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CHANGING RATE

徘徊的困惑

R 区行政诉讼率
变迁研究 (1987~2016)

THE CHANGING RATE OF
ADMINISTRATIVE LITIGATION
ABOUT
R MUNICIPAL DISTRICT
FROM 1987 TO 2016

ADMINISTRATIVE LITIGATION



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本书系西华师范大学国家级一般培育项目“西部县域行政诉讼率研究（1989-2014）”（编号：15C003）及四川大学纠纷解决与司法改革研究中心2015年一般项目“行政诉讼率变化的因素研究——以新《行政诉讼法》实施为背景”结题成果。

摘 要

全国行政诉讼一审案件数量在三大诉讼总量中的占比曾经长期徘徊不前，这在一定程度上反映出基层行政审判实践的“三难”困境。自 20 世纪 80 年代中后期参照民事诉讼法开启实践以来，基层行政审判已经有 30 多年的发展历程。R 区法院 1987 ~ 2016 年共 30 年行政诉讼案件量曲线走势及其在三大诉讼总量中的占比与全国有多年相似。R 区虽为西部市辖区但经济发展水平居于全国中等，可作为具有一定代表意义的样本来“管中窥豹”，考察基层行政审判实践发展历程。

从诉讼数据变化着手考察实践样态是实证研究的一种进路，因而行政诉讼率可引入作为考察审判实践发展的线索。由于存在多元行政纠纷解决机制，行政诉讼率直接体现公民诉讼救济选择的变化，也同时反映诉讼制度运转的变化。依据诉讼流程的变化，行政诉讼率又可依次解构为起诉率、立案率、判决率、胜诉率、执行率以及撤诉率。沿着“行政诉讼率是什么”“怎么变化”“为什么”“有何启示”“未来会怎样”“如何应对带来的问题”的逻辑思路，本书共分为四个部分。

第一章提出问题，介绍研究方法，并对行政诉讼率进行界定。

该章在梳理国内外诉讼数据研究方法以及行政诉讼制度文本研究的基础上，说明了从法社会学视角考察 R 区行政诉讼率的意义以及研究方法。依据行政诉讼率在中国语境的界定和关联指标解构，确定了分析模型，将起诉量变化、案件类型变化以及审判处理变化（后文界定为层级变化）作为分析诉讼率变化的主线。

第二章对 R 区的行政诉讼率变迁进行全面的现象描述和细节解释。

在对统计数据来源进行说明后，本章第一部分将 1987 ~ 2016 年全国、S

省、T 市、R 区中的每万人中的每年提起行政诉讼的数量进行了对比，发现 R 区的情况历年都比 T 市、S 省高，而年平均数据比全国数据略高，增长呈现波动，说明 R 区行政诉讼率的变化具有全国的共性与地域的个性。为了进一步分析数据呈现的个性，本章第二、三、四部分分别对案件起诉量变化、案件类型变化、层级变化进行了描述。

首先，从起诉量来看，在参照民事诉讼法开启了从无到有的审判实践记录后，R 区行政案件的起诉量自 1990 年行政诉讼法实施的 25 年期间经历了长期徘徊不增及个别年限出现集团诉讼引发剧增的情况，在 2014 年行政诉讼法修订后实施的两年里出现了骤增剧减的情形。

其次，从案件类型来看，随着时间的推移从单一的治安案件转为多种类型，总量上百的案件类型依次为城建、公安、劳动与社会保障、资源类案件，这与全国情况趋同，但每种典型案件中各小类型案件的变化与全国有所不同，体现了 R 区城镇化进程建设的共性与个性。

最后，从层级变化来看，30 年来出现了立案率高、撤诉率高、裁判上诉率高而判决率低、原告胜诉率低的三“高”两“低”变化趋势，而到新行政诉讼法实施后才出现了审判案件的执行问题。说明理论普遍所达成共识的“立案难、审判难、胜诉难、执行难”现象，在 R 区的体现有其个性的特殊原因。

第三章对影响 R 区行政诉讼率变化的因素进行了全面分析和阐述。

R 区行政诉讼率 30 年的变化，实际反映了“自上而下”的行政诉讼制度在基层实践的发展势态。需要在特定的社会发展背景中去考察其形成机理。本章遵循在地域不变的观察视角下，在第一部分分析了案件形成过程的各影响因素后，分别在第二、三、四部分以三条主线分析影响 R 区行政诉讼率变化的因素。

首先，公民的起诉是从争议到诉讼的连接点。从行政诉讼量的变化可以去追寻公民诉讼认知和诉权行使的变化。1987～2016 年，因受到传统文化的影响以及信访、复议的削减，公民对行政诉讼从排斥到逐渐接受而使用的进度较慢。其中，律师起到了一定的“刺激”作用，更重要的是经济发展促使 R 区的“熟人社会”在 2000 年前后逐渐转为“市民社会”，“自上而下”的普法宣传使法律规则逐渐替代“人情”“关系”，成为调整社会生活的准则，而 2010 年后网络信息便捷传播较快提升了公民诉讼认知水平，随后，2014 年

立法的修改和诉讼便民服务增强了公民行使诉权的意愿。在社会变迁下,多种因素影响公民起诉选择从而影响案件数量。

其次,诉讼案件的类型是在行政管理活动中已经形成。从诉讼类型的变化可以去追寻不同时期行政机关管理重点和执法规范的发展。在1987年开始的R区地方经济发展中,政府的管理活动变化引发了不同时期流入诉讼的争议类型变化。同时国家从1993年提出并开始“自上而下”推进的依法行政进程,带来了基层执法规范的变化,在一定程度上减少了争议的发生从而影响了诉讼量的增长。然而地方治理“变通”使得基层执法问题变得复杂,加上立法的变化、民众维权意识的提升和法院具体操作变化等因素共同作用带来了案件类型的多样化。

最后,法院的具体操作直接影响诉讼率的变化。从诉讼不同阶段处理的层级变化可以去探索法律在基层实践中贯彻的力度和效果的演绎。1987~2016年三部诉讼法实施的不同变化,带来了R区法院收案、立案、审判的方向转变。最高法院司法政策的变化直接影响了R区法院的操作,尤其是上下级监督、绩效考核文件的变化和执行,使得诉讼统计数据因编案号的不同而产生量的直接起伏。而R区法院历经采用参照民事审判方式、借鉴刑事审判方式(与被告同审原告)、行政协调模式、行政判决模式处理案件,对诉讼率的层级变化产生了直接影响,尤其是协调经验的传承使得该区并没有出现执行难的问题,但出现了超高的判决上诉率。而在原被告之间的对抗和法院处理案件的过程中,实际留下了国家和地方、司法和行政、立法和行政互相博弈而又形成合力共同推进的印记。

第四章对R区行政诉讼率的变迁进行了总结和启示的思考。

第一部分总结了R区行政诉讼率的变化实际反映了公民诉讼认知、行政机关执法以及法院解决争议能力的变化,印证了立法主体、行政主体、司法主体和公民的法治实践变化,是一种受经济发展、人口变化、文化发展、制度变迁等多种因素影响的社会现象,同时又会带来不同时期不同背景下,公民权、行政权、司法权、立法权的相互博弈,以及在一定情况下形成推动行政法治进步的“自上而下”和“自下而上”的推动合力。

第二部分在评价的基础上认为理论研究应该基于基层实践,提出了对“如何正视诉讼立法与基层实践客观存在的差距”“如何实现‘自上而下’与

‘自下而上’的融合”“如何让基层实践达到实质化解争议”三大问题的反思意义。

第三部分基于新行政诉讼法立法范围的扩大，R 区行政机制改革时期基层行政运转的特殊以及公民维权意识增强和司法改革集中管辖的推行，预判 R 区行政诉讼率将出现增长趋势。

第四部分，在增势预判的前提下，对新行政诉讼法实施过程中，案件在法院的“入”和“出”的问题进行了探讨。立案登记制度实施下，案件大量“入”，对法院产生了价值取舍和操作权衡的双重压力，采用以保障诉权为价值引导的分类分层过滤方式可以缓解压力。对于诉讼“案结事了”“出”法院的问题，结合 R 区 2015 年判后强制执行产生困境导致案件“出”不了法院引发矛盾的案例，建议强化法官的理論学习和重视“协调”经验的传承以及建立判后强制执行保障措施来促进“出”的问题的解决。

最后，笔者在结语中提出了学术研究应当承担起为基层实践提供理论动力的希望，认为无论基层行政诉讼实践如何变化，最终承受结果的是普通公民。在新一轮司法改革中应该基于“自下而上”的行政争议解决需求和“自始到今”诉讼操作实践经验承接，更有力地全面保障公民诉讼权利救济，使基层法院能在诉讼率增长的趋势下更加重视法官主动性的发挥和履职保障，更好地显示出诉讼“定分止争，案结事了”的争议化解优势，让公民感受到司法正义和社会公平，同时提升法院行政审判公信力，促进行政机关依法行政水平的提高。

Abstract

The occupancy rate of first instance administrative litigation in three litigations in China is always not very high in long time, that is reflect the dilemma of “three difficulties” in the practice of administrative trial by primary court . Since the middle and late 1980s, the administrative procedure begin to imitate the civil procedure law in practicing , the administrative trial by primary court has been developing for more than 30 years. The changing rate of administrative litigation about R district and its occupancy rate in three litigations in China is similar to the rate of country . Although the R district in the west of China while its level of economic development is in the middle of the country , so it can be used as a representative sample to research the development of primary court’s administrative trial.

From research the date change about administrative litigation is a good way to empirical research, so the administrative litigation rate can be introduced as a clue to the development of the trial practice. Because of the multi-administrative dispute resolution mechanism, the administrative litigation rate directly reflects the change of people’s lawsuit relief selection, and also reflects the change of the operation of the lawsuit system. According to the changes of the litigation process, the administrative litigation rate can be deconstructed in order to be the prosecution rate, the case rate, the judgment rate, the rate of appeal, the rate of execution, and the rate of withdrawal. What is along the “administrative litigation rate”, “how to change”, “why”, “what is enlightenment”, “what the future holds” “how to deal with” logical train of thought, this paper will be divided into four parts.

The first chapter introduces the problem, introduces the research method, and defines the administrative litigation rate.

The chapter on the base of studying the research methods of litigation date fromhome and abroad and the text of administrative litigation , illustrates the

sociological perspective method R area administrative litigation rate as well as the significance of the research methods. According to the definition of administrative litigation rate in the Chinese context and relevance index deconstruction, determines the analysis model, to Sue quantity changes, the types of cases and the change of trial processing (later level change) is defined as a analysis the thread of the litigation rate changes.

The chapter two provides a comprehensive description and detailed explanation of the change of administrative litigation rate in R district.

After the show the source of statistical data, the first part of this chapter will be the period 1987 - 2016 national, province, city of T, R, S area of each of the ten thousand people each year the number of administrative litigation are compared, found that R than T city area, S province is high, and slightly higher than the national average annual data, growth, fluctuated, explain R area changes in the rate of the administrative litigation with common throughout the country and regional character. In order to further analyze the personality of data presentation, the second, third and fourth parts of this chapter describe the changes of lawsuit quantity, type change and hierarchy of cases.

First of all, from the point of prosecution amount, in reference to the civil procedure law opened up from scratch, R zone administrative cases of prosecution in 1989 on the implementation of “administrative procedural law” during the period of 25 years has experienced long-term stagnate does not increase, and the life of a group litigation caused a surge in “administrative procedural law” in 2014, the implementation of two years appeared in collapse.

Second, from the point of case type, with the passage of time the case type into many types from a single case, concentrated amount outstanding cases involving hundreds of types of urban construction, public security, labor and social security, resources cases, convergence with the national condition, but each of the typical case of each small type case changes with the different, embodies the commonness and individuality of the construction of the R area urbanization.

Moreover, from the perspective of level changes in 30 years the rate of register high, dropped rate is high, the rate of appeal is high while the judgment rate is low, the low success, three “high” and two “low” trend, and the new administrative procedure law implementation before the trial execution problems. It is stated in the theory that “the case is difficult, the trial is difficult, the victory is difficult,

the execution is difficult” in the R region there is also the situation that has not occurred.

The third chapter makes a comprehensive analysis and elaboration on factors influencing the change of administrative litigation rate in R district.

The change of administrative litigation rate in R district in 30 years reflects the development of “top-down” administrative litigation system in the grass-roots practice. The formation mechanism needs to be investigated in the context of specific social development. This chapter follows in the area under the same point of view, in the first part analyzes the influence factors of formation of case after, respectively in the second, three, four parts are divided into three main analysis the influencing factors of R area administrative litigation rate change.

Firstly, a citizen's indictment is a link between a controversy and a lawsuit. From the change of administrative litigation quantity, the change of the cognizance and the right of action of citizen litigation can be sought. During the period 1987 – 2016, due to the influence of traditional culture and the reduction of letters and visits and reconsideration, citizens have been slow to use the administrative proceedings from the exclusion to the gradual acceptance. Which lawyers have played a role in “stimulus”, more importantly, economic development promotes R area before and after “acquaintance society” in 2000, gradually to “civil society”, “top-down” to make the rule of law gradually replace the franco-prussian propaganda “favor” relationship “has become” adjust the principles of social life, and convenient network information spread rapidly increased after 2010 civil litigation cognitive level, changes in legislation in 2014 and subsequently litigation convenient service to enhance the citizens' readiness to the exercise of litigation. In the social transition, various factors affect the choice of citizens' prosecution and influence the number of cases.

Secondly, the type of litigation cases is formed in the administrative activities. The change of litigation type can be traced to the development of administrative and law enforcement of administrative organs at different times. Since 1987, the change of management activities in the regional economic development of R district has led to the change of the type of litigation in different periods. Put forward at the same time, countries from 1993 and began to “top-down” to promote the process of administration according to law has brought the change of the law enforcement standard, at the grass-roots level to a certain extent, reduce the occurrence of the dispute and to affect the growth of the amount of the lawsuit. However local

governance “flexible” makes the grass-roots law enforcement problem is complicated, and the change of legislation, the ascension of the consciousness of the masses and court concrete operation change and other factors work together to bring the case type of diversification.

Furthermore, the specific operation of the court directly influences the change of litigation rate. The change of level from different stages of litigation can be used to explore the strength and effect of law in grassroots practice. Different changes in the implementation of the three procedural laws during the period 1987 - 2016 brought about the change in the direction of the court closing, filing and trial of R district court; Supreme Court justice policy changes directly affect the operation of the R district court, especially the supervisor to supervise, the change of the performance review file and execution, makes the statistics of litigation directly from a make up case, different discharge and ups and downs. R district court after using comparable civil trial mode, draw lessons from criminal trial mode (with the defendant to the plaintiff), administrative coordination, administrative verdict processing cases, has a direct influence to the hierarchy of the litigation rate change, especially the coordination experience of inheritance, the difficulty of execution of the area does not appear, but the ultra-high rate of appeal of judgment. And the confrontation between adversaries and the processing of the court, left a national and local actual, judicial and administrative, legislative and administrative game with each other and form a resultant force to promote the mark.

The fourth chapter summarizes and enlighten the vicissitude of administrative litigation rate in R area.

First part summarizes the R area actually reflects the changes of the administrative litigation of civil litigation, administrative law enforcement and the change of the court to settle ability, confirms the subjects of the legislative, administrative, judicial and growth rule of law of the citizens, is a kind of economic development, population change, cultural development, institutional change and other factors influence the social phenomenon, at the same time will bring different times background, citizenship, executive power and judicial power, legislative power of the gaming, and form of administrative rule of law progress in certain circumstances “top-down” and “bottom-up” driving force.

The second part, on the basis of the evaluation thought theory should be based on the basic practice, proposed to the “how to face the litigation legislation and

practice objective existence of the gap at the grass-roots level”, “how to implement the” “top-down ” and “bottom-up ” “fusion” and “how to make the practice at the grass-roots level to achieve real resolve dispute” three problems of reflection.

The third part, based on the new scope of administrative procedure law legislation to expand, R grassroots administrative operation of the special zone administrative mechanism reform period and civil rights protection consciousness enhancement and the implementation of the jurisdiction of the judicial reform focus, anticipation R area administrative litigation rate there will be a growth trend.

In the fourth part, under the precondition of the increase of the new administrative procedure law, the question of “entry” and “out” of the case in the court is discussed. For filing registration system, the case of a large number of “into”, has a value choice and operation on the court weighed the double pressure, based on the classification of the guarantee of litigation as the value guidance stratification filtering method can relieve stress. For litigation “case” happened “and” out “the court’s problems, combining with R area 2015 new enforcement difficulties appears after the verdict, a court case” a “is not given rise to challenge the case, judge is put forward to strengthen theoretical study and pay attention to” coordination “experience and set up after its enforcement safeguard measures to promote the” out “ problem solving.

Finally in the conclusion proposed academic research should assume provide theoretical motivation for grass-roots practice, we should believe that whatever grassroots administrative litigation practice changes, the final result is under ordinary citizens. In a new round of judicial reform should be based on “bottom-up” administrative dispute resolution requirements and “from the beginning to now” litigation practice experience to undertake operation, more effectively guarantee of citizen’s procedural rights relief, can make the grass-roots court in litigation rate growth under the trend of more attaches great importance to the exertion of judge initiative and started security, to better show the lawsuit “fixed points check, case” happened dispute resolve advantage, let the citizens feel the judicial justice and social justice, enhance administrative trial court credibility at the same time, promote the administrative authority for raising the level of administration according to law.

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