

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 (Amended in 2017)

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(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)

第一章 总则

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。

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。

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。

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。

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。

被告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。

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。

人民法院设行政审判庭，审理行政案件。

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。

Chapter I General Provisions

Article 1 This Law is formulated in accordance with the Constitution of the People's Republic of China for the purposes of ensuring the impartial and prompt trial of administrative cases by the people's courts, settling administrative disputes, safeguarding the legitimate rights and interests of citizens, legal persons and other organizations and supervising the exercise of power by administrative organs in accordance with the law.

Article 2 If a citizen, a legal person or any other organization considers that his or its lawful rights or interests have been infringed upon by an administrative act of an administrative organ or its personnel, he or it has the right to initiate legal proceedings with a people's court in accordance with this Law.

An administrative act as mentioned in the preceding paragraph refers to an administrative act taken by an organization as authorized by laws, regulations or rules.

Article 3 A people's court shall guarantee the right of citizens, legal persons and other organizations to initiate legal proceedings, and accept the administrative cases which shall be accepted.

An administrative organ or its personnel shall not interfere in or obstruct the acceptance of administrative cases by a people's court.

The person in charge of an administrative organ sued shall appear in court and participate in the proceedings. In case he or she cannot appear in court, he or she shall entrust a corresponding staff of the administrative organ to be present.

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 group or individual.

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

Article 5 When hearing an administrative case, a people's court shall take facts as its basis and the law as its criterion.

<p>第六条</p> <p>人民法院审理行政案件，对行政行为是否合法进行审查。</p>	<p>Article 6 When hearing an administrative case, a people's court shall check the legality of the relevant administrative act.</p>
<p>第七条</p> <p>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。</p>	<p>Article 7 When hearing an administrative case, a people's court shall, as prescribed by the law, apply the systems of collegiate panel, withdrawal of judicial personnel and public trial and a system whereby the second instance is final.</p>
<p>第八条</p> <p>当事人在行政诉讼中的法律地位平等。</p>	<p>Article 8 All parties to administrative proceedings shall be equal before the law.</p>
<p>第九条</p> <p>各民族公民都有用本民族语言、文字进行行政诉讼的权利。</p> <p>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。</p> <p>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。</p>	<p>Article 9 Citizens of all ethnic groups have the right to initiate proceedings in their native spoken and written languages.</p> <p>In areas densely inhabited by a minority ethnic group or by several ethnic groups, the people's courts shall conduct hearings in the spoken language in common use in the area and issue legal documents in the written language in common use in the area.</p> <p>A people's court shall provide interpretation for those participants in proceedings who are not fluent in the spoken and written language in common use in the area.</p>
<p>第十条</p> <p>当事人在行政诉讼中有权进行辩论。</p>	<p>Article 10 The parties to administrative proceedings have the right to engage in debate.</p>
<p>第十一条</p> <p>人民检察院有权对行政诉讼实行法律监督。</p>	<p>Article 11 A people's procuratorate has the right to exercise legal supervision over administrative proceedings.</p>
<p>第二章 受案范围</p> <p>第十二条</p> <p>人民法院受理公民、法人或者其他组织提起的下列诉讼：</p> <p>(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；</p> <p>(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；</p> <p>(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；</p> <p>(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；</p> <p>(五) 对征收、征用决定及其补偿决定不服的；</p> <p>(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；</p> <p>(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；</p> <p>(八) 认为行政机关滥用行政权力</p>	<p>Chapter II Scope of Cases for Hearing</p> <p>Article 12 A people's court shall accept actions initiated by citizens, legal persons or other organizations as the result of any of the following circumstances:</p> <p>(1) refusing to accept such administrative penalties as administrative detention, suspension or revocation of a business license or permit, an order to suspend production or business operations or confiscation of illegal goods, a fine or a warning;</p> <p>(2) refusing to accept such compulsory administrative measures or administrative enforcement as restriction of personal freedom or the sealing up, seizure or freeze of property;</p> <p>(3) applying for an administrative license, but the administrative organ refuses to issue the license or fails to respond to the application within the prescribed time limit, or refusing to accept any other decision made on the administrative license by the administrative organ;</p> <p>(4) refusing to accept the decision made by an administrative organ on confirming the ownership or the right to use of land, mineral resources, water, forest, hill, grassland, wasteland, tidal flat, sea area or other natural resources;</p> <p>(5) refusing to accept a decision on expropriation or requisition or a decision on compensation therefor;</p> <p>(6) applying to an administrative organ, requesting it to safeguard personal rights, property rights, and other legitimate rights and interests through the execution of its statutory duty, but the administrative organ refuses to perform the duty or fails to respond to the application;</p> <p>(7) believing that an administrative organ has infringed upon the plaintiff's autonomy in business management, rural land contractual management right or rural land management right;</p>

排除或者限制竞争的；	(8) believing that an administrative organ has abused its administrative power to preclude 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；	(9) believing that an administrative organ has illegally raised funds, apportioned charges or required the performance of other obligations;
(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；	(10) believing that an administrative organ has failed to pay consolation money, subsistence allowances or social insurance benefits according to 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；	(11) believing that an administrative organ has failed to perform according to law or as agreed upon, or illegally modified or rescinded an agreement, such as a government concession agreement or an agreement on compensation for land or house expropriation; and
(十二) 认为行政机关侵犯其他人身权、财产权等合法权益的。	(12) believing that an administrative organ has otherwise infringed upon personal rights, property rights or other lawful rights and interests.
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。	
第十三条	Article 13 A people's court shall not accept the actions initiated by citizens, legal persons or other organizations if they involves any of the following matters:
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；	(1) State acts on issues such as national defense or diplomacy;
(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 regulations or rules, or decisions and decrees with normal binding force which are formulated and issued 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；	(3) decisions made by administrative organs on awards and penalties, or appointment and removal of their personnel; and
(四) 法律规定由行政机关最终裁决的行政行为。	(4) administrative acts over which administrative organs hold final judgment in accordance with the law.
第三章 管辖	Chapter III Jurisdiction
第十四条	Article 14 A people's court at the grassroots level have jurisdiction as a court of first instance over administrative cases.
基层人民法院管辖第一审行政案件。	
第十五条	Article 15 An intermediate people's court has jurisdiction as a court of first instance over the following types of administrative cases:
中级人民法院管辖下列第一审行政案件：	
(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) cases initiated against administrative acts taken by departments under the State Council or the people's governments at the 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 in areas under its jurisdiction; and
(四) 其他法律规定由中级人民法院管辖的案件。	(4) other cases over which the intermediate people's court has jurisdiction as prescribed by the law.
第十六条	Article 16 A high people's court has jurisdiction as a court of first instance over grave and complicated administrative cases in areas under its jurisdiction.
高级人民法院管辖本辖区内重大、复杂的第一审行政案件。	
第十七条	Article 17 The Supreme People's Court has jurisdiction as a court of first instance over grave and complicated administrative cases in the whole country.
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。	
第十八条	Article 18 An administrative case shall be subject to the jurisdiction of the people's court in the place where the administrative organ that initially undertook the specific administrative act is located. An administrative case which has been reconsidered may also be subject to the jurisdiction of the people's court in the place where the reconsideration organ is located.
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。	

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。

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。

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。

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。

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。

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。

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。

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。

第四章 诉讼参加人

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。

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。

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。

With the approval of the Supreme People's Court, a high people's court may, in light of the trial practice, allow several people's courts to have cross-regional jurisdiction over administrative cases.

Article 19 An action initiated against compulsory administrative measures restricting personal freedom shall be subject to the jurisdiction of a people's court in the place where the defendant or the plaintiff is located.

Article 20 An administrative action regarding a real property shall be subject to the jurisdiction of a people's court in the place where the real property is located.

Article 21 Where two or more people's courts have jurisdiction over the same case, the plaintiff may have the option to initiate an action to one of these people's courts. In case that the plaintiff initiates actions to two or more people's courts that have jurisdiction over the case, the people's court that first receives the bill of complaint shall have jurisdiction.

Article 22 Where a people's court finds that a case it has accepted is not under its jurisdiction, it shall transfer the case to the people's court that has jurisdiction over the case. The people's court to which the case has been transferred shall accept the case. Where the people's court to which the case has been transferred deems that the case it has accepted is not under its jurisdiction, it shall report the case to a people's court at the higher level for designation of jurisdiction, and shall not transfer the case again to another people's court on its own.

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

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

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

If a people's court deems it necessary that an administrative case of first instance under its jurisdiction shall be tried by a people's court at the higher level or a designated people's court, it may file a report with the people's court at the higher level for a decision.

Chapter IV Participants in Proceedings

Article 25 An administrative counterpart or any citizen, legal person or other organization who or which has interests in a specific administrative act have the right to initiate an action.

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

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

The people's procuratorate may, on the basis of the findings from its performance of duties that an administrative organ responsible for supervision and administration of ecological environment and resource protection, food and drug safety, state property protection, transfer of the right to use state-owned land or any other field exercises its authority in violation of laws or commits nonfeasance, causing the damage to the national or public interest, make procuratorial recommendation to the administration organ and urge the latter to perform duties by law. If the administrative organ still fails to perform its duties according to law upon the procuratorial recommendation, the people's procuratorate may prosecute with a people's court according to law.

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。

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。

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。

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。

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。

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。

Article 26 If a citizen, a legal person or any other organization initiate an action directly to a people's court, the administrative organ that took the specific administrative act shall be the defendant.

Regarding to a reconsidered case, if the reconsideration organ decides to uphold the original administrative act, the administrative organ that initially took the act and the reconsideration organ shall be the joint defendants; if the reconsideration organ has changed the original administrative act, it shall be the defendant.

If a reconsideration organ fails to make a decision within the prescribed time limit, and an citizen, a legal person or any other organization initiates an action against the original administrative act, the administrative organ that initially took the act shall be the defendant; if an action is initiated against the reconsideration organ's failure to make an decision, the reconsideration organ shall be the defendant.

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

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

If an administrative organ has been abolished or its functions and powers have been changed, the administrative organ that carries on the exercise of functions and powers of the abolished organ 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。

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法律效力，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。

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。

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。

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。

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。

下列人员可以被委托为诉讼代理人：

(一) 律师、基层法律服务工作

Article 27 Where one party or both parties consist of two or more persons, and their administrative cases are against the same specific administrative act or against the specific administrative acts of the same nature, and the people's court considers that the trial of the cases can be merged, which is agreed upon by both parties, this shall be a joint action.

Article 28 If the persons comprising a party to a joint action is large in number, the party may elect a representative to act for it. The acts of such representative in the litigation shall be valid for the party he/she represents. However, modification or waiver of claims or admission of the claims of the other party by the representative shall be subject to the consent of the party he/she represents.

Article 29 A citizen, a legal person or any other organization that has an interest in the administrative act sued but fails to initiate an action, or has an interest in the result of the case, may apply to participate in the action as a third party, or may participate in the proceedings upon notification by the people's court.

A third party that is to bear liability or whose rights or interests are to be reduced in accordance with the judgment of the people's court is entitled to initiating an action in accordance with the law.

Article 30 A citizen with no capacity for action shall be represented by his or her legal representatives in proceedings. In case that the legal representatives try to shift the responsibilities onto each other, the people's court may appoint one of them to represent the citizen in proceedings.

Article 31 Each party or legal representative may entrust one or two persons to represent him or her in proceedings.

Any of the following persons may be entrusted as an agent ad litem:

- (1) a lawyer, or a legal service worker at the grassroots level;
- (2) near relative or staff member of the party concerned; and

者； (3) a citizen recommended by the community, the citizen's employer or relevant social organization.

(二) 当事人的近亲属或者工作人员；

(三) 当事人所在社区、单位以及有关社会团体推荐的公民。

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 A lawyer who serves as an agent ad litem has the right to consult and copy materials pertaining to the case in accordance with relevant provisions, and also has the right to investigate among and collect evidence from the organizations and citizens concerned. If the information involves State secrets, trade secrets or personal privacy, the lawyer shall keep it confidential in accordance with relevant provisions of 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 concerned and agents ad litem may consult or copy the materials pertaining to the trial of the case, excluding those involving State secrets, trade secrets or personal privacy.

第五章 证据

第三十三条

证据包括：

Chapter V Evidence

Article 33 Evidence includes the following types:

(一) 书证；

(1) documentary evidence;

(二) 物证；

(2) material evidence

(三) 视听资料；

(3) audio-video material;

(四) 电子数据；

(4) electronic data;

(五) 证人证言；

(5) testimony of witnesses;

(六) 当事人的陈述；

(6) statement of the parties;

(七) 鉴定意见；

(7) expert opinions; and

(八) 勘验笔录、现场笔录。

(8) 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 the facts.

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

The defendant who fails to provide evidence or provides evidence at the expiry of the time limit without justified reasons shall be deemed as having no evidence, unless the administrative act sued involves the lawful rights and interests of a third party, and the third party needs to provide evidence.

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 legal proceedings, the defendant and its agent ad litem may not collect evidence from the plaintiff, a third party or witnesses 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 collected evidence at the time of taking the specific administrative act but cannot provide due to force majeure or other justified reasons, upon approval by the people's court, the evidence may be provided at a later date.

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 a third party puts forward any reasons or evidence that it has failed to provide during the administrative handling procedure, upon approval by the people's court, the defendant may supplement evidence.

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

Article 37 The plaintiff may provide evidence proving that an administrative act is illegal. If the evidence provided by the plaintiff is untenable, the burden of proof of the defendant cannot be exempted.

<p>除被告的举证责任。</p> <p>第三十八条</p> <p>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：</p> <p>（一）被告应当依职权主动履行法定职责的；</p> <p>（二）原告因正当理由不能提供证据的。</p> <p>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。</p>	<p>Article 38 In an action initiated against the defendant's failure to perform its statutory duty, the plaintiff shall provide evidence proving an application has been filed with the defendant, except where:</p> <p>(1) the defendant shall perform its statutory duty on its own initiative according to its functions and powers; or</p> <p>(2) the plaintiff is unable to provide evidence for any justified reasons.</p> <p>In a case involving administrative indemnity or compensation, the plaintiff shall provide evidence of the damage caused by the specific administrative act. If the plaintiff is unable to provide evidence due to any reasons of the defendant, the burden of proof shall be borne by the defendant.</p>
<p>第三十九条</p> <p>人民法院有权要求当事人提供或者补充证据。</p>	<p>Article 39 A people's court has the authority to require the parties to provide or supplement evidence.</p>
<p>第四十条</p> <p>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。</p>	<p>Article 40 A people's court has the authority to obtain evidence from the relevant administrative organs, other organizations or citizens. However, a people's court shall not, for the purpose of proving the legitimacy of a specific administrative act, obtain evidence which the defendant has failed to collect at the time of taking the administrative act.</p>
<p>第四十一条</p> <p>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：</p> <p>（一）由国家机关保存而须由人民法院调取的证据；</p> <p>（二）涉及国家秘密、商业秘密和个人隐私的证据；</p> <p>（三）确因客观原因不能自行收集的其他证据。</p>	<p>Article 41 If the plaintiff or a third party cannot collect on its own initiative the following evidence pertaining to the case, it may apply to a people's court for obtaining such evidence:</p> <p>(1) evidence that is preserved by a State organ and can only be obtained by a people's court;</p> <p>(2) evidence that involves State secrets, trade secrets or personal privacy; and</p> <p>(3) other evidence that the plaintiff or third party is unable to collect on its own initiative for any objective reasons.</p>
<p>第四十二条</p> <p>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。</p>	<p>Article 42 Under the circumstance where evidence is likely to be cease to exist or be lost or would be difficult to obtain later on, the participants in proceedings may apply to the people's court for preservation of the evidence, and the people's court may also take measures to preserve such evidence on its own initiative.</p>
<p>第四十三条</p> <p>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。</p> <p>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。</p>	<p>Article 43 Evidence shall be presented in court and cross-examined by the parties concerned. However, evidence that involves State secrets, trade secrets or personal privacy shall not be presented in an open court session.</p> <p>A people's court shall, under the procedure prescribed by the law, examine and verify evidence comprehensively and objectively. If evidence is not accepted, reasons shall be explained in the written judgment.</p>
<p>以非法手段取得的证据，不得作为认定案件事实的根据。</p>	<p>Evidence collected by illegal means shall not be taken as a basis for ascertaining the facts.</p>
<p>第六章 起诉和受理</p> <p>第四十四条</p> <p>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。</p> <p>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</p>	<p>Chapter VI Initiation of an Action and Acceptance of a Case</p> <p>Article 44 With regard to an administrative case within the scope of acceptance by a people's court, a citizen, a legal person or any other organization may first apply to the relevant administrative organ for reconsideration and, if refusing to accept the reconsideration decision, may initiate an action to the people's court; it/he may also initiate an action to the people's court directly.</p> <p>In case that the party concerned shall first apply to an administrative organ for reconsideration, and then bring an action to a people's court if refusing to accept the reconsideration decision as stipulated by</p>

<p>院提起诉讼的，依照法律、法规的规定。</p>	<p>relevant provisions of laws and regulations, the provisions of the laws and regulations shall apply.</p>
<p>第四十五条</p> <p>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。</p>	<p>Article 45 Where a citizen, a legal person or any other organization refuses to accept the reconsideration decision, he or it may initiate legal proceedings to a people's court within 15 days from the date of the receipt of the reconsideration decision. If the reconsideration organ fails to make a decision on the expiration of the time limit, the applicant may bring a suit before a people's court within 15 days after the time limit for reconsideration expires, except as otherwise provided for by law.</p>
<p>第四十六条</p> <p>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。</p>	<p>Article 46 Where a citizen, a legal person or any other organization chooses to directly initiate an action to 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, except as otherwise provided for by law.</p>
<p>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。</p>	<p>A people's court will not accept an action initiated regarding a real property more than 20 years after the specific administrative act has been taken, or an action initiated regarding any other issues more than five years after the specific administrative act has been taken.</p>
<p>第四十七条</p> <p>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。</p>	<p>Article 47 Where a citizen, a legal person or any other organization applies to an administrative organ to perform its statutory duty in protecting personal rights, property rights or other lawful rights and interests but the administrative organ fails to perform the duty within two months from the date of receipt of the application, the citizen, legal person or organization may bring a suit before a people's court. Where the time limit for performance of its duty by an administrative organ is stipulated otherwise by laws or regulations, such laws or regulations shall prevail.</p>
<p>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。</p>	<p>Where, in an emergency, a citizen, a legal person or any other organization requests an administrative organ to perform its statutory duty in protecting personal rights, property rights or other lawful rights and interests, but the administrative organ fails to perform the duty, the time limit for initiating legal proceedings will not be subject to the time limit as provided in the preceding paragraph.</p>
<p>第四十八条</p> <p>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。</p>	<p>Article 48 In case that a citizen, a legal person or any other organization misses the time limit for initiating legal proceedings due to force majeure or other impersonal reasons, the missed time will not be counted in the time limit for initiating legal proceedings.</p>
<p>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。</p>	<p>In case that a citizen, a legal person or any other organization misses the time limit for initiating legal proceedings due to the reasons other than those specified in the preceding paragraph, he or it may apply for an extension of the time limit within ten days after the obstacle is eliminated, subject to the approval by the people's court.</p>
<p>第四十九条</p> <p>提起诉讼应当符合下列条件：</p> <p>（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；</p> <p>（二）有明确的被告；</p> <p>（三）有具体的诉讼请求和事实根据；</p> <p>（四）属于人民法院受案范围和受诉人民法院管辖。</p>	<p>Article 49 The following requirements shall be met when an action is to be initiated:</p> <p>(1) the plaintiff must be a citizen, a legal person or any other organization that meets the requirements as prescribed in Article 25 of this Law;</p> <p>(2) there must be a specific defendant;</p> <p>(3) there must be specific claims and corresponding factual basis; and</p> <p>(4) the suit must fall within the scope of cases acceptable to the people's courts and the jurisdiction of the people's court accepting to hear the case.</p>
<p>第五十条</p> <p>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。</p> <p>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。</p>	<p>Article 50 When an action is initiated, a bill of complaint shall be submitted to a people's court, and copies of the statement shall be provided according to the number of defendants.</p> <p>If the plaintiff has genuine difficulty in preparing the bill of complaint in writing, he or it may state his complaint orally; the people's court shall transcribe the complaint, issue a dated written proof and inform the other party of the complaint accordingly.</p>

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。

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。

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。

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。

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。

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。

前款规定的规范性文件不含规章。

第七章 审理和判决

第一节 一般规定

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。

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。

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。

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

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.

If the people's court is unable to determine on the spot whether the bill of complaint meet the requirements as specified in this Law, the court shall accept the statement, issue a written proof stating the date of receipt, and decide whether to file the case within seven days. If the bill of complaint fails to meet the requirements for acceptance, the people's court shall make a ruling not to file the case. The reasons why the complaint has been rejected shall be stated in the written ruling. If the plaintiff refuses to accept the ruling, the plaintiff may appeal to a people's court at the higher level.

If a bill of complaint contains insufficient content or other mistakes, the people's court shall offer its guidance and explanation, and inform the party concerned of what needs to be supplemented once and for all. The people's court shall not refuse to accept the bill of complaint on the grounds that the requirements for acceptance are not met without offering its guidance or explanation.

If a people's court refuses to accept a bill of complaint, fails to issue a written proof following the acceptance of the statement, or fails to inform the party concerned of what needs to be supplemented once and for all, the party concerned may lodge a complaint with a people's court at the higher level, which shall order such people's court to make corrections, and give administrative sanctions to the person directly in charge and other liable personnel in accordance with the law.

Article 52 If a people's court neither files a case nor makes a ruling not to file the case, the party concerned may lodge a complaint with the people's court at the higher level. If the people's court at the higher level considers that the requirements for acceptance are met, the court shall file and hear the case, or designate any other people's court at the lower level to do so.

Article 53 If a citizen, a legal person or any other organization considers that the regulatory documents on which a specific administrative act has been based are illegal despite the fact that these documents are formulated by the departments under the State Council or local people's governments and their departments, he or it may, at the time of initiating an action against the administrative act, request a review of these regulatory documents.

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

Chapter VII Trial and Judgment

Section 1 General Rules

Article 54 A people's court shall hear administrative cases in public, except for those involving State secrets, personal privacy or as otherwise provided for by law.

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

Article 55 If a party considers a member of the judicial personnel to have an interest in the case or to be related to it, which may affect the fair trial of the case, the party has the right to demand the withdrawal of the judicial personnel.

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

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

The withdrawal of the president of the court as the presiding judge shall be decided by the court's adjudication committee; the withdrawal of a member of the adjudicatory personnel shall be decided by the

议一次。

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：

(一) 被告认为需要停止执行的；

(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；

(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；

(四) 法律、法规规定停止执行的。

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。

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。

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。

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。

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：

(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；

(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；

(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) 以欺骗、胁迫等非法手段使原告撤诉的；

(六) 以暴力、威胁或者其他方法

president of the court; the withdrawal of other personnel shall be decided by the presiding judge. Any party who refuses to accept the decision may apply for reconsideration once.

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

(1) if suspension is deemed necessary by the defendant;

(2) if the plaintiff or an interested party applies for a suspension of execution, and the people's court deems that execution of the specific administrative act will cause irremediable losses and suspension of the execution will not harm national or public interests;

(3) if the people's court deems that execution of the specific administrative act will cause heavy damage to national or public interests; and

(4) if suspension of execution is required by the provisions of laws or regulations.

If the party concerned refuses to accept a ruling on suspension or non-suspension of execution, he may apply for reconsideration once.

Article 57 Where an action is initiated against an administrative organ's failure to pay consolation money, subsistence allowances, or job-related injury or medical insurance benefits, and the rights and obligations of the parties are clear, or the livelihood of the plaintiff would be seriously affected unless advance execution is enforced, the people's court may, according to the application of the plaintiff, make a ruling on advance execution.

If the party concerned refuses to accept a ruling on advance execution, he may apply for reconsideration once. Execution of the ruling shall not be suspended during the period of reconsideration.

Article 58 If a plaintiff, having been served with a summon, 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, after having been served with a summon, 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.

Article 59 If a participant in the proceedings or any person commits any of the following acts, the people's court may, according to the seriousness of his or her offense, reprimand him or her, order him or her to sign a statement of repentance or impose upon him or her a fine not exceeding 10,000 yuan or detain him or her for a period not exceeding 15 days; if a crime is constituted, criminal liability shall be investigated according to law:

(1) any person who has the duty to render assistance in investigation or execution, delays without reason or refuses to render assistance or obstructs the investigation or execution after the people's court has served him or her a notice for assistance;

(2) forging, concealing or destroying evidence, or providing false supporting materials, which would hinder the trial of a case by the people's court;

(3) instigating, bribing or coercing others to make false testimony or obstructing witnesses from giving testimony;

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

(5) Making the plaintiff withdraw the case by fraud, coercion or other illegal means;

(6) resorting to violence, coercion or other means to obstruct the

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；

(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。

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。

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。

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。

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。

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。

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。

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。

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。

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。

人民法院审理行政案件，参照规章。

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。

第六十五条

人民法院应当公开发布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。

personnel of a people's court from performing their duties or disrupting court order by making an uproar in the court or rushing at it; or

(7) threatening, insulting, slandering, framing, beating, besieging or retaliating against the adjudicatory personnel or other personnel of a people's court, participants in proceedings or personnel who assist in the investigation or execution.

If an entity commits any of the acts as specified in the preceding paragraph, the people's court may impose a fine or detain the person chiefly in charge of the entity or the directly liable personnel according to the provisions of the preceding paragraph; if a crime is constituted, criminal liability shall be investigated according to law.

A fine or detention must be approved by the president of a people's court. Any party who refuses to accept the punishment decision may apply to the people's court at the next higher lever for reconsideration once. Execution of the decision shall not be suspended during the period of reconsideration.

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

Conciliations shall be carried out on the principles of voluntariness and legitimacy, and shall not harm the national interests, public interests or others' legitimate rights and interests.

Article 61 Where, in an administrative action that involves administrative licensing, registration, collection or expropriation or the ruling rendered by an administrative on a civil dispute, a party applies for concurrent settlement of relevant civil disputes, the people's court may handle the civil disputes concurrently.

Where, in administrative proceedings, the people's court considers that an administrative case needs to be tried on the judgment rendered for a civil action, the court may make a ruling to suspend the administrative proceedings.

Article 62 Prior to a judgment or ruling made by a people's court on an administrative case, if the plaintiff applies for the withdrawal of the case, or if the defendant amends the specific administrative act and the plaintiff, as a result, agrees and applies for the withdrawal of the suit, the people's court shall decide whether or not to grant the approval thereon.

Article 63 In trying administrative cases, a people's court shall take the law, administrative rules and regulations and local regulations as the criteria. Local regulations shall be applicable to administrative cases within the corresponding administrative areas.

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

In trying administrative cases, a people's court shall take relevant rules and regulations as the criteria.

Article 64 Where, in trying an administrative case, a people's court finds through investigation that the regulatory documents as specified in Article 53 herein are illegal, the court shall not take such documents as the basis for determining the legitimacy of the specific administrative act, and put forward handling suggestions to the organs issuing the documents.

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

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。

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。

第二节 第一审普通程序

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。

被告不提出答辩状的，不影响人民法院审理。

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。

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。

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：

- (一) 主要证据不足的；
- (二) 适用法律、法规错误的；
- (三) 违反法定程序的；
- (四) 超越职权的；
- (五) 滥用职权的；
- (六) 明显不当的。

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。

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。

第七十三条

Article 66 Where, in trying an administrative case, a people's court considers that the person in charge of the administrative organ or the directly liable personnel has violated laws or administrative disciplines, the court shall transfer the relevant materials to the supervisory organ, the administrative organ in question or the administrative organ at the higher level; if the people's court considers that there exists a criminal act, it shall transfer the relevant materials to the public security and procuratorial organs.

Where a defendant, having been summoned by the peoples' court, refuses to appear in court without justified reasons, or leaves the court session halfway without permission, the court may make an announcement on the defendant's refusal to appear in court or leaving the court session halfway, and propose suggestions to the supervisory organ or the administrative organ at the higher level on the sanctions to be given to the person in charge of the defendant or the directly liable personnel.

Section 2 Ordinary Procedure of First Instance

Article 67 A people's court shall, within five days after filing a case, send a copy of the bill of complaint to the defendant. The defendant shall, within 15 days after receiving the copy of the bill of complaint, provide the people's court with the evidence for taking a specific administrative act and regulatory documents on which the administrative act has been based and submit a bill of defense. The people's court shall send a copy of the bill of defense to the plaintiff within five days after receiving it.

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

Article 68 When a people's court hears administrative cases, a collegial panel of judges or of judges and assessors shall be formed. The number of members of a collegial panel shall be an odd number of three or more.

Article 69 Where the evidence for taking a specific administrative act is conclusive, the application of laws and regulations is correct, and the legal procedure is complied with, or the reasons for the defendant's performance of its statutory duty or payment obligation as proposed by the plaintiff are untenable, the people's court shall reject the claims of the plaintiff.

Article 70 Where a specific administrative act has been taken under any of the following circumstances, the people's court may make a ruling to cancel or cancel partially the administrative act, or rule the defendant to make a new administrative act:

- (1) inadequacy of essential evidence;
- (2) erroneous application of the law or regulations;
- (3) violation of the legal procedure;
- (4) exceeding authority;
- (5) abuse of powers; and
- (6) obvious unfairness.

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

Article 72 Where, after hearing a case, the people's court finds that the defendant has failed to perform its statutory duty, a fixed time shall be set by judgment for its performance of the duty.

Article 73 Where, after hearing a case, the people's court finds that the

<p>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。</p>	<p>defendant holds the payment obligation according to law, the court shall rule the defendant to perform the payment obligation.</p>
<p>第七十四条</p>	<p>Article 74 Where a specific administrative act has been taken under either of the following circumstances, the people's court shall make a ruling to confirm that it is illegal, but not cancel the administrative act:</p>
<p>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：</p>	<p>(1) the specific administrative act shall be cancelled according to law, but the cancellation will cause great damage to national or public interests; and</p>
<p>（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；</p>	<p>(2) the procedure for taking of the specific administrative act constitutes a minor legal offense, but does not have a real impact on the rights of the plaintiff.</p>
<p>（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。</p>	<p>Where a specific administrative act has been taken under any of the following circumstances, and the cancellation of the administrative act or the ruling on performance by the administrative organ is not required, the people's court shall make a ruling to confirm that the act is illegal:</p>
<p>行政行为有下列情形之一的，不需要撤销或者判决履行的，人民法院判决确认违法：</p>	<p>(1) the administrative act is illegal, but there is no cancellable content in the act;</p>
<p>（一）行政行为违法，但不具有可撤销内容的；</p>	<p>(2) the defendant has changed the original illegal administrative act, and the plaintiff still request the people's court to confirm that the original administrative act is illegal; and</p>
<p>（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；</p>	<p>(3) the defendant fails to perform or delays the performance of its statutory duty, and the ruling on performance by the defendant is meaningless.</p>
<p>（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。</p>	<p>Article 75 Where a plaintiff applies for confirming that a specific administrative act has no legal validity because of its gross and evidence illegalities such as the administrative organ has no qualifications or the exercise of the administrative act has no basis, the people's court shall make a ruling to confirm that the act is invalid.</p>
<p>第七十五条</p>	<p>Article 76 At the time of making a ruling to confirm that a specific administrative act is illegal or invalid, a people's court may order the defendant to take remedial action; if damage has been caused to the plaintiff, the court shall rule the defendant to assume compensation liability according to law.</p>
<p>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。</p>	<p>Article 77 Where an administrative sanction is obviously unfair, or there is definite error in the fixing or identification of the amount of money involved in a specific administrative act, the people's court may make a ruling to change the administrative sanction or the amount of money.</p>
<p>第七十六条</p>	<p>At the time of making a ruling to change the administrative sanction or fine, the people's court shall not aggravate the obligations of the plaintiff or impair its rights or interests, unless an interested party, as the co-plaintiff, has lodged the opposite claims.</p>
<p>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。</p>	<p>Article 78 Where a defendant fails to perform according to law or as agreed upon or illegally alter or terminate the agreement as specified in Item (11) of the first paragraph of Article 12 herein, the people's court shall rule the defendant to continue the performance of such agreement, take remedial action, compensate for losses or assume other obligations.</p>
<p>第七十七条</p>	<p>Where the defendant alters or terminates the agreement as specified in Item (11) of the first paragraph of Article 12 herein according to law, but fails to give compensation, the people's court shall rule the defendant to make compensation.</p>
<p>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。</p>	<p>Article 79 In an administrative case wherein the reconsideration organ and the administrative organ which undertook the original administrative act are the joint defendants, the people's court shall make judgments on both the reconsideration decision and the original administrative act.</p>
<p>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。</p>	
<p>第七十八条</p>	
<p>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。</p>	
<p>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。</p>	
<p>第七十九条</p>	
<p>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</p>	

<p>判。</p> <p>第八十条</p> <p>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。</p> <p>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。</p> <p>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。</p>	<p>Article 80 People's courts shall publicly pronounce their judgments on all cases regardless whether the cases have been tried publicly or privately.</p> <p>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.</p> <p>Upon pronouncement of a judgment, the parties concerned must be informed of their right to file an appeal, the time limit for appeal and the court to which they may appeal.</p>
<p>第八十一条</p> <p>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。</p>	<p>Article 81 The people's court shall make a judgment of first instance within six months from the date of filing the case. If an extension of the time limit is necessary under special circumstances, it shall be approved by a high people's court, if an extension of the time limit for trying a case of first instance by a high people's court is needed, this shall be approved by the Supreme People's Court.</p>
<p>第三节 简易程序</p> <p>第八十二条</p> <p>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：</p> <p>（一）被诉行政行为是依法当场作出的；</p> <p>（二）案件涉及款额二千元以下的；</p> <p>（三）属于政府信息公开案件的。</p> <p>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。</p> <p>发回重审、按照审判监督程序再审的案件不适用简易程序。</p>	<p>Section 3 Summary Procedure</p> <p>Article 82 In trying the following administrative cases of first instance, if the people's court considers that the facts are evident, the rights and obligations clear and the disputes trivial, the summary procedure may be applied:</p> <p>(1) administrative cases in which the administrative act sued has been taken on the spot according to law;</p> <p>(2) administrative cases in which the amount of money involved is less than 2,000 yuan; and</p> <p>(3) administrative cases related to government information disclosure.</p> <p>If the parties concerned agree to apply the summary procedure for the administrative cases of first instance other than those mentioned in the preceding paragraph, the summary procedure may be applied.</p> <p>The summary procedure is not applicable to the administrative cases that are remanded for a retrial or retried according to the procedure of trial supervision.</p>
<p>第八十三条</p> <p>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。</p>	<p>Article 83 An administrative case to which the summary procedure is applied shall be tried by a single judge, and the case shall be concluded within 45 days after the case is filed.</p>
<p>第八十四条</p> <p>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。</p>	<p>Article 84 If a people's court finds it inappropriate to apply the summary procedure in trial of an administrative case, the court may make a ruling to replace the summary procedure with the ordinary procedure.</p>
<p>第四节 第二审程序</p> <p>第八十五条</p> <p>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。</p>	<p>Section 4 Procedure of Second Instance</p> <p>Article 85 If a party refuses to accept a judgment of first instance made by a people's court, the party has the right to file an appeal with the people's court at the higher level within 15 days after the service of the written judgment. If a party refuses to accept a ruling of first instance made by a people's court, the party has the right to file an appeal with the people's court at the higher level within 10 days after the service of the written ruling. All judgments and rulings of first instance made by the people's court that have not been appealed within the prescribed time limit shall be legally effective.</p>
<p>第八十六条</p> <p>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。</p>	<p>Article 86 With respect to a case on appeal, a people's court shall form a collegial panel to conduct the trial. If the collegial panel, after consulting the files, making investigations and questioning the parties, deems it unnecessary to conduct a trial as no new facts, evidence or arguments are raised, a trial may not be conducted.</p>
<p>第八十七条</p>	<p>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</p>

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。

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。

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：

（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；

（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；

（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；

（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。

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。

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。

第五节 审判监督程序

第九十条

当事人对已经发生法律效力判决、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。

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：

（一）不予立案或者驳回起诉确有错误的；

（二）有新的证据，足以推翻原判决、裁定的；

（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；

（四）原判决、裁定适用法律、法规确有错误的；

（五）违反法律规定的诉讼程序，可能影响公正审判的；

（六）原判决、裁定遗漏诉讼请求的；

（七）据以作出原判决、裁定的法

tried the case and the administrative act sued.

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. If an extension of the time limit is necessary under special circumstances, it shall be approved by a high people's court, and if an extension of the time limit for handling a case on appeal by a high people's court is necessary, this shall be approved by the Supreme People's Court.

Article 89 In trying a case on appeal, a people's court shall, in light of the following situations, dispose of it accordingly:

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

(2) if the facts are incorrectly ascertained or the laws and regulations are incorrectly applied in the original judgment or ruling, the judgment or ruling shall be amended, rescinded or altered according to law;

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

(4) if there was violations of the legal procedure in making the original judgment, such as omitting a party or illegal judgment by default, the original judgment shall be rescinded and the case shall be remanded to the original people's court for a retrial.

After a judgment is made on a case remanded for a retrial by the people's court which originally tried the case, if a party files an appeal, the people's court of second instance shall not remand the case for another retrial.

If a people's court trying a case on appeal needs to change the original judgment, the court shall also make a judgment on the administrative act sued.

Section 5 Procedure of Trial Supervision

Article 90 If a party considers that a legally effective judgment or ruling contains definite error, the party may apply to the people's court at the higher level for a retrial, but the execution of the judgment or ruling shall not be suspended.

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

(1) there is definite error in failure to file the case or rejection of the action;

(2) there is new evidence, which is sufficient to overturn the original judgment or ruling;

(3) the main evidence for ascertaining the facts in the original judgment or ruling is insufficient, forged or not cross-examined;

(4) there is definite error in the application of laws and regulations in the original judgment or ruling;

(5) the statutory litigation procedure is violated, which may affect the fair trial of the case;

(6) some claims are omitted in the original judgment or ruling;

(7) the legal documents on which the original judgment or ruling was made have been cancelled or revised; and

(8) the judge is found to have taken bribes, engaged in malpractice for

律文书被撤销或者变更的；

personal benefits or perverted the law during the trial of the case.

(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。

第九十二条

各级人民法院院长对本院已经发生法律效力判决、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 If the president of a people's court finds that a legally effective judgment or ruling made by his or her court falls under any of the circumstances as specified in Article 91 herein or finds that the conciliation is in violation of the principle of voluntariness or the conciliation statement is illegal and deems it necessary to have the case retried, the president shall refer the matter 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。

If the Supreme People's Court or a people's court at the higher level finds that a legally effective judgment or ruling made by a local people's court or a people's court at the lower level respectively falls under any of the circumstances as specified in Article 91 herein, or finds that the conciliation is in violation of the principle of voluntariness or the conciliation statement is illegal, the Supreme People's Court or the people's court at the higher level have the power to bring the case up for trial itself or order the people's court at the lower level to conduct a retrial.

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 If the Supreme People's Procuratorate or a people's procuratorate at the higher level finds that a legally effective judgment or ruling made by a local people's court or a people's court at the lower level respectively falls under any of the circumstances as specified in Article 91 herein, or finds that the conciliation statement harms national or public interests, the Supreme People's Procuratorate or the people's procuratorate at the higher level have the right to lodge a protest.

地方各级人民检察院对同级人民法院已经发生法律效力判决、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。

If a local people's procuratorate finds that a legally effective judgment or ruling made by a people's court at the same level falls under any of the circumstances as specified in Article 91 herein, or finds that the conciliation statement harms national or public interests, the people's procuratorate may make a procuratorate proposal to the people's court at the same level, and report the same to the people's procuratorate at the higher level for record-filing; and may also apply to the people's procuratorate at the higher level for lodging a protest with the people's court at the same 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。

If a people's procuratorate finds that a member of the judicial personnel has committed an illegal act during any of the trial procedures other than the procedure of trial supervision, it shall have the power to make a procuratorate proposal to the people's court at the same level.

第八章 执行

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。

Chapter VIII Execution

Article 94 The parties must perform the legally effective judgment, ruling or conciliation statement made by the people's court.

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 If a citizen, a legal person or any other organization refuses to perform the judgment, ruling or conciliation statement, the administrative organ or a third party may apply to a people's court of first instance for compulsory execution or the administrative organ may proceed with compulsory execution according to 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 If an administrative organ refuses to perform the judgment, ruling or conciliation statement, 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) informing the bank to transfer from the administrative organ's account the amount of the fine that shall be returned or the amount of money that shall be paid;

(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；

(2) imposing a fine ranging from 50 to 100 yuan per day on an administrative organ that fails to perform the judgment, ruling or conciliation statement within the prescribed time limit, counting from the date when the time limit expires;

(3) making an announcement on the administrative organ's refusal to

(三) 将行政机关拒绝履行的情况予以公告；

(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；

(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。

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。

第九章 涉外行政诉讼

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。

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。

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。

第十章 附 则

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。

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。

第一百零三条

本法自1990年10月1日起施行。

perform the judgment, ruling or conciliation statement;

(4) making a judicial proposal to the supervisory organ or the administrative organ at a level higher to the administrative organ in question. 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

(5) if an administrative organ refuses to perform a judgment, ruling or conciliation statement, resulting in adverse social influence, the person in charge of the administrative organ and other directly liable personnel may be detained; if the circumstance is serious and a crime is constituted, criminal liability shall be investigated according to law. Article 97 If a citizen, a legal person or any other organization, during the period prescribed by law, neither initiates an action nor carries out the specific administrative act, the administrative organ may apply to a people's court for compulsory execution, or proceed with compulsory execution according to law.

Chapter IX Administrative Proceedings Involving Foreign Interests

Article 98 This Law is applicable to foreign nationals, stateless persons and foreign organizations that are engaged in administrative actions in the People's Republic of China, except as otherwise provided for by law.

Article 99 Foreign nationals, stateless persons and foreign organizations that are engaged in administrative actions in the People's Republic of China have the same rights and obligations as citizens and organizations of the People's Republic of China.

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

Article 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.

Chapter X Supplementary Provisions

Article 101 Where there are no relevant provisions in this Law regarding the duration, service, property preservation, trial in court, conciliation, suspension of an action, termination of an action, summary procedure or execution for the trial of administrative cases, or regarding the supervision carried out by people's procuratorates 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.

Article 102 The 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. The specific measures on the charging of litigation fees shall be made separately.

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



扫一扫，手机阅读更方便