

Chinese Judicial System and its Reform

journal or publication title	Proceedings of the Roundtable Meeting Law, Development and Socio-Economic Changes in Asia
volume	1
page range	23-33
year	2001
URL	http://hdl.handle.net/2344/00015237

I. The People's Judicial System of China

In China, the structure of judicial system is as following: the judicial organization is the People's Court and it has the judicial power; the procuratorial organization is the People's Procuratorate and it has the procuratorial power; the investigative organizations are the Public Security Organization and the State Security Organization, and they have the investigative powers; the judicial administrative organization is in charge of the affairs of judicial administration according to law. The prison is subject to the judicial administrative organization. The special organizations of lawyer, notary, people's mediation and arbitration are all directed by the administrative organization. The above state organizations and social groups that are authorized by law have made up a complete People's Judicial System of China.

II. The Position of the People's Judicial System

According to the Constitution of the People's Republic of China, all the powers of state belong to the people and the organizations by which the people exercise their state powers are the National People's Congress and its Standing Committee. The administrative organization (government), judicial organization (court) and procuratorial organization (procuratorate) are elected and supervised by the People's Congress. In the central state organizations, the State Council is the Central People's Government and the executive organization of the supreme organization of state power, and it is also the supreme administrative organization; the Supreme People's Court is the supreme judicial organization; the Supreme People's Procuratorate is the legal

* Broadly speaking, there are four fields of Chinese judicial system concerning judicial systems of Mainland China, Hong Kong, Macao and Taiwan. This article just refers to the judicial system of Mainland China.

** Professor and Deputy-director of the Institute of Law of Chinese Academy of Social Sciences

*** Doctor and Sectary-general of the Public Law Center of the Institute of Law of Chinese Academy of Social Sciences

supervision organization and the supreme procuratorial organization. Besides, the Central Military Committee is the Supreme military organization in charge of the military force of the state. The above four organizations lay equal and enjoy the equal positions to each other.

The functional departments such as the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice are set up in the State Council. They are administrative organizations. But the former two are regarded as organizations with justice character for their functions such as criminal investigation, detention, preliminary examination and arrest; the Ministry of Justice is also with character of justice for its function of being in charge of prison, lawyer, notary and people's mediation.

At the local level, the People's Court, Procuratorate and Government enjoy the same equal positions and they directed by the People's Congress of their stages and must report their works to it. The departments of Public Security and Judicial Administrative are set up in the People's Government of different local stages. But in fact, the positions of the People's Court and Procuratorate of different levels are something lower than the their counterparts of the People's Government.

III. The System of Judicial Organization

According to the Constitution and the Organic Law of the People's Court, the People's Court is the judicial organization of the state. Its organic system is to set up: the local People's Courts of different levels, the Special People's Courts and the Supreme People's Court.

The local People's Courts of different levels are:

1. The grass-roots People's Courts which are set up at the levels of county, autonomous county, the city without district and the district of city;
2. The Intermediate People's Courts which are set up at the levels of prefecture, city and autonomous state;
3. The higher People's Courts which are set up at the levels of Province, Autonomous Regions and municipalities directly under the Central Government.

For the convenience of the people's litigation, some People's Tribunals are set

up in the grassroots People's Court as detached tribunals, rather than a trial grade. The special People's Courts are Military Court and the other special courts. The Military Courts are set up in three grades:

1. The grass-roots Military Court;
2. The Military Courts of greater military region and categories of troops.
3. The Military Court of the People's Liberation Army of China.
4. The other special courts are the Maritime Court and Railroad Transportation Court.
5. The Supreme People's Court is set up in capital Beijing.

The order of the system of the People's Courts ranking from the bottom to the top is very important and showing that the relationship between the upper and lower courts is the relation of instances, namely, the relation of trial supervision.

IV. The System of Procuratorial Organization

According to the Constitution and the Organic Law of the People's Procuratorate, the People's Procuratorate is the legal supervision organization of state. Its system consists of the Supreme People's Procuratorate, the local People's Procuratorate of different grades and some special procuratorates such as the Military Procuratorate. The Supreme People's Procuratorate is set up in capital Beijing. The local People's Procuratorate of different grades are :

1. The Procuratorates of province, autonomous region and municipality directly under the Central Government;
2. The Sub-procuratorates of province, autonomous region and municipality directly under the Central Government;
3. The procuratorates of autonomous prefecture, municipality directly under province and autonomous region;
4. The procuratorates of county, autonomous county, city and district under municipality.

The sub-procuratorate of province, autonomous region and municipality directly under the Central Government, is a grade of procuratorate, not the detached one. The provincial and county procuratorates can set up their detached organizations in

mineral, farming and forest areas depending on the practical requirements. The prosecutor's office can be set up as detached organization in town and township by the procuratorates of county, city and district under municipality according to the decision of the Supreme People's Procuratorate. The special People's Procuratorate are the Military Procuratorate, Railroad Transportation Procuratorate which are corresponding to the special people's courts. The system of the People's Procuratorates ranks from the top to the bottom, just as the general practice in some other countries of the world. The Supreme People's Procuratorate directs the work of the local People's Procuratorates of different levels and the work of the special People's Procuratorates, while, the upper grades direct the work of the lower grades. The relationship between the People's Procuratorates is to direct and to be directed.

V. The System of Investigative Organizations

According to Chinese law, the Public Security Organizations and the State Security Organization are parts of the administrative organizations of the country. They are in charge of the criminal investigations and become the state investigative organizations by nature. The system of them is as following:

1. The system of the public security organizations are:
 - (a) The Ministry of Public Security in the State Council is in charge of the security of whole country;
 - (b) The Public Security Bureaus are set up in every provinces, autonomous regions and municipalities directly under the Central Government;
 - (c) The public security sub bureaus are set up in the district of municipalities directly under the Central Government;
 - (d) The public departments are set up in prefectures, autonomous prefectures;
 - (e) The Public Security Bureaus are set up in cities, counties and the autonomous counties;
 - (f) The Public Security Sub bureaus are set up in the districts of cities;
 - (g) The Grassroots Public Security Station or the Special Public Security Officer is set up in residential districts of city and the towns of county;
 - (h) The Grassroots Public Security Station is not a grade of public security organizations.
 - (i) The upper directs the lower among the public security organizations.

The Public Security Bureau (or departments) is also found in the systems of railway, transportation, civil aviation, forest and so on. The safeguard organization is established in army system too.

2. The system of the State Security Organizations is:

- (a) The Ministry of State Security is set up in State Council;
- (b) The State Security Bureaus are set up in every province, autonomous regions and municipalities directly under the Central Government;
- (c) Some State Security organizations or officers are set up in the other areas according to the practical requirements.
- (d) The relationship between the upper and the lower of the state security organizations is to direct and to be directed.

VI. The System of Judicial Administrative Organizations

According to the law of China, the judicial administrative organization is the necessary part of state administrative organization and in charge of the judicial administration of the country. Its system is as following:

1. The Ministry of Justice is set up in the State Council and in charge of the works of the whole country in prison, lawyer, grassroots legal service, notary and the people's mediation and so on and so forth;
2. The Bureau of Justice is set up in every provinces, autonomous regions and municipalities directly under the Central Government;
3. The Bureau of Justice is also established in the districts of municipalities directly under the Central Government, prefectures, states and cities;
4. The Bureau of Justice is set up in counties and autonomous counties;
5. The Group of Justice or Judicial Assistant are set up in town, township and the residential district of greater cities.

The system and tasks of the judicial administrative organization is still in the process of development and has not gotten a stable form. All the organizations of prison, lawyer, notary, the people's mediation and arbitration are equal and have no the vertical leaderships to each other.

VII. The Qualification and Appointment of Judicial Personnel

In China, the judicial personnel means persons who do the job of justice. According to Article 94 of Criminal Law of China, the judicial personnel refers to the persons who have duty to investigate, prosecute, judge, control and oversee the prisoners. Generally speaking, the judicial personnel means judges and prosecutors in China.

In the Law of Judges and the Law of Prosecutors promulgated on 28th February 1995, the qualification and appointment of judges and prosecutors are provided in the same way as following:

1. The necessary qualifications for judges and prosecutors

- (a) To have the nationality of P.R.C.
- (b) More than 23 years old;
- (c) To support the Constitution of P.R.C.
- (d) To have good political and professional qualification and good conduct;
- (e) In good health;
- (f) To graduate from college law major or the other majors but have the knowledge of law and to have worked more than 2 years; or those obtain the bachelor's degree on law and has worked more than 1 year; but those who obtain master or doctor degree will not be subject to the limitations of working seniority.

2. Provisions for judges and prosecutors currently in office

For those, who had been appointed as judges or prosecutors before the Law of Judges and the Law of Prosecutors came into force and do not possess the qualifications of the record of formal schooling provided, must be trained in order to satisfy the demands of the two laws within time limit; or, they will be dismissed or removed to other positions.

3. Provisions for not be allowed to be judges and prosecutors

The laws of judges and prosecutors provide that the following persons are not allowed to be judges and prosecutors:

- (a) Used to be punished for crime;
- (b) Used to be discharged from public employment.

VIII. The Guiding Thought and Basic Principle of the People's Judicial System

According to the current Constitution of P.R.C., the guiding thought of the People's Judicial System is Marxism and its Chinese edition the theory of Deng Xiaoping. Under the guidance of the rationale of state and law of Marxism, in accordance with the Constitution of P.R.C., from the very situation of China, summing up the experiences of the People's Justice, the Judicial System of China at present is built up. Following aspects shows the concrete meaning:

1. To uphold the thought line of emancipating the mind and seeking the truth from facts;
2. To uphold the rationale that the superstructure serves the economic basis;
3. To uphold the uniform principle of legal systems;
4. To uphold the aim of serving the people wholeheartedly;
5. To uphold the leadership of the Communist Party.

The basic principles of the People's Judicial System can be summed up from the Constitution, the organic laws of the People's Courts and the Procuratorates, the procedural law and some other law concerned. They are:

1. The principle of judicial sovereignty;
2. The principle of judicial uniform;
3. The principle of judicial independence;
4. The principle of judicial check;
5. The principle of judicial democracy;
6. The principle of judicial equal;
7. The principle of judicial realism;
8. The principle of judicial convenience.

IX. The Judicial Procedural System

In China the judicial procedural system is divided as three parts, the civil procedure, criminal procedure and the administrative procedure. The making of the codes of procedural law was in the past 20 years in China. For a long time before that, the judicial activities just followed the principles provided by the constitution, organic

laws of court and procuratorate and experiences summed up from the judicial practices.

The first procedural code was criminal procedural law made in 1979 and revised in 1996. The revised edition of the criminal procedural code has 225 articles and embodies the spirit of reform for making use of the advanced legal experiences of the west countries such as the doctrine of the presumption of innocence and so on.

As to the civil procedure, the courts handled cases with experiences of trial practice for a long time until 1982 when the Code of Civil Procedure (trial implementation) was promulgated. The code was revised in 1991 with 270 articles, more concrete and easy to be used.

The Code of Administrative Procedure was made in 1989 and came into force in 1990 which was the regulation for the purpose so-called " citizen sues officials". But this code is something too simple and needs a new revision based on the experiences of practice.

X. The Three Main Aspects of Chinese Judicial Systems

There are three main aspects in Chinese judicial systems.

1. The Civil Judicial System

The civil judicial system consists of the systems such as notary, mediation, lawyer, arbitration, adjudication and implementation around the handle of civil and economic disputes, or the so-called civil and commercial cases.

2. The Criminal Judicial System

The criminal judicial system, around the handle of criminal cases, consists of the systems such as investigation, public prosecution, adjudication, lawyer and prison which include the contents of the prevention of offence, prosecution of the criminal suspect, testifying the crime, punishment to convicts and reforming the convicts to new persons.

3. The Administrative Judicial System

The administrative judicial system, around the handle of administrative cases,

consists of the systems of administrative review, adjudication and lawyer.

XI. The Problems with the Current Judicial System

It's not a long time since Chinese judicial system was set up. So it is far more from complement in many aspects. The problems it has mainly are as following:

1. The Localization of Judicial Power

The local protectionism and the department protectionism are so serious that they make the local courts can not exercise their judicial powers independently and make lots of effective judgements, especially the judgements of economic cases, couldn't be enforced. Why is it so terrible? Because all the local courts were produced by the local power organs the people's congress and the local judges are all appointed by the local power organs too. Meanwhile, the local departments of the Communist Party and governments can control and manage those judges and the financial budgets of the local courts. So the local departments of the Communist Party and governments have many approaches to intervene the particular cases which should be handled independently by the courts. In this way, the local courts have become the tools just to be used to defend the local or department interests. For example, due to its personnel and matter interests are all subject to the railroad department, people regard the Railroad Transportation Courts as the watchdogs of the railroad department.

2. The Administration of Adjudication

The appearances of the administration of adjudication are in two aspects, which exist within the court and between the grades of trial. The former is that the court leaders, who do not try case directly, make the judgement for the case by the administrative powers and lead to the separation of trial and judgement. The last one is that the lower courts often report the hard case they think to the upper before the judgement is made, and the upper courts often direct how the case should be judged to the lower court, in this way the appeal right of litigants are damaged completely.

3. The generalization of judges' quality

The organic laws of the People's Court and the People's Procuratorate only make general regulations for the judges and prosecutors, but have no concrete professional, moral and mental demands in a long time. The judges and prosecutors are treated as common cadres of Party and government department with lower treatments. This leads the generalization of judge's quality. Though the laws of judges and prosecutors promulgated in 1995 made some concrete provisions for the qualifications of judges and prosecutors, there needs some time to be strictly carried out of them.

4. The decentralization of the judicial administration

The court, procuratorate, investigative and judicial organizations have their own systems which are independent to each other. The qualification exams for the judges, prosecutors and lawyers are held respectively, without the uniform demands and standards. There are no uniform legal safeguards to judges and prosecutors also remains a problem.

5. The formalization of the supervision from the People' Congress

The mechanism of supervision from the People's Congress is not perfect at present. One of the channels for the people to appeal is to write to the department for letter set in the People's Congress. But the department is called as "the transfer post" for it has no positive power to help the people who write to it but transport the letters which rarely noticed by the court. The litigants often feel very difficult to find the access to justice.

XII. The Thinking of Reform

The above problems are seriously damaging not only the judicial system of China, but also the society and people's psychology as well. So it has aroused the great attentions of Chinese people and their leading levels. The media have reported many important meetings, documents and reform measures on the subject. We can say that , corresponding to the tide of the world today, a movement of judicial reform has begun in China. Many reform thinking have been made for the present judicial system, the following are the consensus reached by the most people.

1. To reform the personnel and financial system of the judicial system, namely the persons, finance and equipment must be controlled vertically by the Central in order to safeguard the judicial organizations to exercise their functional powers independently and fairly and get rid of the local intervene.

2. For overcoming the protectionism from the local and government department, a proper reform must be done to the establishment of the courts. For example, to make some judicial areas to which some circuits can be set up to handle the appeal cases and review the death penalty cases. To close all the special courts except the military court, the cases handled by them can be tried by the circuit trial from the higher court or the special trials.

3. To strengthen the grassroots courts, their detached trials, the organizations of arbitration and mediation, in order to exert their functions completely. The aim is to make most civil and commercial cases be solved by arbitration or mediation, to make most criminal cases be tried in the grassroots courts, that the courts up the intermediate grades could focus on the important and complicated cases for the first instance and appeal. To raise the qualifications of judges and prosecutors and decrease the amounts of them, while increase the amounts of judicial assistants.

4. To set up some special trials in the grassroots court, such as the trials respectively for juvenile, family and employment. To assimilate some persons from social associations as part-time judges and they can handle special cases together with the full-time judges.