



Contemporary Chinese Legal System

Dr. Haihong Liu, SISU
Spring Semester, 2016-2017

Schedule

Week	Date	Topic
1	Feb 23	No Class
2	March 2	Topic 1: Chinese legal system in general-Chinese Legal Culture and Traditions
3	March 9	Topic 1 Chinese legal system in general - Experience of Law in PRC
4	March 16	Topic 2: Chinese Constitutional Law & Rule of Law-Chinese Constitution
5	March 23	Topic 2: Chinese Constitutional Law & Rule of Law-Legal Institutions and the Administration of Justice and Law
6	March 30	Topic 2: Chinese Constitutional Law & Rule of Law-Sources of Law and Law-making
7	April 6	Topic 3: Chinese laws in operation-public law
8	April 13	Topic 3: Chinese laws in operation- civil law
9	April 20	Topic 3: Chinese laws in operation-Business law
10	April 27	Topic 3: Chinese laws in operation-Foreign Trade & Investment law
11	May 4	Internship: Visit the legal department of a multinational company in Shanghai (The time may be changed)
12	May 11	Topic 4: Dispute Resolutions
13	May 18	Topic 5-Implementation and Enforcement of Law

Topics to be covered

Case Study

Regulation of Demolition of Urban Houses in
China (expropriation of buildings on state-
owned land)



Administration of demolition of urban houses

- ◆ I. Causes of dispute
- ◆ II. Legal Basis and problems
- ◆ III. Reflections



1. Causes of dispute

1. Rapid urbanization

2. Commercialisation of housing

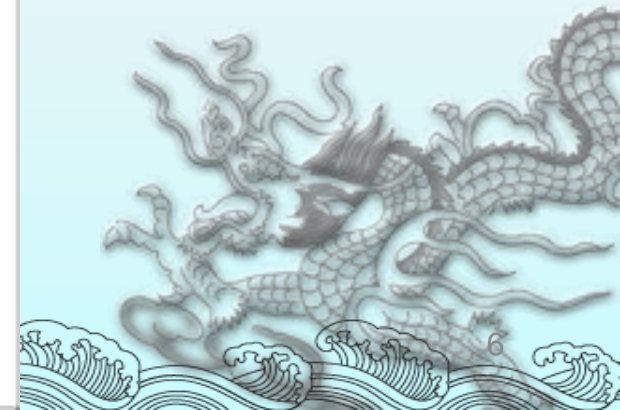
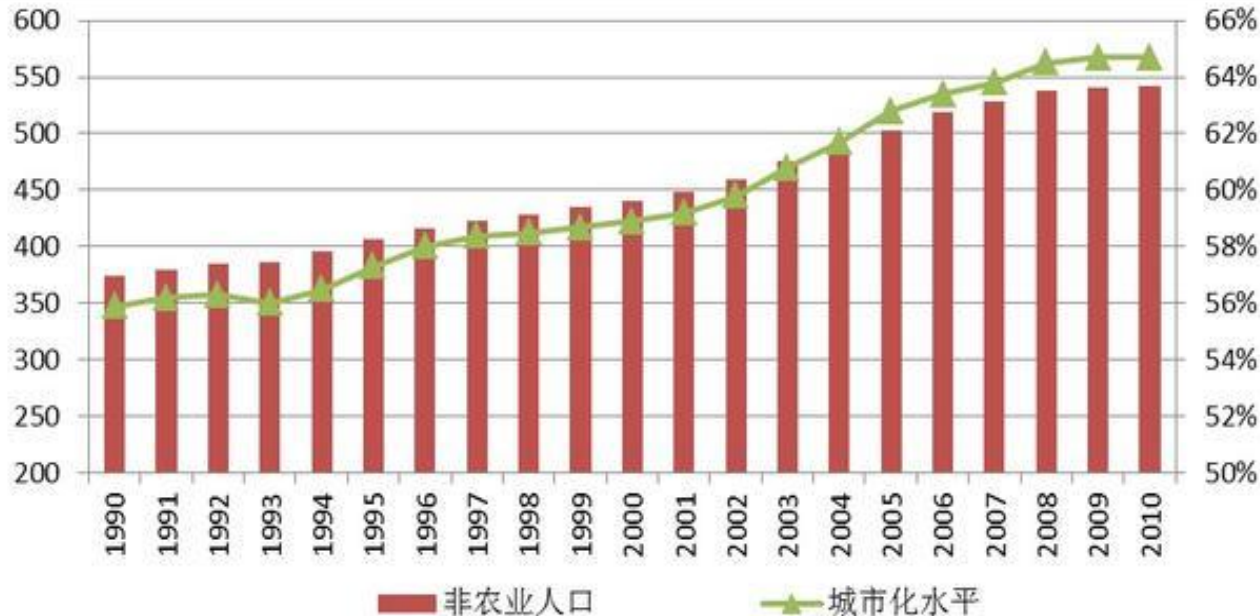
3. Public ownership of land &
private ownership of house



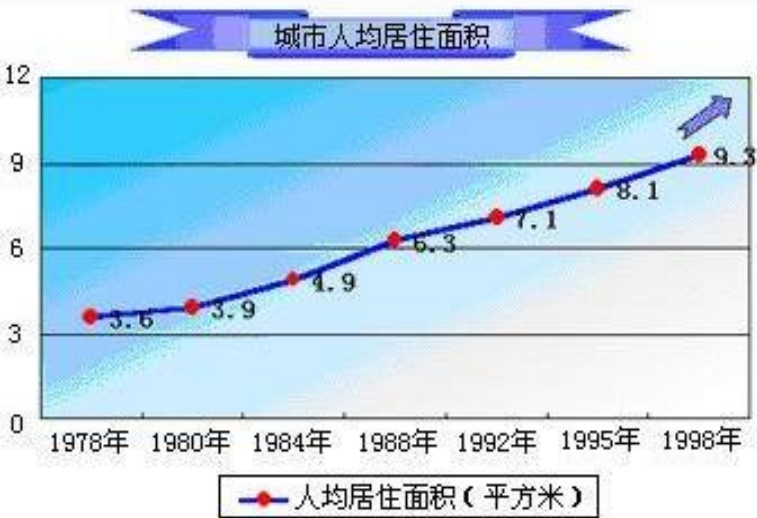
1. Rapid urbanization

Rate of Urbanization after reform (right)

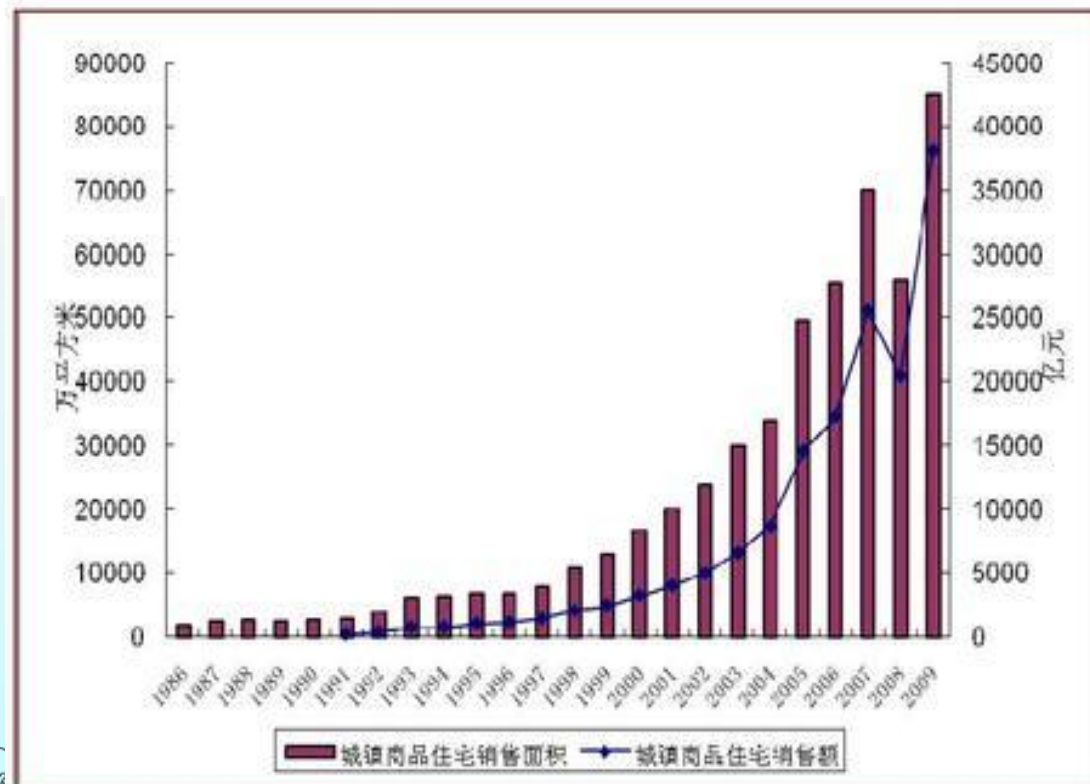
Urbanization in Wuhan (left)



2. Commercialisation of housing



residential area per capita (left)
Sales volume of urban houses(right)



3. Public ownership of land & private ownership of house

- ◆ Article 3 In the primary phase of socialism, the state adheres to the basic economic system with the **public ownership** playing a **dominant role** and diverse forms of ownership developing side by side. (Real Right Law of PRC,2007)



3. Public ownership of land & private ownership of house

- ◆ Article 47 **Urban lands** shall be in the ownership of the **state**. As regards lands in the rural areas and suburban areas that shall be owned by the state as prescribed by law, they shall be in the ownership of the state.
- ◆ Article 53 **State organs** have the power, in accordance with the laws and the relevant provisions of the State Council, to possess, utilize and **dispose of any realty** or chattel directly controlled by them. (Real Right Law of PRC, 2007)

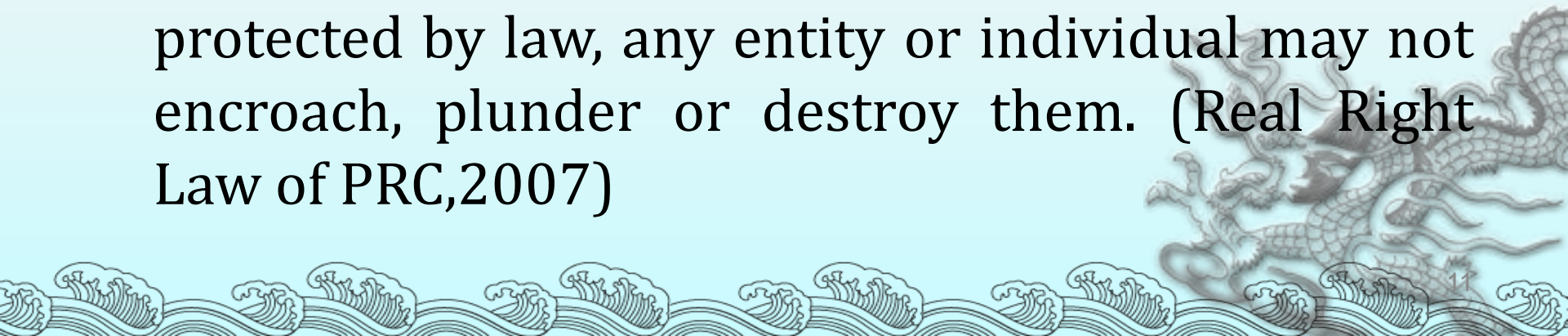
3. Public ownership of land & private ownership of house

- ◆ Article 54 **The public institutions** held by the state have the power to possess, utilize, as well as, according to the laws and the relevant provisions of the State Council, **seek profits** from and **dispose of** any **realty** or chattel directly controlled by them.



3. Public ownership of land & private ownership of house

- ◆ Article 64 An **individual** has the right to own his legal income, premise, household goods, production instruments, raw materials as well as other **realties** and chattels.
- ◆ Article 66 An individual's legal properties shall be protected by law, any entity or individual may not encroach, plunder or destroy them. (Real Right Law of PRC,2007)



3. Public ownership of land & private ownership of house

- ◆ Article 71 An owner is entitled to possess utilize, seek profits from and dispose of the exclusive parts of the building. Any owner may not endanger the safety of the building or infringe upon the lawful rights and interests of any other owner when exercising his or its rights.



Legal relation involved in demolition of urban houses

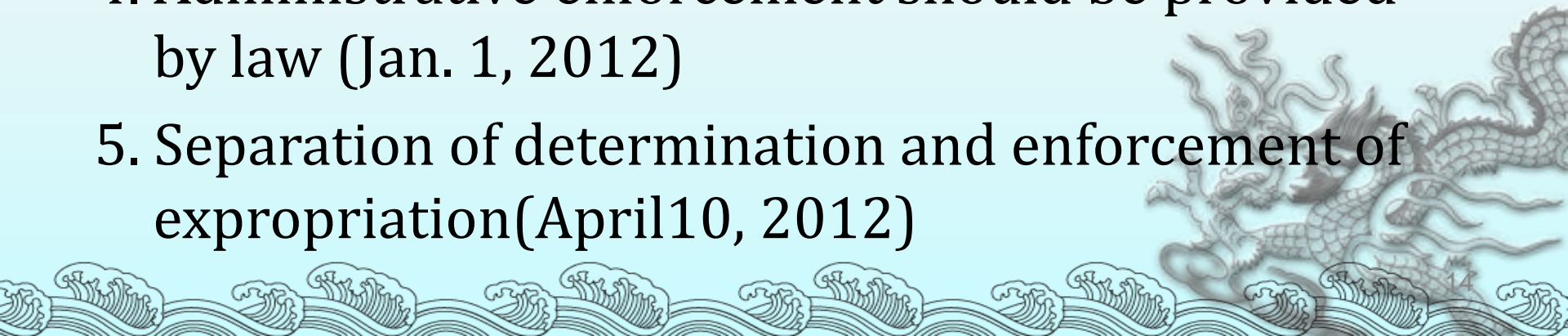
Administrative legal relation?

Civil legal relation?



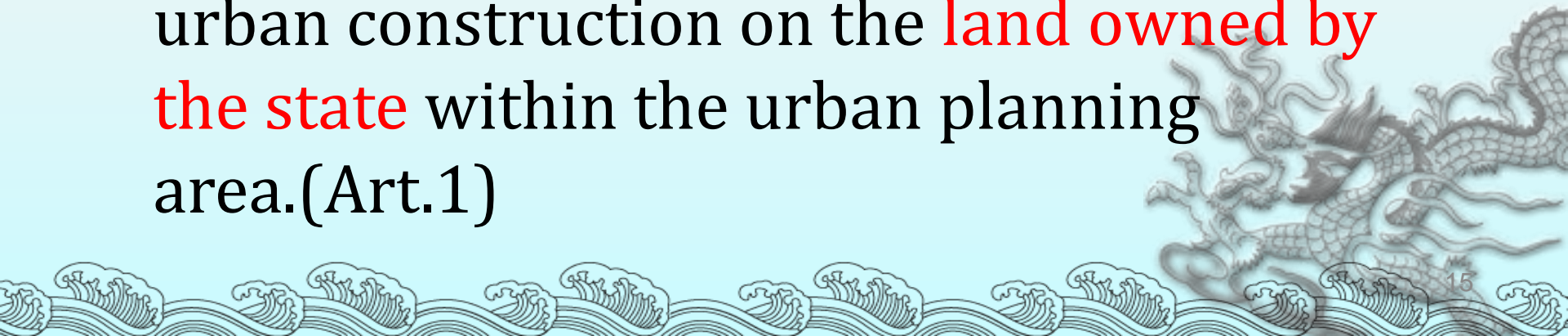
II Legal Basis

1. Demolition organized by local government (June 1, 1991)
2. Forced demolition initiated by local administration or by local court upon application (Nov. 1, 2001)
3. Expropriation replacing demolition, criminal penalty may be imposed on demolition with violence (Jan. 21, 2011)
4. Administrative enforcement should be provided by law (Jan. 1, 2012)
5. Separation of determination and enforcement of expropriation (April 10, 2012)



1. Demolition organized by local government

- ◆ Regulation on administration of demolition of urban houses by State Council (June 1, 1991)
- ◆ The regulation is applicable for demolition of buildings and fixtures as required for urban construction on the **land owned by the state** within the urban planning area. (Art. 1)



1. Demolition organized by local government

Demolisher refers to any construction unit or individual which has acquired the license of building demolition.

The demolished refers to the owner(s) and user(s) of the building and the fixture to be demolished
(Art. 3)

1. Demolition organized by local government

Demolisher should apply for license of demolition with local people's government by submitting relevant approval, demolition plan (Art.8)



1. Demolition organized by local government

房屋拆迁许可证存根

拆许字()第 号

拆 迁 人		
建设项目		
项目地点		
项目批文		
规划批文		
用地批文		
其它批文		
拆迁计划		
拆迁方案		
拆迁实施单位		
拆迁范围		
拆迁面积	建筑面积 (m ²)	占地面积 (m ²)
拆迁期限		
发证日期		
备 注		

经办人:

签发人:

拆
许
字
(
)
第
号

房屋拆迁许可证

拆许字()第 号

_____:

你单位因_____项目建设, 需拆迁下列范围内的房屋及其附属物, 经审查具备拆迁条件, 予以批准, 特发此证。

拆 迁 范 围	建筑面积 (m ²)		占地面积 (m ²)
拆 迁 面 积	非 住 宅	住 宅	
拆迁实施单位			
拆 迁 期 限			

发证机关

年 月 日

中华人民共和国建设部制

1. Demolition organized by local government

房屋拆迁许可证

抚开 拆许字(2006)第 01 号

抚顺经济开发区高湾经济区管理委员会

你单位因 棚户区改造 项目建设, 需拆迁下列范围内的房屋及其附属物, 经审查具备拆迁条件, 予以批准, 特发此证。

拆 迁 范 围	抚顺市人民政府批准的高湾棚户区改造规划: 南湾 6#、7#、8#、9#、10#、13#、14#、15#、16#、34#、35#地块		
拆 迁 面 积	建 筑 面 积 (m ²)		占 地 面 积 (m ²)
	非 住 宅	住 宅	
	8027.21	98593.46	
拆 迁 实 施 单 位	抚顺经济开发区高湾经济区管委会旧区改造工程指挥部		
拆 迁 期 限	2006 年 7 月 5 日—2006 年 9 月 4 日		
备 注			

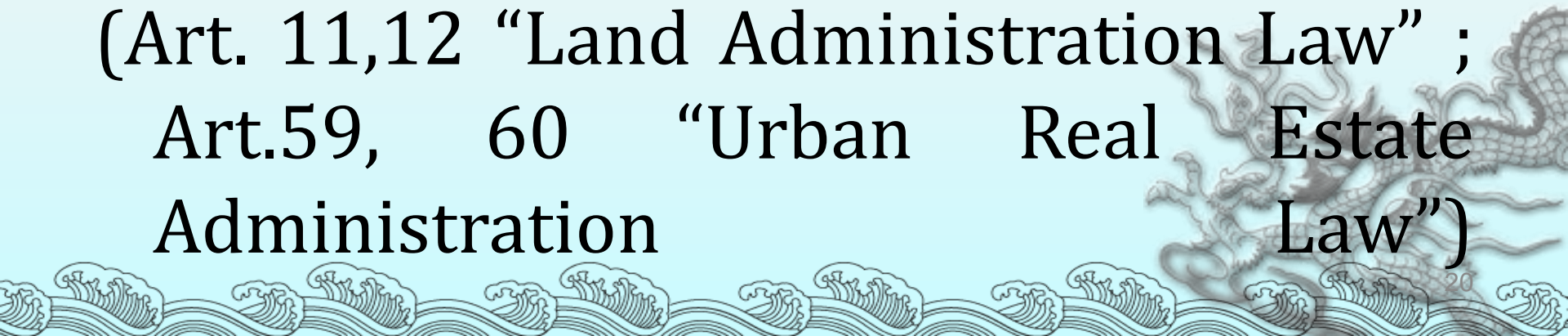
发证机关

1. Demolition organized by local government

Problem 1: Due Process

Is the right to use the land by the demolished legally taken back?

(Art. 11,12 “Land Administration Law” ;
Art.59, 60 “Urban Real Estate
Administration Law”)

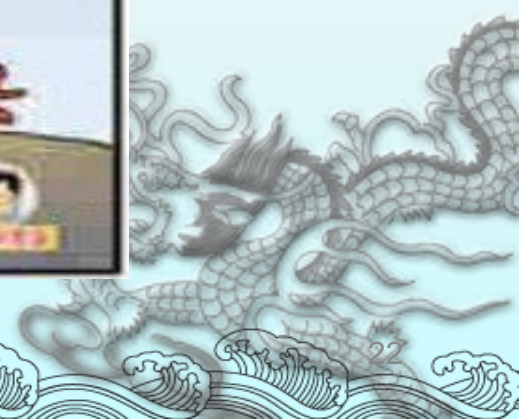
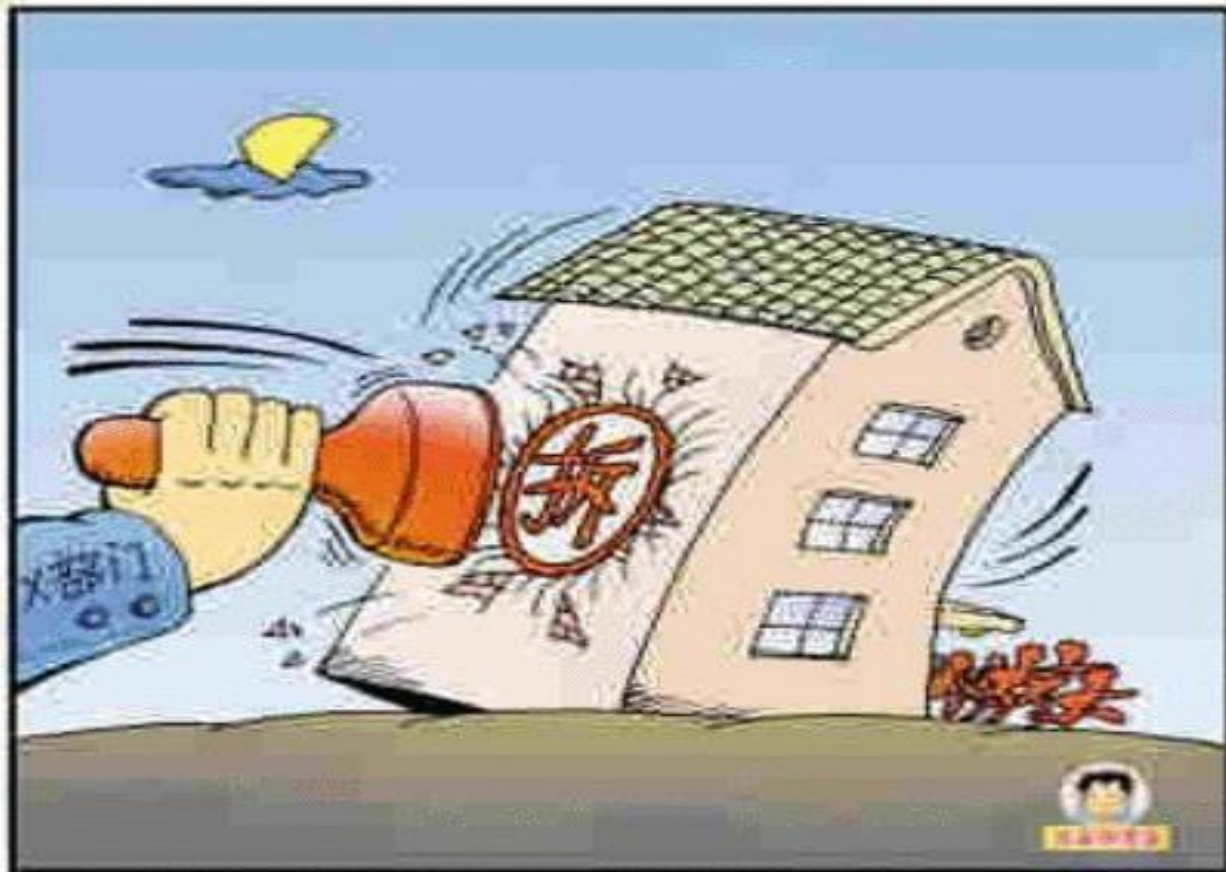


1. Demolition organized by local government

Demolition may be **organized** by local people's government or conducted by demolisher or other party under the commission of demolisher. (Art.9)



1. Demolition organized by local government



1. Demolition organized by local government



1. Demolition organized by local government

Problem 2:

What is the role of government in demolition?



1. Demolition organized by local government



1. Demolition organized by local government



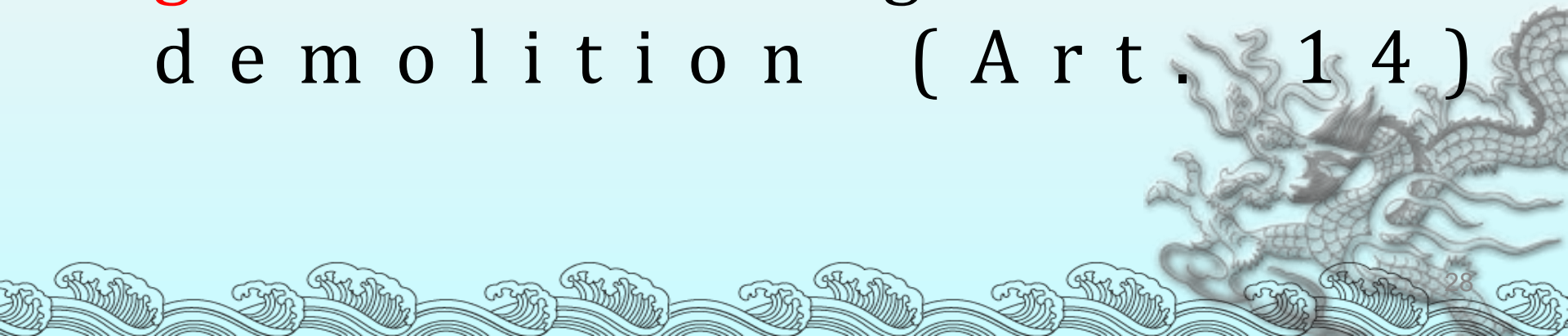
1. Demolition organized by local government

Nail House



1. Demolition organized by local government

- ◆ If the demolisher and the demolished fail to reach agreement on the means, amount of compensation and the area or location of relocation, it shall be decided by the local people's government which grant license of demolition (Art . 14)



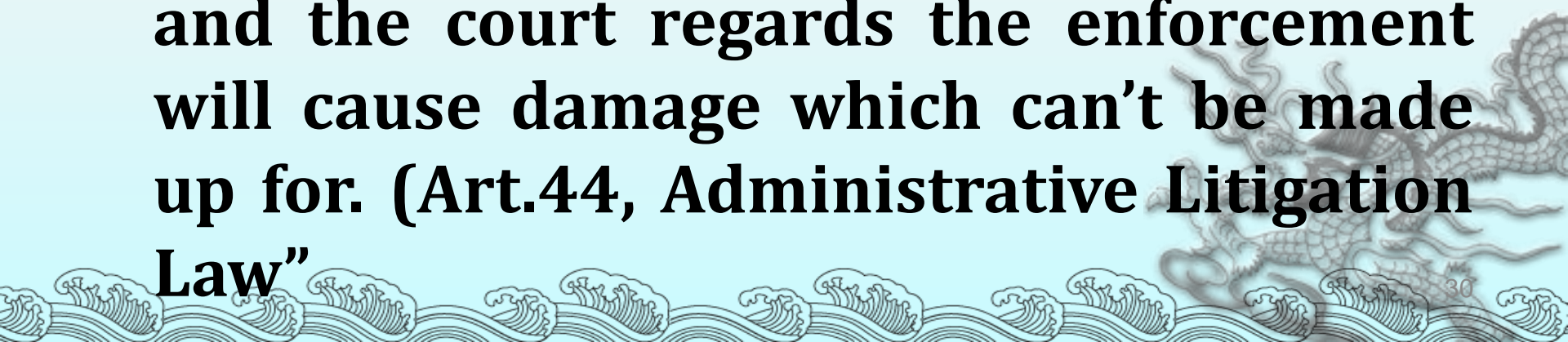
1. Demolition organized by local government

- ◆ If the Party is not satisfied with the decision of the local government, it may initiate legal suit at the people's court within 15 days upon receiving the letter of decision. **The demolition will not be stopped** during the litigation if the demolisher has provided relocation or substitution building for transition. (Art. 14)

1. Demolition organized by local government

Problem 3: Enforced demolition

The actual administrative act shall not be suspended during the administrative litigation except in the following circumstances (1) required by the defendant; (2) applied by the plaintiff, and the court regards the enforcement will cause damage which can't be made up for. (Art.44, Administrative Litigation Law"



1. Demolition organized by local government



1. Demolition organized by local government



2. Forced demolition initiated by local administration or by local court upon application

Regulation on administration of demolition of urban houses by State Council (Nov. 1,2001)

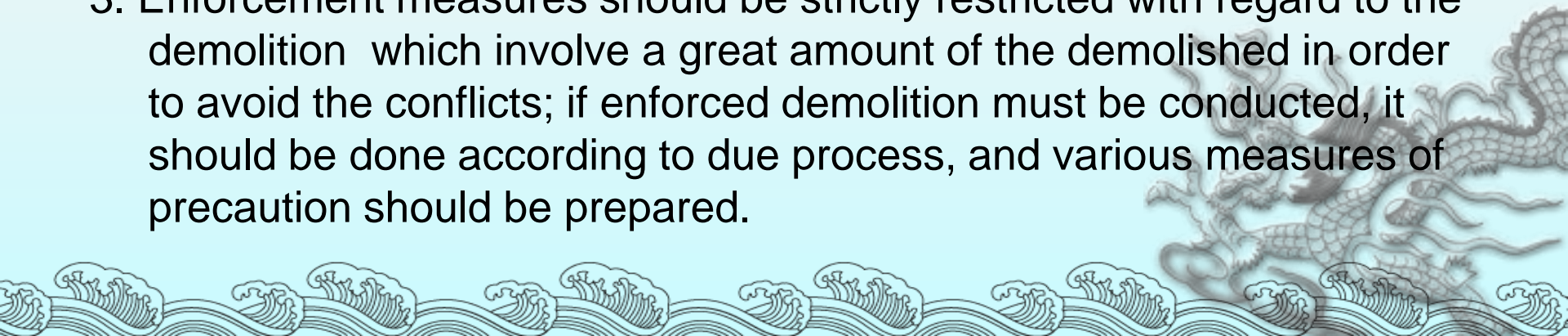


2. Forced demolition initiated by local administration or by local court upon application

Government Policy:

“Emergency Notice by the Office of the State Council concerning the improvement of demolition of urban buildings in order to maintain the social stability (sep 2003)”

1. No demolition if the funds for demolition and relocation of the demolished are not set aside.
2. Strengthen the punishment of the demolished which conduct the demolition illegally, reduce the compensation without authorization, fail to solve the reasonable requests of the demolished
3. Enforcement measures should be strictly restricted with regard to the demolition which involve a great amount of the demolished in order to avoid the conflicts; if enforced demolition must be conducted, it should be done according to due process, and various measures of precaution should be prepared.



2. Forced demolition initiated by local administration or by local court upon application

- ◆ Judicial Interpretation [2004] No. 244

The actual administrative act on demolition of urban buildings shall not be initiated in advance. (Art 35)



2. Forced demolition initiated by local administration or by local court upon application

Countermeasures (strategies of the demolished):

1. Non-cooperation

- Litigation (administrative or civil)
- Non-litigation

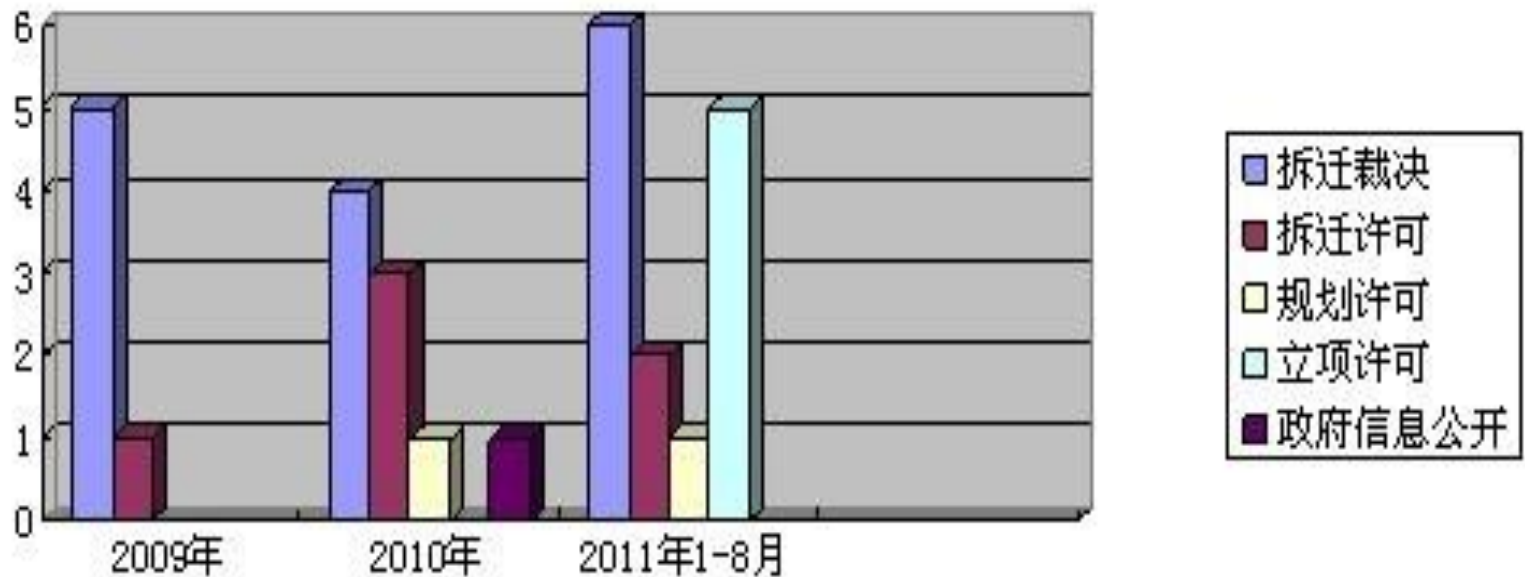
2. Cooperation

- Bargain

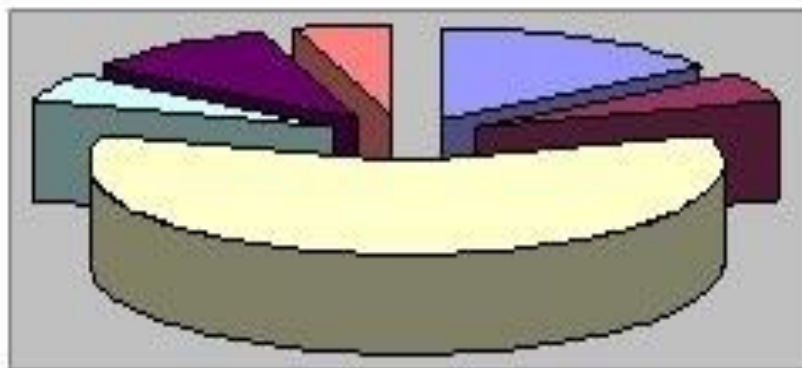


Countermeasures (strategies of the demolished)

◆ 1. Non-cooperation -litigation

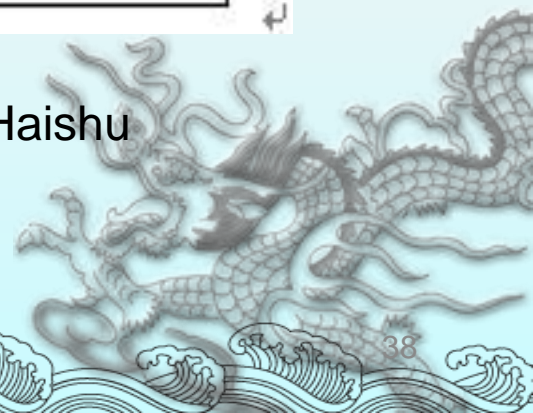


Statistics of Administrative Litigation at Ning Bo Haishu District Court



- 判决撤销 3件 15%
- 判决确认违法 1件 5%
- 驳回 12件 60%
- 原告主动撤诉 1件 5%
- 经协调后撤诉 2件 10%
- 移送 1件 5%

Disposition: Statistics of Administrative Litigation at Ning Bo Haishu District Court



Countermeasures (strategies of the demolished)

1. Non-cooperation-Non-litigation
 - ◆ Letters and Calls
 - ◆ Demonstration holding constitution
 - ◆ Challenge relevant regulations
 - ◆ Violence against force



1. Letters and Calls



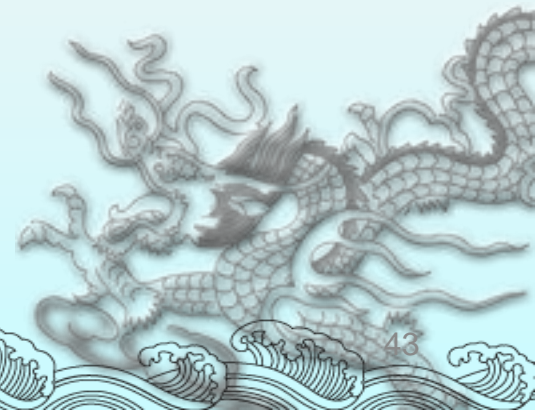
Demonstration holding constitution





3. Challenge relevant regulations

- ◆ 5 Law Professors submit proposal to the PC for review of Regulation.
- ◆ Lawyers submit proposal to the standing committee of PC for amendment of regulation.
- ◆ People's representatives made proposals to the PC for amendment



4. Violence against force



3. Expropriation replacing demolition

Regulation on the Expropriation of Buildings
on State-owned Land and Compensation
(Jan 21, 2011)



3. Expropriation replacing demolition

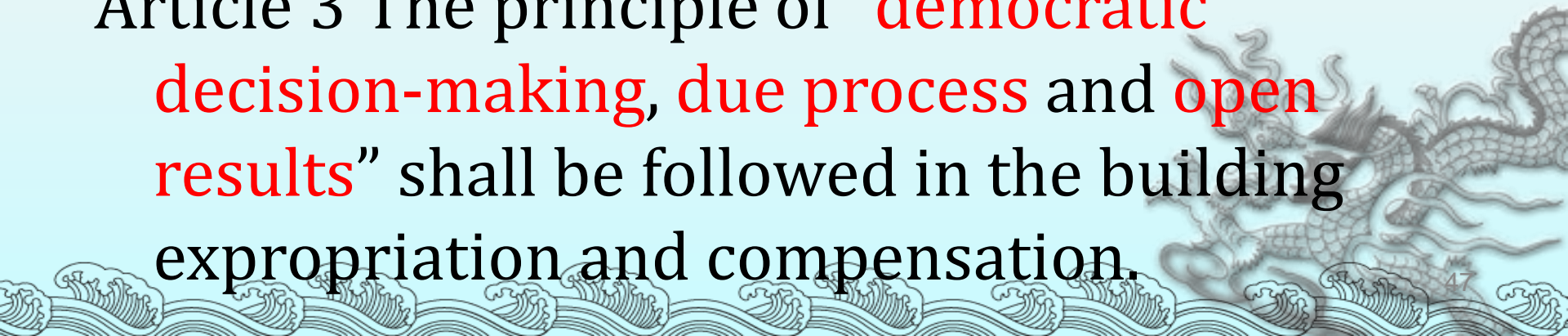
- ◆ Article 1 This Regulation is formulated for purposes of regulating the expropriation of buildings on state-owned land and corresponding compensation, maintaining public interests and protecting the legitimate rights and interests of owners of the buildings to be expropriated.



3. Expropriation replacing demolition

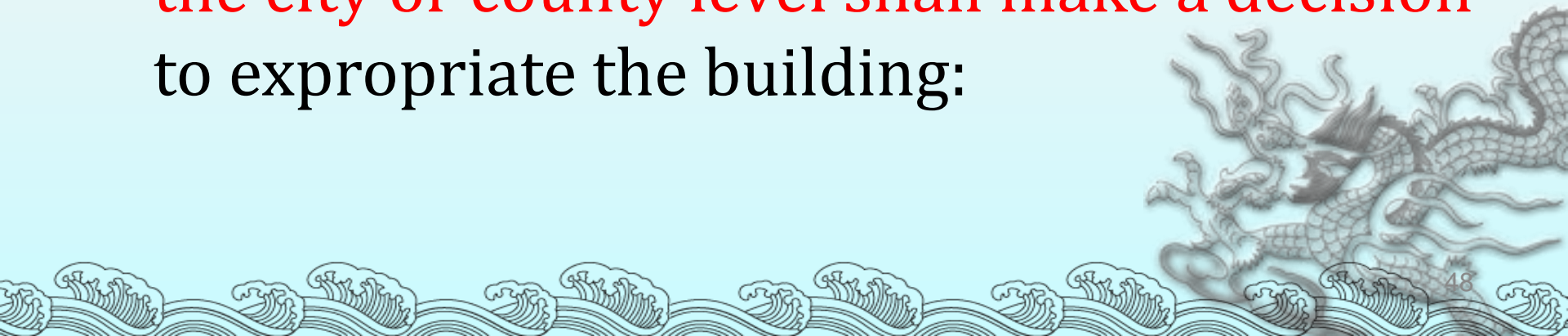
Article 2 Where a building of any entity or individual on state-owned land is **expropriated for public interest**, the owner of the expropriated building (hereinafter referred to as the “owner”) shall be fairly compensated.

Article 3 The principle of “**democratic decision-making, due process and open results**” shall be followed in the building expropriation and compensation.



3. Expropriation replacing demolition

Article 8 Where, for public interests such as safeguarding the national security and promoting the national economic and social development, it is necessary to expropriate a building under any of the following circumstances, the **people's government at the city or county level shall make a decision** to expropriate the building:



3. Expropriation replacing demolition

Public hearing of the
expropriation and compensation
plan. (Article 10)



3. Expropriation replacing demolition

- ◆ Article 13 The people's government at the city or county level shall, after making a **decision** on building expropriation, **announce it to the public in a timely manner**. The announcement shall state the expropriation and compensation plan, rights to administrative reconsideration and administrative lawsuit and other matters.
-Where a building is expropriated according to law, the corresponding **right to use** state-owned land **shall be retracted** at the same time.



3. Expropriation replacing demolition

- ◆ **compensation agreement** shall be agreed. The innocent party may sue the breaching party. (Art 25)



3. Expropriation replacing demolition

No compensation agreement is reached, determined by people's government at the city or county level which makes the building expropriation (Article 26)



3. Expropriation replacing demolition

Compensation shall be made before
relocation in building expropriation.

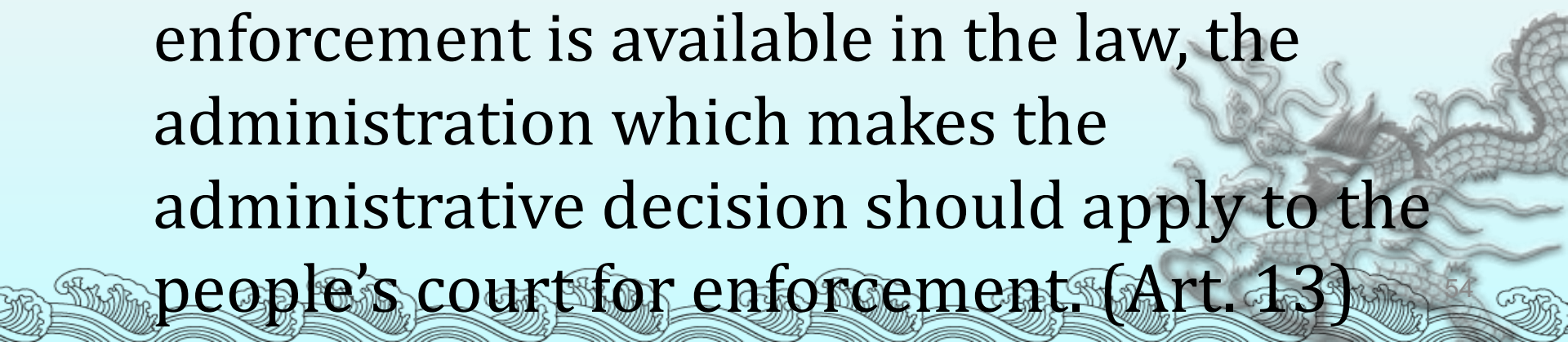
No violent relocation is permitted. (Art. 27)



4. Administrative enforcement should be provided by law

- ◆ “Administrative Enforcement Law” (Jan1, 2012)

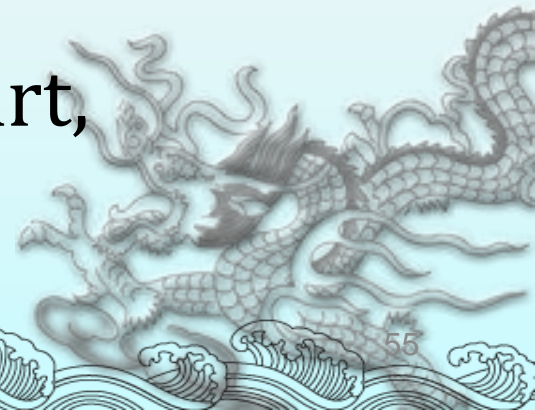
Administrative enforcement shall be provided by law. If no legal basis of administrative enforcement is available in the law, the administration which makes the administrative decision should apply to the people's court for enforcement. (Art. 13)



5. Separation of determination and enforcement of expropriation

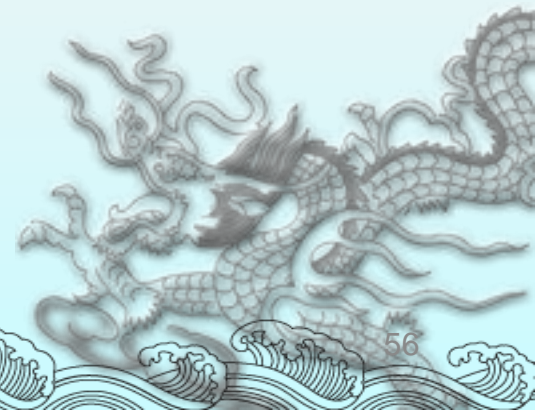
- ◆ Regulations concerning certain issues on application with the court of enforcement of decision on urban building expropriation and compensation. (April 10, 2012)

Forced relocation is decided by court, enforced by local government.



III Reflection

- ◆ Problems of concerning law making in China
 1. Ultra vires in legislation
 2. Contradiction between regulations and laws
 3. Lack of due process
 4. Review of constitutionality
 5. Overreliance on policies
 6. Building of civil society



Presentation Topics

Judicial application of fundamental rights in
Constitution in US and Germany

Case Study

- ◆ Griswold v. Connecticut 381 US 479
- ◆ Lueth v. Veit Harlan

