JUDICIAL REVIEW OF ADMINISTRATION IN THE PEOPLE'S REPUBLIC OF CHINA
Jyh-pin Fa and Shao-chuan Leng

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Jyh-pin Fa and Shao-chuan Leng

TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Introduction</td>
<td>1 [447]</td>
</tr>
<tr>
<td>II. Historical Background</td>
<td>2 [448]</td>
</tr>
<tr>
<td>III. Legislative Process</td>
<td>6 [451]</td>
</tr>
<tr>
<td>IV. The Administrative Procedure Law</td>
<td>7 [452]</td>
</tr>
<tr>
<td>Organization of Procedure</td>
<td>7 [452]</td>
</tr>
<tr>
<td>Scope of Review</td>
<td>9 [455]</td>
</tr>
<tr>
<td>Object of Review</td>
<td>11 [456]</td>
</tr>
<tr>
<td>Proceedings and Judgment</td>
<td>13 [458]</td>
</tr>
<tr>
<td>Tortious Liability</td>
<td>14 [459]</td>
</tr>
<tr>
<td>V. Conclusion and Outlook</td>
<td>16 [460]</td>
</tr>
</tbody>
</table>

Appendix I: Chinese Text of the People's Republic of China Administrative Procedure Law 19

Appendix II: Administrative Procedure Law in Effect for One and a Half Years: Mixed Blessing and Sadness (Excerpts) 36

JUDICIAL REVIEW OF ADMINISTRATION IN THE
PEOPLE'S REPUBLIC OF CHINA

Jyh-pin Fa*
and
Shao-chuan Leng**

I. INTRODUCTION

Since 1979, the People's Republic of China (PRC) under the leadership of Deng Xiaoping has taken steps to institute law reform and to develop "socialist legality with Chinese characteristics." Obviously, this policy is closely linked to China's commitment to the program of four modernizations. The PRC needs a formal legal system to ensure a secure environment, essential to the successful development of its economy. China must project itself as a stable and orderly society with relevant laws to protect the interests and rights of foreigners in order to expand external trade, import advanced technology, and attract international investment. Deng said in early 1986: "We must use two hands to carry on the four modernizations: grasping construction with one hand and grasping the legal system with the other."2

It is in the area of its legislative output that the PRC has proceeded with surprising speed. In the last decade, the National People's Congress (NPC) and its Standing Committee have promulgated eighty laws, twenty amendments, forty regulatory decisions. During the same period, the State council has issued some 900 administrative regulations and decrees while the authorities at the provincial level have adopted over 1,000 local laws and regulations.3 Despite the tragic occurrence of the harsh crackdown on the pro-democracy demonstrators in Tiananmen Square on June 4, 1989, the Chinese government has pledged to continue its "open-door policy" toward the outside world.

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1. Xiang Chienyi, et al., Making an Effon to Establish a Socialist Legal System with Chinese Characteristics, HONGQI (RED FLAG) 8-12, 18 (Feb. 1, 1984).

(1)
and remained active in enacting new laws and regulations.\textsuperscript{4} Among the major enactments in Deng's China are the implementation of procedural laws. The first enactment was the Criminal Procedure Law, adopted in 1979.\textsuperscript{5} The second one was the Civil Procedure Law (for trial implementation only), enacted in 1982.\textsuperscript{6} The most recent enactment was the Administrative Procedure Law, which was adopted by the NPC on April 4, 1989, and came into force on October 1, 1990.\textsuperscript{7} Thus, a complete modern system of procedural justice was implemented in the course of a single decade. In China, a country without a tradition of private citizens suing the government, and where the all-powerful position of the state has always been emphasized, the historical significance of this new law is apparent. Moreover, the law was enacted at a time when the pro-democracy demonstrations in Tiananmen were demanding, among other things, a clean and responsible governmental crackdown on official profiteering and other corrupt and illegal behavior.\textsuperscript{8} The new law, if fully implemented, will help check public officials' abuse of power in the future.

This article will review the historical background and drafting process of this new legislation. The major characteristics of the new Administrative Procedure Law will then be outlined and analyzed. Finally, the article will make a preliminary assessment of the law and the outlook for the future.

\section*{II. HISTORICAL BACKGROUND}

The PRC's legal system has been influenced in varying degrees by Chinese heritage and Communist ideology. Concerning administrative litigation, no such experience is found in the Chinese legal tradition. Certainly, imperial China had an elaborate system of appeals to allow for the review of criminal sentences by higher authorities, including the emperor himself. A unique censorial institution had the power and duty to watch, scrutinize, and criticize the conduct of all members of the officialdom. However, following the traditional reluctance to resort to the courts, the Chinese were even more hesitant to

\textsuperscript{4} See officials' reports before the National People's Congress in Fazhi Ribao(Legal System Daily), March 29, 1990 at 1; Wu Naitao, \textit{The Origins of the Chinese Legal System}, 33 BEIJING REV.23-27(No.38,1990).
\textsuperscript{5} Renmin Ribao (People's Daily), July 2, 1979, at 1.
\textsuperscript{6} \textit{Id.}, Mar. 9, 1982, at 1.
\textsuperscript{7} \textit{Id.}, Apr. 5, 1989, at 1.
\textsuperscript{8} For the Tiananmen demonstrations, see generally, A. Nathan, CHINA'S CRISIS 171-192 (1990); L. FEIGON, CHINA RISING: THE MEANING OF TIANANMEN (1990).
risk incurring severe punishment by complaining about official abuse or injustice. Despite the review system and the censorate, the traditional administrative system in China never developed individual remedies of the kind long-established as a matter of routine in the West.

In modern China, the Nationalist government promulgated a Law of Administrative Proceedings in 1932. However, when the PRC was established in 1949, the Communist government abolished this and all other Nationalist law immediately. If Chinese tradition offers little background or experience with respect to administrative litigation, socialist ideology and practice are equally deficient in this regard.

Judicial control over administration, corollary of the separation of powers, has always been anathema in socialist countries, where the unity of state power is a supreme, guiding principle. This assumption was the basis of the claim that in socialist states, administrative agencies could not be guilty of abuses against individuals because the interests of individuals and the government were identical and there was no room for conflict between them. This is what Trotsky meant when he said that “the workers could not defend themselves against the workers.”

Therefore, it is not surprising that although the possibility of a private citizen bringing a government department to court was recognized in the PRC as early as 1949 in the Common Program and in the Constitution of 1954, these provisions are more political-philosophical declarations than legally binding norms. No serious consideration was given to the necessary machinery or enforcement process for such action. It was inconceivable that anyone would dare to bring such a case to a people’s court or that the court would entertain it. Until recently, the only available safeguards against the abuse of pub-

14. Article 97. For English text of the CONSTITUTION, see id. at 294-311.
lic power were largely internal, requiring the administrative agency to conduct its own investigations and to remedy its own shortcomings.\textsuperscript{15}

One frequently-used device has been the "letters and visits" system by which state and party organs establish reception offices to hear their complaints about official misconduct from the masses. Over the past ten years, the Public Affairs Division under the Party Central Committee and the State Council has supposedly received 7.54 million letters and more than 853,000 visitors.\textsuperscript{16} More recently, in an effort to combat corruption and other offenses, Chinese authorities have actively sought public complaints and reports. For instance, during the last half of 1988, the procuratorates throughout the country received 147,238 reports on the irregularities of officials.\textsuperscript{17} In 1988, the courts of all levels handled over 3,570,000 letters and received more than 4,175,000 visitors.\textsuperscript{18} Impressive as these figures may appear, this device is simply not a substitute for a regular law to deal with administrative abuses. As some of China's official publications concede, although the visitation and report system has played an effective role in improving communications between the government and the people, reliance on this single forum has left many problems unresolved. The presence of many anonymous letters and reports, in fact, reflects the people's fear of retaliation and their cynicism toward the system.\textsuperscript{19}

Aware of the inadequacy of its non-legal remedies, the PRC gradually took steps toward legal redress. In 1979, China began to open the courts to administrative cases. Courts were authorized to accept appeals against decisions regarding the registering of electors made by election committees. The Law on the Election of Delegates of the National People's Congress and Local People's Congresses opened a new chapter in the legislative history of the PRC. This trend continued with legislation concerning foreign elements and expanded to include even certain local statutes.\textsuperscript{20} This piecemeal approach was formally


\textsuperscript{16} 33 BEIJING REV. 28 (No.14, 1990).

\textsuperscript{17} Id., No.3 at 30.

\textsuperscript{18} Renmin Ribao (People's Daily), April 9, 1989, at 1.


\textsuperscript{20} Zhu Weijiu, \textit{We Shall Establish an Independent Administrative Procedure System}, ZHENGFA LUNTAN (Tribune of Politics and Law), No. 15, at 54, 57 (June 1987).
confirmed by the Civil Procedure Law, passed for trial implementation in 1982.\textsuperscript{21} Article 3, paragraph 2 of this law states: "This Law shall be applied when legislation provides that such administrative cases shall be decided by the people's court."\textsuperscript{22} Until 1989, more than 130 regulations and legislative enactments containing such a provision had been passed.\textsuperscript{23}

Initially, the economic chamber of the people's court was assigned to handle administrative business, so it was not surprising that most of the cases concerned economic administration. Few individuals appeared as plaintiffs and the litigants were mostly other government departments. This situation only began to change in 1986 with the passage of an amendment to the Security Administration and Punishment Act.\textsuperscript{24} The major innovation contained in this amendment was the right to judicial review of administrative decisions. After unsuccessfully appealing to the superior government agency, individuals could then initiate a judicial process.\textsuperscript{25} In view of the extensive powers of the public security agency and the volume of cases handled under the Security Administration and Punishment Act, it became necessary to establish a separate administrative chamber of the people's court. By the time the Administrative Procedure Law was passed, as many as 1,400 administrative chambers had been established.\textsuperscript{26}

Fundamental differences exist between administrative and civil cases,\textsuperscript{27} so the PRC government was strongly urged to draft a comprehensive law on administrative procedure, separate from the Civil Procedure Law. The government responded by beginning the drafting process in 1986.

\textsuperscript{21} Renmin Ribao (People's Daily), Mar. 9, 1982, at 1.
\textsuperscript{24} Security Administration and Punishment Act, Art. 39, reprinted in ZRGFQ, \textit{supra} note 22, at 1534.
\textsuperscript{25} Wang Hanbin's speech explaining the Draft of the Administrative Procedural Law of the People's Republic of China, in 2 ZHONGHUA RENMIN GONGHEQUO ZUGAO RENMIN FAYUAN GONGBAO 11 (Gazette of the Supreme People's Court of the PRC) (June 20, 1989).
\textsuperscript{26} Id.
\textsuperscript{27} The differences are largely due to the distinction between public and private law. For further details, see P. CANE, \textit{AN INTRODUCTION TO ADMINISTRATIVE LAW} 4-9(1986).
III. LEGISLATIVE PROCESS

In 1986, the Legal Affairs Commission of the NPC Standing Committee began the legislative process by organizing a special group to prepare a draft of the Administrative Procedure Law. Based on data from Chinese courts' recent experience and foreign administrative litigation systems, a preliminary draft was offered in August 1987, to various quarters for suggestions. In July 1988, a revised version (the draft for comments) was circulated to solicit views from the courts, state agencies, mass organizations, and legal experts. At the same time, special symposiums were held in major cities to discuss the document. As a result, the draft of the Administrative Procedure Law was completed and presented to the NPC Standing Committee in October 1988, for preliminary examination. In November, the NPC Standing Committee had the draft published in the press to invite public comments. Within four months the draft received some 130 opinions from central and local government departments, courts and prosecuting offices, and over 300 opinions from individual citizens.

There was generally strong support for an administrative litigation law, but division regarding several major issues emerging from the nation-wide discussion of the draft:

1. **Scope of the courts' jurisdiction.** Many argued for a broader scope in the form of a general clause to provide the people with better protection. Legal practitioners, on the other hand, insisted on limiting the courts' review to specific administrative acts, so as not to overburden the courts.

2. **Application of administrative rules.** Administrative organs and legal scholars generally favored the use of administrative rules as a basis for court decisions. But judicial personnel argued that administrative rules are often confusing, contradictory, and can even run counter to state laws.

3. **The courts' power to correct administrative decisions.** The judiciary and its staff believed that the courts should have the power to amend administrative decisions. The administrative authorities, however, vigorously objected to judicial interference with their executive power. In addition, questions concerning the basis for tortious acts, the role of mediation, and administrative review as a prerequisite for a court hearing were also important.

points of discussion and debate.\textsuperscript{29}

Finally, after almost three years of research and revisions, solicitations and considerations of the opinions from all sides, an expanded draft of seventy-four articles from original forty-nine was presented to the Seventh National People's Congress in March 1989 for consideration and approval. On April 4, 1989, the NPC formally adopted the Administrative Procedure Law which was to become effective on October 1, 1990.\textsuperscript{30}

**IV. THE ADMINISTRATIVE PROCEDURE LAW**

**Organization of Procedure**

In former socialist countries that follow the principle of a unified judicial system,\textsuperscript{31} the adjudication of administrative cases is generally assigned to the ordinary courts,\textsuperscript{32} a practice that may also have developed from the teachings of Engels and Lenin.\textsuperscript{33} This is rather unusual considering that the influence of the civil law heritage is strong in these countries,\textsuperscript{34} and a separate and distinct judicial hierarchy handling administrative cases has always been one of the hallmarks of a civil law system.\textsuperscript{35} The PRC followed the example of other socialist states. Its ordinary courts adjudicated administrative cases under the Civil Procedure Law mentioned above. The Administrative Procedure Law allows for the continuation of this practice, stating that "people's courts shall establish administrative chambers to hear ad-


\textsuperscript{30} For text of the Law, see ZRGFQ, *supra* note 22, at 2125-2131.


ministrative cases." However, unlike civil cases, all administrative cases must be decided by a collegiate bench consisting of an odd number of judges, or judges and people's assessors.

A second difference between administrative and civil procedures is the process of administrative appeal. Based on respect for administrative autonomy and sound judicial administration, the merits of administrative appeal have long been recognized. The exhaustion of administrative remedies in modern jurisprudence is a well-known example. However, in the PRC, the relationship between administrative appeal and judicial proceedings may follow one of at least six different patterns.

Under legislation following the first pattern, administrative appeal is the only remedy available for the individual. Under both the Patent Law and the Trademark Law, the decision of the review committee to which appeals are made is final. Other statutes allow an individual to bring an appeal before the people's court, but only after he or she has appealed to the agency superior to that which committed the alleged abuse, or in some cases to both the original administrative agency and its superior. These administrative appeals are obligatory in nature and are a precondition for entering the judicial process. Probably the most popular arrangement is the provision for immediate access to judicial review without the necessity of going through a preliminary administrative review process. Several pieces of legislation recognize the right to choose between an internal review process and a suit in the regular courts. However, the laws governing the emigration of Chinese nationals and immigration of foreigners stipulate that once an individual decides to appeal to the superior public security department, the channel of judicial interven-

36. Art. 3, para. 2.
37. The Civil Procedure Law, art. 35, para. 2 states that "Simple civil cases may be decided by a judge alone."
38. Administrative Procedure Law, art. 46.
41. The Trademark Law of the People's Republic of China, Arts. 21, 22, and 35.
42. E.g., Security Administration and Punishment Act, art. 39; Individual Income Tax Law, art. 13; Joint Venture Income Tax Law, art. 15.
43. E.g., Customs Law, art. 46.
44. E.g., Fishery Law, art. 12; Pharmaceutical Products Administration Law, art. 55; Ocean Environmental Protection Law, art. 41; Land Control Law, arts. 13 and 52.
45. E.g., Law Governing Foreign National's Entry and Exit, art. 29.
46. Art. 15.
47. Art. 29.
JUDICIAL REVIEW OF ADMINISTRATION

tion is closed. In contrast, the Customs Law,\(^{48}\) the Water Law,\(^{49}\) and the River Regulation Statute\(^{50}\) all leave the channel of judicial appeal open to those individuals who first opt for administrative appeal.\(^{51}\)

Although most of the drafters of the Administrative Procedure Law favored a single, unified approach and would have preferred to give precedence to administrative over judicial review,\(^{52}\) the new law represents a compromise with current practice because it adopts an "open-door" approach. An individual may either file a complaint in court immediately or opt for appeal to the administrative agency first.\(^{53}\) This choice, however, does not apply to statutes which explicitly stipulate that administrative review must precede judicial action.\(^{54}\) As for laws which state that the result of the administrative review is final, the door of the court remains closed because under the new law, such explicit stipulations take precedence.\(^{55}\)

Scope of Review

In nineteenth century Germany, disputes concerning traditional administrative law focused on how the jurisdiction of the administrative court should be defined. Many lawmakers wondered whether to adopt a general clause which recognized the full availability of judicial review with certain exceptions provided by law, or whether the court's jurisdiction should be restricted only to those cases explicitly enumerated in the law. Prussia and its successors opted for the latter. Except in police matters over which they had general jurisdiction, Prussia's administrative courts' jurisdiction depended on specific legislative as-

\(^{48}\) Art. 53.

\(^{49}\) Art. 48.

\(^{50}\) Art. 46. For texts of all the laws cited in notes 37-47, see ZRGFQ, supra note 22.


\(^{52}\) YING SONGNIAN & ZHU WEIIU, XINGZHENGFA YU XINGZHENG SUSONQFA JIAOZHENG (Text of Administrative Law and Administrative Procedure Law) 308-09 (May 1980); Zhang Youyu, Two Comments on the Administrative Procedure Law, ZHONGGUO FAXUE (Chinese Legal Science), No. 4, at 26-28 (July 1989); Wang Limin, Some Suggestions on the Administrative Procedure Law, FAXUE (Law Science Monthly), No. 12, at 10 (December 1986).

\(^{53}\) Art. 37, para. 1.

\(^{54}\) Art. 37, para. 2.

\(^{55}\) Art. 12, sec. 5.
assignment. Courts in Württemburg and other southern states, in contrast, had general jurisdiction over all disputes involving the infringement of an individual's rights by any administrative action. After World War II, West Germany discarded the Prussian model and opted for a general clause. Of the former socialist countries, Bulgaria, Rumania, and Yugoslavia adopted a general clause, whereas others followed the Prussian model. The former Soviet Union made a major policy change in 1987, when it adopted a general clause.

The differences between the two models may not be as significant as they seem, if various exceptions are attached to the general clause or the enumerative clause to cover a wide range of categories. In the PRC, though a general clause has yet to be incorporated into the law, the scope of judicial review has gradually been expanded.

The system of judicial review of administration in the PRC began with the Civil Procedure Law, which states that administrative cases may be brought to the people's court if authorized by other legislation. Despite this explicit mention of legislation, an interpretation of the Supreme People's Court subsequently extended this to include regulations issued by the State Council or those passed by the people's congresses of provinces, autonomous regions, or municipalities directly under the central government, or their standing committees. Regardless of whether this interpretation was accurate, it did expand considerably the scope of judicial review in practice. More than 120

56. SINGH, supra note 39, at 10-11.
57. Id., at 112.
58. Oda, supra note 31, at 123.
59. Since only the actions of individual government officials can be reviewed and most important decisions are made by collegiate bodies, it is suggested that this limitation makes judicial review almost meaningless. Oda, supra note 11, at 116-17, 119-21.
60. See Oda, supra note 31, at 123-25; Oda, supra note 11, at 125. See also Garlicki, Constitutional and Administrative Courts as Custodians of the State Constitutions—The Experience of East European Countries, 61 TUL. L. REV. 1285, 1291 (1987).
61. Art. 3, para. 2.
62. The Supreme People's Court, A Response to the Question Whether the People's Court Shall Receive Administrative Cases Under the Authorization of a Local Regulation Issued by a People's Government, October 9, 1987, in GAOSU GONGZUO SHOUCE (Handbook on Litigation) 312 (The Chamber of Appeal of the Supreme People's Court and the Intermediary People's Court of Wuhan City, Hubei Province eds., October 1988).
63. According to the PRC Constitution, items of legislation originating with the National People's Congress and its Standing Committee are called "statutes" (art. 62, sec. 3; art. 67, sec. 20), whereas administrative regulations are issued by the State Council (art. 89, sec. 1) and local legislation is produced by people's congresses of provinces, autonomous regions, or municipalities under the direct jurisdiction of the central authority or their standing committees (art. 100). These three categories are thus clearly separated. For text of the 1982 Constitution, see ZRGFQ, supra note 22, at 3-16.
such items of legislation and regulations had appeared by the end of 1988.64

Although the general clause principle did not win sufficient support during the drafting of the Administrative Procedure Law, the adoption of an enumerative clause which is more unified and clear must be seen as progress. The Law contains a list of eight areas of administrative law in which an individual may petition for review by the people's court. The list includes decisions concerning the restriction of personal or property rights, imposition of administrative sanctions, infringement of autonomy to carry on business, refusal or failure to issue a license, neglect or refusal to protect personal or property rights, failure to allocate pensions, etc.65 Thus the right to judicial review has been extended to many new areas of administrative omission, and in particular, it now applies to sanctions under the program of re-education through labor.66 However, cases concerning national defense, foreign affairs, the appointment or dismissal of government employees, and other internal disciplinary measures are specifically excluded from the court's jurisdiction. Rule-making acts and those decisions which are stipulated as final and conclusive, are also beyond judicial remedy.67

Object of Review

The distinction between a rule and an order has procedural significance in that it determines whether a notice or a formal hearing is required,68 and it plays a major role in deciding the availability of judi-

64. YING SONGNIAN & ZHU WEIJIU, supra note 52, at 321-22.
65. Art. 11.
66. INFORMATION DEPARTMENT, MINISTRY OF JUSTICE, ZHONGHUA RENNÍN GONGHEGUO XINGZHENG SUSONGFA JIANGHUA (Talks on the Administrative Procedure Law of the PRC) 25-26 (March 1990) [hereinafter INFORMATION DEPARTMENT]. On October 16, 1990, a people's court accepted a case challenging an administrative decision to subject a person to reeducation through labor. However, before the court rendered its judgment, the decision on reeducation through labor was cancelled by an administrative agency, so the court dismissed the case. A member of the court considered that reeducation through labor decision may be reviewed by a people's court according to the Administrative Procedure Law. See Chen Tianyuan, My View on Trying An Administrative Case Challenging [a Decision on] Reeducation Through Labor, FAXUE ZAZHI (Law Magazine), 1991, No. 4, at 47. This view is confirmed by the Supreme People's Court Opinion (on Trial Basis) on Certain Questions Relating to Thorough Implementation of the Administrative Procedure Law, discussed and adopted by the 499th Adjudication Committee of the Supreme People's Court on May 29, 1991, ZHONGGUO LUSHI (China Lawyer), No. 6 (1991), at 41.
67. Art. 12.
68. B. SCHWARTZ, supra note 39, at 145.
cial review. Only an order is subject to court proceedings and, with the exception of the United States where the "ripeness" doctrine is applied, general regulations are for the most part considered to be beyond the reach of the courts. As in other socialist countries which have established a system of administrative procedure, the powers of the people's court under the PRC's Administrative Procedure Law are limited to the review of individual, concrete administrative decisions.

Neither normative, abstract administrative actions (by-laws, regulations, rules) nor administrative decisions concerning reward, punishment, appointment or dismissal are justiciable.

In Western countries, the courts exercise jurisdiction incidentally or indirectly when they review the legality of the general rule which is the basis of an individual order. A rule may be declared null and void if the court concludes that it contradicts the law or has serious defects. This is not the case in socialist countries. At one extreme, courts in the Soviet Union are obliged to apply the dubious rule regardless, while in Rumania, Bulgaria, and Poland courts are permitted to nullify an individual decision but may only inform the administrative agency concerning the illegality of the administrative rule.

The circumstances in the PRC are somewhat different. Regulations issued by ministries or commissions under the State Council or by local people's governments may be referred to but have no binding force on the people's courts as statutes, State Council regulations, or local legislation do. The court's function is limited to raising the legality problem with the legislative body or superior administrative department. If a local regulation issued by a people's government is deemed to conflict with a regulation issued by a ministry or commission under the State Council, or if the regulations issued under the State Council are in conflict among themselves, they must be referred to the State Council for interpretation or adjudication according to the

69. Id., at 522-25.
70. Oda, supra note 31, at 125; Wiessowski & McCaffrey, supra note 32, at 650.
71. Art. 2.
72. Art. 12.
73. SINGH, supra note 39, at 24-25.
75. Id., at 126; Garlicki, supra note 60, at 1295-96; Wiessowski & McCaffrey, supra note 32, at 650-51.
76. Administrative Procedure Law, art. 53, para. 1.
77. Id., art. 52, para. 1. But according to the Constitution, the courts exercise judicial power according to the law (i.e., statutes) alone (art. 126).
An analogous construction may be applied to other cases. Since the National People's Congress Standing Committee is authorized to interpret the law and may revoke inconsistent State Council regulations, regulations issued by ministries or commissions which conflict with the law should also be sent to the NPC Standing Committee for interpretation. As the State Council is authorized to change or revoke regulations issued by its subordinate agencies, it should have sole jurisdiction over the resolution of conflicts among these subordinates. As a result, the functions of the people's courts are rather restricted here. The court is not empowered to set these illegal regulations aside, but may only adjourn proceedings and await a binding interpretation as a guide to future action.

Proceedings and Judgment

In view of the basic principle of the separation of powers and the public interest involved in administrative cases, some other special points deserve attention. Mediation, a major element of civil procedure in the PRC is, with one exception, expressly excluded from the new Administrative Procedure Law. The institution of administrative process in the people's court does not automatically require implementation of the original administrative action to be suspended. However, in certain circumstances, (1) if the defendant deems that it is necessary to suspend the implementation; (2) if the plaintiff petitions the court and the court considers a suspension to be necessary when implementation would cause irreparable damage or if the public interest would also be served by such a suspension; or (3) if the suspension is provided for in other statutes or regulations.

After reviewing the case and finding the administrative decision to be illegal, the people's court in general cannot directly change the decision or substitute its own decision for that of the administrative agency; it may only quash the decision and require the agency to issue a new order according to the court's interpretation of the law. The

78. Administrative Procedure Law, art. 53, para. 2.
79. Constitution, art. 67, secs. 4 & 7.
80. Zhang, supra note 52, at 229.
82. Zhang, supra note 52, at 29.
84. Administrative Procedure Law, article 50.
85. Id., art. 44.
86. Administrative Procedure Law, art. 54, sec. 2.
agency is then obliged not to issue a basically similar decision,\textsuperscript{87} as that would make the judgment meaningless. However, in exceptional cases, where an administrative sanction is manifestly unfair, the people’s court may alter the decision directly.\textsuperscript{88} It is reported that during the 1987-89 period, judgment went in favor of the plaintiff in roughly fifteen percent of administrative cases.\textsuperscript{89} Whether this percentage will change under the new law is an interesting and important question.

For those agencies which defy the judgment of the court, the new law provides a number of specific methods of enforcement: ordering a bank to transfer funds directly from the agency’s account in the case of a fine or the awarding of damages, assessing a daily fine of fifty to one hundred yuan if the agency fails to comply with the court’s order, instituting a judicial suggestion to the agency’s supervising department, or investigation of possible criminal proceedings.\textsuperscript{90}

The Law contains a separate chapter on foreign nationals and foreign organizations. Foreign nationals and organizations are treated similarly to Chinese citizens\textsuperscript{91} unless the foreign country concerned restricts the right of Chinese nationals to conduct administrative litigation (in which case the principle of reciprocity is applied).\textsuperscript{92} However, if the foreign plaintiff engages a lawyer, the lawyer must be employed by a Chinese law firm.\textsuperscript{93}

**Tortious Liability**

The principle that a government agency could be held tortiously liable for its illegal actions was recognized in the PRC’s 1954 Constitution.\textsuperscript{94} At least one statute—the Temporary Statute on Port Management of 1954—specifically stated that a ship owner might claim damages from the port authority if the latter refused to issue an exit permit.\textsuperscript{95} However, these rather advanced provisions remained only on paper for decades.

Since the initiation of the reform policy in 1979, governmental

\textsuperscript{87} Id., art. 55.
\textsuperscript{88} Id., art. 54, sec. 4.
\textsuperscript{89} See The Work Report of the Supreme People’s Court presented by the president Ren Jianxin at the Second Session of the Seventh National People’s Congress on March 29, 1989, and reported in ZRGFQ, supra note 22, at 20.
\textsuperscript{90} Art. 65, para. 3.
\textsuperscript{91} Art. 71, para. 1.
\textsuperscript{92} Art. 71, para. 2.
\textsuperscript{93} Art. 73.
\textsuperscript{94} Art. 97.
\textsuperscript{95} Art. 20. Quoted in YING SONGNIAN \\& ZHU WEIJIU, supra note 52, at 281-82.
tortious liability has again become the focus of attention. The 1982 Constitution reconfirmed this principle, and within a few years concrete progress was achieved. One major breakthrough is contained in Article 42 of the 1986 amendment to the Security Administration and Punishment Act which apart from requiring a public security department to admit its mistake, refund the fine, and return confiscated property when its sanction is judged to be wrong, the Act also stipulates that the plaintiff should be compensated for any loss suffered. A comprehensive framework for such cases was contained in the General Principles of the Civil Law passed at the same time. Civil tortious liability is imposed on a governmental department when it causes damage to the legitimate rights or interests of an individual or corporation during the course of performing its public functions.

However, the imposition of civil liability on a government agency in the course of performing its public functions is contradictory in nature and it is indeed difficult to apply civil law and process to administrative cases. In view of these considerations, a chapter on governmental tortious liability has been incorporated into the new Administrative Procedure Law. Two channels are now open to persons claiming damages from the government. Individual citizens, legal persons, or other organizations may bring a damage suit incidentally with the original petition to revoke or change the administrative decision. If they sue for damage only, they must first petition the administrative agency concerned and then the people's court, and this is the one point at which mediation is permitted. In general, damages shall be paid from public funds at all levels, but the agency is entitled to claim the entire sum or part of the sum from the public servant whose deliberate action or gross neglect is deemed to be responsible for the damage.

96. Art. 41, para. 3.
97. See ZRGFQ, supra note 22, at 1534.
98. See Arts. 106-134 of the Civil Law General Principles in ZRGFQ, supra note 22, at 323-325.
99. Art. 121.
100. Art. 67, para. 1.
101. Art. 67, para. 2. Some suggest that this channel should be opened up to the public only after the administrative decision had been revoked or changed by the agency or the people's court, see INFORMATION DEPARTMENT, supra note 66, at 92-93.
102. Art. 67, para. 3.
103. Art. 69.
104. Art. 68, para. 2.
V. CONCLUSION AND OUTLOOK

After three years of intensive work and nationwide discussion, the PRC finally produced the new Administrative Procedure Law, an important piece of legislation reflecting some compromises among divergent points of view. As explained by Wang Hanbin, vice-chairman of the NPC Standing Committee, because of China’s deficiencies in experience and preparatory work, it was necessary to limit the scope of the new law’s jurisdiction and to have an interval of one and one half years between the adoption of the law and the time of its taking effect.105

Much remains to be done regarding implementation of the new law. To fill the glaring legislative gap in administrative area, the Legal Affairs Bureau under the State Council reportedly has been busy drafting the rules and regulations related to the Administrative Procedure Law to cover administrative decrees, penalties, compensation, etc.106 Central and local government departments, led by the State Council, also have been examining the existing administrative rules to see whether they are consistent with state laws. So far, more than 10,000 government regulations have been declared invalid.107

To prepare for the implementation of the Administrative Procedure Law, promotion campaigns have been launched throughout the country, and special seminars and training sessions have been held for judicial personnel. China now is said to have 2,600 administrative chambers under the courts overseen by 8,000 judges.108 Over 31,000 administrative cases have been handled by the courts at various levels since they set up administrative divisions in the 1980s. More than twenty administrative departments have been involved in these cases, including public security, industry and commerce, taxation, customs, mineral resources, environment protection, and food hygiene.109 Of all the administrative cases handled, the departments sued won in excess of forty percent. Charges were withdrawn in thirty percent of the cases while administrative decisions were revoked or changed in twenty percent of the cases. To date, the number of cases involving public security is the largest.110 In one case, reporting was not permit-

110. According to the statement of Huang Jie, chief judge of the Administrative Division under the Supreme People's Court. XINHUA (New China News Agency) (July 26, 1990).
In fact, among the major obstacles is the resistant and cynical attitude of the bureaucracy and the indifference and skepticism of the populace toward the new law. Some officials regard the law as restricting their ability to perform their functions. Others take it as a loss of face to be defendants in court trials. Still others claim that conditions in China are not yet ripe for administrative litigation. As to the general public, some have no idea how to use the law to protect their interests because of their ignorance. Many others refuse to do so out of fear and a lack of confidence in the judicial process.\textsuperscript{112}

The problems and difficulties mentioned above are serious but not insurmountable. They certainly should not detract from the fact that the enactment of the Administrative Procedure Law is another landmark in the PRC's legal reform program launched in 1979. Its significance is more apparent than the 1979 Criminal Procedure Law and the 1982 Civil Procedure Law, because it has a direct bearing on the rule of law. Whether the government, like a private party, is held responsible for its illegal actions and whether the court is independent enough to exercise its function of adjudicating cases involving government department is considered to be the touchstone of the principle of government under law.\textsuperscript{113} Since the late 1970s, developments in the PRC's legal system have mainly been aimed at serving the interests of the state administration and economic advancement rather than limiting government powers to shield individuals from state or party abuse.\textsuperscript{114} Equally true is the fact that limited improvement in certain areas of human rights conditions have been overshadowed by renewed abuses of other basic rights in China since the Tiananmen Massacre.\textsuperscript{115} But the new law in question is the first of its kind ever enacted in the PRC to permit individuals to challenge and sue administrative agencies. To allow law coming into effect now may well be a hopeful sign that the Chinese leadership are beginning to understand the necessity to demonstrate a genuine commitment for respect of the law if

\textsuperscript{111} Yu Fu, \textit{Talks about the Judgement Against the Public Security Agency}, FAXUE (Law Science Monthly), No. 9, at 44 (Sept. 10, 1987).


\textsuperscript{114} See Alford, "Seek Truth from Facts"—Especially When They are Unpleasant: America's Understanding of China's Efforts at Law Reform, 8 UCLA PAC. BASIN L.J. 177, 182 (1990).

\textsuperscript{115} See Feinerman, Deteriorating Human Rights in China, 89 CURRENT HIST. 265-269, 279-280 (September 1990).
they wish to secure some measure of reconciliation with Chinese intellectuals after the Tiananmen Massacre.\textsuperscript{116} The degree of their sincerity and commitment toward the rule of law will be tested by how far they will go in implementing the Administrative Procedure Law.

\textsuperscript{116} See Leng, \textit{A Key to China's Future: Respect for the Law}, 16 \textit{Asian Affairs} 77-81 (No. 2, 1989).
Appendix I:
People's Republic of China Administrative Procedure Law*

中华人民共和国行政诉讼法。

(1989年4月4日第七届全国人民代表大会
第二次会议通过 1989年4月4日中华人民
共和国主席令第十六号公布 1990年10月
1日起施行)

目 录

第一章 总则
第二章 受案范围
第三章 管辖
第四章 诉讼参加人
第五章 证据
第六章 起诉和受理
第七章 审理和判决
第八章 执行
第九章 侵权赔偿责任
第十章 涉外行政诉讼
第十一章 附则

(Collection of People's Republic of China Law)
第一章 总 则

第一条 为保证人民法院正确、及时审理行政案件，保护公民、法人和其他组织的合法权益，维护和监督行政机关依法行使行政职权，根据宪法制定本法。

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具体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。

第三条 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。

人民法院设行政审判庭，审理行政案件。

第四条 人民法院审理行政案件，以事实为根据，以法律为准绳。

第五条 人民法院审理行政案件，对具体行政行为是否合法进行审查。

第六条 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。

第七条 当事人在行政诉讼中的法律地位平等。

第八条 各民族公民都有用本民族语言、文字进行行政诉讼的权利。

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。

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。

第九条 当事人在行政诉讼中有权进行辩论。

第十条 人民检察院有权对行政诉讼实行法律监督。

第二章 受案范围

第十一条 人民法院受理公民、法人和其他组织对下列具体行政行为不服提起的诉讼：

（一）对拘留、罚款、吊销许可证和执照、责令停产停业、没收财物等行政处罚不服的；

（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不服的；

（三）认为行政机关侵犯法律规定的经营自主权的；

（四）认为符合法定条件申请行政机关颁发许可证和执照，行政机关拒绝颁发或者不予答复的；

（五）申请行政机关履行保护人身权、财产权的法定职责，行政机关拒绝履行或者不予答复的；

（六）认为行政机关没有依法发给抚恤金的；

（七）认为行政机关违法要求履行义务的；

（八）认为行政机关侵犯其他人身权、财产权的。

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。
第十二条 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：
（一）国防、外交等国家行为；
（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；
（三）行政机关对行政机关工作人员的奖惩、任免等决定；
（四）法律规定由行政机关最终裁决的具体行政行为。

第三章 管 辖

第十三条 基层人民法院管辖第一审行政案件。
第十四条 中级人民法院管辖下列第一审行政案件：
（一）确认发明专利权的案件、海关处理的案件；
（二）对国务院各部门或者省、自治区、直辖市人民政府所作的具体行政行为提起诉讼的案件；
（三）本辖区内重大、复杂的案件。
第十五条 高级人民法院管辖本辖区内重大、复杂的第一审行政案件。
第十六条 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。
第十七条 行政案件由最初作出具体行政行为的行政机关所在地人民法院管辖。经复议的案件，复议机关改变原具体行政行为的，也可以由复议机关所在地人民法院管辖。
管轄。

第十八条 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。

第十九条 因不动产提起的行政诉讼，由不动产所在地人民法院管辖。

第二十条 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，由最先收到起诉状的人民法院管辖。

第二十一条 人民法院发现受理的案件不属于自己管辖时，应当移送有管辖权的人民法院。受移送的人民法院不得自行移送。

第二十二条 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。

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。

第二十三条 上级人民法院有权审判下级人民法院管辖的第一审行政案件，也可以把自己管辖的第一审行政案件移交下级人民法院审判。

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判的，可以报请上级人民法院决定。
第四章  诉讼参加人

第二十四条  依照本法提起诉讼的公民、法人或者其他组织是原告。

有权提起诉讼的公民死亡，其近亲属可以提起诉讼。

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。

第二十五条  公民、法人或者其他组织直接向人民法院提起诉讼的，作出具体行政行为的行政机关是被告。

经复议的案件，复议机关决定维持原具体行政行为的，作出原具体行政行为的行政机关是被告；复议机关改变原具体行政行为的，复议机关是被告。

两个以上行政机关作出同一具体行政行为的，共同作出具体行政行为的行政机关是共同被告。

由法律、法规授权的组织所作的具体行政行为，该组织是被告。由行政机关委托的组织所作的具体行政行为，委托的行政机关是被告。

行政机关被撤销的，继续行使其职权的行政机关是被告。

第二十六条  当事人一方或者双方为二人以上，因同一具体行政行为发生的行政案件，或者因同样的具体行政行为发生的行政案件，人民法院认为可以合并审理的，为共同诉讼。
第二十七条 同提起诉讼的具体行政行为有利害关系的其他公民、法人或者其他组织，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。

第二十八条 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。

第二十九条 当事人、法定代理人，可以委托一至二人代为诉讼。

律师、社会团体、提起诉讼的公民的近亲属或者所在单位推荐的人，以及经人民法院许可的其他公民，可以受委托为诉讼代理人。

第三十条 代理诉讼的律师，可以依照规定查阅本案有关材料，可以向有关组织和公民调查，收集证据。涉及国家秘密和个人隐私的材料，应当依照法律规定保密。

经人民法院许可，当事人和其他诉讼代理人可以查阅本案庭审材料，但涉及国家秘密和个人隐私的除外。

第五章 证 据

第三十一条 证据有以下几种：
（一）书证；
（二）物证；
（三）视听资料；
（四）证人证言；
第六章　起诉和受理

第三十七条　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上一级行政机关或者法
律、法规规定的行政机关申请复议，对复议不服的，再向人民法院提起诉讼；也可以直接向人民法院提起诉讼。

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

第三十八条 公民、法人或者其他组织向行政机关申请复议的，复议机关应当在收到申请书之日起两个月内作出决定。法律、法规另有规定的除外。

申请人不服复议决定的，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。复议机关逾期不作出决定的，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。

第三十九条 公民、法人或者其他组织直接向人民法院提起诉讼的，应当在知道作出具体行政行为之日起三个月内提出。法律另有规定的除外。

第四十条 公民、法人或者其他组织因不可抗力或者其他特殊情况耽误法定期限的，在障碍消除后的十日内，可以申请延长期限，由人民法院决定。

第四十一条 提起诉讼应当符合下列条件：

（一）原告是认为具体行政行为侵犯其合法权益的公民、法人或者其他组织；

（二）有明确的被告；

（三）有具体的诉讼请求和事实根据；

（四）属于人民法院受案范围和受诉人民法院管辖。

第四十二条 人民法院接到起诉状，经审查，应当在七日内立案或者作出裁定不予受理。原告对裁定不服的，可以
提起上诉。

第七章 审理和判决

第四十三条 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日内向人民法院提交作出具体行政行为的有关材料，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。

被告不提出答辩状的，不影响人民法院审理。

第四十四条 诉讼期间，不停止具体行政行为的执行。但有下列情形之一的，停止具体行政行为的执行：

（一）被告认为需要停止执行的；

（二）原告申请停止执行，人民法院认为该具体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社会公共利益，裁定停止执行的；

（三）法律、法规规定停止执行的。

第四十五条 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。

第四十六条 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。

第四十七条 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。
回避。
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。

前两款规定，适用于书记员、翻译人员、鉴定人、勘验人。

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。

第四十八条 经人民法院两次合法传唤，原告无正当理由拒不到庭的，视为申请撤诉；被告无正当理由拒不到庭的，可以缺席判决。

第四十九条 诉讼参与人或者其他有下列行为之一的，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一千元以下的罚款、十五日以下的拘留；构成犯罪的，依法追究刑事责任：
（一）有义务协助执行的人，对人民法院的协助执行通知书，无故推拖、拒绝或者妨碍执行的；
（二）伪造、隐藏、毁灭证据的；
（三）指使、贿买、胁迫他人作伪证或者威胁、阻止证人作证的；
（四）隐藏、转移、变卖、毁损已被查封、扣押、冻结的财产的；
（五）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扰乱人民法院工作秩序的；
（六）对人民法院工作人员、诉讼参与人、协助执行人侮辱
辱、诽谤、诬陷、殴打或者打击报复的。

罚款、拘留须经人民法院院长批准。当事人不服的，可以申请复议。

**第五十条** 人民法院审理行政案件，不适用调解。

**第五十一条** 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具体行政行为，原告同意并申请撤诉的，是否准许，由人民法院裁定。

**第五十二条** 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。

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。

**第五十三条** 人民法院审理行政案件，参照国务院和地方人民政府根据法律、行政法规制定、发布的规章。人民法院认为地方人民政府制定、发布的规章与国务院和地方人民政府制定、发布的规章不一致的，由最高人民法院送请国务院作出解释或者裁决。

**第五十四条** 人民法院经过审理，根据不同情况，分别作出以下判决：

（一）具体行政行为证据确凿，适用法律、法规正确，符合法定程序的，判决维持。
(二) 具体行政行为有下列情形之一的，判决撤销或者部分撤销，并可以判决被告重新作出具体行政行为：
1. 主要证据不足的；
2. 适用法律、法规错误的；
3. 违反法定程序的；
4. 超越职权的；
5. 滥用职权的。
(三) 被告不履行或者拖延履行法定义务的，判决其在一定期限内履行。
(四) 行政处罚显失公正的，可以判决变更。

第十五条 人民法院判决被告重新作出具体行政行为的，被告不得以同一的事实和理由作出与原具体行政行为基本相同的具体行政行为。

第十六条 人民法院在审理行政案件中，认为行政机关的主管人员、直接责任人员违反政纪的，应当将有关材料移送该行政机关或者其上一级行政机关或者监察、人事机关；认为有犯罪行为的，应当将有关材料移送公安、检察机关。

第十七条 人民法院应当在立案之日起三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。

第十八条 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
達之日起十日內向上一級人民法院提起上訴。逾期不提起上訴的，人民法院的第一審判決或者裁定發生法律效力。

第五十九條 人民法院對上訴案件，認為事實清楚的，可以实行書面審理。

第六十条 人民法院審理上訴案件，應當在收到上訴狀之日起兩個月內作出終審判決。有特殊 情況 需要 延長的，由高等人民人民法院批准，高等人民法院審理上訴案件需要 延長的，由最高人民法院批准。

第六十一条 人民法院審理上訴案件，按照下列情形，分別處理：

（一）原判決認定事實清楚，適用法律、法規正確的，判決駁回上訴，維持原判；

（二）原判決認定事實清楚，但適用法律、法規錯誤的，依法改判；

（三）原判決認定事實不清，證據不足，或者由於違反法定程序可能影響案件正確判決的，裁定撤銷原判，發回原審人民法院重審，也可以查清事實後改判。當事人對重審案件的判決、裁定，可以上訴。

第六十二条 執行人對已經發生法律效力的判決、裁定，認為確有錯誤的，可以向原審人民法院或者上一級人民法院提出申訴，但判決、裁定不停止執行。

第六十三条 人民法院院長對本院已經發生法律效力的判決、裁定，發現違反法律、法規規定認為需要再審的，應當提交審判委員會決定是否再審。

上级人民法院對下級人民法院已經發生法律效力的判
第六条 深、裁定，发现违反法律、法规规定的，有权提出或者指令下级人民法院再审。

第六十四条 人民检察院对人民法院已经发生法律效力的判决、裁定，发现违反法律、法规规定的，有权按照审判监督程序提出抗诉。

第八章 执行

第六十五条 当事人必须履行人民法院发生法律效力的判决、裁定。

公民、法人或者其他组织拒绝履行判决、裁定的，行政机关可以向第一审人民法院申请强制执行，或者依法强制执行。

行政机关拒绝履行判决、裁定的，第一审人民法院可以采取以下措施：

（一）对应当归还的罚款或者应当给付的赔偿金，通知银行从该行政机关的帐户内划拨；

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

（三）向该行政机关的上一级行政机关或者监察、人事机关提出司法建议。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；

（四）拒不履行判决、裁定，情节严重构成犯罪的，依法追究主管人员和直接责任人员的刑事责任。
第六十六条 公民、法人或者其他组织对具体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。

第九章 侵权赔偿责任

第六十七条 公民、法人或者其他组织的合法权益受到行政机关或者行政机关工作人员作出的具体行政行为侵犯造成损害的，有权请求赔偿。

公民、法人或者其他组织单独就损害赔偿提出请求，应当先由行政机关解决。对行政机关的处理不服，可以向人民法院提起诉讼。

赔偿诉讼可以适用调解。

第六十八条 行政机关或者行政机关工作人员作出的具体行政行为侵犯公民、法人或者其他组织的合法权益造成损害的，由该行政机关或者该行政机关工作人员所在的行政机关负责赔偿。

行政机关赔偿损失后，应当责令有故意或者重大过失的行政机关工作人员承担部分或者全部赔偿费用。

第六十九条 赔偿费用，从各级财政列支。各级人民政府可以责令有责任的行政机关支付部分或者全部赔偿费用。具体办法由国务院规定。
第十章 涉外行政诉讼

第七十条 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。

第七十一条 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。

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。

第七十二条 中华人民共和国缔结或者参加的国际条约同本法有不同规定的，适用该国际条约的规定。中华人民共和国声明保留的条款除外。

第七十三条 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。

第十一章 附则

第七十四条 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。

第七十五条 本法自1990年10月1日起施行。
APPENDIX II:
ADMINISTRATIVE PROCEDURE LAW IN EFFECT FOR
ONE AND A HALF YEARS: MIXED BLESSING AND
SADNESS (EXCERPTS)*

Zhang, Shu-tang & Shi, Zhao-xu

The chief judge of the Administrative Tribunal of the Supreme People's Court, Huang Jie, commented that trial practice involving the Administrative Procedure Law for the past year and a half has generally implemented the law satisfactorily.

The people's courts of the entire country adjudicated 13,006 administrative cases in 1990 and 25,667 cases in 1991. Administrative litigation increases almost one fold within a year. Of those cases in the past two years, the people's courts upheld 36.02% and 31.62% of the administrative agencies' decisions, respectively. 36.10% and 36.90% of the cases in these respective years were withdrawn after the people's courts started to process the cases or the administrative agencies changed their decisions. The people's courts overruled 16.71% and 18.89% of the administrative agencies' decisions. During these two years, administrative judges of the people's courts have changed or amended the agencies' decision by 3.31% and 3.34%, respectively. 65.92% and 65.31% of the first trial decisions was upheld in the second trial.

Huang Jie stated that although the Civil Code has already defined the administrative litigation in the early 1980s, there were still very few cases filed against the government. According to the Supreme People's Court's statistics, the average number of administrative litigation case each year from 1983 to 1986 remained at approximately 800 cases. That was due to the people's prevalent fear to bring suits against the government during the trial period of the Administrative Procedure Law.

People are very apprehensive about bringing a law suit against the government. This is especially true for law suits against base level of the governmental agencies. Some people consider that "the victory or loss in an administrative case against the government is only temporary; however, to be governed by the government is permanent." Venues for some suits are not unprovided; however, quite a few people would rather tolerate an unfavorable administrative decision until the

* Liao-wan, (Outlook Weekly), overseas edition, no. 13 (March 20, 1992), pp. 3-4. The above excerpts are translated and edited by Su Yun Chang, Research Assistant of the East Asian Legal Studies Program of University of Maryland School of Law.
JUDICIAL REVIEW OF ADMINISTRATION

last straw or try to resolve the dispute through private channels. One private-owned business merchant was obviously and unfairly fined by the tax authority. After thorough deliberation, he gave up his legal right to protect his interest in the end. He reluctantly said that “even if I had won the case, it was useless unless I do not want to be in business from now on.” [Obviously, he was worried that the tax authority would keep bothering him, and he did not want to be entangled in relentless law suits if he insisted on asserting his legal rights.] This kind of mentality will not be changed over night. It can be changed when the administrative agencies change their attitude and regard themselves as civil servants.

Quite a lot of the administrative agencies lost in litigations because they [failed to follow or] violated the administrative procedures. Therefore, a more systematic and standardized reform of the administrative laws is required. Laws and statutes which are out-of-date or obviously in conflict with other currently effective laws should be abrogated or amended as soon as possible. At the same time, the quality of law enforcement agencies should be enhanced. In various degrees, some agencies in certain localities still do not abide by the law or enforce it strictly or even fail to pursue the charge against illegal activities.
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