|  |  |  |
| --- | --- | --- |
| 发文机关  Promulgator | ：  : | 全国人民代表大会常务委员会  The Standing Committee of the National People's Congress |
| 发布日期  Date of Issue | ：  : | 2017.06.27  2017.06.27 |
| 生效日期  Effective Date | ：  : | 2017.07.01  2017.07.01 |
| 时效性  Effectiveness | ：  : | 现行有效  Current |

# 中华人民共和国行政诉讼法（2017修正）

# Administrative Procedure Law of the People's Republic of China (Revised in 2017)

中华人民共和国行政诉讼法（2017修正）

Administrative Procedure Law of the People's Republic of China (Revised in 2017)

（1989年4月4日第七届全国人民代表大会第二次会议通过　根据2014年11月1日第十二届全国人民代表大会常务委员会第十一次会议《关于修改〈中华人民共和国行政诉讼法〉的决定》第一次修正　根据2017年6月27日第十二届全国人民代表大会常务委员会第二十八次会议《关于修改〈中华人民共和国民事诉讼法〉和〈中华人民共和国行政诉讼法〉的决定》第二次修正）

(Adopted at the 2nd Session of the 7th National People 's Congress on April 4, 1989; amended for the first time according to the Decision on Revising the Administrative Procedure Law of the People's Republic of China at the 11th Session of the Standing Committee of the 12th National People's Congress on November 1, 2014; and amended for the second time according to the Decision on Revising the Civil Procedure Law of the People's Republic of China and the Administrative Procedure Law of the People's Republic of China at the 28th Session of the Standing Committee of the 12th National People's Congress on June 27, 2017)

目　录

Contents

　　第一章 总 则

Chapter 1 General Provisions

　　第二章 受案范围

Chapter 2 Scope of Case

　　第三章 管 辖

Chapter 3 Jurisdiction

　　第四章 诉讼参加人

Chapter 4 Participants in Legal Actions

　　第五章 证 据

Chapter 5 EVIDENCE

　　第六章 起诉和受理

Chapter 6 PROSECUTION AND HEARING

　　第七章 审理和判决

Chapter 7 Trial and Judgment

　　　　第一节 一般规定

Section 1 General Provisions

　　　　第二节 第一审普通程序

Section 2 Ordinary Procedure at First Instance

　　　　第三节 简易程序

Section 3 Summary Procedure

　　　　第四节 第二审程序

Section 4 Procedure at Second Instance

　　　　第五节 审判监督程序

Section 5 Procedure for Trial Supervision

　　第八章 执 行

Chapter 8 Enforcement

　　第九章 涉外行政诉讼

Chapter 9 Foreign-related Administrative Litigation

　　第十章 附 则

Chapter 10 Supplementary Provisions

第一章 总 则

Chapter 1 General Provisions

第一条   为保证人民法院公正、及时审理行政案件，解决行政争议，保护公民、法人和其他组织的合法权益，监督行政机关依法行使职权，根据宪法，制定本法。

Article 1 In accordance with the Constitution, this Law is enacted for the purpose of ensuring the impartial and timely hearing of administrative cases and settlement of administrative disputes by people's courts, protecting the lawful rights and interests of citizens, legal persons and other organizations and supervising the exercise of functions and powers by administrative organs in accordance with the law.

第二条   公民、法人或者其他组织认为行政机关和行政机关工作人员的行政行为侵犯其合法权益，有权依照本法向人民法院提起诉讼。

Article 2 Where citizens, legal persons or other organizations which consider that administrative acts of administrative organs or their personnel have infringed their legitimate rights and interests, they shall have the right to institute proceedings in people's courts according to this Law.

前款所称行政行为，包括法律、法规、规章授权的组织作出的行政行为。

An administrative act referred to in the preceding paragraph shall include an administrative act made by an organisation authorised by laws, regulations and rules.

第三条   人民法院应当保障公民、法人和其他组织的起诉权利，对应当受理的行政案件依法受理。

Article 3 A people's court shall guarantee the rights of citizens, legal persons and other organizations to file a lawsuit and shall accept an administrative case that shall be accepted in accordance with the law.

行政机关及其工作人员不得干预、阻碍人民法院受理行政案件。

Administrative organs and their personnel shall not intervene or hamper the acceptance of administrative cases by a people's court.

被诉行政机关负责人应当出庭应诉。不能出庭的，应当委托行政机关相应的工作人员出庭。

The person in charge of an administrative organ sued shall appear in court. If he cannot appear in court, he shall appoint the corresponding personnel of the administrative organ to appear in court.

第四条   人民法院依法对行政案件独立行使审判权，不受行政机关、社会团体和个人的干涉。

Article 4 A people's court shall hear administrative cases independently in accordance with the law and shall not be subject to interference from any administrative organ, social organization or individual.

人民法院设行政审判庭，审理行政案件。

A people's court shall set up an administrative tribunal to hear administrative cases.

第五条   人民法院审理行政案件，以事实为根据，以法律为准绳。

Article 5 People's courts shall hear administrative cases based on the facts of such cases and in accordance with the law.

第六条   人民法院审理行政案件，对行政行为是否合法进行审查。

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

第七条   人民法院审理行政案件，依法实行合议、回避、公开审判和两审终审制度。

Article 7 In hearing administrative cases, people's courts shall implement a collegiate system, a challenge system, a system of public hearings and a system of the court of second instance being the court of last instance according to the law.

第八条   当事人在行政诉讼中的法律地位平等。

Article 8 Parties to administrative proceedings shall have equal legal status.

第九条   各民族公民都有用本民族语言、文字进行行政诉讼的权利。

Article 9 Citizens of all nationalities shall have the right to use their native spoken and written languages in administrative proceedings.

在少数民族聚居或者多民族共同居住的地区，人民法院应当用当地民族通用的语言、文字进行审理和发布法律文书。

Where minority nationalities live in concentrated communities or where several nationalities live together in one area, the people's courts shall conduct hearings and issue legal documents in the spoken and written languages commonly used by the local nationalities.

人民法院应当对不通晓当地民族通用的语言、文字的诉讼参与人提供翻译。

The people's courts shall provide translations for any participant in the proceedings who is not familiar with the spoken or written languages commonly used by the local nationalities.

第十条   当事人在行政诉讼中有权进行辩论。

Article 10 Parties to administrative proceedings shall have the right to engage in debate.

第十一条   人民检察院有权对行政诉讼实行法律监督。

Article 11 People's procuratorates shall have the right to exercise legal supervision over administrative proceedings.

第二章 受案范围

Chapter 2 Scope of Case

第十二条   人民法院受理公民、法人或者其他组织提起的下列诉讼：

Article 12 A people's court shall accept the following types of proceedings instituted by citizens, legal persons or other organizations that:

（一）对行政拘留、暂扣或者吊销许可证和执照、责令停产停业、没收违法所得、没收非法财物、罚款、警告等行政处罚不服的；

1. are dissatisfied with an administrative penalty such as administrative detention, suspension or revocation of a permit or license, an order to suspend production or business activities, confiscation of illegal gains or property, imposition of a fine and warning;

（二）对限制人身自由或者对财产的查封、扣押、冻结等行政强制措施和行政强制执行不服的；

(II) refusing to accept a compulsory administrative measure or administrative execution, such as restriction of personal freedom or sealing up, seizing or freezing property;

（三）申请行政许可，行政机关拒绝或者在法定期限内不予答复，或者对行政机关作出的有关行政许可的其他决定不服的；

3. in case of an application for administrative licensing, are dissatisfied with the administrative organs' refusal to accept or failure to respond to the application within a legal time limit, or with other decisions made by the administrative organs on administrative licensing;

（四）对行政机关作出的关于确认土地、矿藏、水流、森林、山岭、草原、荒地、滩涂、海域等自然资源的所有权或者使用权的决定不服的；

(IV) refuse to accept decisions made by administrative organs concerning the right of ownership in or the right to the use of natural resources such as land, mineral resources, waters, forests, mountains or hills, grasslands, wasteland, tidal flats and sea areas;

（五）对征收、征用决定及其补偿决定不服的；

(V) are dissatisfied with the decisions on expropriation, requisition and compensation therefor;

（六）申请行政机关履行保护人身权、财产权等合法权益的法定职责，行政机关拒绝履行或者不予答复的；

6. in case of an application for performance of the statutory duties to protect the personal right and property right as well as other legitimate rights and interests by the administrative organs, are dissatisfied with the administrative organs' refusal to perform or to respond to the application;

（七）认为行政机关侵犯其经营自主权或者农村土地承包经营权、农村土地经营权的；

(VII) consider that the administrative organs have infringed their autonomy in management or rural land contractual management right and rural land management right;

（八）认为行政机关滥用行政权力排除或者限制竞争的；

(VIII) consider that the administrative organs abuse administrative powers to eliminate or restrict competition;

（九）认为行政机关违法集资、摊派费用或者违法要求履行其他义务的；

(IX) consider that the administrative organs raise funds, amortize expenses or require them to perform other obligations in an illegal way;

（十）认为行政机关没有依法支付抚恤金、最低生活保障待遇或者社会保险待遇的；

(X) consider that the administrative organs fail to pay pensions, the subsistence allowances or social insurance benefits in accordance with the law;

（十一）认为行政机关不依法履行、未按照约定履行或者违法变更、解除政府特许经营协议、土地房屋征收补偿协议等协议的；

(XI) consider that the administrative organs fail to perform in accordance with the law or the agreement, or illegally change or terminate government franchise agreements, agreements on land and house expropriation and compensation and other agreements; or

（十二）认为行政机关侵犯其他人身权、财产权等合法权益的。

(XII) consider that the administrative organs have infringed other legitimate rights and interests such as personal rights and property rights.

除前款规定外，人民法院受理法律、法规规定可以提起诉讼的其他行政案件。

In addition to the provisions in the preceding paragraph, people's courts shall accept other administrative cases for which proceedings may be instituted under laws and regulations.

第十三条   人民法院不受理公民、法人或者其他组织对下列事项提起的诉讼：

Article 13 People's courts shall not accept the proceedings instituted by citizens, legal persons or other organizations for the following matters:

（一）国防、外交等国家行为；

1. acts of the State in areas such as national defence and foreign affairs;

（二）行政法规、规章或者行政机关制定、发布的具有普遍约束力的决定、命令；

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

（三）行政机关对行政机关工作人员的奖惩、任免等决定；

(III) decisions of administrative organs to reward, punish, appoint or dismiss personnel of administrative organs; and

（四）法律规定由行政机关最终裁决的行政行为。

(IV) administrative acts for which the law provides that final adjudication is to be conducted by administrative organs.

第三章 管 辖

Chapter 3 Jurisdiction

第十四条   基层人民法院管辖第一审行政案件。

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

第十五条   中级人民法院管辖下列第一审行政案件：

Article 15 Intermediate people's courts shall have jurisdiction over the following administrative cases of first instance:

（一）对国务院部门或者县级以上地方人民政府所作的行政行为提起诉讼的案件；

1. proceedings instituted against the administrative acts of any department under the State Council or the people's government at county level or above;

（二）海关处理的案件；

2. cases handled by the customs;

（三）本辖区内重大、复杂的案件；

3. grave and complicated cases which arise in their areas of jurisdiction; and

（四）其他法律规定由中级人民法院管辖的案件。

(IV) other cases under the jurisdiction of the intermediate people's courts as stipulated by law.

第十六条   高级人民法院管辖本辖区内重大、复杂的第一审行政案件。

Article 16 Higher people's courts shall have jurisdiction as courts of first instance over grave and complicated administrative cases in areas under their jurisdiction.

第十七条   最高人民法院管辖全国范围内重大、复杂的第一审行政案件。

Article 17 The Supreme People's Court shall have jurisdiction as a court of first instance over grave and complicated administrative cases in the whole country.

第十八条   行政案件由最初作出行政行为的行政机关所在地人民法院管辖。经复议的案件，也可以由复议机关所在地人民法院管辖。

Article 18 Jurisdiction over administrative cases shall be exercised by the people's court at the place where the administrative organ which originally performed the administrative act (from which the case arose) is located. For cases which have been reconsidered, jurisdiction over such cases may be exercised by the people's court at the place where such reconsideration organ is located.

经最高人民法院批准，高级人民法院可以根据审判工作的实际情况，确定若干人民法院跨行政区域管辖行政案件。

Upon the approval of the Supreme People's Court, a higher people's court may, according to the actual situation of the trial, determine several people's courts to have cross-regional jurisdiction over administrative cases.

第十九条   对限制人身自由的行政强制措施不服提起的诉讼，由被告所在地或者原告所在地人民法院管辖。

Article 19 Jurisdiction over cases arising from dissatisfaction with administrative orders which restrict personal freedom shall be exercised by the people's court at the place of residence of the defendant or plaintiff.

第二十条   因不动产提起的行政诉讼，由不动产所在地人民法院管辖。

Article 20 Jurisdiction over administrative litigation involving real property shall be exercised by the people's court at the place where the real property is located.

第二十一条   两个以上人民法院都有管辖权的案件，原告可以选择其中一个人民法院提起诉讼。原告向两个以上有管辖权的人民法院提起诉讼的，由最先立案的人民法院管辖。

Article 21 When two or more people's courts have jurisdiction over a case, the plaintiff may have the option to bring the suit in one of these people's courts. Where the plaintiff institutes proceedings in two or more people's courts with jurisdiction, the people's court that first places the case on its trial docket shall have jurisdiction.

第二十二条   人民法院发现受理的案件不属于本院管辖的，应当移送有管辖权的人民法院，受移送的人民法院应当受理。受移送的人民法院认为受移送的案件按照规定不属于本院管辖的，应当报请上级人民法院指定管辖，不得再自行移送。

Article 22 If a people's court finds that a case it has entertained is not under its jurisdiction, it shall refer the case to the people's court that has jurisdiction over the case. The people's court to which a case has been referred shall entertain the case, and if it considers that, according to the relevant regulations, the case referred to it is not under its jurisdiction, it shall report to a superior people's court for the designation of jurisdiction and shall not independently refer the case again to another people's court.

第二十三条   有管辖权的人民法院由于特殊原因不能行使管辖权的，由上级人民法院指定管辖。

Article 23 If, due to special reasons, a people's court with jurisdiction over a case is not in a position to exercise such jurisdiction, a superior people's court shall designate jurisdiction.

人民法院对管辖权发生争议，由争议双方协商解决。协商不成的，报它们的共同上级人民法院指定管辖。

If a dispute arises over jurisdiction between 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.

第二十四条   上级人民法院有权审理下级人民法院管辖的第一审行政案件。

Article 24 People's courts at higher levels shall have the power to hear administrative cases over which people's courts at lower levels have jurisdiction as courts of first instance.

下级人民法院对其管辖的第一审行政案件，认为需要由上级人民法院审理或者指定管辖的，可以报请上级人民法院决定。

If a lower level people's court considers that an administrative case of first instance within its jurisdiction shall be tried by or subject to a jurisdiction designated by a higher level people's court, it may report to a higher level people's court for decision.

第四章 诉讼参加人

Chapter 4 Participants in Legal Actions

第二十五条   行政行为的相对人以及其他与行政行为有利害关系的公民、法人或者其他组织，有权提起诉讼。

Article 25 The concerned person to an administrative act and other citizens, legal persons or other organizations that have an interest in the administrative act are entitled to institute proceedings.

有权提起诉讼的公民死亡，其近亲属可以提起诉讼。

If a citizen who has the right to bring a suit is deceased, his near relatives may bring the suit.

有权提起诉讼的法人或者其他组织终止，承受其权利的法人或者其他组织可以提起诉讼。

Where legal persons or other organizations which have the right to institute proceedings are terminated, the legal persons or other organizations which succeed to their rights may institute proceedings.

人民检察院在履行职责中发现生态环境和资源保护、食品药品安全、国有财产保护、国有土地使用权出让等领域负有监督管理职责的行政机关违法行使职权或者不作为，致使国家利益或者社会公共利益受到侵害的，应当向行政机关提出检察建议，督促其依法履行职责。行政机关不依法履行职责的，人民检察院依法向人民法院提起诉讼。

Where the people's procuratorate finds that administrative organs responsible for the supervision and management of such areas as the ecological environment and resources protection, food and drug safety, state-owned assets protection and grant of land use rights for state-owned land perform duties unlawfully or omit to perform duties, infringing upon the national or public interests, it may institute a procuratorial proposal to the administrative authority to urge such authority to perform its duty in accordance with the law. If such administrative authority fails to perform its duty in accordance with the law, the people's procuratorate shall institute a lawsuit to the people's court.

第二十六条   公民、法人或者其他组织直接向人民法院提起诉讼的，作出行政行为的行政机关是被告。

Article 26 Defendants shall be the administrative organs which performed the administrative act (which are the subjects of the proceedings) where citizens, legal persons or other organizations directly institute proceedings in people's courts.

经复议的案件，复议机关决定维持原行政行为的，作出原行政行为的行政机关和复议机关是共同被告；复议机关改变原行政行为的，复议机关是被告。

For cases which have been reconsidered, where the reconsideration organ decides to uphold the original decision, the co-defendants shall be the administrative organ which performed the original administrative act and the reconsideration organ. Where the reconsideration organ orders the amendment of the original administrative act, the defendant shall be such reconsideration organ.

复议机关在法定期限内未作出复议决定，公民、法人或者其他组织起诉原行政行为的，作出原行政行为的行政机关是被告；起诉复议机关不作为的，复议机关是被告。

Where a reconsideration organ fails to make a reconsideration decision within the statutory period, and citizens, legal persons or other organizations sue the original administrative act, the defendant is the administrative organ which performed the original administrative act; where the reconsideration organ is accused of dereliction of duty, the defendant shall be such reconsideration organ.

两个以上行政机关作出同一行政行为的，共同作出行政行为的行政机关是共同被告。

Where two or more administrative organs perform the same administrative act, the administrative organs that jointly performed the administrative act shall be co-defendants.

行政机关委托的组织所作的行政行为，委托的行政机关是被告。

Where the administrative act is performed by an organization entrusted by an administrative organ, such organ shall be the defendant.

行政机关被撤销或者职权变更的，继续行使其职权的行政机关是被告。

Where an administrative organ is dissolved or its functions and powers are changed, the administrative organ which continues to exercise the original organ's functions and powers shall be the defendant.

第二十七条   当事人一方或者双方为二人以上，因同一行政行为发生的行政案件，或者因同类行政行为发生的行政案件、人民法院认为可以合并审理并经当事人同意的，为共同诉讼。

Article 27 Administrative cases arising from the same or similar administrative act shall be deemed to be cases of joint litigation where one party or both parties consist of two or more persons, the people's court considers that the cases can be jointly heard and the parties concerned agree.

第二十八条   当事人一方人数众多的共同诉讼，可以由当事人推选代表人进行诉讼。代表人的诉讼行为对其所代表的当事人发生效力，但代表人变更、放弃诉讼请求或者承认对方当事人的诉讼请求，应当经被代表的当事人同意。

Article 28 If the persons comprising a party to a joint action is large in number, the party may elect representatives from among themselves to act for them in the litigation. The acts of such representatives in the litigation shall be valid for the party they represent. However, modification or waiver of claims or admission of the claims of the other party by the representatives shall be subject to the consent of the party they represent.

第二十九条   公民、法人或者其他组织同被诉行政行为有利害关系但没有提起诉讼，或者同案件处理结果有利害关系的，可以作为第三人申请参加诉讼，或者由人民法院通知参加诉讼。

Article 29 Citizens, legal persons or other organizations that have an interest in an administrative act against which proceedings are instituted and fail to institute proceedings, or that have an interest in the outcomes of a case, may apply to participate in the proceedings as third parties or may be ordered by people's courts to participate in the proceedings.

人民法院判决第三人承担义务或者减损第三人权益的，第三人有权依法提起上诉。

A third party who is ruled by a people's court to bear an obligation or have its rights or interests undermined is entitled to institute an appeal in accordance with the law.

第三十条   没有诉讼行为能力的公民，由其法定代理人代为诉讼。法定代理人互相推诿代理责任的，由人民法院指定其中一人代为诉讼。

Article 30 Where a citizen has no capacity to institute proceedings, his statutory agents shall commence proceedings on his behalf. If the statutory agents try to shift responsibility as agents ad litem upon one another, the people's court shall appoint one of them to represent the person in litigation.

第三十一条   当事人、法定代理人，可以委托一至二人作为诉讼代理人。

Article 31 Parties and statutory agents may entrust one to two agents ad litem.

下列人员可以被委托为诉讼代理人：

The following persons may be entrusted as agents ad litem:

（一）律师、基层法律服务工作者；

1. lawyers and law service providers at the grass-roots level;

（二）当事人的近亲属或者工作人员；

2. close relatives or employees of the parties; and

（三）当事人所在社区、单位以及有关社会团体推荐的公民。

3. citizens recommended by the community where the party resides, the employer of the party or any other social organization concerned.

第三十二条   代理诉讼的律师，有权按照规定查阅、复制本案有关材料，有权向有关组织和公民调查，收集与本案有关的证据。对涉及国家秘密、商业秘密和个人隐私的材料，应当依照法律规定保密。

Article 32 Lawyers acting as agents ad litem are entitled to gain access to or copy any information relating to the case in question according to the relevant provisions and are entitled to investigate and collect evidence related to the case from organizations and citizens concerned. The confidentiality of state secrets, trade secrets and personal privacy shall be maintained in accordance with the law.

当事人和其他诉讼代理人有权按照规定查阅、复制本案庭审材料，但涉及国家秘密、商业秘密和个人隐私的内容除外。

The parties and other agents ad litem are entitled to gain access to or copy the court trial-related documents concerning the case in question according to the relevant provisions, except for information involving state and commercial secrets and individual privacy.

第五章 证 据

Chapter 5 EVIDENCE

第三十三条   证据包括：

Article 33 The evidence shall include:

（一）书证；

1. documentary evidence;

（二）物证；

2. physical evidence;

（三）视听资料；

(III) audio-visual materials;

（四）电子数据；

(IV) electronic data;

（五）证人证言；

(V) testimony of witnesses;

（六）当事人的陈述；

(VI) statements of parties;

（七）鉴定意见；

(VII) expert opinions; and

（八）勘验笔录、现场笔录。

(VIII) written records of inquests and records made on the scene.

以上证据经法庭审查属实，才能作为认定案件事实的根据。

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

第三十四条   被告对作出的行政行为负有举证责任，应当提供作出该行政行为的证据和所依据的规范性文件。

Article 34 A defendant shall bear the burden of proof in respect of its administrative act, and provide evidence of having performed such administrative act and the normative documents on which such administrative act is based.

被告不提供或者无正当理由逾期提供证据，视为没有相应证据。但是，被诉行政行为涉及第三人合法权益，第三人提供证据的除外。

Where the defendant fails to provide evidence or provides evidence beyond the specified period without justified reasons, it shall be deemed that there is no corresponding evidence. However, if the administrative act against which proceedings are instituted involves the legitimate rights and interests of a third party, the evidence provided by the third party shall be an exception.

第三十五条   在诉讼过程中，被告及其诉讼代理人不得自行向原告、第三人和证人收集证据。

Article 35 During the proceedings, the defendant and its agent ad litem may not collect evidence from the plaintiff, third party or witness (es) on its own initiative.

第三十六条   被告在作出行政行为时已经收集了证据，但因不可抗力等正当事由不能提供的，经人民法院准许，可以延期提供。

Article 36 Where the defendant has already collected the evidence before performing an administrative act but is unable to provide it as a result of force majeure or for other legitimate reasons, the defendant may provide the said evidence later upon the approval of the people's court.

原告或者第三人提出了其在行政处理程序中没有提出的理由或者证据的，经人民法院准许，被告可以补充证据。

Where the plaintiff or the third party presents the reasons or evidence not presented during the administrative handling progress, the defendant may supplement the evidence upon the approval of the people's court.

第三十七条   原告可以提供证明行政行为违法的证据。原告提供的证据不成立的，不免除被告的举证责任。

Article 37 A plaintiff may provide the evidence proving that an administrative act is illegal. Where the evidence provided by the plaintiff is false, the defendant shall not be exempted from the burden of proof.

第三十八条   在起诉被告不履行法定职责的案件中，原告应当提供其向被告提出申请的证据。但有下列情形之一的除外：

Article 38 In a case in which the defendant is sued for non- performance of statutory duties, the plaintiff shall provide the evidence proving that it has ever applied to the defendant. Other than in the following circumstances:

（一）被告应当依职权主动履行法定职责的；

1. the defendant shall actively perform the relevant statutory duties in accordance with its functions and powers; or

（二）原告因正当理由不能提供证据的。

(II) the plaintiff fails to provide the evidence for justified reasons.

在行政赔偿、补偿的案件中，原告应当对行政行为造成的损害提供证据。因被告的原因导致原告无法举证的，由被告承担举证责任。

In the cases in which an administrative compensation or reimbursement is required, the plaintiff shall provide evidence proving the damages incurred by the administrative act. Where the plaintiff fails to provide the evidence due to reasons attributable to the defendant, the burden of proof shall be borne by the defendant.

第三十九条   人民法院有权要求当事人提供或者补充证据。

Article 39 A people's court is entitled to require the concerned parties to provide or supplement evidence.

第四十条   人民法院有权向有关行政机关以及其他组织、公民调取证据。但是，不得为证明行政行为的合法性调取被告作出行政行为时未收集的证据。

Article 40 A people's court is entitled to obtain evidence from the relevant administrative organs and other organizations and citizens. However, it shall not obtain the evidence that was not collected when the defendant performed an administrative act so as to prove the legality of the administrative act.

第四十一条   与本案有关的下列证据，原告或者第三人不能自行收集的，可以申请人民法院调取：

Article 41 Where the plaintiff or the third party cannot collect the following evidence related to the case on their own, they may apply to the people's court for obtaining the evidence:

（一）由国家机关保存而须由人民法院调取的证据；

1. the evidence that is kept by the State organs and must be obtained by the people's court;

（二）涉及国家秘密、商业秘密和个人隐私的证据；

(II) evidence involving any state secret, trade secret or personal privacy; and

（三）确因客观原因不能自行收集的其他证据。

(III) other evidence that cannot be collected by themselves due to objective reasons.

第四十二条   在证据可能灭失或者以后难以取得的情况下，诉讼参加人可以向人民法院申请保全证据，人民法院也可以主动采取保全措施。

Article 42 Under circumstances where there is a likelihood that evidence may be destroyed or lost, or difficult to obtain later, the participants in the proceedings may apply to the people's court for preservation of the evidence. The people's court may also on its own initiative take measures to preserve such evidence.

第四十三条   证据应当在法庭上出示，并由当事人互相质证。对涉及国家秘密、商业秘密和个人隐私的证据，不得在公开开庭时出示。

Article 43 Evidence shall be presented in court and cross-examined by the parties concerned. The evidence involving state and commercial secrets and individual privacy shall not be presented in public court.

人民法院应当按照法定程序，全面、客观地审查核实证据。对未采纳的证据应当在裁判文书中说明理由。

A people's court shall comprehensively and objectively examine and verify the evidence according to the statutory procedures. For evidence not accepted, reasons shall be explained in the judgment.

以非法手段取得的证据，不得作为认定案件事实的根据。

No evidence obtained by illegal means may be used as the basis for ascertaining the facts of any case.

第六章 起诉和受理

Chapter 6 PROSECUTION AND HEARING

第四十四条   对属于人民法院受案范围的行政案件，公民、法人或者其他组织可以先向行政机关申请复议，对复议决定不服的，再向人民法院提起诉讼；也可以直接向人民法院提起诉讼。

Article 44 Citizens, legal persons or other organizations may first apply to the administrative organ for reconsideration of administrative cases which fall within the scope of administrative adjudication of a people's court. If such citizens, legal persons or other organizations are dissatisfied with the reconsideration decision, they may institute proceedings with a people's court afterwards. Alternatively, they may institute proceedings directly with a people's court.

法律、法规规定应当先向行政机关申请复议，对复议决定不服再向人民法院提起诉讼的，依照法律、法规的规定。

Where the laws and regulations provide that a party shall first apply to an administrative organ for reconsideration and that a proceeding may be instituted with a people's court only if the party is dissatisfied with the reconsideration decision, such provisions shall apply.

第四十五条   公民、法人或者其他组织不服复议决定的，可以在收到复议决定书之日起十五日内向人民法院提起诉讼。复议机关逾期不作决定的，申请人可以在复议期满之日起十五日内向人民法院提起诉讼。法律另有规定的除外。

Article 45 Where any citizens, legal persons or other organizations are dissatisfied with the reconsideration decision, they may, within 15 days after receiving the decision, institute proceedings with a people's court. 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. Unless otherwise required by law.

第四十六条   公民、法人或者其他组织直接向人民法院提起诉讼的，应当自知道或者应当知道作出行政行为之日起六个月内提出。法律另有规定的除外。

Article 46 If a citizen, a legal person or any other organization brings a suit directly before a people's court, he or it shall do so within six months from the date when he or it knows or should know that a specific administrative act has been taken. Unless otherwise required by law.

因不动产提起诉讼的案件自行政行为作出之日起超过二十年，其他案件自行政行为作出之日起超过五年提起诉讼的，人民法院不予受理。

Where proceedings are not initiated within 20 years as of the date of performance of the administrative action for cases with the proceedings initiated due to real property or within five years as of the date performance of the administrative action for other cases, the people's court shall not accept such cases.

第四十七条   公民、法人或者其他组织申请行政机关履行保护其人身权、财产权等合法权益的法定职责，行政机关在接到申请之日起两个月内不履行的，公民、法人或者其他组织可以向人民法院提起诉讼。法律、法规对行政机关履行职责的期限另有规定的，从其规定。

Article 47 Where citizens, legal persons or other organizations apply to an administrative organ for performance its statutory duties to protect their personal rights, property rights and other legitimate rights and interests and the administrative organ fails to perform its duties within two months as of the date of receipt of the applications, the citizens, legal persons or other organizations may institute proceedings with a people's court. Where the laws and regulations provide otherwise on deadlines for performance of duties by administrative authorities, such provisions shall prevail.

公民、法人或者其他组织在紧急情况下请求行政机关履行保护其人身权、财产权等合法权益的法定职责，行政机关不履行的，提起诉讼不受前款规定期限的限制。

Where citizens, legal persons or other organizations ask an administrative organ to perform its statutory duties to protect their personal rights, property rights and other legitimate rights and interests under an emergency circumstance and the administrative organ fails to perform its duties, the institution of proceedings shall not be subject to the time limit prescribed in the preceding paragraph.

第四十八条   公民、法人或者其他组织因不可抗力或者其他不属于其自身的原因耽误起诉期限的，被耽误的时间不计算在起诉期限内。

Article 48 Where citizens, legal persons or other organizations fail to meet the deadline for institution of proceedings due to force majeure or other reasons not attributable to themselves, the delayed time shall not be included in the time limit for institution of proceedings.

公民、法人或者其他组织因前款规定以外的其他特殊情况耽误起诉期限的，在障碍消除后十日内，可以申请延长期限，是否准许由人民法院决定。

Citizens, legal persons or other organizations that fail to meet the deadline for institution f proceedings due to special circumstances other than those mentioned in the preceding paragraph may, within ten days upon removal of the obstacles, apply to a people's court for an extension of the time limit. The extension applied shall be subject to the approval of the people's court.

第四十九条   提起诉讼应当符合下列条件：

Article 49 The institution of proceedings shall meet the following conditions:

（一）原告是符合本法第二十五条规定的公民、法人或者其他组织；

1. the plaintiff shall be any of citizens, legal persons or other organizations as specified in Article 25 hereof;

（二）有明确的被告；

2. there must be a definite defendant;

（三）有具体的诉讼请求和事实根据；

3. there must be a specific claim and a corresponding factual basis; and

（四）属于人民法院受案范围和受诉人民法院管辖。

(IV) the suit must fall within the scope of cases acceptable to the people's courts and the jurisdiction of the people's court where it is filed.

第五十条   起诉应当向人民法院递交起诉状，并按照被告人数提出副本。

Article 50 When instituting an action, a statement of claim shall be submitted to the people's court, together with a number of copies corresponding to the number of defendants.

书写起诉状确有困难的，可以口头起诉，由人民法院记入笔录，出具注明日期的书面凭证，并告知对方当事人。

Where there is actually a difficulty in writing a statement of claim, a proceeding may be instituted in an oral way, and the people's court shall be responsible for making a written record, issuing a written document with the specific date of receipt marked and notifying the other party concerned.

第五十一条   人民法院在接到起诉状时对符合本法规定的起诉条件的，应当登记立案。

Article 51 When a people's court receives a bill of complaint and finds that it meets the requirements for acceptance as specified in this Law, the court shall file the case.

对当场不能判定是否符合本法规定的起诉条件的，应当接收起诉状，出具注明收到日期的书面凭证，并在七日内决定是否立案。不符合起诉条件的，作出不予立案的裁定。裁定书应当载明不予立案的理由。原告对裁定不服的，可以提起上诉。

For a case where it cannot decide whether the conditions for instituting a proceeding specified herein are met or not, the people's court shall accept the statement of claim, issue a written document with the date of receipt marked, and decide whether the case shall be filed within seven days. Where the conditions for the institution of an action are not met, a ruling not to file the case shall be made. The verdict shall explicitly state the reasons for the refusal. The plaintiff who is not satisfied with the verdict may file an appeal.

起诉状内容欠缺或者有其他错误的，应当给予指导和释明，并一次性告知当事人需要补正的内容。不得未经指导和释明即以起诉不符合条件为由不接收起诉状。

Where a statement of claim is incomplete in terms of its contents or has other errors, the concerned party shall be given guidance and explanation and informed of contents to be supplemented and corrected at one stroke. A people's court shall not refuse to receive a statement of claim in the name of the statement of claim failing to meet the relevant conditions without giving any guidelines or explanations.

对于不接收起诉状、接收起诉状后不出具书面凭证，以及不一次性告知当事人需要补正的起诉状内容的，当事人可以向上级人民法院投诉，上级人民法院应当责令改正，并对直接负责的主管人员和其他直接责任人员依法给予处分。

Where a people's court refuses to accept a statement of claim, or fails to issue a written document after the receipt of a statement of claim or fails to inform the concerned parties of the information on the statement of claim to be supplemented and corrected at one stroke, the concerned parties may complain to a higher-level people's court and the higher-level people's court shall order the people's court to make corrections and punish the persons directly in charge or other persons directly responsible.

第五十二条   人民法院既不立案，又不作出不予立案裁定的，当事人可以向上一级人民法院起诉。上一级人民法院认为符合起诉条件的，应当立案、审理，也可以指定其他下级人民法院立案、审理。

Article 52 Where a people's court neither places a case on its trial docket nor makes a verdict on refusal to place the case on its trial docket, the concerned party may institute a proceeding with a higher-level people's court. The higher-level people's court that considers the conditions for filing a lawsuit are met may either place the case on its trial docket and try the case or designate another lower-level people's court to do so.

第五十三条   公民、法人或者其他组织认为行政行为所依据的国务院部门和地方人民政府及其部门制定的规范性文件不合法，在对行政行为提起诉讼时，可以一并请求对该规范性文件进行审查。

Article 53 Where citizens, legal persons or other organizations consider that the normative documents which are formulated by the departments under the State Council and local people's governments and their departments and on which an administrative act is based are illegal, when instituting a proceeding for the administrative act, they may apply for examination of the normative documents at the same time.

前款规定的规范性文件不含规章。

The regulatory documents as mentioned in the preceding paragraph do not include rules.

第七章 审理和判决

Chapter 7 Trial and Judgment

第一节 一般规定

Section 1 General Provisions

第五十四条   人民法院公开审理行政案件，但涉及国家秘密、个人隐私和法律另有规定的除外。

Article 54 People's courts shall hear administrative cases in public, except where state secrets or private affairs of individuals are involved and in cases where the law provides otherwise.

涉及商业秘密的案件，当事人申请不公开审理的，可以不公开审理。

A case involving trade secrets may not be heard in public if a party so requests.

第五十五条   当事人认为审判人员与本案有利害关系或者有其他关系可能影响公正审判，有权申请审判人员回避。

Article 55 Where a party considers that judicial personnel have an interest in the case or are concerned with the case in any other way which might affect the impartiality of the trial, such party shall have the right to request such personnel to withdraw (from the case).

审判人员认为自己与本案有利害关系或者有其他关系，应当申请回避。

If a member of the judicial personnel considers himself to have an interest in the case or to be otherwise related to it, he shall apply for withdrawal.

前两款规定，适用于书记员、翻译人员、鉴定人、勘验人。

The provisions of the preceding two paragraphs shall apply to court clerks, interpreters, examiners and inspectors.

院长担任审判长时的回避，由审判委员会决定；审判人员的回避，由院长决定；其他人员的回避，由审判长决定。当事人对决定不服的，可以申请复议一次。

The withdrawal of the president of the court serving 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. A party who is dissatisfied with the decision may apply for reconsideration once.

第五十六条   诉讼期间，不停止行政行为的执行。但有下列情形之一的，裁定停止执行：

Article 56 During the period of legal proceedings, execution of the administrative act shall not be suspended. However, execution of such acts shall be suspended under one of the following circumstances:

（一）被告认为需要停止执行的；

1. where the defendant considers that it is necessary to suspend the act;

（二）原告或者利害关系人申请停止执行，人民法院认为该行政行为的执行会造成难以弥补的损失，并且停止执行不损害国家利益、社会公共利益的；

2. where the plaintiff or an interested person applies for suspension of the act and the people's court rules that such administrative act shall be suspended as, in the opinion of the people's court, the execution would cause irremediable losses and the suspension of the act would not harm the national interests and public interests;

（三）人民法院认为该行政行为的执行会给国家利益、社会公共利益造成重大损害的；

(III) the people's court rules that such administrative act may cause great damage to the national interests and public interests; and

（四）法律、法规规定停止执行的。

(IV) where suspension of execution is required by the provisions of laws or regulations.

当事人对停止执行或者不停止执行的裁定不服的，可以申请复议一次。

If the party concerned is dissatisfied with the ruling on suspension or not suspension, it may apply for reconsideration once.

第五十七条   人民法院对起诉行政机关没有依法支付抚恤金、最低生活保障金和工伤、医疗社会保险金的案件，权利义务关系明确、不先予执行将严重影响原告生活的，可以根据原告的申请，裁定先予执行。

Article 57 For any case in which a proceeding is instituted against an administrative organ for not paying pensions or subsistence allowances or work-related injury, medical, or social insurance premiums, if the relationships of rights and obligations are definite and no advance enforcement will seriously affect the life of the plaintiff, the people's court may rule advance enforcement according to the application of the plaintiff.

当事人对先予执行裁定不服的，可以申请复议一次。复议期间不停止裁定的执行。

If the party concerned is dissatisfied with the ruling on advance execution, it may apply for reconsideration once. Enforcement of the ruling shall not be suspended during the review period.

第五十八条   经人民法院传票传唤，原告无正当理由拒不到庭，或者未经法庭许可中途退庭的，可以按照撤诉处理；被告无正当理由拒不到庭，或者未经法庭许可中途退庭的，可以缺席判决。

Article 58 If a plaintiff, having been served with a summons, refuses to appear in court without justified reasons, or if he withdraws during a court session without the permission of the court, the case may be considered as withdrawn by him; if a defendant, having been served with a summons, refuses to appear in court without justified reasons, or if he withdraws during a court session without the permission of the court, the court may make a judgment by default.

第五十九条   诉讼参与人或者其他人有下列行为之一的，人民法院可以根据情节轻重，予以训诫、责令具结悔过或者处一万元以下的罚款、十五日以下的拘留；构成犯罪的，依法追究刑事责任：

Article 59 If litigants or any other person commits any of the following acts, the people's court may, according to the seriousness of his offence, reprimand him, order him to sign a statement of repentance or impose upon him a fine of not more than CNY10,000 or detain him for not longer than 15 days; if a crime is constituted, his criminal responsibility shall be investigated:

（一）有义务协助调查、执行的人，对人民法院的协助调查决定、协助执行通知书，无故推拖、拒绝或者妨碍调查、执行的；

1. delaying or refusing to assist in or obstructing without reason the execution of the notice of a people's court for assistance in investigation and execution by a person who isobliged to render assistance;

（二）伪造、隐藏、毁灭证据或者提供虚假证明材料，妨碍人民法院审理案件的；

2. forging, concealing or destroying evidence or providing false evidential materials to hinder the people's court from hearing a case;

（三）指使、贿买、胁迫他人作伪证或者威胁、阻止证人作证的；

(III) instigating, suborning or coercing others to commit perjury, or hindering witnesses from giving testimony;

（四）隐藏、转移、变卖、毁损已被查封、扣押、冻结的财产的；

(IV) concealing, transferring, selling or destroying the property that has been sealed up, seized or frozen;

（五）以欺骗、胁迫等非法手段使原告撤诉的；

(V) Making the plaintiff withdraw the case by deception, coercion or other illegal means;

（六）以暴力、威胁或者其他方法阻碍人民法院工作人员执行职务，或者以哄闹、冲击法庭等方法扰乱人民法院工作秩序的；

(VI) hindering the personnel of a people's court from performing their duties through violent, threatening or other means, or disturbing the order of the work of a people's court by creating uproars, rushing at the court or other means; or

（七）对人民法院审判人员或者其他工作人员、诉讼参与人、协助调查和执行的人员恐吓、侮辱、诽谤、诬陷、殴打、围攻或者打击报复的。

(VII) threatening, insulting, slandering, framing, beating, sieging or retaliating against the judicial personnel or other personnel of the people's court, litigants or personnel who assist in the investigation and execution.

人民法院对有前款规定的行为之一的单位，可以对其主要负责人或者直接责任人员依照前款规定予以罚款、拘留；构成犯罪的，依法追究刑事责任。

A People's Court may impose a fine or detention on the key person-in-charge or directly accountable personnel of an organisation which has committed any of the acts stipulated in the preceding paragraph pursuant to the provisions of the preceding paragraph; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law.

罚款、拘留须经人民法院院长批准。当事人不服的，可以向上一级人民法院申请复议一次。复议期间不停止执行。

A fine or detention must be approved by the president of a people's court. A party concerned who disagrees with the decision may apply to a higher-level People's Court for review once. The execution of the decision shall not be suspended during the period of reconsideration.

第六十条   人民法院审理行政案件，不适用调解。但是，行政赔偿、补偿以及行政机关行使法律、法规规定的自由裁量权的案件可以调解。

Article 60 A people's court shall not apply conciliation in handling an administrative case. However, a case involving administrative indemnity or compensation or a case for which an administrative organ may exercise the discretion as prescribed by laws or regulations may be settled through mediation.

调解应当遵循自愿、合法原则，不得损害国家利益、社会公共利益和他人合法权益。

The mediation shall be conducted on the principles of voluntariness and legality and shall not harm the national interests, public interests and the legitimate rights and interests of others.

第六十一条   在涉及行政许可、登记、征收、征用和行政机关对民事争议所作的裁决的行政诉讼中，当事人申请一并解决相关民事争议的，人民法院可以一并审理。

Article 61 If a party applies for concurrent settlement of the relevant civil dispute in an administrative litigation involving administrative licensing, registration, collection, expropriation and the ruling for the civil dispute made by the administrative organ, the people's court may hear the case concurrently.

在行政诉讼中，人民法院认为行政案件的审理需以民事诉讼的裁判为依据的，可以裁定中止行政诉讼。

In an administrative proceeding, if the people's court rules that the hearing of the administrative case shall be based on the judgment of the civil litigation, the people's court may award the suspension of administrative proceeding.

第六十二条   人民法院对行政案件宣告判决或者裁定前，原告申请撤诉的，或者被告改变其所作的行政行为，原告同意并申请撤诉的，是否准许，由人民法院裁定。

Article 62 Where, before the people's court pronounces judgment or gives a ruling, the plaintiff applies for withdrawal of the case, or the defendant alters its administrative act and the plaintiff agrees and applies for withdrawal of the case, the people's court shall rule on whether or not to approve such alteration.

第六十三条   人民法院审理行政案件，以法律和行政法规、地方性法规为依据。地方性法规适用于本行政区域内发生的行政案件。

Article 63 People's courts shall try administrative cases in accordance with laws, administrative regulations and local regulations. Local regulations shall be applicable to administrative cases within the corresponding administrative areas.

人民法院审理民族自治地方的行政案件，并以该民族自治地方的自治条例和单行条例为依据。

In handling 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.

人民法院审理行政案件，参照规章。

People's courts shall hear administrative cases by referring to rules and regulations.

第六十四条   人民法院在审理行政案件中，经审查认为本法第五十三条规定的规范性文件不合法的，不作为认定行政行为合法的依据，并向制定机关提出处理建议。

Article 64 If a people's court finds through examination that the normative documents specified in Article 53 hereof are illegal in the course of hearing an administrative case, such documents shall not be taken as the basis on which an administrative act is identified as lawful, and the people's courts shall propose solutions to the organs that formulate the aforesaid normative documents.

第六十五条   人民法院应当公开发生法律效力的判决书、裁定书，供公众查阅，但涉及国家秘密、商业秘密和个人隐私的内容除外。

Article 65 A people's court shall make public the legally effective judgments and rulings for consultation, except for those involving State secrets, trade secrets or personal privacy.

第六十六条   人民法院在审理行政案件中，认为行政机关的主管人员、直接责任人员违法违纪的，应当将有关材料移送监察机关、该行政机关或者其上一级行政机关；认为有犯罪行为的，应当将有关材料移送公安、检察机关。

Article 66 In the course of hearing an administrative case, where a people's court considers that persons in charge of an administrative organ or persons of an administrative organ who are directly responsible have violated the law or the discipline, the people's court shall transfer the relevant materials to the supervisory organ, such administrative organ or its superior administrative organ; where the court considers that such persons have committed a crime, it shall transfer the relevant materials to the public security and/or the procuratorial organs.

人民法院对被告经传票传唤无正当理由拒不到庭，或者未经法庭许可中途退庭的，可以将被告拒不到庭或者中途退庭的情况予以公告，并可以向监察机关或者被告的上一级行政机关提出依法给予其主要负责人或者直接责任人员处分的司法建议。

If the defendant refuses to appear in court without justified reasons after being summoned to do so or leaves the court session halfway without permission of the court, the people's court may announce the condition that the defendant refuses to appear in court or leaves the court session halfway, and may present judicial proposals to the supervisory organ or the superior administrative organ of the defendant to punish the major person-in-charge of or persons directly responsible for the defendant in accordance with the law.

第二节 第一审普通程序

Section 2 Ordinary Procedure at First Instance

第六十七条   人民法院应当在立案之日起五日内，将起诉状副本发送被告。被告应当在收到起诉状副本之日起十五日内向人民法院提交作出行政行为的证据和所依据的规范性文件，并提出答辩状。人民法院应当在收到答辩状之日起五日内，将答辩状副本发送原告。

Article 67 A people's court shall send a copy of the statement of claim to the defendant within five days after docketing the case. The defendant shall, within 15 days from the date of receiving the copy of the statement of claim, submit to the people's court evidence relating to its performance of the administrative act in question and normative documents on which the administrative act in question is based, and submit a statement of defense. The people's court shall send a copy of the bill of defence to the plaintiff within five days of receiving it.

被告不提出答辩状的，不影响人民法院审理。

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

第六十八条   人民法院审理行政案件，由审判员组成合议庭，或者由审判员、陪审员组成合议庭。合议庭的成员，应当是三人以上的单数。

Article 68 Administrative cases in the people's courts shall be tried by a collegial panel of judges or of judges and assessors. The number of members of a collegial panel shall be an odd number of three or more.

第六十九条   行政行为证据确凿，适用法律、法规正确，符合法定程序的，或者原告申请被告履行法定职责或者给付义务理由不成立的，人民法院判决驳回原告的诉讼请求。

Article 69 Where the evidence in respect of an administrative act is conclusive, the application of laws and regulations to the act is correct and the statutory procedure is complied with, or the reason for which the plaintiff requires the defendant to fulfill duties or payment obligation is invalid, the people's court shall reject the claim of the plaintiff.

第七十条   行政行为有下列情形之一的，人民法院判决撤销或者部分撤销，并可以判决被告重新作出行政行为：

Article 70 If an administrative act has been performed in one of the following circumstances, the act shall be annulled or partially annulled by judgment of the people's court, or the defendant may be required by judgment to perform an administrative act anew:

（一）主要证据不足的；

1. where the main evidence (in support of such act) is insufficient;

（二）适用法律、法规错误的；

2. where incorrect laws and regulations were applied;

（三）违反法定程序的；

(III) Statutory procedures are violated;

（四）超越职权的；

4. where such act is performed beyond the authority;

（五）滥用职权的；

(V) abusing his power;

（六）明显不当的。

(VI) where such act is improper obviously.

第七十一条   人民法院判决被告重新作出行政行为的，被告不得以同一的事实和理由作出与原行政行为基本相同的行政行为。

Article 71 Where a people's court rules a defendant to undertake a new administrative act, the defendant may not, based on the same facts and reasons, undertake a specific administrative act essentially identical with the original act.

第七十二条   人民法院经过审理，查明被告不履行法定职责的，判决被告在一定期限内履行。

Article 72 If the people's court finds out the defendant fails to perform its statutory duties after trial, it shall order the defendant to perform such duties within a specified period.

第七十三条   人民法院经过审理，查明被告依法负有给付义务的，判决被告履行给付义务。

Article 73 If the people's court finds out that the defendant has payment obligation in accordance with the law after trial, it shall order the defendant to perform the payment obligation.

第七十四条   行政行为有下列情形之一的，人民法院判决确认违法，但不撤销行政行为：

Article 74 If an administrative act has been performed in either of the following circumstances, the people's court shall rule that the administrative act is illegal but shall not be annulled:

（一）行政行为依法应当撤销，但撤销会给国家利益、社会公共利益造成重大损害的；

1. where the administrative act shall be annulled in accordance with the law, but the annulment may seriously damages national interests and public interests; or

（二）行政行为程序轻微违法，但对原告权利不产生实际影响的。

(II) where administrative act procedures are slightly illegal but have no actual influence on the rights of the plaintiff.

行政行为有下列情形之一，不需要撤销或者判决履行的，人民法院判决确认违法：

If an administrative act has been performed in one of the following circumstances, the people's court shall rule that the administrative act is illegal if the administrative act is not required to be annulled or be performed by judgment:

（一）行政行为违法，但不具有可撤销内容的；

1. where the administrative act is illegal, but there is no content to be annulled;

（二）被告改变原违法行政行为，原告仍要求确认原行政行为违法的；

2. where the defendant changes the original administrative act, but the plaintiff continues to require the confirmation of illegality of the original administrative act; and

（三）被告不履行或者拖延履行法定职责，判决履行没有意义的。

3. where the defendant fails to perform or delays the performance of statutory duties, and the ruling on such performance is of no significance.

第七十五条   行政行为有实施主体不具有行政主体资格或者没有依据等重大且明显违法情形，原告申请确认行政行为无效的，人民法院判决确认无效。

Article 75 Where an administrative act is performed in significant and obvious illegal circumstances such as the executor having no legal capacity as an administrative subject and lack of basis, and the plaintiff applies for confirming such administrative act as invalid, the people's court shall rule that the administrative act is invalid.

第七十六条   人民法院判决确认违法或者无效的，可以同时判决责令被告采取补救措施；给原告造成损失的，依法判决被告承担赔偿责任。

Article 76 When a people's court rules that anadministrative act is illegal or invalid, it may order the defendant to take remedial measures at the same time; if the plaintiff suffers losses, the people's court shall rule the defendant to bear compensation liability in accordance with the law.

第七十七条   行政处罚明显不当，或者其他行政行为涉及对款额的确定、认定确有错误的，人民法院可以判决变更。

Article 77 Where an administrative penalty is manifestly improper, or the confirmation or identification of amounts involved in any other administrative act is incorrect, the people's court may order that such penalty or confirmation or identification act be altered.

人民法院判决变更，不得加重原告的义务或者减损原告的权益。但利害关系人同为原告，且诉讼请求相反的除外。

Where the people's court orders that such penalty or administrative act be altered, it shall not increase the obligation or impair the rights and interests of the plaintiff. However, if the interested party is also the plaintiff, the claim shall be reversed.

第七十八条   被告不依法履行、未按照约定履行或者违法变更、解除本法第十二条第一款第十一项规定的协议的，人民法院判决被告承担继续履行、采取补救措施或者赔偿损失等责任。

Article 78 Where the defendant does not perform in accordance with the law, fails to perform as agreed or illegally changes or terminates the agreement specified in Item 11, Paragraph 1 of Article 12 hereof, the people's court shall rule the defendant to take liabilities for continuing to perform the agreement, taking remedial measures or making compensations.

被告变更、解除本法第十二条第一款第十一项规定的协议合法，但未依法给予补偿的，人民法院判决给予补偿。

Where the defendant legally changes or terminates the agreement specified in Item 11, Paragraph 1 of Article 12 hereof but does not make compensations in accordance with the law, the people's court shall rule the defendant to make compensations.

第七十九条   复议机关与作出原行政行为的行政机关为共同被告的案件，人民法院应当对复议决定和原行政行为一并作出裁判。

Article 79 Where the reconsideration organ and the administrative organ which performs the original administrative act are co-defendants in a case, the people's court shall make judgment on the reconsideration decision and the original administrative act concurrently.

第八十条   人民法院对公开审理和不公开审理的案件，一律公开宣告判决。

Article 80 The people's court shall publicly pronounce its judgment in all cases, whether publicly tried or not.

当庭宣判的，应当在十日内发送判决书；定期宣判的，宣判后立即发给判决书。

If a judgment is pronounced in court, the written judgment shall be issued and delivered within ten days. If a judgment is pronounced later on a fixed date, the written judgment shall be issued and given immediately after the pronouncement.

宣告判决时，必须告知当事人上诉权利、上诉期限和上诉的人民法院。

Upon pronouncement of a judgment, the parties must be informed of their right to appeal, the time limit for appeal and the court to which they may appeal.

第八十一条   人民法院应当在立案之日起六个月内作出第一审判决。有特殊情况需要延长的，由高级人民法院批准，高级人民法院审理第一审案件需要延长的，由最高人民法院批准。

Article 81 A people's court shall pass a judgment of first instance within six months from the date of filing the case. Extension of such period, if required because of special circumstances, shall be approved by a higher people's court. Where a higher people's court requires an extension of such period for a case which it is hearing as a court of first instance, such extension shall be approved by the Supreme People's Court.

第三节 简易程序

Section 3 Summary Procedure

第八十二条   人民法院审理下列第一审行政案件，认为事实清楚、权利义务关系明确、争议不大的，可以适用简易程序：

Article 82 The people's court may apply summary procedure to hear the following administrative cases of first instance with clear facts, definite relationships of rights and obligations and not serious disputes:

（一）被诉行政行为是依法当场作出的；

1. where the administrative act under litigation is performed on the site in accordance with the law;

（二）案件涉及款额二千元以下的；

2. Where the case involves an amount of less than CNY2,000; and

（三）属于政府信息公开案件的。

(III) where the case involves disclosure of government information.

除前款规定以外的第一审行政案件，当事人各方同意适用简易程序的，可以适用简易程序。

In addition to the administrative cases of the first instance set out in the preceding paragraph, summary procedure may apply to cases for which the parties concerned agree upon the application of summary procedure.

发回重审、按照审判监督程序再审的案件不适用简易程序。

Summary procedure shall not apply to cases remanded for retrial and retried according to the procedure for trial supervision.

第八十三条   适用简易程序审理的行政案件，由审判员一人独任审理，并应当在立案之日起四十五日内审结。

Article 83 An administrative case heard according to summary procedure shall be heard by the judge independently, and be concluded within 45 days after the case is placed on the trial docket.

第八十四条   人民法院在审理过程中，发现案件不宜适用简易程序的，裁定转为普通程序。

Article 84 If the people's court finds that it is improper to apply summary procedure to a case in hearing, it shall order that ordinary procedure applies.

第四节 第二审程序

Section 4 Procedure at Second Instance

第八十五条   当事人不服人民法院第一审判决的，有权在判决书送达之日起十五日内向上一级人民法院提起上诉。当事人不服人民法院第一审裁定的，有权在裁定书送达之日起十日内向上一级人民法院提起上诉。逾期不提起上诉的，人民法院的第一审判决或者裁定发生法律效力。

Article 85 If a party refuses to accept a judgment of first instance by a people's court, he shall have the right to file an appeal with the people's court at the next higher level within 15 days after the date on which the written judgment was served. A party who disagrees with a ruling of a people's court of first instance shall have the right to appeal to a people's court at the next highest level within 10 days of receiving notice of the ruling. The judgment or ruling of first instance of a People's Court shall be legally effective if an appeal is not filed within the stipulated period.

第八十六条   人民法院对上诉案件，应当组成合议庭，开庭审理。经过阅卷、调查和询问当事人，对没有提出新的事实、证据或者理由，合议庭认为不需要开庭审理的，也可以不开庭审理。

Article 86 The people's courts shall form a collegiate bench to try appellate cases. Upon consulting, investigation and inquiry of the parties concerned, if no new facts, evidence or reasons are put forward, and the collegiate bench rules that it is unnecessary to hold a hearing, the case may be handled without a hearing.

第八十七条   人民法院审理上诉案件，应当对原审人民法院的判决、裁定和被诉行政行为进行全面审查。

Article 87 In trying a case on appeal, a people's court shall thoroughly examine the judgment or ruling of the people's court which originally tried the case and the administrative act sued.

第八十八条   人民法院审理上诉案件，应当在收到上诉状之日起三个月内作出终审判决。有特殊情况需要延长的，由高级人民法院批准，高级人民法院审理上诉案件需要延长的，由最高人民法院批准。

Article 88 In trying a case on appeal, a people's court shall make a final judgment within three months from the date of receiving the appeal. Extension of such period, if required because of special circumstances, shall be approved by a higher people's court. Where a higher people's court requires an extension of such time limit for handling an appellate case, such extension shall be approved by the Supreme People's Court.

第八十九条   人民法院审理上诉案件，按照下列情形，分别处理：

Article 89 The people's court shall handle an appellate case respectively according to the circumstances set forth below:

（一）原判决、裁定认定事实清楚，适用法律、法规正确的，判决或者裁定驳回上诉，维持原判决、裁定；

1. where the facts are clearly ascertained and the law and regulations are correctly applied in the original judgment or ruling, the appeal shall be rejected by judgment or ruling and the original judgment and ruling be upheld;

（二）原判决、裁定认定事实错误或者适用法律、法规错误的，依法改判、撤销或者变更；

2. where the facts are erroneously ascertained or the law and regulations are incorrectly applied in the original judgment or ruling, the judgment or ruling shall be amended, annulled or altered in accordance with the law;

（三）原判决认定基本事实不清、证据不足的，发回原审人民法院重审，或者查清事实后改判；

3. where the facts are not clearly ascertained in the original judgment and the evidence is insufficient, the case shall be remanded to the original people's court for retrial, or the people's court of the second instance may amend the original judgment after investigating and clarifying the facts; and

（四）原判决遗漏当事人或者违法缺席判决等严重违反法定程序的，裁定撤销原判决，发回原审人民法院重审。

(IV) where there is any serious violation of statutory procedures such as omission of the party concerned and illegal judgment by default in the original judgment, the people's court of second instance shall rule that the original judgment be annulled and remand the case to the original people's court for retrial.

原审人民法院对发回重审的案件作出判决后，当事人提起上诉的，第二审人民法院不得再次发回重审。

Where the party concerned institutes an appeal after the original people's court makes a judgment on the case remanded for retrial, the people's court of second instance shall not remand the case for retrial again.

人民法院审理上诉案件，需要改变原审判决的，应当同时对被诉行政行为作出判决。

Where the people's court needs to amend the original judgment in trying an appellate case, it shall make judgment on the administrative act sued at the same time.

第五节 审判监督程序

Section 5 Procedure for Trial Supervision

第九十条   当事人对已经发生法律效力的判决、裁定，认为确有错误的，可以向上一级人民法院申请再审，但判决、裁定不停止执行。

Article 90 If a party considers that there is some definite error in a legally effective judgment or written order, he may apply to the people's court at the next higher level for a retrial; however, the execution of the judgment or order shall not be suspended.

第九十一条   当事人的申请符合下列情形之一的，人民法院应当再审：

Article 91 If the application of a party conforms to any of the following circumstances, the people's court shall retry the case:

（一）不予立案或者驳回起诉确有错误的；

1. there is an error in not filing a case or dismissing a lawsuit;

（二）有新的证据，足以推翻原判决、裁定的；

2. there is new evidence that is sufficient to overturn the original judgment or ruling;

（三）原判决、裁定认定事实的主要证据不足、未经质证或者系伪造的；

3. where the facts ascertained in the original judgment and ruling are not sufficient, cross-examined, or are forged;

（四）原判决、裁定适用法律、法规确有错误的；

(IV) where the laws and regulations applied in the original judgment and ruling are wrong;

（五）违反法律规定的诉讼程序，可能影响公正审判的；

(V) the litigation procedure prescribed by law has been violated and it may hamper the impartiality of a trial; or

（六）原判决、裁定遗漏诉讼请求的；

(VI) where the claim is omitted under the original judgment and ruling;

（七）据以作出原判决、裁定的法律文书被撤销或者变更的；

(VII) where the legal documentation relating to the original judgment or ruling has been cancelled or amended; or

（八）审判人员在审理该案件时有贪污受贿、徇私舞弊、枉法裁判行为的。

(VIII) The judges in trying the case committed acts of embezzlement, bribery, or malpractices for personal gain, or bended the law in making judgment.

第九十二条   各级人民法院院长对本院已经发生法律效力的判决、裁定，发现有本法第九十一条规定情形之一，或者发现调解违反自愿原则或者调解书内容违法，认为需要再审的，应当提交审判委员会讨论决定。

Article 92 Where the president of a People's Court at any level discovers that a judgment or a ruling made by a People's Court which has come into legal effect falls under any of the circumstances stipulated in Article 91 of this Law or discovers that mediation is in violation of the principle of voluntary participation or that the contents of the mediation letter are illegal and deems that there is a need for re-trial, the case shall be submitted to the judicial committee for discussion and decision.

最高人民法院对地方各级人民法院已经发生法律效力的判决、裁定，上级人民法院对下级人民法院已经发生法律效力的判决、裁定，发现有本法第九十一条规定情形之一，或者发现调解违反自愿原则或者调解书内容违法的，有权提审或者指令下级人民法院再审。

Where the Supreme People's Court discovers that a judgment or ruling of a local People's Court at any level which has come into legal effect falls under any of the circumstances stipulated in Article 91 of this Law or discovers that mediation is in violation of the principle of voluntary participation or that the contents of the mediation letter are illegal, or discovers that a judgment or ruling of a lower-level People's Court which has come into legal effect falls under any of the circumstances stipulated in Article 91, the Supreme People's Court or the higher-level People's Court shall have the right to arraign or order the lower-level People's Court to re-try the case.

第九十三条   最高人民检察院对各级人民法院已经发生法律效力的判决、裁定，上级人民检察院对下级人民法院已经发生法律效力的判决、裁定，发现有本法第九十一条规定情形之一，或者发现调解书损害国家利益、社会公共利益的，应当提出抗诉。

Article 93 Where the Supreme People's Procuratorate discovers that a judgment or ruling of a People's Court at any level which has come into legal effect falls under any of the circumstances stipulated in Article 91 of this Law or discovers that a mediation letter harms national interest or public interest, or where a higher-level People's Procuratorate discovers that a judgment or ruling of a lower-level People's Court which has come into legal effect falls under any of the circumstances stipulated in Article 91 of this Law or discovers that a mediation letter harms national interest or public interest, a protest shall be made.

地方各级人民检察院对同级人民法院已经发生法律效力的判决、裁定，发现有本法第九十一条规定情形之一，或者发现调解书损害国家利益、社会公共利益的，可以向同级人民法院提出检察建议，并报上级人民检察院备案；也可以提请上级人民检察院向同级人民法院提出抗诉。

Where a People's Procuratorate at any level at any locality discovers that a judgment or ruling made by a People's Court of counterpart level which has come into legal effect falls under any of the circumstances stipulated in Article 91 of this Law, or discovers that a mediation letter harms national interest and public interest, the People's Procuratorate may make an attorney recommendation to the People's Court of counterpart level, and file record with the higher-level People's Procuratorate; or request the higher-level People's Procuratorate to make a protest to the People's Court of counterpart level.

各级人民检察院对审判监督程序以外的其他审判程序中审判人员的违法行为，有权向同级人民法院提出检察建议。

In terms of the illegal acts of judges in trial procedures other than the procedure for trial supervision, the people's procuratorates at all levels are entitled to make procuratorial suggestions to the people's courts at the same level.

第八章 执 行

Chapter 8 Enforcement

第九十四条   当事人必须履行人民法院发生法律效力的判决、裁定、调解书。

Article 94 The parties concerned must perform legally effective judgments, rulings and mediation documents rendered by people's courts.

第九十五条   公民、法人或者其他组织拒绝履行判决、裁定、调解书的，行政机关或者第三人可以向第一审人民法院申请强制执行，或者由行政机关依法强制执行。

Article 95 Where a citizen, legal person or other organization refuses to perform a judgment, ruling or mediation document, the administrative organ or any third person may apply to the people's court of first instance for enforcement or enforce the judgment, ruling or mediation document by the administrative organ in accordance with the law.

第九十六条   行政机关拒绝履行判决、裁定、调解书的，第一审人民法院可以采取下列措施：

Article 96 Where an administrative organ refuses to perform a judgment, ruling or mediation document, the people's court of first instance may adopt the following measures:

（一）对应当归还的罚款或者应当给付的款额，通知银行从该行政机关的账户内划拨；

1. (where the court rules that) fines shall be refunded or damages shall be paid, the court may notify the relevant bank of transfer of the sum from the account of the administrative organ in question;

（二）在规定期限内不履行的，从期满之日起，对该行政机关负责人按日处五十元至一百元的罚款；

(II) (where the administrative organ) fails to perform the judgment, ruling or mediation document within the prescribed time limit, a fine of CNY50 to CNY100 per day shall be imposed on the principal of the administrative organ in question;

（三）将行政机关拒绝履行的情况予以公告；

(III) announce the administrative organ's refusal to perform the order, ruling or mediation document;

（四）向监察机关或者该行政机关的上一级行政机关提出司法建议。接受司法建议的机关，根据有关规定进行处理，并将处理情况告知人民法院；

(IV) putting forward judicial suggestions to the supervisory organ or the administrative organ at the next higher level. 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

（五）拒不履行判决、裁定、调解书，社会影响恶劣的，可以对该行政机关直接负责的主管人员和其他直接责任人员予以拘留；情节严重，构成犯罪的，依法追究刑事责任。

(V) Where an administrative organ refuses to perform a judgment, ruling or mediation document and causes adverse social impact, the person (s) -in-charge who is/are directly accountable and other directly accountable personnel of the administrative organ may be detained; where the case is serious and constitutes a criminal offence, criminal liability shall be pursued in accordance with the law.

第九十七条   公民、法人或者其他组织对行政行为在法定期限内不提起诉讼又不履行的，行政机关可以申请人民法院强制执行，或者依法强制执行。

Article 97 Where a citizen, legal person or other organization neither institutes proceedings in respect of an administrative act nor performs such act within the statutory time limit, the administrative organ may apply to a people's court for enforcement or enforce the act itself according to the law.

第九章 涉外行政诉讼

Chapter 9 Foreign-related Administrative Litigation

第九十八条   外国人、无国籍人、外国组织在中华人民共和国进行行政诉讼，适用本法。法律另有规定的除外。

Article 98 This Law is applicable to foreign nationals, stateless persons and foreign organizations that are engaged in administrative suits in the People's Republic of China. Unless otherwise required by law.

第九十九条   外国人、无国籍人、外国组织在中华人民共和国进行行政诉讼，同中华人民共和国公民、组织有同等的诉讼权利和义务。

Article 99 Foreign nationals, stateless persons and foreign organizations that are engaged in administrative suits in the People's Republic of China shall enjoy the same litigation rights and be subject to the same obligations as citizens and organizations of the People's Republic of China.

外国法院对中华人民共和国公民、组织的行政诉讼权利加以限制的，人民法院对该国公民、组织的行政诉讼权利，实行对等原则。

If 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 People's Courts shall follow the principle of reciprocity regarding the administrative litigation rights of the citizens and organizations of that foreign country.

第一百条   外国人、无国籍人、外国组织在中华人民共和国进行行政诉讼，委托律师代理诉讼的，应当委托中华人民共和国律师机构的律师。

Article 100 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.

第十章 附 则

Chapter 10 Supplementary Provisions

第一百零一条   人民法院审理行政案件，关于期间、送达、财产保全、开庭审理、调解、中止诉讼、终结诉讼、简易程序、执行等，以及人民检察院对行政案件受理、审理、裁判、执行的监督，本法没有规定的，适用《中华人民共和国民事诉讼法》的相关规定。

Article 101 Where there are no relevant provisions in this Law regarding the period, service, property preservation, trial in court, conciliation, suspension of action, termination of action, summary procedure or execution for the trial of administrative cases, or regarding the supervision carried out by the people's procuratorate over acceptance, trial, judgment or execution of administrative cases, the provisions in the Civil Procedure Law of the People's Republic of China shall apply.

第一百零二条   人民法院审理行政案件，应当收取诉讼费用。诉讼费用由败诉方承担，双方都有责任的由双方分担。收取诉讼费用的具体办法另行规定。

Article 102 People's courts shall charge litigation fees for hearing administrative cases. The litigation fee shall be borne by the losing party, or by both parties if they are both liable. Detailed measures on collection of litigation fees shall be stipulated separately.

第一百零三条   本法自1990年10月1日起施行。

Article 103 This Law shall go into effect as of October 1, 1990.