

ORIGINAL RESEARCH ARTICLE

Research on the Mode of Online Administrative Litigation under the Background of "Internet +": A Case Study of Hangzhou Internet Court

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ABSTRACT

The development of e-commerce economy has led to the emergence of new types of legal relationships. The promotion of administrative litigation models should be an approach to promote strengths and avoid weaknesses, whether online or offline. Exploring the advantages of the online litigation model can speed up the processing rate of administrative cases. Relying on big data will also help trial judges accurately locate administrative litigation cases and save judicial resources. Under the background of "Internet +", how to make full use of big data to further advance the online litigation model and solve the problems in judicial practice has become an urgent priority.

KEYWORDS: Online litigation model, Internet court, innovation of litigation model, convenience of litigation

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According to the "E-commerce Development Report of China in 2018-2019", the total amount of China's e-commerce transactions in 2018 was 31.63 trillion yuan, with an increase of 8.5% year-on-year. China's online retail transaction volume has grown rapidly at a rate of more than 40% in recent years. It has gradually entered a period of stable development since 2016. It can be seen that China's e-commerce continues to bear a strong source of power for the development of the national economy. The new types of legal relationships and legal issues derived from the new business format of e-commerce have continuously developed into the "key stand" that stimulates the efficient operation of e-commerce platforms. On August 31, 2018, the fifth session of the 13th Standing Committee of National People's Congress voted to pass the "E-commerce Law", marking the birth of a basic legal framework for the healthy development of e-commerce in China. According to the newly-promulgated "E-commerce Law", the relationship between e-commerce individuals and administrative agencies has become more subtle and flexible under the background of "Internet +". The Hangzhou Internet Court came into being in 2017. This is the first trial court in China focusing on trials of Internet-related cases, whose missions are to implement the principle of "reviewing Internet cases online" and efficiently handle the new type of legal relationship under the current rapid economic development in the era of big data. Therefore, the establishment of online administrative litigation under the background of "Internet +" is a general trend.

1. Overview of handling of administrative litigation cases

In recent years, China's legal system has continued to be developed and the ways and scope for ordinary people to choose to ensure their basic rights have been changed and extended in many dimensions. From the litigation system alone, it can be seen that the types of litigation systems in which people participate today are not limited to civil and criminal litigation, but have been expanded into administrative litigation. The court has also evolved from the normal state of trial of civil legal relations between equal subjects to the current complex and extensive administrative litigation cases. Therefore, the improvement of China's administrative litigation legal system provides a fundamental possibility for the realization of people's basic rights. However, looking at the handling of administrative litigation cases across the country, the "difficulty in winning" in administrative litigation practice has become a common problem. In the case of unequal litigation status, how can the parties protect themselves as a weak person? Even if an administrative dispute can be filed in the end, can the administrative dispute be finally judged through administrative proceedings? According to the new provisions of the "Administrative Procedure Law" in 2015, there are cases where the court should rule to dismiss an administrative case that has been filed: (1) the plaintiff does not comply with Article 25 of the "Administrative Procedure Law"; (2) there is no clear defendant; (3) there is no specific litigation request or factual basis; (4) it does not fall within the scope of the people's court and the jurisdiction of the people's court; (5) it exceeds the legal time limit and has no valid reason; (6) the party who does not have the ability to sue fails to comply the lawsuit filed by the legal agent, designated agent, or representative on behalf of him; (7) the defendant listed in the complaint was wrong but the plaintiff was unwilling to make changes; (8) repeated lawsuits were brought to the court; (9) the law requires that the administrative review organ shall deal with it in advance; (10) the party withdrew the lawsuit to the court, and then filed a lawsuit in the court again without proper reasons; (11) the dispute indicted has been settled or bound by the effective ruling; (12) administrative action obviously has no practical impact on the legal rights and interests of the parties; (13) other situations that do not meet the statutory lawsuits. It can be seen from this that even if the administrative dispute has been filed, there will be many "obstacles" if the administrative proceedings are to be successfully completed to obtain the final judgment. From the perspective of judicial practice, the following issues exist. First, "not falling within the scope of the people's court's jurisdiction and subject to the jurisdiction of the people's court" often becomes a written word evaded by the competent court. Due to the existing status quo in judicial practice, for the grassroots courts, there is a certain connection between the administrative organs and the grassroots courts in the rights setup of the administrative law system. Therefore, whether this relationship can be properly handled has become one of the difficulties in testing the grassroots courts. Secondly, the first thing that people think of when encountering administrative disputes is not to resort to law and use judicial channels to resolve administrative disputes. They are accustomed to applying the common solutions in civil disputes to administrative disputes. The most applied is "mediation". Of course, "mediation" here is not a third-party mediation agency to negotiate in civil disputes, but "tolerance" or "finding the way". However, the execution of administrative actions does not depend on autonomy of the will, and the promulgation of administrative actions is not solely controlled by the staff of the administrative organ who has performed an administrative action. Therefore, in judicial practice, one party often ends up in a circle after experiencing a "struggle" and still has no choice but to think of resolving the dispute by filing an administrative lawsuit. However, each administrative dispute has a corresponding prosecution period. After the prosecution period has passed, even if the parties bring the case to the court, they will face the adverse consequences of exceeding the prosecution period and failing to file a case.

Compared with the whole country, Zhejiang Province also has similar problems and dilemmas in handling administrative lawsuits. "The prosecution difficulty", "difficulty in winning" and even "difficulty in enforcement" have become one of the hard targets that must be overcome in the development of administrative litigation. In addition, with the rapid development of e-commerce in Zhejiang Province in recent years, e-commerce economy has become the mainstay leading the economic development of Zhejiang Province. How to properly handle the new legal relationship brought about by the development of e-commerce and the legal issues and disputes in practice has become

the source power and strategic engine to ensure the economic development of e-commerce. Therefore, the online administrative litigation model emerged as a new litigation method in Hangzhou. The emergence of online litigation models is eye-catching, not only because it breaks through many of the traditional legal constraints of administrative law, but also brings a new look to administrative litigation models. Emergence of the mode is accompanied by vitality, which may change people's cognition of the speed, transparency and execution of administrative cases.

2. Innovations in handling administrative lawsuits on the platform of the Hangzhou Internet Court (Taking Hu as a case of administrative penalties for food safety in Jiaxing Market Supervision Administration)

The online administrative litigation born under the background of "Internet +" is well known to rely on Internet big data. One of its advantages is to use the legal big database platform gradually established in China, and to use big data to classify and organize cases. It is conducive to the analysis and integration of cases, the sharing of resources in a timely manner, and the effective use of judicial resources. Secondly, based on the principle of "reviewing Internet cases online", the time and economic costs of the parties in the process of litigation are greatly reduced, as well as the waste of reasonable resources. It further avoids the possibility that the jurisdictional courts will "offend" the local administrative organs when they are entangled in the structure of the administrative rights system when trying individual administrative cases. Therefore, regardless of the single or multiple dimensions of the appearance of online litigation models, it cannot be denied that this is a system innovation in practice, and this innovation is likely to alleviate the current stagnation of administrative litigation.

On June 26, 2017, the central government reorganized and formally reviewed and approved the "Plan on Establishing the Hangzhou Internet Court" and decided to establish the Hangzhou Internet Court. This means that China and even the world's first Internet court settled in Hangzhou. It also means that Hangzhou will provide strong judicial guarantees for maintaining network security, resolving Internet-related disputes, and promoting the deep integration of the Internet and the economy and society. Regardless of content or form, the newly-born Internet court appears to be avant-garde: it will separate Internet-related cases from the existing trial system, specialize in the trial and study of Internet-related cases, and promote the legalization and standardization of Internet governance. Assisting the court to try a case can be tried by remote video and other means, which greatly saves costs and promotes judicial online and network reform. On the morning of December 26, 2018, the Hangzhou Internet Court opened a court hearing for the plaintiff Hu against the defendant Jiaxing Market Supervision Administration's administrative reconsideration decision. This marks the beginning of the online administrative litigation mode for hearing administrative cases.

2.1 Operation process

The basic process of the Hangzhou Internet Court in hearing administrative litigation cases is divided into online prosecution, online acceptance, online response and defense, notification of rights and obligations, and service of documents, online evidence and cross-examination, online court trial, production of judgment documents, online judgment, online execution, dossier archiving, *etc.*

2.2 Using the platform

There are many bright spots in the online operation mode. In terms of platform docking, the Internet platform can use the system docking method to transmit original data and information to the litigation platform as prosecution materials. In addition, documents can be generated automatically. The trial judge can use the AI technology to make online judgment documents on the litigation platform. The litigation platform automatically generates part or all of the documents, and the trial judge only needs to improve or modify them.

2.3 Saving judicial resources

Taking Hu as a case against Jiaxing Market Supervision Administration's food safety administrative penalty and the case of the defendant's Zhejiang Market Supervision Administration's administrative reconsideration decision, it is

not difficult to find that both sides of the original defendant can obtain and deliver messages by just operating on the Internet. Among them, the online payment rules stipulate that after the case is filed, the system will automatically notify the plaintiff to pay the legal fees. The plaintiff shall pay the litigation costs online within seven days after receiving the notice. The plaintiff can pay directly through Alipay, online banking, etc. And the system will automatically calculate whether the plaintiff has paid the legal fees within the prescribed time. If the payment is not made on time, the system will pop up the "Notification of Unpaid Fees". After the trial judge verifies, the system will handle the complaint accordingly. The system will automatically generate a withdrawal decision. In this way, the trial court reduced the damage in time and economic benefits, and judicial resources are also protected.

3. Problems

The Internet court created by relying on the online litigation model has played an important role in handling administrative litigation cases, which not only enables administrative cases to be streamlined and "reduced", but also enables the rapid use of large legal databases to achieve similar case classification and investigation for new types of cases, and the improvement of trial experience and the ability to strengthen the precision of legal use of judges. However, it is clear that the focus of the types of trial cases currently established by the Internet courts relying on the online litigation model is still: Internet shopping, services, small financial loans and other contract corrections, Internet copyright ownership, infringement disputes, and the use of the Internet to infringe on the personality of others civil litigation areas such as rights disputes, infringement disputes on Internet shopping product liability, and disputes on Internet domain name, rarely involve administrative litigation. It stems from the particularity and normalization of administrative litigation cases, which are different from civil litigation. Therefore, the implementation of administrative litigation under the online litigation mode is imperative with further development.

4. Countermeasures

Today, although the preliminary exploration of the application of the online administrative litigation model in practice has achieved initial results, in the context of "Internet +", the online administrative litigation model still needs to be optimized and upgraded. How to optimize the procedures and tasks of the online trial stage is a top priority. Is it possible to divide the facts that need to be clear from the parties and the administrative organs during the trial stage into the pre-trial preparation stage for confirmation and completion? Or do the parties and administrative agencies need to make the evidence clear at the stage of proof? Improving the quality of litigation and the efficiency of litigation requires not only the cooperation of the administrative organs, but also the grasp of the concept of a reasonable litigation request by the people.

The principle of Internet courts hearing administrative cases has to a certain extent broken the restrictions of traditional regional jurisdictional courts, which may reveal the deficiencies of some administrative agencies in applying laws and regulations. Although the administrative organs may be caught off guard, they can be urged to think twice before taking administrative actions and regulate and warn the exercise of administrative power from a judicial perspective.

References

1. Lou L. Research on the scope of the cases of civil public interest litigation. East China University of Political Science and Law; 2019.
2. Liang X. Research on the actual actual efficacy of law for administrative proceeding in China (in Chinese). Southwest University of Political Science and Law; 2016. doi: 10.7666/d.D01017766.
3. Li W. A study of the acceptance of administrative litigation cases of government information publicity in China. Yanshan University; 2016.
4. Song G. The elements of administrative litigation mode and its relationship. *Zhiyuxing* 2019; (4): 42-47.
5. Sun Z, Su X. The practice and thought of the speedy proceeding of administrative cases (in Chinese). *Administration and Law* 2020; (1): 103-108.
6. Pan R. Exploring the pre-procedure of administrative public interest litigation (in Chinese). *Procuratorate Daily*;

2019-07-11(003).

7. Mei Y. The perfection of environmental public interest litigation system in China (in Chinese). East China University of Political Science and Law; 2019.
8. Wu Z. On the legal control of executive power. Qingdao University; 2019.
9. Wang Y. An empirical study on the system of administrative officials appearing in court to respond to lawsuits: Taking Jiangxi Province's administrative trial practice as the analysis object. Jiangxi University of Finance and Economics; 2019.
10. Zhou L. Research on the time limit of administrative litigation. Nanjing Tech University; 2019.