

Outline of the paper entitled:

China's Administrative Adjudication System Current Situation and Prospects for Administrative Adjudication in Guangzhou Municipality Guangdong Province

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1. History and development of the system of administrative adjudication in Guangzhou

Prior to passage of the Administrative Litigation Law

- Some jurisdiction was originally given under the provisions of the 1982 Civil Procedure Law (for Trial implementation) and other particular legislation for courts to hear administrative cases
- It was only in 1986 that the Guangzhou People's Intermediate Court received its first administrative case in respect of a decision of the environmental protection agency, which was heard in the economic division of the court
- In June 1987 the administrative division of the Guangzhou Intermediate People's Court was established. Administrative divisions were later established in the lower level courts
- Prior to the Administrative Litigation Law coming into force in October 1990, preparatory work was carried out in respect of administrative litigation, including establishment of a study group to carry out preparatory work for the implementation of a broad ranging system of administrative litigation
- During this time the number of administrative litigation cases increased, though from a low base
- In accordance with the provisions of then extant Civil Procedure Law, there was a heavy emphasis on mediation of disputes, and as a result few judgments were given
- Because of some problems in enforcement where agencies either relied on their own internal rules as the basis of decision-making or ignored the rules, shortly before the introduction of the Administrative Litigation Law a meeting was held to emphasise the need to follow rules when making administrative decisions as well as to conduct training for those representatives of government agencies who were to appear in court as defendant on behalf of the government agency

After passage of the Administrative Litigation Law

- The jurisdiction of the intermediate court to hear administrative cases was expanded considerably
- Diagrams omitted which break down the number and types of cases heard by local and intermediate people's courts in Guangzhou municipality

2. Basic Characteristics of administrative adjudication

- The number of administrative cases has increased each year although the number of judges in the administrative division has not changed since its establishment
- Between 1987 and 2001, the types of administrative cases adjudicated are concentrated in a number of areas of administrative decision-making: primarily: urban planning, land and public security, which reflects the areas of greatest change and development in Guangzhou
- There has also been a gradual increase in complaints about administrative decision-making occurring in areas other than those traditionally seen, for example disputes in relation to the retirement benefits of cadres

- Difficulties exist with respect to the applicable law for determining the lawfulness of the administrative decision, in particular as the result of the existence of large numbers of local government regulations and departmental rules which departments argue constitute the legal basis of their decision-making to which the court should “refer” when determining the lawfulness of the administrative decision in question.
- The rate at which applicants withdraw their applications before a decision is handed down is high. The rate at which the applicant withdrew cases before a final decision was handed down was higher between 1987 and 1989 than it was between 1989 and 2001 after passage of the Administrative Litigation Law, which adopted the principle that it was not appropriate to mediate an administrative case. Despite this, the rate at which the applicant withdraws cases remains high. Part of the reason for the disparity was emphasis on mediation of disputes before passage of the Administrative Litigation Law. However since 1990, disputes are still informally resolved by mediation between the parties or after an approach by the defendant to the applicant to resolve the problem or to apply improper pressure on the applicant. Under the Administrative Litigation Law, the decision to withdraw the litigation must be approved by the court.

3. The future for administrative adjudication in Guangzhou

- Difficulties and problems with implementing the system of administrative litigation still exist
- One problem is the limited jurisdiction of the courts for acceptance of complaints against administrative decision-making. Apart from those areas designated in Article 11 of the Administrative Litigation Law where the jurisdiction to accept a case is clear, it is unclear whether the court has jurisdiction to accept cases not included within the express grant of jurisdiction but not contained in the list of matters expressly excluded under Article 12. In those cases, it is a matter of discretion as to whether the court decides it has jurisdiction to hear the claim. The courts are not empowered to determine the lawfulness of abstract administrative acts
- The continuing applicability of civil procedure to parts of administrative litigation is not rational.
- Insufficient resources are allocated to administrative adjudication. Since its establishment in 1987, the allocation of judicial resources to the administrative division has not increased despite the large increase in the volume of cases handled by that division.
- The quality of first instance decision-making is uneven as seen from the results of appeals and the number of cases overturned on appeal.
- There continues to be hindrance by administrative agencies in the conduct of administrative litigation cases.

4. Prospects

- There is currently work being done to amend and improve the Administrative Litigation Law so that it better reflects the current structure of society and relations between citizens and government departments. In March 2000 the Supreme People’s Court issued an interpretation of the Administrative Litigation Law in an attempt to deal with some inadequacies, though these should properly be dealt with by way of amendment to the Administrative Litigation law itself.
- Work is constantly being done to improve the quality of administrative adjudication work. Since passage of the Judges Law of the PRC a unified judicial examination has been introduced in an attempt to improve the quality of judges and to ensure that they meet minimum requirements as a pre-requisite to having the position of judge.