

People's Republic of China Supreme People's Court

ADMINISTRATIVE PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA

(Adopted on April 4, 1989)

Content

Chapter I General Provisions

Chapter II Scope of Case Acceptance

Chapter III Jurisdiction

Chapter IV Participants in Proceedings

Chapter V Evidence

Chapter VI Initiation of an Action and Acceptance of a Case

Chapter VII Trial and Judgment

Chapter VIII Execution

Chapter IX Compensation Liability for Infringement of Rights

Chapter X Administrative Procedure Involving Foreign Interests

Chapter XI Supplementary Provisions

Chapter I General Provisions

Article 1

For the purposes of safeguarding correct and timely trial of administrative cases, protecting the lawful rights and interests of citizens, legal persons and other organizations and ensuring and supervising the exercise of administrative power by administrative organs according to law, this Law is enacted in accordance with the Constitution.

Article 2

In case that a citizen, a legal persons or other organizations a concrete administrative action by an administrative organ or its personnel has infringed upon his or her or its lawful rights and interests, they shall have the right to initiate an action to a people's courts in accordance with this Law.

Article 3

The people's courts shall exercise judicial power independently over administrative cases, and shall not be subject to interference by any administrative organ, social organization or individual.

The people's courts shall set up administrative divisions to handle administrative cases.

Article 4

The people's court shall, in trying administrative cases, base themselves on facts and take the law as the criterion.

Article 5

The people's court shall, in handling an administrative cases, examine to determine whether or not the specific administrative act is legal.

Article 6

The people's court shall, in handling administrative cases, adopt, as prescribed by law, the systems of collegial panel, withdrawal and public trial and a system whereby the second instance is the final.

Article 7

Parties to an administrative case shall be equal before the law.

Article 8

Citizens of all nationalities shall have the right to use their native spoken and written languages in administrative proceedings.

In an area where people of a minority nationality live in concentrated communities or where a number of nationalities live together, the people's courts shall conduct the trial and issue legal documents in the language or languages commonly used by the local nationalities.

The people's courts shall provide interpretation for participants in proceedings who do not understand the language or languages commonly used by the local nationalities.

Article 9

Parties to an administrative action shall have the right to debate.

Article 10

The people's procuratorates shall have the right to exercise legal supervision over administrative proceedings.

Chapter II Scope of Case Acceptance

Article 11

The people's courts shall accept actions initiated by citizens, legal persons or other organizations against any of the following specific administrative acts:

- (1). refusing to accept such administrative penalties as detention, fine, revocation of a business license or permit, order of suspension of production or business or confiscation of property;
- (2). refusing to accept such compulsory administrative measures as restriction of freedom of the person or the sealing up, seizure or freeze of property;
- (3). deeming that an administrative organ has infringed upon its managerial decision-making powers authorized thereto by law;
- (4). deeming that the application for issuance of a permit or license conforms to the provisions of laws but an administrative organ has refused to issue it or refused to make a reply therefor;
- (5). having applied to an administrative organ to perform its statutory duty in

protecting the rights of the person and of property but the administrative organ has refused to perform the duty or failed to make a reply therefor;

(6). deeming that an administrative organ has failed to distribute a pension thereto according to law;

(7). deeming that an administrative organ has demanded the performance of duties in violation of laws; and

(8). deeming that an administrative organ has infringed upon other rights of the person and of property.

Apart from the provisions of the preceding paragraph, the people's court shall also accept other administrative actions which may be initiated in accordance with the provisions of relevant laws and regulations.

Article 12

The people's courts shall not accept actions initiated by citizens, legal persons or other organizations concerning any of the following matters:

(1). State acts in areas like national defense and foreign affairs;

(2). administrative rules and regulations, or decisions and orders with general binding force formulated and promulgated by administrative organs;

(3). decisions made by an administrative organ concerning awards or punishment for its personnel or concerning the appointment or removal; or

(4). specific administrative acts that shall, as provided for by law, be finally decided by an administrative organ.

Chapter III Jurisdiction

Article 13

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

Article 14

The intermediate people's courts shall have jurisdiction as courts of first instance over the following administrative cases:

(1). cases of confirming patent rights of invention and cases handled by the Customs;

(2). actions initiated against specific administrative acts taken by departments under the State Council or by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government; and

(3). grave and complicated cases in areas under their jurisdiction.

Article 15

The higher people's courts shall have jurisdiction as courts of first instance over grave and complicated administrative cases in areas under their jurisdiction.

Article 16

The Supreme People's Court shall have jurisdiction as a court of first instance

over grave and complicated administrative cases in the whole country.

Article 17

An administrative case shall be under the jurisdiction of the people's court in the place where the administrative organ that initially undertook the specific administrative act is located. An administrative case which has been reconsidered and the reconsideration organization has changed the original specific administrative act also may be under the jurisdiction of the people's court in the locality where the reconsideration organization is located.

Article 18

An action initiated against compulsory administrative measures restricting freedom of the person shall be under the jurisdiction of a people's court in the place where the defendant or the plaintiff is located.

Article 19

An administrative action regarding a real property shall be under the jurisdiction of the people's court in the place where the real property is located.

Article 20

When two or more people's courts have jurisdiction over the same action, the plaintiff may have the option to initiate an action to one of these people's courts. In case that a plaintiff initiates actions to two or more people's courts that have jurisdiction over the case, the people's court that first receives the bill of complaint shall have jurisdiction.

Article 21

Where a people's court finds that a case it has accepted is not under its jurisdiction, it shall transfer the case to the people's court that has jurisdiction over the case. The people's court to which the case has been transferred may not transfer the case again to another people's court on its own.

Article 22

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

In case that a dispute arises over jurisdiction between the people's courts, it shall be resolved by the parties to the dispute through consultation. If the consultation fails, it shall be reported to a people's court superior to the courts in dispute for the designation of jurisdiction.

Article 23

People's courts at higher levels shall have the authority to try administrative cases over which people's courts at lower levels have jurisdiction as courts of first instance, and may also transfer administrative cases over which they themselves have jurisdiction as courts of first instance to people's courts at lower levels for trial.

Where a people's court deems it necessary that an administrative case of first instance under its jurisdiction shall be tried by a people's court at a higher level, it may report to such a people's court for a decision.

Chapter IV Participants in Proceedings

Article 24

A citizen, a legal person or any other organization that initiates an action in accordance with this Law shall be a plaintiff.

If a citizen who has the right to initiate an action is dead, his or her near relatives may initiate an action.

If a legal person or any other organization that has the right to initiate an action has terminated, the legal person or any other organization that succeeds to its rights may initiate an action.

Article 25

Where a citizen, a legal person or any other organization initiate an action directly to a people's court, the administrative organ that took the specific administrative act shall be the defendant.

Regarding to a reconsidered case, if the reconsideration organization upholds the original specific administrative act, the administrative organ that initially took the act shall be the defendant; if the reconsideration organization has changed the original specific administrative act, the reconsideration organization shall be the defendant.

Where two or more administrative organs have taken the same specific administrative act, the administrative organs that have jointly taken the act shall be the joint defendants.

If a specific administrative act has been taken by an organization authorized by the law or regulations, the organization shall be the defendant. If a specific administrative act has been taken by an organization as entrusted by an administrative organ, the entrusting administrative organ shall be the defendant.

Where an administrative organ has been abolished, the administrative organ that carries on the exercise of functions and powers of the abolished organ shall be the defendant.

Article 26

Where one party or both parties consist of two or more persons, and their administrative cases are against the same specific administrative act or against the specific administrative acts of the same nature, and the people's court considers that the trial of the cases can be merged, this shall be a joint action.

Article 27

Any other citizen, legal person or any other organization who or which has interests in a specific administrative act against which an action is initiated may apply to participate in the action as a third party, or may participate in the proceedings upon notification by the people's court.

Article 28

Any citizen with no capacity for action shall be represented by his or her legal representatives in proceedings. In case that the legal representatives try to shift the responsibilities onto each other, the people's court may appoint one of them to represent the citizen in proceedings.

Article 29

Each party or legal representative may entrust one or two persons to represent him or her in proceedings.

A lawyer, a social group, near relatives of a citizen who has initiated an action, or a person recommended by the unit to which the citizen belongs or any other citizen approved by the people's court may be entrusted as an agent

Article 30

A lawyer who serves as an agent may consult materials pertaining to the case in accordance with relevant provisions, and may also investigate among and collect evidence from the organizations and citizens concerned. If the information involves State secrets or personal privacy, the lawyer shall keep it confidential in accordance with relevant provisions of the law.

Upon approval of the people's court, parties and other agents may consult the materials relating to the trial of the case, however, those involving State secrets or personal privacy shall be excluded.

Chapter V Evidence

Article 31

Evidence includes the following types:

- (1). documentary evidence;
- (2). material evidence;
- (3). audio-video material;
- (4). testimony of witnesses;
- (5). statements of the parties;
- (6). expert conclusions; and
- (7). records of inquests and records made on the scene.

Any of the above-mentioned evidence must be verified by the court before it can be taken as a basis for ascertaining a fact.

Article 32

The defendant shall have the burden of proof for the specific administrative act it has taken, and shall provide evidence and regulatory documents on which the act has been based.

Article 33

In the course of legal proceedings, the defendant may not collect evidence from the plaintiff and witnesses on its own initiative.

Article 34

The people's court shall have the authority to request the parties to provide or supplement evidence.

The people's court shall have the authority to obtain evidence from the relevant administrative organs, other organizations or citizens.

Article 35

In the course of legal proceedings, when a people's court considers that an expert evaluation for a specialized problem is necessary, the issue shall be entrusted to an statutory expert evaluation department for an expert evaluation. In absence of such a statutory expert evaluation department, the people's court shall designate one evaluation department to conduct an expert evaluation.

Article 36

Under the circumstance where evidence is likely to be cease to exist or be lost or would be difficult to obtain later on, the participants in proceedings may apply to the people's court for the preservation of the evidence, the people's court may also take measures to preserve such evidence on its own initiative.

Chapter VI Initiation of an Action and Acceptance of a Case

Article 37

Regarding to an administrative case within the scope of acceptance by the people's court, a citizen, a legal person or any other organization may first apply for a reconsideration to an administrative organ at the next higher level or to an administrative organ as prescribed by the law or regulations, and may initiate an action to a people's court if refusing to accept the reconsideration decision; also may initiate an action to a people's court directly.

In case that an application for a consideration to an administrative organ shall be made first as stipulated by relevant provisions of laws and regulations, and that an action may be then initiated to a people's court if refusing to accept the reconsideration decision, the provisions of the laws and regulations shall apply.

Article 38

Where a citizen, a legal person or any other organization applies to an administrative organ for a reconsideration, the reconsideration organ shall make a decision within two months from the day of the receipt of the application. However, cases stipulated otherwise by laws and regulations shall be excluded.

Where any applicant refuses to accept the reconsideration decision, the applicant may initiate legal proceedings to a people's court within 15 days from the day of the receipt of the reconsideration decision. If the reconsideration organ fails to make a decision on the expiration of the time limit, the applicant may bring a suit before a people's court within 15 days after the time limit for reconsideration expires, except as otherwise provided for by law.

Article 39

Where a citizen, a legal person or any other organization choose to directly initiate an action to a people's court, he or it shall do so within three months from the day when he or it comes to know that a specific administrative act has been taken, except as otherwise provided for by law.

Article 40

In case that a citizen, a legal person or any other organization misses the time limit prescribed by law due to force majeure or other special reasons, he or it may apply for an extension of the time limit within ten days after the obstacle is eliminated, the people's court shall make a decision thereon.

Article 41

The following requirements shall be met when an action to be initiated:

- (1). the plaintiff must be a citizen, a legal person or any other organization that considers a specific administrative act as having infringed upon his or its lawful rights and interests;
- (2). there must be a specific defendant;
- (3). there must be specific claims and corresponding factual basis; and
- (4). the suit must fall within the scope of cases acceptable to the people's courts and the jurisdiction of the people's court accepting to hear the case.

Article 42

When a people's court receives a bill of complaint, it shall, upon examination, file a case or make a ruling not to accept it within seven days. If the plaintiff refuses to accept the ruling, the plaintiff may appeal to a people's court at the higher level.

Chapter VII Trial and Judgment

Article 43

A people's court shall, within five days after filing a case, send a copy of the bill of complaint to the defendant. The defendant shall, within 10 days after receiving the copy of the bill of complaint, provide the people's court with the documents on which a specific administrative act has been based and submit a bill of defense. The people's court shall send a copy of the bill of defense to the plaintiff within five days after receiving it.

Failure by the defendant to submit a bill of defense shall not affect the trial of the case by the people's court.

Article 44

During the time of legal proceedings, execution of the specific administrative act shall not be suspended. Execution of the specific administrative act shall be suspended under one of the following circumstances:

- (1). if suspension is deemed necessary by the defendant;
- (2). if the defendant applies for a suspension of execution, and the people's court deems that execution of the specific administrative act will cause irremediable losses and suspension of the execution will not harm public interests, and thus rules to suspend the execution; or
- (3). if suspension of execution is required by the provisions of laws or regulations.

Article 45

The people's court shall openly try administrative cases, unless the cases involve State secrets or personal privacy or are otherwise provided for by law.

Article 46

When the people's court hears administrative cases, a collegial panel of judges or of judges and assessors shall be formed. The number of members of a collegial panel shall be an odd number of three or more.

Article 47

If a party considers a member of the judicial personnel to have an interest in the case or to be related to it, which may affect the impartial handling of the case, the party shall have the right to demand the withdrawal of the judicial personnel.

If a member of the judicial personnel considers himself or herself to have an interest in the case or to have other relations with it, he or she shall apply for withdrawal.

The provisions of the two preceding paragraphs shall apply to court clerks, interpreters, expert witnesses and persons who conduct inquests.

The withdrawal of the president of the court as the presiding judge shall be decided by the court's adjudication committee; the withdrawal of a member of the judicial personnel shall be decided by the president of the court; the withdrawal of other personnel shall be decided by the presiding judge. Any party who refuses to accept the decision may apply for a reconsideration.

Article 48

In case where a plaintiff refuses to appear in court without justified reasons after being summoned twice by the people's court, the court shall consider this an application of withdrawal of the case; if the defendant refuses to appear in court without justified reasons, the court may make a judgment by default.

Article 49

If a participant in the proceedings or any other person commits any of the following acts, the people's court may, according to the seriousness of his or her offense, reprimand him or her, order him or her to sign a statement of repentance or impose upon him or her a fine not exceeding 1,000 yuan or detain him or her for a period not exceeding 15 days; if a crime is constituted, criminal responsibility shall be investigated according to law:

- (1). any person who has the duty to render assistance, but delays without reason or refuses to render assistance or obstructing the execution after the people's court has served him or her a notice for assistance;
- (2). forging, concealing or destroying evidence;
- (3). instigating, bribing or coercing others to make false testimony or obstructing witnesses from giving testimony;
- (4). concealing, transferring, selling or destroying the property that has been sealed up, seized or frozen;
- (5). resorting to violence, coercion or other means to obstruct the personnel of a people's court from performing their duties or disturbing the order of a people's court; or
- (6). insulting, slandering, framing, beating or retaliating against the personnel of a people's court, participants in proceedings or personnel who assist in the execution of duties.

A fine or detention must be approved by the president of a people's court. Any party who refuses to accept the punishment decision may apply for a reconsideration.

Article 50

A people's court shall not apply conciliation in trying an administrative case.

Article 51

Prior to a judgment or rulings made by a people's court on an administrative case, if the plaintiff applies for the withdrawal of the case, or if the defendant amends the specific administrative act and the plaintiff, as a result, agrees and applies for the withdrawal of the suit, the people's court shall decide whether or not to grant the approval thereon.

Article 52

In trying administrative cases, the people's courts shall take the law, administrative rules and regulations and local regulations as the criteria. Local regulations shall be applicable to administrative cases within the corresponding administrative areas.

In trying administrative cases of a national autonomous area, the people's courts shall also take the regulations on autonomy and separate regulations of the national autonomous area as the criteria.

Article 53

In trying administrative cases, the people's courts shall take as reference regulations formulated and announced by ministries or commissions under the State Council in accordance with the law and administrative rules and regulations, decisions or orders of the State Council, and regulations formulated and announced, in accordance with the law and administrative rules and regulations of the State Council, by the people's governments of provinces, autonomous regions and municipalities directly under the Central Government, by the cities where the people's governments of provinces and autonomous regions are located, as well as rules and regulations made, in accordance with laws and administrative regulations of the State Council, by the larger cities approved by the State Council.

If a people's court considers regulations or rules formulated and announced by a local people's government to be inconsistent with regulations or rules formulated and announced by a ministry or commission under the State Council, or if it considers rules or regulations formulated and announced by ministries or commissions under the State Council to be inconsistent with each other, the Supreme People's Court shall refer the matter to the State Council for an interpretation or ruling.

Article 54

After hearing a case, a people's court shall make one of the following judgments according to the conditions:

- (1). rule to uphold the specific administrative act if the evidence for taking the specific administrative act is conclusive, the application of the law and regulations is correct, and the legal procedure is complied with.
- (2). rule to cancel or cancel partially the specific administrative act, or rule the defendant to make a new administrative act if the specific administrative act has been taken in one of the following circumstances:

1. found to be inadequate in essential evidence;

2. found that the application of the law or regulations is erroneous;

3. found to have violated the legal procedure;

4. found to have acted exceeding authority; or

5. found to have abused the powers.

(3). if a defendant fails to perform or delays the performance of its statutory duty, a fixed time shall be set by judgment for its performance of the duty.

(4). if an administrative penalty is obviously unfair, rule to make amendment.

Article 55

Where the people's court rules a defendant to take a new specific administrative act, the defendant may not, based on the same fact and reason, undertake a specific administrative act essentially identical with the original one.

Article 56

In trying administrative cases, if a people's court considers the head of an administrative organ or the person directly in charge to have violated administrative discipline, the court shall transfer the relevant materials to the administrative organ or the administrative organ at the next higher level or to a supervisory or personnel department; if a people's court considers that there exists a criminal act, it shall transfer the relevant materials to the public security and procuratorial organs.

Article 57

The people's court shall make a judgment of first instance within three months from the day of filing the case. If an extension of the time limit is necessary under special circumstances, it shall be approved by a higher people's court, if an extension of the time limit for trying a case of first instance by a higher people's court is needed, this shall be approved by the Supreme People's Court.

Article 58

If a party refuses to accept a judgment of first instance made by a people's court, the party shall have the right to file an appeal with the people's court at the next higher level within 15 days after the service of the written judgment. If a party refuses to accept a ruling of first instance made by a people's court, the party shall have the right to file an appeal with the people's court at the next higher level within 10 days after the service of the written ruling. All judgments and rulings of first instance made by the people's court that have not been appealed within the prescribed time limit shall be legally effective.

Article 59

A people's court may handle an appealed case by examining the court records if it considers the facts clearly ascertained.

Article 60

In handling an appealed case, a people's court shall make a final judgment within two months from the day of receiving the appeal. If an extension of the time limit is necessary under special circumstances, it shall be approved by a

higher people's court, if an extension of the time limit for handling an appealed case by a higher people's court is necessary, this shall be approved by the Supreme People's Court.

Article 61

The people's court shall handle appealed cases in light of the conditions:

(1). if the facts are clearly ascertained and the law and regulations are correctly applied in the original judgment, the appeal shall be rejected and the original judgment shall be upheld;

(2). if the facts are clearly ascertained but the law and regulations are incorrectly applied in the original judgment, the judgment shall be amended according to the law and regulations; or

(3). if the facts are not clearly ascertained in the original judgment or the evidence is insufficient, or a violation of the prescribed procedure may have affected the correctness of the original judgment, the original judgment shall be rescinded and the case shall be remanded to the original people's court for a retrial, or the people's court of the second instance may amend the judgment after investigating and clarifying the facts. The parties may appeal against the judgment or ruling rendered in a retrial of their case.

Article 62

If a party considers that a legally effective judgment or ruling contains definite error, the party may make complaints to the people's court which tried the case or to a people's court at a higher level, but the execution of the judgment or ruling shall not be suspended.

Article 63

If the president of a people's court finds a violation of provisions of the law or regulations in a legally effective judgment or ruling made by his or her court and deems it necessary to have the case retried, the president shall refer the matter to the adjudication committee, which shall decide whether a retrial is necessary.

If a people's court at a higher level finds a violation of provisions of the law or regulations in a legally effective judgment or ruling made by a people's court at a lower level, it shall have the power to bring the case up for trial itself or direct the people's court at the lower level to conduct a retrial.

Article 64

If the people's procuratorate finds a violation of provisions of the law or regulations in a legally effective judgment or ruling made by a people's court, it shall have the right to lodge a protest in accordance with procedures of judicial supervision.

Chapter VIII Execution

Article 65

The parties must perform the legally effective judgment or ruling made by the people's court.

If a citizen, a legal person or any other organization refuses to perform the judgment or ruling, the administrative organ may apply to a people's court of

first instance for compulsory execution or proceed with compulsory execution according to law.

If an administrative organ refuses to perform the judgment or ruling, the people's court of first instance may adopt the following measures:

- (1). informing the bank to transfer from the administrative organ's account the amount of the fine that should be returned or the damages that should be paid;
- (2). imposing a fine ranging from 50 to 100 yuan per day on an administrative organ that fails to perform the judgment or ruling within the prescribed time limit, counting from the day when the time limit expires;
- (3). making a judicial proposal to the administrative organ next higher to the administrative organ in question or to a supervisory or personnel department. The organ that accepts the judicial proposal shall deal with the matter in accordance with the relevant provisions and inform the people's court of its disposition; and
- (4). if an administrative organ refuses to execute a judgment or ruling, and the circumstances are so serious that a crime is constituted, the head of the administrative organ and the person directly held responsible shall be investigated for criminal responsibility according to law.

Article 66

If a citizen, a legal person or any other organization, during the period prescribed by law, neither initiates an action nor carries out the specific administrative act, the administrative organ may apply to a people's court for compulsory execution, or proceeds with compulsory execution according to law.

Chapter IX Compensation Liability for Infringement of Rights

Article 67

A citizen, a legal person or any other organization who suffers damage because of the infringement upon his or her or its lawful rights and interests by a specific administrative act taken by an administrative organ or its personnel shall have the right to claim compensation.

If a citizen, a legal person or any other organization makes an independent claim for damages, the case shall first be dealt with by the administrative organ. If the disposition by the administrative organ is refused to be accepted, an action may be initiated to a people's court.

Conciliation may apply to an action for compensation.

Article 68

If a specific administrative act taken by an administrative organ or its personnel infringes upon the lawful rights and interests of a citizen, a legal person or any other organization and thus causes damage thereto, the administrative organ or the administrative organ to which the personnel belongs shall bear the liability for making compensation.

After having borne the liability for making compensation, the administrative organ shall instruct those personnel who have committed intentional or gross

mistakes in the case to bear part or all of the damages.

Article 69

The cost of compensation shall be included as an expenditure in the government budget at various levels. The people's governments at various levels may order the administrative organs responsible for causing the compensation to bear part or all of the damages. The specific measures thereof shall be formulated by the State Council.

Chapter X Administrative Procedure Involving Foreign Interests

Article 70

This Law shall be applicable to foreign nationals, stateless persons and foreign organizations that are engaged in administrative actions in the People's Republic of China, except as otherwise provided for by law.

Article 71

Foreign nationals, stateless persons and foreign organizations that are engaged in administrative actions in the People's Republic of China shall have the same rights and obligations to action as citizens and organizations of the People's Republic of China.

Should the courts of a foreign country impose restrictions on the administrative litigation rights of the citizens and organizations of the People's Republic of China, the Chinese people's courts shall follow the principle of reciprocity regarding the administrative litigation rights of the citizens and organizations of that foreign country.

Article 72

If an international treaty concluded or acceded to by the People's Republic of China contains provisions different from those of this Law, the provisions of the international treaty shall apply, with exception of those clauses on which the People's Republic of China has announced reservations.

Article 73

When foreign nationals, stateless persons and foreign organizations appoint lawyers as their agents in administrative actions in the People's Republic of China, they shall appoint lawyers of a lawyers organization of the People's Republic of China.

Chapter XI Supplementary Provisions

Article 74

The people's court shall charge litigation fees for handling administrative cases. The litigation fee shall be borne by the losing party, or by both parties if they are both held responsible. The specific measures on the charging of litigation fees shall be made separately.

Article 75

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