# The Amendment of China's Administrative Litigation Law: Progress and Limitations

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## Introduction

China passed the Administration Litigation Law (ALL) in April 1989 and implemented it from October 1990 (Pei 1997). The ALL allows citizens to sue the government. However, the ALL appears to have limited power to protect citizens from an abuse of government power. Although around 10 million Chinese citizens annually resort to "visits and letters" ( 信 访 ) institutions to file complaints, of which complaints about government actions make up a large portion, only about 100,000 people sued the government in the 2000s (Minzner 2006). The Chinese media call this phenomenon as "trust visits and letters but not law" ( 信访不信法 ; Dong 2014). This is perplexing because many scholars note that "visits and letters" are not an effective way of resolving problems (Minzner 2006; Zhang 2008). One could attribute this to the Chinese tradition of not using the law. But in fact, the number of civil lawsuits has increased dramatically since the 1980s. Administrative lawsuits make up only about 2 percent of all lawsuits since the 1990s (Zhang 2008).

The problems of the ALL can be summarized as "[it is] difficult to get lawsuits accepted, difficult to have fair trials, difficult to have decisions enforced" ( 立案难，审判难，执行难 ). Courts in China are subject to the control of the Chinese Communist Party (CCP). Moreover, local courts are not independent from local party-governments, which control personnel appointments and court funding. Although the central government began to provide a portion of funding for local courts in 2008, some of the burden remained on local governments (Li 2013; Liebman 2007). The ALL did not function properly in the 1990s and 2000s while the number of mass incidents ( 群体性事件 ) increased rapidly (Chuang 2014).

Authoritarian regimes often utilize laws to provide a channel to dissipate citizen discontent and to make sure government agents do not misuse their power. Xi Jinping, who took power in late 2013, has emphasized the rule of law. Although his predecessors also pointed out the importance of the rule of law, it was under Xi's leadership that, for the first time in the history of the CCP, the Central Committee of the CCP discussed legal reforms as a main issue in the Fourth Central Committee of the Eighteenth Congress, and the CCP amended the ALL in 2014, with implementation to begin in May 2015. This article aims to analyze the progress and

limitations of this amendment.

**The 2014 Amendment of the ALL**

This section examines the content of amendment of ALL, focusing on the changes that could relieve the three difficulties mentioned above: "[it is] difficult to get lawsuits accepted, difficult to have fair trials, difficult to have decisions enforced" ( 立案难，审判难，执行难 ).

*The Difficulty of Getting Lawsuits Accepted ( 立案难 )*

One of important reasons for the difficulty in getting lawsuits accepted is related to the limited scope of issues covered by the 1989 ALL. The 1989 ALL only allowed administrative lawsuits against "concrete administrative actions" ( 具体行政行为 ): citizens were not allowed to sue the government over the rules and laws of the government; they were only allowed to sue the government for violations of administrative rules and laws. The amended ALL allows citizens to file complaints against "administrative actions" ( 行政行为 ), which leaves room for lawsuits against rules and laws made by local governments (Chen 2014).

The other important reason for the difficulty in getting lawsuits accepted is related to procedures. Under the terms of the 1989 ALL, courts would examine not only whether the plaintiff submitted the required documents but also whether the plaintiff is qualified for litigation, including whether he or she is an interested party in the lawsuit and whether his or her interests are legal. Thus, a number of cases failed to qualify (Wang 2015). Local governments often exerted influence on courts not to accept sensitive cases (Jiang 2014; O'Brien and Li 2004). According to Article 51 of the new ALL, "A people's court receiving a complaint shall docket it if it meets the conditions for filing a complaint as set out in this Law[...]. If the complaint does not meet the conditions for filing a complaint, the people's court shall enter a ruling not to docket the complaint. The written ruling shall state the reasons for not docketing the complaint. The plaintiff may file an appeal against the ruling" (ALL 2014). In addition, the new ALL extends the filing period from three to six months after the administrative actions in question were taken. And the new ALL allows the plaintiff to file a complaint verbally (ALL 2014).

*The Difficulty of Getting a Fair Trial ( 审判难 )*

One of important reasons for the difficulty of getting a fair trial is that local governments could influence local courts. Losing administrative lawsuits could be harmful to the careers of local officials. Thus, local officials have an incentive to influence courts to get favorable judgments. Article 14 of the new ALL stipulated that "The basic people's court shall have jurisdiction over administrative cases as courts of first instance" (ALL 2014). At the same time, the new ALL allows an intermediate people's court jurisdiction over "a major or complicated case within its

territorial jurisdiction" (ALL 2014). Because which cases are "major or complicated" is vague, it remains to be seen how many cases fall under the jurisdiction of an intermediate people's court and whether this will ameliorate the problem of local government influence.

Another problem in filing administrative lawsuits was that once local governments received a subpoena from the court, government officials usually delegated lawyers to attend in their place, or they even ignore the subpoena (Li 2013; O'Brien and Li 2004). It is said that "even if citizens sue government organizations, they cannot see government officials in court" ( 民告官不见官 ; Jin 2011). For instance, cases in which the person in charge of an administrative agency attended the court as a defendant represented fewer than 1 percent of the lawsuits filed in Guizhou province between 2010 and 2014. In Neimenggu in 2013, there were only 8 out of 2,000 administrative lawsuits in which the person in charge of an administrative agency attended the court as a defendant (Li 2016). It is evident that local government officials usually do not take administrative lawsuits seriously.

Some local governments conducted experiments that required the person in charge of an administrative agency to attend trials. Heyang County ( 合阳 ) of Shaanxi Province introduced this rule in 1999. Other local governments followed the suit. Jiangsu Province adopted this rule in 2006 (Wang 2008). Adoption of this rule increased the attendance of people in charge of administrative agencies. For instance, before Jingmen City ( 荆门市 ) of Hubei Province applied this rule in January 2012, persons in charge of administrative agencies attended only 2.2 percent of administrative lawsuit cases. By 2013, however, it had increased to 92.8 percent (Li 2016).

In 2014, this rule was adopted nationally. Article 3 of the new ALL note that "The person in charge of an administrative agency against which a complaint is filed shall appear in court to respond to the complaint, or, if he or she is unable to appear in court, authorize a relevant employee of the administrative agency to appear in court" (ALL 2014). The Supreme People's Court of China (2016) interpreted the phrase "the person in charge of an administrative agency" as referring to the director or deputy director of a government organization.

Li (2016) noted that this institution is probably unique in China, and referred to it as a Chinese solution for Chinese problem. Advocates for this rule claim that attending court would help the heads of bureaucratic organizations learn about the importance of the rule of law. Considering the concentration of power among the leaders of bureaucratic organizations in China, the argument goes, whether he or she emphasizes bureaucratic organizations function according to the rule of law is important. Advocates also argue that having the director of bureaucratic organization attend court for a lawsuit would give the plaintiff the sense that the government is taking the case seriously, and therefore render him or her more willing to accept the verdict of the court (Jin 2012).

Some have cast doubt on the effectiveness of this rule. They argue that because of this rule

trials are often rescheduled to accommodate the busy schedules of the director or vice director of government organizations, which undermines the authority of the courts (Zhai 2012). They also point out that government officials do not speak in court out of fear that they might make a mistake (Liu and Shi 2016). Moreover, the ALL does not have a clause about punishment of the person in charge of an administrative agency if he or she fails to appear in court as defendant. Thus, government officials do not have a strong incentive to attend the court unless local governments use court attendance as part of an evaluation of cadre performance (Li 2016).

Another change in the new ALL is that it requires government organizations that conduct "administrative reconsideration" ( 行政复议 ) to attend court as codefendant. Administrative reconsideration allows citizens to file a complaint with government organizations. According to Jiang Ming'an ( 姜明安 ), a law professor at Beijing University, administrative reconsideration usually upholds administrative actions, and therefore many citizens doubt its effectiveness in redressing their grievances. By making the organization that conducts reconsideration a codefendant, China hopes to ameliorate this problem (Xinhuawang 2014).

**The Difficulty in Enforcing Decisions ( 执行难 )**

The new ALL allows the court to take several actions if an administrative agency refuses to comply with the court's judgment, including imposing a fine, reporting the failure to comply to the agency's supervising authority or the administrative agency at the next level, and even detaining the liable officials if their refusal to comply with the judgment has adverse social impact (Zheng and Xia 2015).

**Conclusion**

As discussed above, the ALL was amended to address problems in institutions concerned with administrative litigation. However, some suggestions from Chinese legal experts were not accepted. First, although some experts advocated for the establishment of independent courts for administrative lawsuits, this was not included in the amendment. Second, the new ALL does not mention administrative lawsuits in the public interest (Zheng and Xia 2015). Third, Jiang Bixin ( 江必新 , 2014), vice president of the Supreme People's Court, pointed out that in many other countries, if defendants do not provide proof to the court, the court finds for the plaintiff. He argued for adopting a similar rule in China, but this was rejected.

Given local governments' influence over local courts, it is difficult to expect that local courts could make impartial verdicts. Thus, further reforms are needed to guarantee the independence of local courts. Considering that the CCP and the government are intermingled functionally and personally, and that the ALL only applies to the government but not to the CCP, the ALL is intrinsically limited in its ability to protect citizens from the abuse of political power.

Nonetheless, considering that the abuse of power by local governments is a major source of discontent in China, using the ALL is still meaningful both for protecting citizens' rights and for increasing the legitimacy of CCP's rule.

It is too early to evaluate the impact of the ALL on redressing the problems of filing administrative lawsuits, trials, and enforcement. This remains a task for future research. To some extent, the new ALL does appear to have reduced the difficulty of filing lawsuits. Two hundred twenty thousand lawsuits were files in 2015, an increase of 60 percent over the previous year. This is impressive, but the number of administrative lawsuits remained small, and represented fewer than 2 percent of all lawsuits filed in 2015 (Geng 2016).

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