, the rights and obligations between the parties are clear, and the dispute is minor:

- (1) The alleged administrative action was taken on the spot according to the law.
- (2) The amount involved in the case is not more than 2,000 yuan.
- (3) The case involves the disclosure of open government information.

For administrative cases other than those as mentioned in the preceding paragraph, the summary procedure may be applied with the consent of all parties.

The summary procedure may not apply to a case remanded for retrial or a case retried under the trial supervision procedure.

Article 83 An administrative case to which the summary procedure is applied shall be tried by a sole judge, and be closed within 45 days from the day when the complaint is docketed.

Article 84 Where a people's court discovers during trial that the application of the summary procedure is not appropriate for the case, it shall enter a ruling to try the case under the formal procedure.

Section 4 Procedures at Second Instance

Article 85 Against a judgment of a people's court of first instance, a party shall have the right to file an appeal with the people's court at the next higher level within 15 days of the service of the

written judgment. Against a ruling of a people's court of first instance, a party shall have the right to file an appeal with the people's court at the next higher level within 10 days of the service of the written ruling. If the party fails to appeal upon expiry of the aforesaid period, the judgment or ruling of the people's court of first instance shall take effect.

Article 86 A people's court shall form a collegial bench to try an appeal case in court. Where, after reviewing the case file, conducting investigation, and questioning the parties, no new fact, evidence, or ground is submitted, the collegial bench may try the appeal case without holding court if the collegial bench deems it unnecessary.

Article 87 In trying an appeal case, a people's court shall comprehensively review the judgment or ruling of the people's court conducting the original trial and the alleged administrative action.

Article 88 A people's court trying an appeal case shall enter a final judgment within three months of receipt of a written appeal. Any extension of the aforesaid period as needed under special circumstances shall be subject to the approval of a Higher People's Court. Where a Higher People's Court trying an appeal case needs to extend the aforesaid period, the extension shall be subject to the approval of the Supreme People's Court.

Article 89 A people's court trying an appeal case shall:

(1) enter a judgment or ruling to dismiss the appeal and sustain the original judgment or ruling, if the original judgment or ruling is clear in fact finding and correct in application of laws and regulations;

(2) enter its own judgment or ruling, revoke the original judgment or ruling, or enter a modification judgment or ruling according to the law, if the original judgment or ruling is erroneous in fact finding or application of laws and regulations;

(3) remand the case to the people's court conducting the original trial for retrial or enter its own judgment after fact finding, if the original judgment is unclear in the finding of the basic facts; or

(4) enter a ruling to revoke the original judgment and remand the case to the people's court conducting the original trial for retrial, if the original judgment omits a party, is a default judgment illegally entered, or otherwise seriously violates the statutory procedures.

Where, after the people's court conducting the original trial enters a judgment for a case remanded for retrial, a party appeals, the people's court of second instance shall not remand the case for retrial again.

Where a people's court trying an appeal case needs to change the original judgment, its own judgment shall also contain a determination regarding the alleged administrative action.

Section 5 Trial Supervision Procedure

Article 90 A party to a case may petition the people's court at the next higher level for retrial if the party deems that the effective judgment or ruling for the case is erroneous, but the execution of the judgment or ruling shall not be suspended.

Article 91 Where a party's petition for retrial falls under any of the following circumstances, a people's court shall conduct retrial:

(1) A ruling not to docket a complaint or a ruling to dismiss a complaint is erroneous.

(2) There is any new evidence which suffices to overturn the original judgment or ruling.

- (3) The primary evidence for the fact finding in the original judgment or ruling is insufficient, has not been cross-examined, or is forged.
- (4) There is any erroneous application of laws and regulations in the original judgment or ruling.
- (5) There is any violation of statutory proceedings, which may affect the impartial trial of the case.
- (6) The original judgment or ruling has omitted any claims.
- (7) The legal instrument based on which the original judgment or ruling is entered has been revoked or modified.
- (8) In trying the case, a judge commits embezzlement, accepts bribes, practices favoritism, makes falsification, or adjudicates by bending the law.

Article 92 Where the president of a people's court at any level discovers that any effective judgment or ruling of the court falls under any of the circumstances as set out in Article 91 of this Law or discovers that any mediation was conducted by the court in violation of the free will principle or any part of an effective consent judgment of the court is in violation of the law, and deems a retrial necessary, the president shall submit the case to the judicial committee of the court for deliberation and decision.

Where the Supreme People's Court discovers that any effective judgment or ruling of a local people's court at any level, or a people's court at a higher level discovers that any effective judgment or ruling of a people's court at a lower level, falls under any of the circumstances as set out in Article 91 of this Law, the Supreme People's Court discovers that any mediation was conducted by a local people's court at any level in violation of the free will principle or any part of an effective consent judgment of a local people's court at any level is in violation of the law, or a people's court at a higher level discovers that any mediation was conducted by a people's court at a lower level in violation of the free will principle or any part of an effective consent judgment of a people's court at a lower level is in violation of the law, the Supreme People's Court or the people's court at a higher level shall have the power to directly retry the case or specify the people's court at a lower level to retry the case.

Article 93 Where the Supreme People's Procuratorate discovers that any effective judgment or ruling of a people's court at any level, or a people's procuratorate at a higher level discovers that any effective judgment or ruling of a people's court at a lower level, falls under any of the circumstances as set out in Article 91 of this Law, or the Supreme People's Procuratorate discovers that any effective consent judgment of a people's court at any level, or a people's procuratorate at a higher level discovers that any effective consent judgment of a people's court at a lower level, is detrimental to the national interest or public interest, the Supreme People's Procuratorate or the people's procuratorate at a higher level shall file an appeal.

Where a local people's procuratorate at any level discovers that any effective judgment or ruling of a people's court at the same level falls under any of the circumstances as set out in Article 91 of this Law or discovers that any effective consent judgment of a people's court at the same level is detrimental to the national interest or public interest, the people's procuratorate may provide the people's court at the same level with procuratorial recommendations, and report such recommendations to the people's procuratorate at the next higher level for recordation; or request that the people's procuratorate at the next higher level file an appeal with the people's court at the same level.

A people's procuratorate at any level shall have the power to provide a people's court at the same

level with procuratorial recommendations regarding the violations of the law by judges in trial procedures other than the trial supervision procedure.

Chapter VIII Enforcement

Article 94 The parties must comply with an effective judgment, ruling, or consent judgment of a people's court.

Article 95 Where a citizen, a legal person, or any other organization refuses to comply with a judgment, ruling, or consent judgment, the administrative agency or a third party may apply to the people's court of first instance for enforcement, or the administrative agency may conduct enforcement according to the law.

Article 96 Where an administrative agency refuses to comply with a judgment, ruling, or consent judgment, the people's court of first instance may take the following measures:

- (1) By a notice, requiring a bank to transfer the amount of a fine that shall be refunded or the amount payable from the administrative agency's account.
- (2) If the administrative agency fails to comply during a specified period, imposing a fine of 50 to 100 yuan per day on the person in charge of the administrative agency from the expiry date of the specified period.
- (3) Issuing a public announcement on the administrative agency's refusal to comply.
- (4) Providing the supervisory authority or the administrative agency at the next higher level with judicial recommendations. The authority or agency receiving judicial recommendations shall handle such recommendations according to the relevant provisions, and inform the people's court of the results.
- (5) If the administrative agency's refusal to comply with the judgment, ruling, or consent judgment has any adverse social impact, detaining the directly liable supervising official and other directly liable persons of the administrative agency; and if the circumstances are so serious that any crime is constituted, subjecting the offenders to criminal liability according to the law.

Article 97 Where, during the statutory period, a citizen, a legal person, or any other organization neither files a complaint against an administrative action nor complies with an administrative action, the administrative agency may apply to a people's court for enforcement, or conduct enforcement according to the law.

Chapter IX Foreign-Related Administrative Litigation

Article 98 This Law shall apply to administrative litigation conducted by foreign nationals, stateless persons, and foreign organizations in the People's Republic of China, except as otherwise provided for by any law.

Article 99 Foreign nationals, stateless persons, and foreign organizations conducting administrative litigation in the People's Republic of China shall have equal litigation rights and obligations as citizens and organizations of the People's Republic of China.

Where the courts of a foreign country impose any restrictions on the rights of citizens and organizations of the People's Republic of China in administrative litigation, the people's courts shall apply the principle of reciprocity to the rights of citizens and organizations of the foreign country in administrative litigation.

Article 100 Where foreign nationals, stateless persons, and foreign organizations retain lawyers to represent them in administrative litigation in the People's Republic of China, they shall retain lawyers of law firms of the People's Republic of China.

Chapter X Supplementary Provisions

Article 101 Where this Law is silent regarding any period, service of process, property preservation, court session, mediation, suspension of proceedings, termination of proceedings, summary procedure, or enforcement, among others, for administrative cases tried by the people's courts or regarding the supervision by the people's procuratorates over the acceptance, trial, adjudication, and enforcement of administrative cases, the relevant provisions of the Civil Procedure Law of the People's Republic of China shall apply.

Article 102 The people's courts shall collect court costs for the trial of administrative cases. The court costs shall be assumed by the losing party or, if both sides are liable, assumed by both sides. The specific measures for the collection of court costs shall be developed additionally.

Article 103 This Law shall come into force on October 1, 1990.

chl_297380