

# The Rise of Smart Courts in China: Opportunities and Challenges to the Judiciary in a Digital Age

*Junlin Peng<sup>1</sup> and Wen Xiang<sup>2</sup>*

**Abstract:** Information and communication technology has increasingly played an important role in judicial activities. In recent years, digitalization of courts has been explored actively in theory and practice in China. Generally, digitalization of courts refers to that litigation activities like case-filing, court trial, execution, service and preservation can be carried out online to a certain degree, with the help of modern technology like big data, cloud computing, artificial intelligence and high-tech equipment. Digitalization of courts is considered to help to improve judicial efficiency, contribute to judicial disclosures, provide convenience for people and to establish judicial big data. However, lack of consistent guidelines might undermine the application of digital means in the judiciary. The purpose of this paper is to investigate the progress made so far with regard to digitalization of courts in China, and to analyze the opportunities and challenges during the digitalized process of Chinese courts.

**Keywords:** digitalization of courts, artificial intelligence, judicial reform, China

## Introduction

In recent years, digitalization of Chinese courts has hit the headlines and been heatedly discussed among academics and legal practitioners. In China, the concept of digitalization of courts is to some extent similar to concepts like “smart court” or “intelligent court”. It appears that scholars and academics are not unanimous on what the standard definition of digitalization of court should mean. Digitalization of Chinese court means that litigation activities like case-filing, court trial, execution, service and preservation can be carried out online to a certain degree, with the help of modern technology like big data, cloud computing, artificial intelligence and

- 
- 1 Junlin Peng, Assistant attorney, Wangcheng Law Firm, China. Master of Law, Faculty of Law, University of Copenhagen. LL.B, Beijing Normal University.
  - 2 Wen Xiang, corresponding author. Assistant Professor, S.C.Van Fellow of Chinese Law, iCourts, Faculty of Law, University of Copenhagen. Email: wen.xiang@jur.ku.dk. The research is supported by S.C.Van Foundation and the Danish National Research Foundation Grant no. DNRF105. All errors remain the responsibility of the authors.

high-tech equipment. Digitalization of courts is aimed, among others, at facilitating modernization of trial capability and trial system.<sup>3</sup>

Information and communication technology is establishing a new-type of court and litigation system in recent years. It is imperative for Chinese courts to join the rest of the world by digitally transforming its court practice and procedure. China's President Xi Jinping once stated, "there is no modernization without digitalization"<sup>4</sup>. Similarly, Zhou Qiang, the Chief Justice and President of the Supreme People's Court of China (*Supreme Court hereinafter*), has emphasized that judicial reform and information construction, contributing to the modernization of judgment capability and system, are "two wheels of cars and a pair of wings of birds".<sup>5</sup> Thus, digitalization becomes necessary to address some problems presently faced in China during litigation.

Suffice to note that a large number of cases need to be dealt with by a relatively small number of judges in China. With the rapid development of economy and increasing consciousness of rights, people tend to resort to law to solve their disputes.<sup>6</sup> Therefore, judges are frequently overloaded having to deal with large number of cases, and the lack of capacity inevitably affects efficiency of case-handling. In addition to handling cases, judges are also saddled with administrative responsibilities, which may result in distraction in the handling of cases. This is also coupled with the fact that the traditional way of collecting, collating and delivering information appears to be too slow to improve the judicial efficiency. Digitalization of courts is seen as useful to improve judicial efficiency.

There is no doubt that litigants care about how cases are proceeding. In the past, it was not easy for litigants and the public to be updated on litigation processes in China. In pre-digitalization times, litigants would try every means to contact judges about information on the progression of their cases. However, judges were and are often

- 
- 3 Rule of Law Index Innovation Project Team of Institute of Law in Academy of Social Sciences. The development of informatization of Chinese courts in 2017 and outlook in 2018. *Annual Report on Informatization of Chinese Courts no.2*. 2018.  
中国社会科学院法学研究所法治指数创新工程项目组. 2017中国法院信息化发展与2018展望. 中国法院信息化发展报告No.2. 2018.
  - 4 Xi Jinping. *First meeting of the central cyber security and informatization*. 2014. 习近平. 中央网络安全和信息化领导小组第一次会议. 2014.
  - 5 Zhou Qiang. *National symposium of provosts of high courts*. 2014. 周强. 全国高级法院院长座谈会. 2014.
  - 6 Wu Tao & Chen Man. On the Construction of Intelligent Court: Value Orientation and System Design. *Social Science*. 2019 (5) 吴涛, 陈曼: 论智慧法院的建设-价值取向与制度设计, 社会科学, 2019年第5期.

too busy to reply to litigants timely. This leads to misunderstanding and distrust. In addition, platforms for disclosure of judicial information rarely existed in pre-digitalization times. Hence, people were inclined to regard litigation activities as non-transparent and inaccessible, which severely undermines judicial credibility. Litigation activities are usually time and energy consuming for both litigants and lawyers. In order to file a case, they may have to go to court several times to manually file their court processes. What's more, litigants, witnesses and judicial appraisers have to appear before court several times even though the facts and legal rules in support of the case are simple and clear.<sup>7</sup>

In principle, digitalization of courts, if well adopted and practiced, may be crucial to solving the problems existing in litigation activities, such as low efficiency, weak judicial credibility and inconvenience. This paper is aimed at addressing opportunities and challenges associated with digitalized processes. It will analyze the legitimacy and legality of certain technological innovations applied in digitalization of courts. It will further examine the questions whether remote trials go against the principle of direct and verbal trial, and whether automation of courts ensure a better quality of justice in China.

## Steps of Digitalization of Chinese courts

### Case-filing stage

#### *Electronic Case-filing (E-filing)*

From 1st May, 2015, all courts in China had to start accepting cases based on a case-filing registration system instead of case-filing scrutiny system.<sup>8</sup> The traditional way of case-filing scrutiny requires the judge to scrutinize essential facts and issues to decide whether the court should accept the case or not. Conversely, according to the case-filing registration system, the court must accept the case as long as the case meets the formal requirements of the system. Due to the application of the case-filing registration system, the threshold of filing a case becomes lower and the case number has been increasing significantly since 2015. The reports of the Supreme Court show that courts in China

---

7 Zhang Shuqin. Make Best Use of the Advantages and Bypass the Disadvantages: A Right Attitude of Judicial Artificial Intelligence. *Journal of Shanghai Normal University (Philosophy and Social Sciences)*, 2020 (1). 张书勤, 人工智能在审判中的应用, 上海师范大学学报(哲学社会科学版), 2020 (1).

8 Supreme People's Court Monitor, June 18, 2015, at: <https://supremepeoplescourtmonitor.com/2015/06/18/new-docketing-procedures-come-to-the-chinese-courts/>.

have accepted 14.38 million cases in 2014<sup>9</sup>, 17.66 million cases in 2015<sup>10</sup> and 19.99 million cases in 2016<sup>11</sup>, which means the case number increases at a relatively high rate. The large number of cases puts a heavy burden on judges who deal with case-filing affairs.

According to Article 14 of *Rules of Supreme People's Court on Several Issues on Case-Filing Registration System*, in order to facilitate litigants to exercise litigious rights, courts provide litigation services such as case-filing online systems.<sup>12</sup> So far, many courts in China have actively explored and established an E-filing system. In general, E-filing in China can be divided into two modes: filing a case directly online and making an appointment online to file a case. To file a case directly online, as the name suggests, litigants or lawyers submit an electronic version of litigation materials online and judges then assess them online. If those litigation materials meet formal requirements, judges can decide to accept the case directly online. As for making an appointment online to file a case, it means litigants or lawyers can upload an electronic version of litigation materials online. If there are some materials missing, the judge will ask litigants or lawyers to provide supplements. When all the litigation materials are complete, clients or lawyers can go to the court to file a case with a paper version of litigation materials, which can help clients or lawyers avoid going to court several times. A study shows that so far about 2479 courts (as of 2018) in China have begun to establish E-filing systems. Beijing, Shanghai, Zhejiang, Anhui, Hunan, Jilin and Guangxi have established E-filing systems in all courts of those provinces.<sup>13</sup> Case filing online is still explored in practice and there is no consistent guideline on it, therefore different courts have different rules about E-filing. In Beijing, for example, only lawyers can upload the electronic version of litigation materials to file a case directly online. If those materials go through formal assessment, lawyers are required to send paper versions by couriers to courts. Both litigants and lawyers can make an appointment online to file a case in Beijing. Only

---

9 The Supreme Court of People's Republic of China. Judicial statistics bulletin of national courts in 2015. 2015. 中华人民共和国最高人民法院. 2015年全国法院司法统计公报.2015.

10 The Supreme Court of People's Republic of China. judicial statistics bulletin of national courts in 2016. 2016. 中华人民共和国最高人民法院. 2016年全国法院司法统计公报.2016.

11 The Supreme Court of People's Republic of China. Judicial statistics bulletin of national courts in 2017. 2017. 中华人民共和国最高人民法院. 2017年全国法院司法统计公报.2017.

12 Article 14. Rules of Supreme People's Court on Several Issues on Case-Filing Registration System. 第十四条. 最高人民法院关于人民法院登记立案若干问题的规定.

13 Rule of Law Index Innovation Project Team of Institute of Law in Academy of Social Sciences. Third party assessment report about informatization of Chinese courts (2017). *Annual Report on Informatization of Chinese Courts no.2(2018)*. 2018. 中国社会科学院法学研究所法治指数创新工程项目组. 中国法院信息化第三方评估报告 (2017). 中国法院信息化发展报告 No.2(2018). 2018.

three types of cases can be filed online including first instance of civil and commercial cases, intellectual property cases and some execution cases.<sup>14</sup>

Establishing E-filing system is of great significance in relation to an improvement of filing efficiency and convenience for clients. Clients and lawyers can follow the instructions step by step to file a case online, which can reduce judges' workload of providing consultation services. In addition, case-filing online eliminates the drawback of the traditional filing model that judges can only censor and accept the case at a fixed place. Instead, judges in filing courts can deal with filing affairs online anywhere, which indeed has improved filing efficiency. What's more, the advent of a case-filing online system brings convenience to litigants and lawyers because they can file a case even without leaving home. Compared to the traditional filing model, E-filing helps litigants and lawyers to save some transportation fees, time and energy. For plaintiffs who live far from places in which courts are located, the value of E-filing becomes more obvious. On 4th May, 2017, Mr. Hong who lives in Fujian Province filed a case successfully online to Huangyan People's Court in Zhejiang Province and the first trans-province E-filing in China took only half an hour.<sup>15</sup> However, the design of a case-filing online system is not excellent enough to fully reflect its values. The main concern about E-filing is false litigation. Some judges' concern relates to the fact that people might abuse litigation rights because they cannot verify the identification of parties and censor the authenticity of litigation materials.

Legal services provided by robot guide

*"Hello, I am a robot guide Xiaoyu. How may I help you?"*

*"I want to consult about filing a case. Can you help me?"*

*"Of course! What kind of case are you going to file?"*

*"About contract disputes. What materials do I need to prepare?"*

*"Your case belongs to civil and commercial matters. You need to prepare: statement of claims, identification materials, evidence materials. If you have a lawyer, you should submit the letter of authorization. If you are a company, you need to provide basic business information."*

*"Ok, I get it. Thank you so much!"<sup>16</sup>*

14 <http://www.bjcourt.gov.cn/ssfw/index.htm>, Last accessed: 15th May, 2019.

15 [http://www.legaldaily.com.cn/zfzz/content/2017-05/04/content\\_7133580.htm?node=81122](http://www.legaldaily.com.cn/zfzz/content/2017-05/04/content_7133580.htm?node=81122), Last accessed: 16 May 2019

16 <http://news.sina.com.cn/o/2017-03-12/doc-ifychavf2500227.shtml>. Last accessed: 16th May, 2019

The above conversation happened between a famous host Beining Sa and the first robot guide Xiaoyu in Shanyu People's Court of Anhui Province. In recent years, litigation service halls of many courts in China have introduced robot guides to provide legal services for people. Robot guides are expected to help reduce the service workload of staff in the litigation service hall through taking on the work of legal lecturing and guidance. Robot guides can lead people to corresponding counters to file a case and pay litigation fees. Moreover, they are equipped with massive knowledge to provide introduction of the court, legal consultation service, real-time query of case information. For example, the robot guide Xiaofa in Gaochun People's Court, has learned one hundred thousand legal provisions and regulations, fifty thousand common legal issues and thirty thousand typical cases.<sup>17</sup> Apart from providing legal services, the robot guides can help relieve a serious atmosphere in litigation service halls, because some robot guides can speak in a witty way with a childish sound.<sup>18</sup> Many people may feel nervous when they step into court and the robot guide can help them reduce psychological stress.

## Court trial stage

### *Remote trial*

A remote trial means that litigants can participate in litigation, witnesses testify and judicial appraisers provide expert opinions through audiovisual transmission technology. Through transmission channels of sound, video and image and terminal equipment established by network technology, judges, litigants and participants in the proceedings can simultaneously participate in the trial at the court and at the remote trial point facilitated with internet and relevant apps.<sup>19</sup>

Relevant legislation about remote trial is limited in China. Article 259<sup>20</sup> of *Judicial Interpretation of Civil Procedure Law of People's Republic of China* (Hereinafter referred to as *Interpretation of Civil Procedure Law*) stipulates that in summary procedure, with the consent of both parties and permission of the People's Court, the audiovisual

---

17 [http://www.js.xinhuanet.com/2017-09/12/c\\_1121650325.htm](http://www.js.xinhuanet.com/2017-09/12/c_1121650325.htm), Last accessed: 5th June, 2019

18 Wang Y. The first robot guide debut Minhou People's Court. *Legal Daily*. 8/6/2018. 王莹. 首位机器人亮相闽侯法院. 法制日报. 8/6/2018. 003版.

19 Shanghai Second Intermediate People's Court. Several Provisions on the Remote Trial of Cases(Trial). 2008. 上海市第二中级人民法院. 《关于案件远程审理工作的若干规定（试行）》 2008.

20 Judicial interpretation of Civil Procedure Law of People's Republic of China (Hereinafter referred to as Interpretation of Civil Procedure law) 最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释

transmission technology may be used to open a court session. According to Article 73 of *Civil Procedure Law of People's Republic of China*, (Hereinafter referred to as *Civil Procedure Law*) with the permission of the People's Court, witnesses may testify through audiovisual transmission technology under the following circumstances: failure to attend court due to health reasons, traffic inconvenience, force majeure such as natural disasters and other valid causes. However, there is no provision relevant to remote trial in *Criminal Procedure Law of People's Republic of China* (Hereinafter referred to as *Criminal Procedure Law*). In 2011, the Supreme People's Court and the Ministry of Public Security jointly issued the *Notice on Establishing a Remote video Interrogation Room at the Detention Center*. Courts in some areas such as Shanghai have issued specific rules for remote trial of criminal cases.

At present, practices about remote trial across the country are in the lead of theory. Therefore, remote trial lacks legislative support and theoretical research. Due to the fact that the practice of courts in various areas is not completely consistent, the remote trial shall be introduced roughly by taking Jilin Province as an example. Jilin e-court is equipped with cloud conference system which can be used for remote trial in case where litigants, witnesses and appraisers fail to go to the court. Before the beginning of remote trial, the litigants are expected to log on the website of Jilin e-court and enter into the cloud conference system at appointed time. The judge will initiate the cloud conference on the court intranet. There are no strict requirements for the types of cases which remote trials apply to. Remote trial is mainly applied in the summary procedure and it is also applied in first instance of ordinary procedure and special procedure.<sup>21</sup> In addition, there is no need for both parties to reach an agreement; either party can apply for a remote trial.<sup>22</sup> Thus, one party can participate in court trial through cloud conference system and the other party may go to the court to attend the trial in the traditional way.

#### *Alternative dispute resolution online*

Some courts attach great importance to the construction of alternative dispute resolution online. At a visit to Hechuan People's Court in Chongqing Province, a judge explained the online platform for mediation. The platform is aimed at resolving disputes related to divorce, succession, adjacent relation, road accident and medical dispute.<sup>23</sup>

---

21 Chen Shufang. An empirical study of remote trial in electronic litigation. *Journal of Jiangsu University of Science and Technology*. 2017. 17(4). 陈树芳. 电子诉讼中远程庭审的实证研究. *江苏科技大学学报*. 2017. 第17卷第4期.

22 Ibid.

23 Interview of a judge at Hechuan People's Court, Chongqing, China. 20 August 2018.

The parties involved in the dispute can log on to the platform and choose the mediators who are from People's Mediation Committee, Insurance Industry Association, Mediation Committee for Medical Disputes, Lawyers' Association, Public Security Agency etc. Mediators can organize offline mediation or online remote mediation based on the parties' applications. If the case is mediated successfully, the mediation document shall be transmitted to the court through the platform to get judicial confirmation. Since July 2017, 303 cases were mediated on this platform which accounts for 10% of civil and commercial cases accepted by the court in the same time.<sup>24</sup>

It is to be noted that car accidents account for a large proportion in civil cases and people injured in the traffic accidents have to wait for a long time to get compensation. Yuhang People's Court in Zhejiang Province has carried out a significant innovation, the "Yuhang model" in handling road accidents. The "Yuhang model" is actually a pre-litigation mediation platform for road accidents and the platform is established by the joint efforts of the court, insurance company, insurance industry association, insurance regulatory commission and public security agency. With a uniform and transparent mediation standard and compensation calculator in the platform, the parties can quickly reach an agreement with the help of the mediator. Mediation results confirmed by the court will be immediately transmitted to the system of an insurance company. People injured in road accident can get compensation from the insurance company by triggering "one click settlement". Through the platform, judicial confirmation of mediation documents can be finished within 30 minutes and "one click settlement" can shorten the time of getting compensation to even 28 minutes.<sup>25</sup>

## Execution stage

### *Electronic delivery system*

Whether the legal documents are successfully delivered affects the exercise of the litigants' rights and progression of litigation activities. However, it is not easy to deliver legal documents to litigants successfully in China. Even in case of being informed of the accurate address for service, the court has to spend a lot of time on travelling to the address of service if the litigants live far from the court. In addition, population

---

24 Chongqing High People's Court research group. Chongqing High People's Court creates "6 E" E-court in Internet era. *Annual Report on Informatization of Chinese Courts no.2*. 2018. 重庆市高级人民法院课题组. 重庆市高级人民法院"六E"打造互联网时代电子法院. 中国法院信息化发展报告No.2. 2018.

25 Dai Mengxi Yuhang mode: let data run more and people injured run less. *Financial Times*. 19/7/2017. 010. 戴梦希. 余杭模式: 让数据多跑路, 客户伤者少跑路. 金融时报. 19/7/2017. 第010版.



mobility continues to increase in China, so frequent change of residence also poses serious challenge to service. Electronic service is a great innovation in the information era to solve the difficulty of service.

Legislation on electronic service in China is summarized as follows. In 2003, Article 6 of *Rules of the Supreme Court on the Application of Summary Procedure for Civil Cases*<sup>26</sup> stipulates that in summary procedure, after the plaintiff files a lawsuit, the court may summon the two parties to court through oral message, telephone, fax, email etc. Article 87, paragraph 1, of the *Civil Procedure Law* stipulates that subject to the consent of the person to whom a procedural document is to be served, the document may be served by way of fax, email or any other means through which the receipt of the document may be acknowledged, except for judgments, rulings and mediation documents. At this point, *Civil Procedure Law* legally and officially incorporated electronic service. Article 136 of *Interpretation of Civil Procedure Law* requires the served to confirm the way of service in the confirmation of address for service if he or she accepts electronic service.

Courts in Chongqing province are establishing the platform on “intelligent service and quick arrival”. The platform provides electronic service through email, text message, Wechat etc. and completes the construction of a special electronic delivery system.<sup>27</sup>

Yantian People’s Court in Guangdong Province takes advantage of social media like WeChat to realize electronic delivery of legal documents. After entering the name, ID number and mobile phone number through WeChat,<sup>28</sup> the served can enter face recognition system. When the face of the served is in front of the camera, the verification of identification can be finished within minutes.<sup>29</sup> The served can receive legal documents like summons to court, notice of filing, notice of adducing evidence

---

26 Article 6. Rules of the Supreme Court on the Application of Summary Procedure for Civil Case. 第六条. 最高人民法院关于适用简易程序审理民事案件的若干规定.

27 Chongqing High People’s Court research group. Chongqing High People’s Court creates “6 E” E-court in Internet era. *Annual Report on Informatization of Chinese Courts no.2*. 2018. 重庆市高级人民法院课题组. 重庆市高级人民法院“六E”打造互联网时代电子法院. 中国法院信息化发展报告No.2(2018). 2018.

28 WeChat (Chinese: 微信; pinyin) is a “Chinese multi-purpose messaging, social media and mobile payment app developed by Tencent. It was first released in 2011 and became one of the world’s largest standalone mobile apps in 2018,[8][9] with over 1 billion monthly active users. WeChat has been described as China’s “app for everything” and a “super app” because of its wide range of functions”. <https://en.wikipedia.org/wiki/WeChat>

29 Shenzhen Yantian People’s Court Research Group. The constriction of informatization of courts oriented on judges’ needs. *Annual Report on Informatization of Chinese Courts no.2*. 2018. 深圳市盐田区人民法院调研课题组. 以法官需求为主导的法院信息化建设. 中国法院信息化发展报告No.2. 2018.

through WeChat. Indeed, the “mobile court” option on WeChat ‘allows users to complete case filings, hearings and evidence exchange without physically appearing in court.’<sup>30</sup> The WeChat app which employs Artificial Intelligence (AI) for decision making, allow litigants appear by video as Artificial Intelligence Judge with on-screen avatar that prompts them to present their cases. Notwithstanding that AI Judges have been proactive, it has been criticized that it is dangerous to hand over legal disputes to virtual Judge using online interface with verdicts given via webchat.<sup>31</sup> In addition, it is contended that since parties involved in the litigation can participate in the trial anywhere they can access the internet (shopping malls, internet café, plazas and any other public place) and can dress in any way, it might diminish the seriousness involved in traditional trials.<sup>32</sup> In answer to these criticisms, Guangzhou Internet Court has issued new rules specifically to ensure that online trials remain as serious as traditional trials.<sup>33</sup> There are also human Judges monitoring the entire procedure, and are the ones making the major ruling to obviating the perceived injustice.

#### *Intelligent execution*

Difficulty of execution of decisions has always been a problem faced by Chinese courts. The first and essential part of execution is to find the property targeted for execution. The executable property of the executed person exists in many forms, such as savings in different banks, real estate, car, security and so on. Therefore, the judge has to go to different agencies like banks, real estate registration center, vehicle administration office, stock exchange etc. to search executable property one by one. The system of searching executable property online is designed to solve the difficulty of searching and controlling the property of the executed person. The system is established by courts cooperating with the agencies the report mentioned above. By the end of 2017, the courts have searched 16 items of information about executable property online like account information, bank deposit information, vehicle information, foreign

---

30 AFP-JJJI, In brave new world of China’s digital courts, judges are AI and verdicts come via chat app, at: <https://www.japantimes.co.jp/news/2019/12/07/asia-pacific/crime-le-gal-asia-pacific/ai-judges-verdicts-via-chat-app-brave-new-world-chinas-digital-courts>, last accessed June 2020.

31 WDD. China’s WeChat Mobile Courts are Driving Innovation in the Judicial System, Wedo Deisgn, 19 December 2019, at: <https://wedodesign.com.au/wechat-mobile-courts-driving-innovation-justice-system/>

32 Guodong Du (杜国栋) & Meng Yu (余萌). How to Litigate Before the Internet Courts in China: Inside China’s Internet Courts Series -02, China Justice Observer, 25 January 2019, at <https://www.chinajusticeobserver.com/a/how-to-litigate-before-the-internet-courts-in-china>

33 *Ibid*

investment information, security information etc.<sup>34</sup>The establishment of the system shows that judges can quickly and accurately locate the executable property online without leaving the office. Searching executable property online improves the efficiency of execution work and shortens the time for the executed person to transfer property to evade execution.

For civil and commercial cases, the successful conclusion of most cases will depend on the execution of the court. As the final step of execution, the effect of the judicial auction is closely related with whether the creditor's claims can be protected. The traditional judicial auction is conducted by auction agency entrusted by courts, and traditional judicial auctions tend to breed judicial corruption. Selected auction houses are designated to proceed with judicial auction in a costly and less transparent manner. In China, of the cases of judicial corruption, 80%-90% appear in the field of execution, and 80%-90% of corruption in the field of execution appears in judicial auctions.<sup>35</sup> If the parties waive the right to choose auction agency, the court has the right to entrust auction agency to implement judicial auction. Driven by high commission interest, the auction agency may distribute 40% of the commission to the judge in order to be entrusted by the court.<sup>36</sup> Besides, the traditional way of judicial auction leads to a limited range of auction information dissemination, so that only a few people obtain auction information and participate in judicial auctions in designated places. A small number of people participating in judicial auctions and a relative short auction time results in low hammer price, which impairs the legitimate interests of the creditor and the executed person. In order to eliminate the drawbacks of traditional judicial auction, courts in Shanghai, Chongqing and Zhejiang are actively exploring online judicial auction (E-auction). E-auction refers to a new judicial auction model where courts can dispose of executable property publicly by means of online electronic auction through Internet auction platform.<sup>37</sup> Courts across the country explored mainly three modes of online judicial auction among which the mode where courts carry out judicial auctions directly on an Internet auction platform without the participation of an auction agency is most widely used. Since June 2012, more than 1400 courts in 28 provinces

---

34 Rule of Law Index Innovation Project Team of Institute of Law in Academy of Social Sciences. Chinese court "intelligent execution" development report. *Annual Report on Informatization of Chinese Courts no.2(2018)*. 2018. 中国社会科学院法学研究所法治指数创新工程项目组. 中国法院"智慧执行"发展报告. 中国法院信息化发展报告No.2(2018). 2018.

35 Liu Yingtuan. Connection between corruption in judicial auction and bid rigging. *China Bidding*. 2015. 12. 刘英团. 司法拍卖中的腐败应与串通投标罪对接. 中国招标, 2015年12期

36 Ibid.

37 Article 1. Provisions of the Supreme Court on certain issues concerning judicial auction online. 第1条. 最高人民法院关于人民法院网络司法拍卖若干问题的规定.

have independently conducted judicial auctions online, carrying out 250,000 judicial auctions online and the value of the executed property amounting to 150 billion Yuan.<sup>38</sup> According to Article 12 of *Regulations on Judicial Auction Online*, the judicial auction online should be announced in advance: the auction of movable property shall be announced 15 days before the auction and auction of immovable property shall be announced 30 days before the auction.<sup>39</sup> To ensure bidders' full participation in bidding, the *Regulations of the Supreme People's Court on Issues Concerning Judicial Auction Online (Herein referred as Regulations on Judicial Auction Online)* requires that the bidding time is no less than 24 hours. Judicial auction online not only facilitates more people to participate in bidding fully but also promotes the transparency and justice of judicial auction. Article 3 of *Regulations on Judicial Auction Online* stipulates that the judicial auction online should be open to the public on the Internet auction platform and accept social supervision. The public can supervise the entire auction process online, so the doubts on the injustice of judicial auction can be eliminated to some extent. Judicial auction online can reduce the tendency for judges to become corrupt and may achieve a more transparent and fair judicial auction.

#### Judicial information disclosure platform

The social civilization of a country is closely related to judicial civilization. The judicial activities in a harmonious and civilized society should be open to the public. So far, several electronic platforms have been established to realize judicial disclosure. Judicial disclosure guarantees people's right to know, right of supervision and right of participation.

#### Online judgments

The judicial documents can show the whole process of the trial and the quality of the judicial documents can objectively reflect the judge's professional quality and sense of responsibility. The disclosure of judicial documents is the basic content of judicial disclosure. In July 2013, the website China Judgments Online was officially put into operation. From the operation of China Judgments Online to May 6, 2018, the visit volume reaches 1.5 billion and the total number of judicial documents disclosed on the website is 45 million.<sup>40</sup> During the two years 2014 and 2015, about 14.6 million judicial documents have been uploaded on the website China Judgments Online and 30.5 million lawsuits have been settled, hence, the number of disclosed documents

---

38 [http://finance.ifeng.com/a/20160803/14676218\\_0.shtml](http://finance.ifeng.com/a/20160803/14676218_0.shtml), Last accessed: 12th August, 2019.

39 Article 12. Provisions of the Supreme Court on certain issues concerning judicial auction online. 第12条. 最高人民法院关于人民法院网络司法拍卖若干问题的规定.

40 <http://wenshu.court.gov.cn/>, Last accessed: 12th August, 2019.

accounts for about 50% of settled lawsuits.<sup>41</sup> Although the portion of disclosure should be greatly improved in the future, the portion of 50% during the period is still commendable and encouraging. In principle, all judicial documents should be disclosed to the public except those involving state secrets, business secrets and personal privacy. Fully advancing disclosure of judicial documents is beneficial in protecting the public's right to know and right of supervision, though it has excluded the cases related to state secrets, commercial secrets, personal privacy and other information prohibited from disclosure by law. Uploading the judicial documents means that those judicial documents are under the most rigorous supervision environment. The public will speak highly of judicial documents of high quality. On the contrary, documents of low quality will be criticized by the public, which undoubtedly will prompt the judges to be cautious about the trial and adjudication. Under the supervision of the public, the judges may devote more time and energy to improving the quality of judicial documents and preventing abuse of discretion.

#### *Live broadcast of online court trial*

The principle of open trial is an important principle in the *Constitution of People's Republic of China*<sup>42</sup>, *Criminal Procedure Law* and *Civil Procedure Law*. According to *Civil Procedure Law*, court trial about civil cases, except those involving state secrets, personal privacy, or as otherwise stipulated by law, shall be heard in public.<sup>43</sup> According to *Criminal Procedure Law*, criminal cases shall be heard in public, except cases where suspects are under 18 at the time of trial and cases involving state secrets and personal secrets.<sup>44</sup> Usually, courts will announce the time and place of trial on the electronic bulletin board so that people who go to the court with their identification cards can watch the trial. On 11th December 2013, the platform live broadcast of court trial online was officially operated, which enables people to watch court trial online even without leaving home. From the operation of the platform on 6th May, 2018, 0.83 million cases have been live broadcasted and the visit volume reaches about 60 billion.<sup>45</sup> Since 1st July, 2016, all open trials of the Supreme Court, in principle, shall

- 
- 41 Ma Chao, Yu Xiaohong, & He Haibo. Big data analysis: public report about China judgments online. *Chinese Law Review*. 2016. 4. 马超, 于晓红, 何海波. 大数据分析: 中国司法裁判文书上网公开报告. *中国法律评论*. 2016. 第4期.
- 42 Article 125. Constitution of People's Republic of China. 第125条. 中华人民共和国宪法.
- 43 Article 134. Civil Procedure Law of People's Republic of China. 第134条. 中华人民共和国民事诉讼法.
- 44 Article 183. Article 274. Criminal Procedure Law of People's Republic of China. 第183条. 第274条. 中华人民共和国刑事诉讼法.
- 45 <http://tingshen.court.gov.cn>, Last accessed: 2nd September, 2019.

be broadcasted on the platform.<sup>46</sup> Live broadcasting court trials online makes the court trials more accessible to the public, which ensure the public's right to know and right of supervision. Moreover, watching court trial online is a good way of disseminating legal knowledge, enhancing the legal awareness of members of the public, encouraging the public to be law-abiding. In addition, under the pressure of being supervised by the public, the judge will pay attention to their language usage, their behavior and maintain a fair and impartial position. Cases broadcasted online will become first-hand information on the Chinese trial system and precious resources to promote the rule of law in China.

## Opportunities of digitalization of China's courts

### To improve judicial justice

Digitalization of courts provides strong technical support for judicial justice. Judicial disclosure is the premise of judicial justice and judicial credibility is the outcome of judicial justice. Judicial disclosure is just a means and judicial justice is the ultimate goal. Therefore, the court must actively expand the channels for judicial disclosure, increase the degree of judicial disclosure and enhance the transparency of judicial activities. The popularization of the internet has provided the public with a broader space for supervising and participating in judicial activities. The four judicial information disclosure platforms are good examples to illustrate how digitalization of courts contributes to judicial disclosure. People can obtain the judicial process information and execution information online so that people's right to know is guaranteed; judicial documents are open to the public online to increase the transparency of the judiciary; the whole process of court trial is live broadcasted online to accept the supervision of the public<sup>47</sup>. In a transparent judicial environment, any hint of unfairness of the trial process may be exposed to the public, which prompts the judges to maintain a neutral and impartial position. Digitalization of courts enables the judicial power to run under the "sunshine" and accept the supervision of the public, which will definitely reduce judicial injustice. Besides, some intelligent auxiliary case handling systems, with the functions of reminding the judgment's deviation from legitimacy and providing evidence scrutinization, help to prevent criminals from being unjustly and falsely charged or sentenced. If the existing evidence cannot form

---

46 Zhi Zhenfeng. Live broadcast: a new mode of judicial disclosure and Chinese paradigm. *Journal of Law Application*. 10. 支振锋. 庭审网络直播-司法公开的新型方式与中国范式. 法律适用. 2016. 第10期.

47 Cheng Jinhua. Human Resource, Technology Innovation, and the Great Transformation of Courts. *Journal of Shanghai Jiaotong University (Philosophy and Social Sciences)*. 2019. 12(27). 程金华, 人工、智能与法院大转型, 上海交通大学学报(哲学社会科学版), 2019 12(27)

a complete evidence chain or the actual penalty deviates from forecast penalty, the intelligent auxiliary case handling system will remind the judge to consider whether the judgment is just or not. In conclusion, digitalization of courts provides strong technical support for improving judicial justice and making people believing in courts and judges more and more.

#### To improve judicial efficiency

“*Justice delayed is justice denied*”, fully demonstrates that efficiency is one of inherent values of justice. The judicial activities are in pursuit of not only justice but also efficiency. Disputes should be resolved timely so that the legitimate rights can be protected in time. With the rapid development of economics and improvement of people’s consciousness of protecting rights, the number of cases handled by courts has been increasing rapidly. Thus, courts at all levels generally face the dilemma that a limited number of judges have to deal with an overload of cases. The digitalization of courts provides an opportunity to improve judicial efficiency to solve such a dilemma which courts in China are encountered with. The informatization of courts brings convenience to the daily work of the judges. It also greatly enhances the judicial efficiency and ensures that the litigation can be carried out without undue delay.<sup>48</sup> For example, the trial process management system in courts’ intranet has a reminder function which can remind the judge that the case is approaching the deadline and judge should handle the case within the period stipulated by law. Besides, the current analysis of the state of affairs due to digitalization of courts points to the fact that digitalization indeed contributes to improving judicial efficiency from different aspects. Intelligent voice conversion system accelerates the speed of trial because judges, litigants and lawyers do not need to speak slowly deliberately to cooperate with clerks’ record speed. Some intelligent auxiliary case handling systems can generate basic information of legal documents automatically and push relevant laws and similar cases to judges as a reference, which enables the judge to concentrate on the case itself to improve trial efficiency. Electronic delivery is a great way to avoid clerks spending a lot of time on serving legal documents, and thus improve service efficiency. The system of searching executable property online enhances execution efficiency because it is much easier for judges to find the executable property online compared to the traditional way of searching by resorting to different banks, real estate registration center, vehicle administration office, stock exchange etc. in person. In a word, an important feature of

---

48 Wang Ran. Trial-Centered Litigation System Reform: Justice System of Big Data. *Jinan Journal* (Philosophy and Social Sciences). 2018 (234). 王燃, 以审判为中心的诉讼制度改革 大数据司法路径, 暨南学报 (哲学社会科学版), 2018 (234)

judicial activities is timeliness, and digitalization of courts is expected to contribute to improving judicial efficiency and achieving judicial timeliness.<sup>49</sup>

## Challenges of digitalization of courts in China

### E-filing

Although according to article 120 of *Civil Procedure Law*, when bringing a lawsuit, a statement of claim shall be submitted to the people's court, together with a number of copies corresponding to the number of defendants.<sup>50</sup> From the expression of the article, a statement of claim should be submitted in paper version, but plaintiffs only need to submit the electronic version of a statement of a claim by filing a case online. The question whether the electronic version of a statement of a claim has legal validity is not stipulated clearly in the *Civil Procedural Law*. Even though the courts in different regions such as Beijing, Shanghai and Guangzhou have issued relevant rules for E-filing, these rules only appear in internal documents of the courts and do not have legal effects across the country. Therefore, to provide a legal basis for E-filing across the country, laws about E-filing shall be formulated by the National People's Congress or judicial interpretations shall be issued by the Supreme Court to confirm the legitimacy of E-filing and stipulate specific procedures for E-filing<sup>51</sup>.

As discussed earlier, there have been inconsistencies across the country on who can file cases online. In most areas, only lawyers can file a case online directly; ordinary people only can make an appointment online to file a case. Filing a case directly online, as the name suggests, litigants or lawyers submit electronic version of litigation materials online and judges assess those online. If those litigation materials meet formal requirements, judges can decide to accept the case directly online. Making an appointment online to file a case means litigants or lawyers can upload electronic version of litigation materials online. If there are some materials missing, the judge will let litigants or lawyers provide supplementary documentations. When all the litigation materials are complete, clients or lawyers can bring cases to courts with paper version of litigation materials, which can help clients or lawyers avoid going to court several

---

49 Zhang Jiyu. The main opportunities and challenges for China's judiciary in era of big data. *Development of Judicial System and Society*. 2016. 6. 张吉豫. 大数据时代中国司法面临的主要挑战和机遇——兼论大数据时代司法对法学研究及人才培养的需求. 法制与社会发展. 2016. 第6期.

50 Article 120. *Civil Procedure Law of the People's Republic of China*. 第120条. 中华人民共和国民事诉讼法.

51 Zhan Shangang & Wang Yi, Examination on Internet Court Online Trial System. *Jiangnan Forum*. 2019 (6). 占善刚, 王译, 互联网法院在线审理机制之检讨, 江汉论坛, 2019(6).



times. Most courts restrict the subjects to lawyers based on such considerations: lawyers, generally, have stronger professional skills and better ability of network operations than ordinary people; some people may use the E-filing platform to abuse litigation rights like filing a false lawsuit, but lawyers will abide by the legal professional ethics<sup>52</sup>. However, in China, there is no system of compulsory procuration with lawyers in civil litigation, which means most people in China can choose to participate in civil litigation on their own without the procuration of lawyers. Therefore, according to the practice of most courts, people without the procuration of lawyers cannot file a case online directly. Arguably, this practice is contrary to the original intention of establishing E-filing platform which is aimed at providing facilitation for people and improving efficiency of filing<sup>53</sup>. Therefore, it may not be appropriate to limit the subjects of who can file a case directly online only to lawyers. The right of filing a case directly online is a part of rights of litigation, which nobody shall ordinarily be deprived of. In order to guarantee such rights to people, it is legitimate to extend the subjects, who may file online to ordinary people.

### Remote trial

Legislation about remote trial is incomplete in China. Article 259 of *Interpretation of Civil Procedure Law* stipulates that in summary procedure, with the consent of both parties and permit of people's court, the audiovisual transmission technology may be used to open a court session.<sup>54</sup> According to this article, it is stipulated that remote trial can be applied in summary procedure, which means remote trial can be applied in civil cases with simple facts and clear legal relationships. However, there is no provision relevant to remote trial in *Criminal Procedure Law*. The application of remote trial is a manifestation of the exercise of judicial power. The exercise of judicial power must strictly abide by the law. Although, article 259 in *Interpretation of Civil Procedure Law* provides certain legality for remote trial, it is far from being enough to provide a legal basis for remote trial. Therefore, legality and legitimacy of remote trial and its specific application procedures should be clearly stipulated and approved by the legislature through laws.

---

52 Fuhua Wang. E-Court: from Internal to External Construction. *Contemporary Law Review*. 2016 (5). 王福华 电子法院：由内部到外部的构建, 当代法学, 2016 (5).

53 Yu Zhigang & Li Huaisheng. On Its Historical Significance, Judicial Responsibility and Time Mission of the Hangzhou Internet Court. *Journal of Comparative Law*. 2018 (3). 于志刚, 李怀胜, 杭州互联网法院的历史意义、司法责任与时代使命, 比较法研究, 2018年第3期

54 Article 259. Interpretation of the Supreme People's Court on Application of the Civil Procedure Law of the People's Republic of China. 第259条. 最高人民法院关于适用中华人民共和国民事诉讼法的解释.

First of all, the issues concerning the scope of application of remote trial is worth a discussion. The remote trial in different regions is in the exploratory stage and there is no consistent scope of application of remote trial. Even though the regulations about remote trial are rare, the practice is still in full swing all over the country. In practice, remote trial is generally applied in simple civil cases such as online disputes, criminal cases of second instance and cases about commutation and parole. With regard to the scope of application of remote trial, the paramount premise is that the case can be judged rightly even in remote trial. The following factors may affect the justice of remote trial: Firstly, if the legal relationships of the case are very complicated, remote trial is not conducive to figuring out the truth; Secondly, if the number of the litigants is too large, it is hard for the judge to maintain order of the court through remote trial and the court trial may seem to be chaotic; Thirdly, if the litigants are disabled physically like mute, blind and deaf or litigants are juveniles, remote trial may not be sufficient for them to exercise their litigation rights and the communication between litigants and judge will become difficult in remote trial; Fourthly, if the evidence needs to be cross-examined by touching, smelling or observing carefully, it may not be completed in remote trial<sup>55</sup>. Based on the analysis above, the scope of application of remote trial can include civil cases of first instance in summary procedure, cases of second instance only dealing with legal issues and cases about commutation and parole. Simple civil cases of first instance in summary procedure refer to those cases with facts which the parties do not have controversies over and the legal relationships between the parties are clear. Cases of second instance only dealing with legal issues refer to the civil, criminal and administrative cases of second cases where the parties acknowledge the facts ascertained by trial of first instance but they have controversies over the application of laws. The reason is that facts are ascertained in trial of first instance and parties will not adduce evidence and go on cross-examination, judge only needs to adjudicate whether the application of laws in trial of first instance is right or not. Cases about commutation or parole refer to whether the judge will commute or grant parole to the criminals according to their behaviors and attitudes in prisons. The reason why criminal cases of first trial are not covered by the scope of remote trial is that criminal trial is closely related to the criminal's freedom and the physical evidence such as weapons of offence need to be carefully identified in court. In addition, the judge cannot tell the authenticity of the criminal's statement and the witness's testimony by observing their subtle facial expressions and moods by remote trial. In short, given that the audiovisual

---

55 Min Shijun. Integration, Development and Refinement in Artificial Intelligence and Execution of Courts: A Perspective of Wuhan Court Intelligence Execution System. *Journal of Law Application*. 2019 (23). 闵仕君, 人工智能技术与法院执行领域的融合,发展和完善:以无锡法院智慧执行系统为视角,法律适用. 2019 (23).

transmission technology is not perfect and the remote trial is under exploration, the scope of application of remote trial should not be too broad<sup>56</sup>.

Further, there is need to stipulate clearly how to initiate remote trial. The initiation of remote trial should abide by principle of voluntariness. If the case falls into the scope of application of remote trial, plaintiffs or defendants can apply for participating in the court trial by remote trial based on their personal reasons, for instance, if the applicants live far from the court or have serious illness. Consent of both parties shall not be compulsorily required to activate remote trial because it will not produce negative effects if one party participates in court trial through audiovisual transmission technology while the other party appears in court in personal<sup>57</sup>. After getting the permission of the judge, it is legitimate for the applicant to participate in court trial through audiovisual transmission technology. During the court trial, if the parties or judges think the remote trial is not suitable for the case, the judge can decide to transfer the remote trial into the traditional way of trial.

In addition, the question about whether remote trial is contradictory to the principle of direct and verbal trial or not have been discussed<sup>58</sup>. Principle of direct and verbal trial requires that litigants, other participants and judges should appear in court in person to participate in the court trial and judges must directly engage in court investigation and evidence adoption through verbal trial. Hence, the issue whether litigants' participation in trial through audiovisual transmission technology can be called "appear in court" is the key point about whether remote trial is contrary to the principle of direct and verbal trial. Some people think "appear in court" requires judges and the parties to appear together in a specific physical place - the court.<sup>59</sup> According to literal interpretation, "appear in court" may indeed refer to "appear in the physical court" as a narrow sense definition. According to purposive interpretation, the principle of direct and verbal trial is aimed at avoiding indirect written trial and making sure that the judge can listen to the parties' statements personally. When the principle of direct and verbal trial was introduced, the legislature did not foresee that information technology can develop so rapidly that the parties even can participate in court trial without going to the court but

---

56 Wang Lusheng. Research on Discourse Conflict in the Practice of Judicial Big Data and Artificial Intelligence. *Legal Forum*. 2018.5 (33). 王禄生, 大数据与人工智能司法应用的话语冲突及其理论解读, 法学论坛, 2018.5 (33).

57 Xu Jianfeng, Huang Guodong, & Liu Ye. Building Smart Court and Promoting the Modernization of Trial System and Trial Capability. *Reform on Administrative Management*. 2019 (5). 许建峰, 黄国栋, 柳叶, 全面建设智慧法院促进审判体系和审判能力现代化, 2019年5月.

58 Ibid.

59 Ibid.

to “appear in court” in another way. The concept and theory of law should be viewed and understood in line with the development of the times and technology.<sup>60</sup> Remote trial enables the physical space of the court to be virtually expanded. Therefore, the connotation of “appear in court” could be extended by including participation in court trial by audiovisual transmission technology, although consent from both parties are required to proceed with such a choice of remote trial. In addition, it should be carefully examined for application of remote trial to criminal trials, as in practice, it has proved to be the cases. The legal uncertainty and inconsistent regional regulations could undermine the credibility of ambition of digitized process of courts.

### Electronic delivery system

First of all, it is important to understand the scope of the application of electronic delivery system. As pointed out earlier, Article 87, paragraph 1, of the *Civil Procedure Law* stipulates that, subject to the consent of the person on which a procedural document is to be served, the document may be delivered by way of fax, email or any other means through which the receipt of the document may be acknowledged, except for judgments, rulings and mediation documents<sup>61</sup>. It can be seen that the legislation exempts judgments, rulings and mediation documents compulsorily from the scope of application of electronic service.<sup>62</sup> This article, by way of exemption, delimits the scope of application of electronic service. It is reasonable to preclude judgments, rulings and mediation documents because these three kinds of legal documents are the results of the trials and closely related to the substantive rights and obligations of the parties. Therefore, the article implies that legal documents, except for judgments, rulings and mediation documents, can be served by electronic service, including notification of accepting the case, bill of defense, notification of opening a court session, notification of adducing evidence, court summons, etc. However, three situations should be precluded from the scope of application of electronic service: cases about dissolving marriage relationship, writ for payment in proceedings for supervising and urging the clearance of debt, and bill of statement. Electronic delivery system can produce dual effects on procedural law and substantive law. Failure of service is a severe procedural flaw which is a reason to activate retrial procedure to remedy the right. Pursuant to article 202 of *Civil Procedure Law*, the parties can not apply for a retrial on the judgment or

60 Xu Jianfeng, Huang Guodong, & Liu Ye. Building Smart Court and Promoting the Modernization of Trial System and Trial Capability. *Reform on Administrative Management*. 2019 (5). 许建峰, 黄国栋, 柳叶, 全面建设智慧法院促进审判体系和审判能力现代化, 2019年5月.

61 Article 87, Civil Procedure Law of the People's Republic of China. 第87条. 中华人民共和国民事诉讼法.

62 Ibid.

mediation agreement on the dissolution of marriage that has already taken effect.<sup>63</sup> This article implies that procedural flaws including failure of service can not activate retrial about cases concerning dissolving marriage relationship. Hence, electronic service should not be applied in cases concerning dissolution of marriage. Besides, according to article 136 of *Interpretation of Civil Procedure Law*, the served must confirm the way of service in the confirmation of service address if he or she accepts electronic service. In another word, electronic service only can be used with explicit consent of the served.<sup>64</sup> Thus, statement of claim should not be served on defendants through electronic service because, before getting the copy of statement of claim, the defendants may likely not know that they are involve in a lawsuit, let alone be able to confirm the way of electronic service in the confirmation of service address. The same reasoning can be used to elaborate on why writ for payment should not be served on the debtor by electronic delivery system in proceedings for supervising and urging the clearance of debt. The reason is that the court cannot get the debtor's consent about electronic service before the service of writ for payment. It is submitted that cases about dissolution of marriage relationship, writ for payment and bill of statement are not suitable for the electronic delivery system.

The application of electronic delivery system is actually a balance between strong judicial efficiency and weak guarantee of fair procedure. The obvious limitation may weaken fair procedure. It is hard for courts to confirm whether the served receive the legal documents or not through the system. Situations may arise that others instead of the served receive the legal documents through fax, email, etc. Under such situations, the served may not actually and genuinely see the legal documents. Unsuccessful delivery may deprive litigants of litigious rights, which even may result in retrial. Even though the traditional ways of service are time-consuming, the written proof of service signed by the served and videos or pictures recording the service procedure are helpful to prove that the served indeed receives the legal documents. Therefore, it is important to establish standards for the court to confirm whether the served receive legal documents served electronically. Pursuant to article 87, paragraph 2, of *Civil Procedure Law*, in the case of electronic service, the date of arrival of fax, email, etc. reached the designated system of the party shall be the date of service.<sup>65</sup> It is obvious that legislation

63 Article 202. Civil Procedure Law of the People's Republic of China. 第202条. 中华人民共和国民事诉讼法.

64 Article 136. Interpretation of the Supreme People's Court on Application of the Civil Procedure Law of the People's Republic of China. 第136条. 最高人民法院关于适用中华人民共和国民事诉讼法的解释.

65 Article 87. Civil Procedure Law of the People's Republic of China. 第87条. 中华人民共和国民事诉讼法.

in China sets the standard according to arrival theory, which means the electronic delivery is acknowledged as long as the legal documents enter the served's specific electronic system. The fact whether the served have been aware of the legal documents or have read it or not is irrelevant. Adopting arrival theory is efficiency-oriented but it is detrimental to guarantee fair procedure. Arriving into specific electronic system is not equal to arriving in the address in traditional ways of service. Through traditional ways of service, the served at least know the arrival of the legal document even though they may not read it. However, people may not know the arrival of the legal document simultaneously if they do not check specific electronic system frequently. The standard should not be arrival in specific electronic system but whether the served have been aware of the arrival or not<sup>66</sup>. Then, the question about how to confirm the served's awareness of the arrival of legal documents needs to be further discussed. If the served agree to receive legal documents through the special electronic platform for service established and managed by courts, it can be speculated that the service is successful when the served log on the platform with verification of identification such as face recognition. Upon logging on the platform, the served must be aware of the arrival of the legal documents. If the served agree to receive the legal documents through the personal electronic system, the served should be required to sign and mail back the written proof of service to the court upon noticing the arrival of legal documents<sup>67</sup>. It is expected that electronic delivery system contributes to solving the difficulty of service and maximizing service efficiency. A nation-wide system is needed to for electronic delivery of legal documents, and some pilot projects were launched in several regions since 2017.<sup>68</sup>

## Conclusion

In conclusion, some achievements have been made in terms of digitalization of courts, but it is still in its infancy in China. Much is still needed to be done to address some of the identified challenges in this paper as it relates to the inconsistencies in e-filing system; the scope of application of remote trial coupled with the uncertainty and inconsistent regional regulations on the application of remote trial; the challenge of streaming of judicial proceedings; among others. This becomes imperative as

---

66 Wu Tao & Chen Man. On the Construction of Intelligent Court: Value Orientation and System Design. *Social Science*. 2019. (5). 吴涛, 陈曼: 论智慧法院的建设: 价值取向与制度设计, 社会科学, 2019年第5期.

67 Wang Ran. Trial-Centered Litigation System Reform: Justice System of Big Data. *Jinan Journal (Philosophy and Social Sciences)*. 2018 (234). 王燃, 以审判为中心的诉讼制度改革 大数据司法路径, 暨南学报 (哲学社会科学版), 2018 (234)

68 <http://songda.court.gov.cn/>

E-filing system, remote trial and alternative disputes resolution online system provide convenience for people as it helps them save a lot of time and energy. Intelligent voice conversion system, intelligent auxiliary case handling system, system of searching executable property online and electronic service contributes to improving judicial efficiency. In addition, the judicial disclosure platforms guarantee the public's right to know and right of supervision. Full judicial disclosure is conducive to restricting judicial power, improving judicial justice and strengthening judicial credibility. Even though the significance of digitalization of courts is noticeable, the challenges that come with it might not be ignored. Although some pilot programme are introduced in several regions in China, it is noted that a set of clear-cut guidelines are missing for application of remote trial, electronic delivery system and other aspects of digitalization of courts in China.

Practice precedes law, which means there is a lack of legislative support and theoretical research in the field of digitalization of courts. Technological innovations and the scope of their applications require further debate, or else, it will undermine the legitimacy of digitalization of courts. It is necessary for the judiciary in China to develop consistent systems in order to achieve compatibility and adequate information sharing in the pursuit of rule of law in a digital world. With the global effects of the COVID-19 pandemic, there might be an additional need to accelerate the digitalization of the administration of justice in China with the further exploration of AI technology and cyber-courts in order to streamline case handling within the sprawling court system in China.

## Bibliography

Chen S. An empirical study of remote trial in electronic litigation. *Journal of Jiangsu University of Science and Technology*. 2017. 17(4). 陈树芳. 电子诉讼中远程庭审的实证研究. 江苏科技大学学报. 2017. 第17卷第4期.

Cheng JH. Human Resource, Technology Innovation, and the Great Transformation of Courts. *Journal of Shanghai Jiaotong University (Philosophy and Social Sciences)*, 2019. 12(27). 程金华, 人工、智能与法院大转型, 上海交通大学学报(哲学社会科学版), 2019. 12(27)

Chongqing High People's Court research group. Chongqing High People's Court creates "6 E" E-court in Internet era. *Annual Report on Digitalization of Chinese Courts*

no.2(2018). 2018. 重庆市高级人民法院课题组. 重庆市高级人民法院“六E”打造互联网时代电子法院. 中国法院信息化发展报告No.2(2018). 2018.

Dai M. Yuhang mode: let data run more and people injured run less. *Financial Times*. 19/7/2017. 010. 戴梦希. 余杭模式: 让数据多跑路, 客户伤者少跑路. 金融时报. 19/7/2017. 第010版.

He Q. Development of artificial intelligence technology. *Modern Science & Technology of Telecommunication*. 2016. 46(2). 贺倩. 人工智能技术发展研究. 现代电信科技. 2016. 第40卷第2期.

Lin Y. & Ma S. *Introduction of Artificial Intelligence*. Beijing. Qinghua University Press. 1989. PP.305-340. 林尧瑞, 马少平. 人工智能导论. 北京. 清华大学出版社. 1989. PP.305-340.

Liu Y. Connection between corruption in judicial auction and bid rigging. *China Bidding*. 2015. 12. 刘英团. 司法拍卖中的腐败应与串通投标罪对接. 中国招标, 2015年12期

Lou B. The introspection and prospect of digitalization of courts——on the advent and development of smart court. *Journal of China Three Gorges University*. 2017.39(2). 娄必县. 法院信息化建设的反思与展望——兼议“智慧型法院的发生与发展”. 三峡大学学报. 2017. 第39卷第2期.

Ma C., Yu X. & He H. Big data analysis: public report about China judgments online. *Chinese Law Review*. 2016. 4. 马超, 于晓红, 何海波. 大数据分析: 中国司法裁判文书上网公开报告. 中国法律评论. 2016. 第4期.

Min SJ. Integration, Development and Refinement in Artificial Intelligence and Execution of Courts: A Perspective of Wuhan Court Intelligence Execution System. *Journal of Law Application*, 2019 (23). 闵仕君, 人工智能技术与法院执行领域的融合、发展和完善: 以无锡法院智慧执行系统为视角, 法律适用. 2019 (23).

Rule of Law Index Innovation Project Team of Institute of Law in Academy of Social Sciences. The development of digitalization of Chinese courts in 2017 and outlook in 2018. *Annual Report on Digitalization of Chinese Courts* no.2. 2018. 中国社会科学院法学研究所法治指数创新工程项目组. 2017中国法院信息化发展与2018展望. 中国法院信息化发展报告No.2. 2018.



Rule of Law Index Innovation Project Team of Institute of Law in Academy of Social Sciences. Third party assessment report about digitalization of Chinese courts (2017). *Annual Report on Digitalization of Chinese Courts* no. 2. 2018. 中国社会科学院法学研究所法治指数创新工程项目组. 中国法院信息化第三方评估报告 (2017). 中国法院信息化发展报告No.2. 2018.

Rule of Law Index Innovation Project Team of Institute of Law in Academy of Social Sciences. The practice and expectation of building “intelligent court” to help judicial reform. *Annual Report on Digitalization of Chinese Courts* no.2. 2018. 中国社会科学院法学研究所法治指数创新工程项目组. 建设“智慧法院”助力司法改革的实践与展望. 中国法院信息化发展报告No.2. 2018.

Rule of Law Index Innovation Project Team of Institute of Law in Academy of Social Sciences. Chinese court “intelligent execution” development report. *Annual Report on Digitalization of Chinese Courts* no.2. 2018. 中国社会科学院法学研究所法治指数创新工程项目组. 中国法院“智慧执行”发展报告. 中国法院信息化发展报告No.2. 2018.

Shenzhen Yantian People’s Court Research Group. The constriction of digitalization of courts oriented on judges’ needs. *Annual Report on Digitalization of Chinese Courts* no.2. 2018. 深圳市盐田区人民法院调研课题组. 以法官需求为主导的法院信息化建设. 中国法院信息化发展报告No.2(2018). 2018.

Shi M. Remote trial is applied in all qualified cases concerning commutation and parole. *People’s Court Newspaper*. 26/7/2017. 004. 时满鑫. 青岛符合条件的减刑假释案件全部远程视频开庭. 人民法院报. 26/7/2017. 004版.

Tan SG & Wang Q. The Practice, Problems and Countermeasures of the Construction of China’s Smart Court. *Journal of Hangzhou Normal University*[Humanities and Social Sciences] 2019. 6. 谭世贵, 王强, 我国智慧法院建设的实践, 问题与对策. 杭州师范大学学报 [社会科学版] 2019年 11 月第 6 期.

Tang Y. “Artificial intelligence” case handling to prevent misjudgment. *Democracy and Legal Times*. 16/7/2017. 005. 汤瑜. “人工智能”办案, 防错诉防错判. 民主与法制时报. 16/7/2017. 第005版.

Wang FH. E-Court: from Internal to External Construction. *Contemporary Law Review*. 2016. 5. 王福华 电子法院: 由内部到外部的构建, 当代法学, 2016 (5).

Wang L. Liu K. Du X. & Liang Y. Research report about Jiangsu courts “platform of reminding judgment’s deviation from prior similar cases”. *Annual Report on Digitalization of Chinese Courts no.2*. 2018. 王禄生, 刘坤, 杜向阳, 梁雁圆. 江苏法院“同安不同判预警平台”调研报告. 中国法院信息化发展报告 No.2. 2018.

Wang LS. Research on Discourse Conflict in the Practice of Judicial Big Data and Artificial Intelligence. *Legal Forum*. 2018. 5(33). 王禄生, 大数据与人工智能司法应用的话语冲突及其理论解读, 法学论坛, 2018.5 (33).

Wang R. Trial-Centered Litigation System Reform: Justice System of Big Data. *Jinan Journal (Philosophy and Social Sciences)*. 2018. (234). 王燃, 以审判为中心的诉讼制度改革 大数据司法路径, 暨南学报 (哲学社会科学版), 2018 (234)

Wang Y. The first robot guide debut Minhou People’s Court. *Legal Daily*. 8/6/2018. 003. 王莹. 首台机器人亮相闽侯法院. 法制日报. 8/6/2018. 003版.

Wu T & Chen M. On the Construction of Intelligent Court: Value Orientation and System Design. *Social Science*. 2019 (5). 吴涛, 陈曼: 论智慧法院的建设: 价值取向与制度设计, 社会科学, 2019年第5期.

Xi J. *First meeting of the central cyber security and informatization*. 2014. 习近平. 中央网络安全和信息化领导小组第一次会议. 2014.

Xu J. Internet court: “key to key” lawsuit. *People’s Daily*. 6/9/2017. 019. 徐隽. 互联网法院: “键对键”打官司. 人民日报. 6/9/2017. 019版.

Xu JF, Huang GD, and Liu Y. Building Smart Court and Promoting the Modernization of Trial System and Trial Capability. *Reform on Administrative Management*. 2019 (5). 许建峰, 黄国栋, 柳叶, 全面建设智慧法院促进审判体系和审判能力现代化, 2019年5月.

Yu D. Developing intelligent auxiliary criminal cases handling system to avoid misjudgments. *Legal Daily*. 13/10/2017. 006. 余东明. 研发“刑事案件智能辅助办案系统”避免冤家案. 法制日报. 13/10/2017. 第006版

Yu ZG & Li, HS. On Its Historical Significance, Judicial Responsibility and Time Mission of the Hangzhou Internet Court. *Journal of Comparative Law*. 2018. (3). 于志

刚, 李怀胜, 杭州互联网法院的历史意义、司法责任与时代使命, 比较法研究, 2018年第3期

Zhan SG & Wang Y. Examination on Internet Court Online Trial System. *Jiangnan Forum*. 2019 (6). 占善刚, 王译, 互联网法院在线审理机制之检讨, 江汉论坛, 2019(6).

Zhang J. The main opportunities and challenges for China's judiciary in era of big data. *Development of Judicial System and Society*. 2016. 6. 张吉豫. 大数据时代中国司法面临的主要挑战和机遇——兼论大数据时代司法对法学研究及人才培养的需求. 法制与社会发展. 2016. 第6期.

Zhang SQ. Make Best Use of the Advantages and Bypass the Disadvantages: A Right Attitude of Judicial Artificial Intelligence. *Journal of Shanghai Normal University (Philosophy and Social Sciences)*, 2020 (1). 张书勤, 人工智能在审判中的应用, 上海师范大学学报(哲学社会科学版), 2020 (1).

Zhang X. & Zhang Q. Analysis and suggestions of of intelligent auxiliary case handling system. *Journal of Suzhou Education Institute*. 2017. 20(6). 张啸远, 张晴. 对智能辅助办案系统的分析及建议. 宿州教育学院学报. 2017. 第20卷第6.

Zhi Z. Live broadcast: a new mode of judicial disclosure and Chinese paradigm. *Journal of Law Application*. 10. 支振锋. 庭审网络直播-司法公开的新型方式与中国范式. 法律适用. 2016. 第10期.

Zhou Q. *National symposium of provosts of high courts*. 2014. 周强. 全国高级法院院长座谈会. 2014.

### *Law and Regulation*

Constitution of People's Republic of China. 中华人民共和国宪法.

Civil Procedure Law of People's Republic of China. 中华人民共和国民事诉讼法.

Criminal Procedure Law of People's Republic of China. 中华人民共和国刑事诉讼法.

Judicial interpretation of Civil Procedure Law of People's Republic of China (Interpretation of Civil Procedure law). 最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释

Shanghai Second Intermediate People's Court. Several Provisions on the Remote Trial of Cases (Trial). 2008. 上海市第二中级人民法院. 《关于案件远程审理工作的若干规定（试行）》2008.

Rules of the Supreme Court on the Application of Summary Procedure for Civil Case. 最高人民法院关于适用简易程序审理民事案件的若干规定.

Provisions of the Supreme Court on certain issues concerning judicial auction online. 最高人民法院关于人民法院网络司法拍卖若干问题的规定.

Rules of Supreme People's Court on Several Issues on Case-Filing Registration System. 最高人民法院关于人民法院登记立案若干问题的规定.

*Internet sources:*

WDD. China's WeChat Mobile Courts are Driving Innovation in the Judicial System, Wedo Design, 19 December 2019, at: <https://wedodesign.com.au/wechat-mobile-courts-driving-innovation-justice-system/>

Guodong Du (杜国栋) & Meng Yu (余萌). How to Litigate Before the Internet Courts in China: Inside China's Internet Courts Series -02, *China Justice Observer*, 25 January 2019, at: <https://www.chinajusticeobserver.com/a/how-to-litigate-before-the-internet-courts-in-china>

AFP-JIJI. In brave new world of China's digital courts, judges are AI and verdicts come via chat app, at: <https://www.japantimes.co.jp/news/2019/12/07/asia-pacific/crime-legal-asia-pacific/ai-judges-verdicts-via-chat-app-brave-new-world-chinas-digital-courts>