

## **Explainer: Judicial interpretation requires government leaders to defend lawsuits in person**

---

2020/07/06 [China Law Translate](#) [CLT Originals](#)

---

ALL TRANSLATIONS ON THIS SITE ARE **UNOFFICIAL** AND ARE PROVIDED FOR REFERENCE PURPOSES ONLY. THESE TRANSLATIONS ARE CREATED AND CONTINUOUSLY UPDATED BY USERS –THEY ARE FREE TO VIEW, BUT **PROPER ATTRIBUTION IS REQUIRED** FOR DISTRIBUTION OF THESE OR DERIVATIVE TRANSLATIONS.

by [Jamie Horsley](#)

The Supreme People’s Court (SPC) has provided detailed [guidance](#) on when high-level agency officials must appear in court and take the stand to personally explain and defend the government behavior being challenged through litigation. The requirement for senior agency representatives to respond to lawsuits, codified in the revised PRC [Administrative Litigation Law](#) (ALL), dates back to reforms on “[administration in accordance with law](#)” launched by the State Council in 2004. This “innovation” was initially intended to foster greater respect from government officials for legal requirements and the role of judicial oversight, but over time the [Chinese Communist Party](#) (CCP), [State Council](#) and the [SPC](#) recognized that the appearance also help ameliorate the substantive underlying disputes between government and the people.

Traditionally, [agencies have not taken administrative litigation seriously](#), not sending knowledgeable representatives to participate in trials and wasting judicial resources, while leaving the public dissatisfied. In contrast, government decision-makers who are forced to actively take part in hearings [learn firsthand about law](#) and the practical issues arising from carrying out their rules and orders. They have the authority not only to settle the disputes, but also to ensure agency compliance with court orders, as well as to improve the challenged policies and practices where necessary, even when they win the lawsuit. Moreover, the presence of senior officials sitting in court across from the plaintiffs produces an equalizing effect. One study [found](#) that, from the plaintiff’s perspective, hearing senior officials explain the rationale for an agency’s actions and answer questions in court helps reduce confrontational tensions and promote greater acceptance of unfavorable decisions.

The ALL does not mandate that the most senior officials must always appear. It requires “responsible persons” of agencies being sued to respond in court or to entrust other corresponding agency personnel to participate on their behalf if they are legitimately unable to do so themselves. In its new [judicial interpretation](#), the SPC clarifies and broadens the scope of who qualifies as a “responsible person” to represent an agency in litigation, while trying to ensure that knowledgeable and authoritative officials participate.

Secondly, the Interpretation clarifies circumstances where the top officials will be expected to appear, including major public interest cases (typically brought by the procuratorate rather than NGOs) involving food and drug safety, environmental and resource protection,” and public health that attract great public attention or might trigger protests, as well as those concerning significant personal or property rights of the plaintiff. The Interpretation also specifies circumstances that justify a leader’s non-appearance or postponing the hearing, such as force majeure, an accident or work pressure, as well as procedures to substantiate those reasons and substitute another qualified official. In addition to other procedural matters, the Interpretation specifies that participating officials are expected to make statements, reply to questions, submit evidence, debate the issues raised and deliver an opinion on substantive resolution of the case, as well as explain the official documents on which the challenged action is based.

Finally, while the courts lack authority themselves to impose any sanctions directly, the Interpretation instructs them to submit “judicial suggestions” to supervision or higher-level administrative authorities on how they should deal with an official’s refusal or failure to appear or participate in the proceedings as required and to record the matter in the judgment document, which is normally publicly available.