

中国法院 的 司法改革

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Judicial Reform of Chinese Courts

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Preface

The rule by law is the fundamental method for administering the country and managing governmental affairs, while justice is a key cornerstone of the system of rule by law. The judicial organs apply laws and adjudicate cases according to legal powers and procedures, and perform the functions of settling disputes, punishing the evil and praising the good, granting remedies, setting rules and other statutory functions, to ensure the effective application of laws and safeguard social fairness and justice. The improvement of the judicial management system and the standardization of the exercise of judicial powers will help the judicial system play a more effective role in administering the country and managing governmental affairs by operation of law, and promote the modernization of governance system and capability in our country.

China's courts have been attaching great importance to judicial reform. Since 2013, on the background of deepening reform in an all-round way, by taking the fundamental realities of our country into consideration and keeping pace with the times, and with the aim to make the public experience

I. China's Court System and Reform Process

Institutional Basis of Court Reform in China

The Constitution of the People's Republic of China provides that the people's courts are judicial organs of the State. The State sets up Supreme People's Court, local people's courts at different levels and special people's courts such as military courts. These people's courts adjudicate civil, criminal and administrative suits in accordance with laws, and carry out judicial activities including the execution of civil and administrative decisions and state compensation.

The Supreme People's Court, as the highest judicial organ of the People's Republic of China, is responsible for adjudicating various cases that have material effects nationwide or are subject to its adjudication according to law, formulating judicial interpretations, supervising and guiding the judicial work of local people's courts at different levels and special people's courts, and managing certain judicial administration work of the courts nationwide within the scope of its functions and powers as per laws.

Local people's courts at different levels include primary people's courts, intermediate people's courts and higher people's courts. Special people's courts include military courts, maritime courts, IP courts, etc.

A people's court at a higher level supervises the judicial work of the people's

II. Ensuring the Independent and Fair Exercise of Adjudicative Power by People's Courts by Law

China's Constitution provides that people's courts shall exercise their adjudicative power independently and free from any interference by any administrative organ, social organization or individual. The judicial power is a power of the Central Government. A local court in a place is not subject to the jurisdiction of the local government in that place, but is a judicial organ set up by the State in that place to exercise the adjudicative power on behalf of the State. Since 2014, in conjunction with the related departments under the Central Government, the Supreme People's Court has been advancing the reform of the judicial management system, exploring ways to improve the organizational system of courts, establishing the record system for interferences with cases, improving the system for safeguarding the authority of judicature, and promoting the creation of an institutional and social environment trusting, respecting and supporting judicature.

Promoting centralized management of personnel, financial and material resources of local courts below provincial level. The reform of the judicial management system by promoting centralized management of personnel, financial and material resources of local courts below the provincial level reflects that the judicial power is a power of the Central Government in nature. All the regions have advanced the work of centralized

management in an open, transparent and democratic manner relying on the provincial platforms. The size and composition of local courts below provincial level in a provincial-level region are subject to management by the provincial commission department with the assistance of the higher people's court in that region. The commission departments at municipal or county level are no longer responsible for the management of size and composition of courts within their respective jurisdictions. Each provincial-level region has established the mechanism that the judges of local courts below provincial level are subject to nomination, management, appointment and removal according to the legal procedures by the provincial-level government in a centralized manner. Judge assistants are recruited and employed by provincial-level public server management departments in conjunction with higher people's courts in a centralized manner. Junior judges are subject to professional qualification examination by provincial-level judge selection committees, and nomination, appointment and removal according to the legal procedures by provincial-level governments in a centralized manner. The provincial-level regions have also explored the reform of centralized funding management system for local courts below provincial level in light of their respective local conditions. In some provinces, autonomous regions and municipalities directly under the Central Government, the funds required by local courts below provincial level are fully included in the budgets of the Central Government and of the provincial-level governments; the provincial-level financial departments manage the funds required by local courts below provincial level; all the courts at the provincial, municipal and county levels are classified as first-

III. Strengthening the Mechanism of Judicial Protection of Human Rights

To respect and protect human rights is an important principle set forth in China's Constitution, and an important character of the socialist judicial system with Chinese characteristics. China's courts have achieved positive results in the development of the mechanism of judicial protection of human rights through pushing forward the reform of the litigation system centering on trials, strictly implementing the legal principles that crimes shall be punished only under the law, judgments shall be made upon evidence and presuming innocent until proven guilty, scientifically applying the policy of balancing leniency and severity, actively preventing cases in which people were unjustly, falsely or wrongly charged or sentenced and protecting the lawyers' right to practice according to law.

Pushing forward the reform of the criminal litigation system centering on trials. On July 20, 2016, the Supreme People's Court, in conjunction with the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice, promulgated the guidelines on pushing forward the reform of the criminal litigation system centering on trials, which emphasize the principles that crimes shall be punished only under the law, presuming innocent until proven guilty, judgments shall be made upon evidence and centering on court trials,

clarify the centrality of the judicial proceedings in criminal lawsuits, and require strengthening the substantialness of court trials and improving the mechanism of supervision over investigation and prosecution activities, and preventing extortion of confessions by torture, collection of evidence through illegal means and other illegal acts from the source, so as to ensure that court trials play a decisive role in finding the facts, admitting evidences, protecting the right of action and making judgments fairly, and the facts of cases found during investigations, prosecutions and trials will be proved to be true according to law. The courts in all regions have been actively pushing forward the reform of the criminal litigation system centering on trials, as a result of which the rate of investigators, experts and witnesses testifying before court has increased significantly and the rule of excluding illegal evidence has been widely implemented. In 2016, the courts in Beijing reviewed 129 applications for excluding illegal evidence filed by litigants or their attorneys, and excluded seven evidences by law. Anhui Higher People's Court, in conjunction with the Provincial Procuratorate, the Provincial Department of Public Security and other departments, formulated the operating rules for excluding illegal evidence in handling of criminal cases and the rules for collection, examination and judgment of evidences in drug-related cases, to standardize the determination of illegal evidences and exclusion procedure. The courts in Wenzhou, Zhejiang have improved the mechanism for protecting personnel testifying before court, promulgated detailed rules on policemen's appearance in court as witnesses, provided remote rooms for offering testimonies, devices for concealing faces of witnesses and other appropriate facilities, established the mechanism for

IV. Judicial Power Serving the People

Exercising judicial power for the people fairly is the primary work of people's courts. The Supreme People's Court has been reforming the system of acceptance and handling of cases, improving the national judicial assistance system, pushing forward the establishment of litigation service centers and people's tribunals, improving the multiple dispute resolution mechanisms, deepening the reform of enforcement system and mechanism, carrying out the pilot program of public interest litigations and pilot reform on the methods of adjudication of family affairs and other measures, to enhance the exercise of judicial power for the people and make the people have a stronger sense of gain in the judicial reform.

Implementing the case filing register system in an all-round way. In May 2015, the Supreme People's Court reformed the court case acceptance system by changing the case filing review system into the case filing register system, which requires each case that should be accepted and handled by the people's court shall be placed on file and each lawsuit shall be accepted and handled by the people's court, thereby effectively solving the "difficulty in case filing". In 2016, the courts nationwide registered 16,302,994 cases in total, up 12.48% year on year, with an on-the-spot case registration rate of 95%, among which civil cases increased by 6.58%, administrative cases increased by 2.31% and criminal cases of private prosecution increased by

74.44% respectively year on year. The people's courts at all levels have made continuous efforts to consolidate the achievements already made in the reform of case filing register system and with the aid of information technology, to improve the efficiency and convenience of case filing. The courts in all regions have simplified the case filing procedure and by means of notification of case filing, one-off list of supplements and corrections, request for response within prescribed time limit and otherwise, ensure successful filing of cases by the litigants in one attempt. The courts have also made efforts to promote online and electronic case filing, and by means of self-service equipment, litigation service website, 12368 litigation service platform, mobile client and other media, opened the online case filing, online submission of documents, online payment of fees and other functions, to further facilitate case filing. The courts in Pudong, Shanghai developed a "two dimension code" self-service case filing system, through which more than 1,000 cases were filed within one month, with the average time of filing of a case being only 15 minutes. The courts in Quanzhou, Fujian took the lead in introducing the cross-city and trans-regional case filing service, rendering litigants able to complete the case filing procedures at any court in the city. The courts in Beijing established the mechanisms of supervision over case filing and rapid handling of complaints over case filing, to promptly respond to and rectify the problems existing in case filing reported or complained by the litigants. In 2016, the courts in Beijing accepted and handled complaints of failure in case filing lodged by more than 1,300 people, thereby ensuring the effective implementation of the case filing register system.

V. Improving the Judicial Accountability System

It is an objective requirement of the law of justice that one who tries a case shall have the power to decide the case and be responsible for his decision. In September 2015, the Supreme People's Court promulgated certain opinions on improving the judicial accountability system in the people's courts, to guide the pilot courts in the reform of the judicial accountability system. Since the national conference on pushing forward the reform of the judicial system held in July 2016, the reform of the judicial accountability system has been implemented in the courts nationwide in an all-round way on the basis of judge quotas and centering on the reform of the operating mechanism of adjudicative power and the accountability system for judges and collegiate panels handling cases.

Exploring the mode of judicial team. The primary and intermediate pilot courts have optimized the staffing in light of their actual situations, organized judicial teams comprising judges, judge assistants, clerks and other auxiliary personnel, formulated respective lists of responsibilities of judges, judge assistants and clerks, established the new judicial work mechanism with judges at the core and the team members cooperating with each other closely, thereby improving the judicial efficiency by more than 20% generally. Futian District People's Court in Shenzhen, Guangzhou has established 59 judicial teams each comprising 1 collegial panel + 3 judge

assistants, or 1 judge + 1 judge assistant, or 1 judge + N judge assistants or otherwise, and 15 quick-track sentencing, quick mediation, quick trial and quick enforcement teams comprising 11.6% of regular judges and 12.4% of auxiliary personnel of the Court, which handled about 50% of the cases newly accepted by the Court. From June to November 2016, each judge of the Court had concluded 1,129 cases on average. Huaxi People's Court in Guiyang, Guizhou has organized criminal judicial teams, each comprising one judge, one judge assistant and one clerk, and civil judicial teams, each comprising one judge, two judge assistants and two clerks. Since the launch of the said reform, the Court's number of the cases concluded by each judge on average, the rate of cases the judgments on which were announced at the court and the average duration of trial of cases have been significantly higher than the average levels of the City. Beijing No. 2 Intermediate People's Court has organized 44 relatively fixed judicial teams in its tribunals, each comprising three to five judges, revoked the fixed chief judge system, and had the judge responsible for a case act as the chief judge. Shanghai No. 2 Intermediate People's Court has assigned at least one judge assistant to each collegial panel, and defined the regulations on judge assistants' participation in adjudicative work, thereby effectively reducing the routine work undertaken by judges in judicial procedures. The circuit courts of the Supreme People's Court have randomly organized collegiate panels, each comprising one chief judge, one judge assistant and one clerk to adjudicate cases.

Reforming the mechanism for execution of written judgments.

VI. Deepening Judicial Openness

In order to further promote judicial impartiality, safeguard the people's right to know, participate and supervise, and improve the judicial transparency and public credibility of the judiciary, the Supreme People's Court has taken the lead in making overall plans and arrangements, simultaneously advancing the establishment of four platforms for openness of judicial process, openness of court trial, openness of written judgments, openness of enforcement of judgments and enforcement actions, and with the aid of modern information technology and new media platforms, continuously expanding judicial openness in both depth and scope. In November 2016, the 24th Session of the Standing Committee of the 12th National People's Congress heard and reviewed the report on deepening judicial openness and promoting judicial impartiality delivered by the Supreme People's Court, and highly commended the work of judicial openness.

Promoting openness of judicial process. In November 2014, the China Judicial Process Information Online was officially opened. So far, all the provincial-level courts nationwide have established unified judicial process information disclosure platforms covering all the courts at three levels within their respective jurisdictions, all of which are connected with the China Judicial Process Information Online, thereby realizing full coverage and sharing of judicial process information nationwide. From the date of

acceptance of a case, the parties to the case and their process attorneys can, by entering their valid certificate numbers, log onto the platform to check and download the process information and documents relating to the case at any time, and receive procedural legal process on line. As of the end of December 2016, the China Judicial Process Information Online had released 520,000 pieces of open trial information, and published 1,838 announcements of court session, and received over 985,000 page views in total. From its trial operation in August 2014 to the end of 2016, the website has disclosed the judicial process information of all the 25,509 cases handled by the Supreme People's Court to the parties involved and their process attorneys, released 525,000 pieces of information, and successfully pushed 33,000 pieces of text messages. On August 1, 2016, the National Corporate Bankruptcy and Restructuring Case Information Online was officially opened, which becomes an online information platform for releasing various information about bankruptcy cases, and on which the legal process, notices of recruitment of administrators, notices of recruitment of investors, notices of asset auction and other relevant information are simultaneously published.

Promoting the openness of court trials. On December 11, 2013, the China Court Trial Live Broadcasting Website was opened. On September 27, 2016, on the basis of comprehensively upgrading the China Court Trial Live Broadcasting Website, the Supreme People's Court officially opened the China Court Trial Online, thereby realizing the collection and authoritative release of videos of court trials conducted at the people's courts at all levels. So far, 1,389 local courts have been connected with the China Court Trial

VII. Promoting Judicial Democracy

To safeguard the people's right to participate in judicial work reflects that the socialist judicial system with Chinese characteristics serves the people and is an objective need for promoting judicial democracy and improving the public credibility of the judiciary. The Supreme People's Court, through reformation of the system of people's assessors and otherwise, has improved the extensiveness, orderliness and effectiveness of the people's access to, participation in and supervision over the judicial work.

Carrying out the pilot program to reform the system of people's assessors. In May 2015, with the authorization of the Standing Committee of the National People's Congress, the Supreme People's Court and the Ministry of Justice jointly promulgated the pilot program to reform the system of people's assessors and the measures for the implementation of the pilot program. The pilot program has been conducted at 50 courts in 10 provinces, autonomous regions and municipalities directly under the Central Government. The items of the pilot program includes, among other things, reforming the requirements for the appointment of people's assessors, improving the mode of appointment of people's assessors, expanding the scope of participation in trials, defining the powers to participate in trials, enhancing job security, establishing the withdrawal mechanism, giving full play to the advantage of people's assessors in being familiar with the

social situations and public opinions, and gradually realizing the goal that people's assessors no longer vote on issues relating to the application of law and only participate in the finding of facts. As of the end of April 2016, all the 50 pilot courts had finished the appointment of people's assessors, including 9,673 new people's assessors; these pilot courts had 13,322 people's assessors in total, 4.3 times of their judge quota; there were over 220,000 people's assessors nationwide, reflecting a further enhancement of their extensiveness and representation. In 2016, the people's assessors nationwide took part in the trial of 3,063,000 cases, including 458,700 criminal cases, 2,481,300 civil cases and 122,900 administrative cases. The people's assessors of the 50 pilot courts took part in the trial of 81,770 cases, including 1,624 cases involving mass interest or public interest or otherwise having a great social influence that were tried using the mechanism of collegiate panel and assessors. The Supreme People's Court has developed the national people's assessor information management system, which is connected with the respective people's assessor information management systems of the pilot courts, to realize information analysis, random selection and management of performance of the people's assessors. The Supreme People's Court has also conducted training courses for people's assessors, published the Guide to the Performance of Duties by People's Assessors, and enhanced the trainings in the rights, obligations, litigation procedures, judicial etiquette and other relevant issues for people's assessors, to improve the capability of the people's assessors to perform their duties. The pilot courts in Heilongjiang and Shandong adopted the method of "directional classification, quota control and random selection", thereby effectively

VIII. Promoting Specialized Trial and Flat Management

Specialized trial and flat management are important means to optimize the allocation of judicial resources and improve the quality and efficiency of trials. The people's courts have been actively exploring the special judicial organs and judicial ways to hear and adjudicate specialized cases, establishing the judicial work mechanism suitable to the law of adjudication of cases and carrying out pilot reforms on the establishment of internal organs, in order to ensure judicial impartiality and improve judicial efficiency.

Carrying out the reform of three-in-one trial of civil, administrative and criminal IP cases. On July 5, 2016, the Supreme People's Court promulgated the opinions on promoting three-in-one trial of civil, administrative and criminal IP cases at the courts nationwide, requiring that except the IP courts in Beijing, Shanghai and Guangzhou, the IP adjudication departments of all the people's courts at all levels shall be renamed IP tribunals, which shall be responsible for the trial of all the civil, administrative and criminal IP cases. In order to give full play to the demonstration role of IP courts, with the approval by the Supreme People's Court, the IP tribunals of the intermediate people's courts in Nanjing, Suzhou, Wuhan and Chengdu have begun to exercise jurisdiction over certain trans-regional IP cases.

Improving the system of special jurisdiction over maritime cases.

China is the country having the most and fullest judicial organs for maritime cases and handling the most maritime cases in the world. In order to further expand the space of blue economy and push forward the Belt and Road Initiatives, the Supreme People's Court has promulgated the relevant judicial interpretations, adjusted the system of jurisdiction over maritime lawsuits, reasonably expanded the scope of cases under the jurisdiction of the maritime courts, and promoted the establishment of the system of special jurisdiction over maritime cases that focuses on civil and commercial cases while also covers cases in other areas. In order to promote innovations in the theories and practices in maritime justice, train outstanding maritime judicial professionals and enhance Chinese-foreign judicial exchanges and cooperation, the Supreme People's Court established the International Maritime Judicial Study Center and the Qingdao Maritime Branch of the National Judges College in Qingdao, Shandong on December 16, 2015.

Promoting the establishment of the specialized judicial mechanism for environmental and resource cases. In June 2014, the Supreme People's Court established the Environmental and Resource Tribunal, and instructed the courts in all regions to enhance the establishment of judicial organs for environmental and resource cases. As of the end of 2016, the people's courts in all regions had established 558 tribunals, collegiate panels and circuit courts for environmental and resource cases in total. 15 higher people's courts in Guizhou, Fujian, Hainan and other regions have established environmental and resource tribunals and Jiangsu, Chongqing and other regions have established three-level judicial system for environmental

IX. Improving the Regularization, Specialization and Professionalization of Judicial personnel

According to the overall arrangement by the State and in conjunction with the related departments of the Central Government, the Supreme People's Court has reformed the judge selection and appointment system, improved the system of classified management of judicial personnel, and promoted the establishment of the system of setting a separate rank of posts for judges and determining their remunerations accordingly, so as to enhance the judges' sense of honor and calling towards their profession.

Carrying out the reform of the judge quota system in an all-round way. The higher people's courts in all provincial-level regions have scientifically set the judge quotas for the courts at three levels according to the number of cases handled, and the situations of economic and social development, population and other basic data of the places where the courts are located, and taking into consideration the level of trial and functions of the courts, workloads of judges, staffing of auxiliary judicial personnel and other factors, and dynamically adjusted the court quotas according to changes in the number of cases and personnel structure. Mainly on the basis of number of cases, the courts in Guangdong decided that the proportion of judges should be lower than 30% in Shantou where there are few cases but abundant personnel and be higher than 50% in Shenzhen,

Dongguan, Zhongshan and other cities where there are abundant cases but few personnel. As of the end of 2016, 27 provinces, autonomous regions and municipalities directly under the Central Government had finished the appointment of judges under the quota system, with 104,4442 judges in total appointed by 27 higher courts, 340 intermediate courts and 2,623 grass-roots courts. After the reform, the pilot courts no longer set up posts for judges in their judicial administration departments and assign more than 85% of their staff members to trial work. For example, the number of judges in the case handling departments of the courts in Shanghai has increased by 8%, and the proportion of judges to auxiliary judicial personnel has been changed from 1:0.75 before the reform to 1:1.7 after the reform. In Beijing, the number of first-line judicial personnel has increased by 21.4% from 6,128 to 7,550, and the number of auxiliary personnel has increased by 68.8% from 2,689 to 4,538.

Reforming the judge selection and appointment system. The pilot regions have established judge selection committees at the provincial level comprising judge representatives and relevant civilians, and formulated open, fair and just judge selection and appointment procedures, to ensure that only the outstanding legal practitioners who are upright in character and have rich experience and a high professional level will become judge candidates. In order to improve the system of selection of judges level by level, on May 13, 2016, the Organization Department of the CCCPC, the Supreme People's Court and the Supreme People's Procuratorate jointly promulgated the opinions on establishing the system of selection of judges

X. Promoting Informatization of Courts

Informatization occupies an important position of fundamental, overall and strategic significance in the work of people's courts. In order to adapt to the new challenges brought by the era of "Internet +", the Supreme People's Court has enhanced the building of court informatization version 3.0 and "intelligent court" (which was also included in the Outline of National IT Development Strategy), and promulgated the Five Development Plan for Informatization of People's Courts 2016-2020, with the aid of big data technology, aiming to improve the IT infrastructures, promoting full coverage, mobile interconnection, cross-border integration, in-depth application, transparency, convenience, accessibility, safety and controllability of all kinds of information, and improving the judicial system and modernization of judicial capability of people's courts.

Improving the standard of informatization and development of IT infrastructures. The Supreme People's Court has formulated the standard of court informatization, established an informatization assessment system covering indicators in six respects, including development, application, service, management, security and effect to give unified guidance on the standard and assessment of informatization for the courts nationwide. The Supreme People's Court has been continuously improving the IT infrastructures and promoting the development of "one website" of the courts

nationwide. In November 2016, all the courts in our country, including 3,520 courts, 9,277 tribunals and 39 maritime courts were connected with the special court website, thereby laying a solid foundation for realizing whole connection of networks, full coverage of data and accessibility of all the services of people's courts. In the development of IT hardware of courts, so far, over 20,000 scientific and technological tribunals and over 2,160 sets of remote interrogation systems have been established nationwide, 98% of the courts nationwide have established IT-based litigation service halls, and big screens, guide platforms, inquiry machines, net-connected computers and other IT facilities have been used generally. The Supreme People's Court has established a digital library.

Realizing full coverage and system integration of judicial information. The Supreme People's Court has established the national judicial and trial information resource management center, which realizes collection, dispatch, display, management and control of the data and over 20,000 routes of video signals from the courts nationwide, and provides the functions of real-time view of live broadcasting of court trials at the courts at four levels nationwide, exchanges, communications, centralized data management, etc. The Supreme People's Court has built the centralized management platform for the data of people's courts, which realizes storage, display, exchange and sort-out of information of courts nationwide, and is gradually incorporating judicial statistical information and personnel management information. So far, the platform has collected the information of over 94.25 million cases, over 46.30 million documents, 259 judicial research projects, over 24,000

Conclusion

The new round of the reform of judicial system has been centering on problems and guided by the objectives, starting from the deep-seated problems affecting judicial impartiality and inhibiting judicial capability, and the problems involving the direct and realistic interests that the public care most; such reform has been observing all the time the laws of justice while proceeding from China's actual conditions, exploring the road of reform of the judicial system with Chinese characteristics, focusing on building and improving the socialist judicial system with Chinese characteristics, and has been pushed forward step by step by operation of law, and combined top-down design with exploration through pilot programs, so as to ensure that the reform will be conducted in a vigorous and steady manner.

The people's understanding and support are the driving force behind the judicial reform, and the people's sense of gain is the standard for evaluating the judicial reform. In light of the new challenges in the new era, the people's new expectations and new progress in science and technology, the judicial reform of China's courts will always be pushed forward and never be finished. In the next step, the people's courts will rally closely around the Party Central Committee with Comrade Xi Jinping as General Secretary, unremittingly pursue the goal to make the public experience fairness and