

## Part II The Court System of China

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## **PART TWO**

### **THE COURT SYSTEM OF CHINA**

The power of courts is of prime importance in the allocation of state power. According to the western doctrine on “separation of powers”, state power can be divided into three branches, namely, legislative, executive and judicial power. In accordance with the theories embodied in the Constitution and laws of the People’s Republic of China, the forms of state power in China can be portrayed as “One Mother and Three Sons”: the legislative authority of organization of state power, the executive power of organs of state administration produced and supervised by legislative power, the judicial power of people’s courts and the procuratorial power of people’s procuratorates. Among the three powers in the western sense, the power of courts is the most important judicial power, and in China, the power of courts is secondary to the legislative authority, while parallel to the executive power and procuratorial power. Theoretically, power is based on rationality and justice, however, in the actual distribution and operation of power, interest is the foundation of the well-known power. Therefore, even for the western countries strictly adhere to the “separation of powers”, the powers divided in theory and the powers prescribed by law are always different, and the powers provided by law and the powers really operated are even more diverse, let alone the divergence between the theoretical powers and the real powers.

#### **A. THE CONSTITUTIONAL STATUS OF PEOPLE’S COURTS**

Constitution is the law for allocation of state power. The constitutional status of courts in China is reflected in the stipulations of the Constitution of the People’s Republic of China. Articles through 123 to 128 in the 1982 Constitution determine the constitutional status of Chinese courts: The people’s courts of the People’s Republic of China are the judicial organs of the state; The people’s Republic of China establishes the Supreme People’s Court, the people’s courts at various local levels and military courts; The people’s courts exercise judicial power independently, in accordance with the provisions of the law, and are not subject

to interference by any administrative organ, public organization or individual; The Supreme People's Court is responsible to the National People's Congress and its Standing Committee; local people's courts at various levels are responsible to the organs of state power which created them. People's Courts are the organs that exercise the state power to adjudicate in China. They are independent to executive organs and procuratorates and are responsible to organs of state power while supervised by them.

## **B. THE RELATIONSHIP BETWEEN PEOPLE'S COURTS AND OTHER ORGANS**

### **1. The relationship with legislative organs**

The relationship between people's courts and legislative organs is firstly capsulated in the provisions of the Constitution. The Constitution of the People's Republic of China postulate that: the National People's Congress has the power to elect and remove the president of the Supreme People's Court; the Standing Committee of the National People's Congress exercises the power to supervise the work of the Supreme People's Court and to appoint or remove, at the recommendation of the President of the Supreme People's Court, the Vice-Presidents and Judges of the Supreme People's Court, members of its Judicial Committee and the President of the Military Court; local people's congresses at and above the county level have the power to elect and recall the presidents of people's courts at the corresponding level; the standing committee of a local people's congress at or above the county level supervises the work of the people's court and decides on the appointment or removal of functionaries of people's courts within the limits of its authority as prescribed by law. The Supreme People's Court is responsible and reports on its work to the National People's Congress and the Standing Committee of the National Congress, while local people's courts at various levels are responsible and report on their work to the people's congresses and their standing committees at corresponding levels.

### **2. The relationship with administrative organs**

The relationship between the people's court and executive organs is also provided for by the Constitution. The Constitution of the People's Republic of China established a political system of "One Government and two Judicial Institutions". Thus, for the power distributed by the Constitution, Chinese Courts and executive organs are parallel. Their personnel are elected, appointed or removed by organs of state power and they are both responsible to organs of state power. However, in the actual operation of Chinese political system, the intrinsic defects

incarnated in the system caused the divergence between the provisions of the Constitution and laws and the reality. The details of the real relationship between the judiciary and the administrative organs are listed as follow: 1. The whole system of Chinese judiciary has no centralized budget and financial allocation by its own, consequently, the financial allocation for infrastructures, facilities, administrative fees and salaries of judges in people's courts at various levels directly flow from fiscal expenditure at the corresponding levels; 2. The judiciary does not have its own force for coercive execution, such as judicial police to enforce any decision by courts. Therefore, whenever the courts intend to fully fulfil their impartial decisions, they have to turn to public security police at the corresponding levels; 3. According to procedure laws, executive organs have the obligation to help accomplish the item relevant to law suits mandated by courts, so it is difficult for the trial and other activities of courts to strictly obey to the provision of the Constitution as "not interfered by any administrative organ". The financial condition logically requires courts to take into consideration the relationship that is not laid down by laws or even illegal relationship with the administrative organs at the corresponding level.

### **3.The relationship with other organs**

#### **(1) The relationship with people's procuratorates**

The relationship between courts and procuratorates is not only embodied in the Constitution, but in organic law, procedure law and other relevant laws. First of all, as far as the legal status is concerned, procuratorates are equal to courts. Both of them are elected or appointed by organs of state power, responsible to organs of state power and supervised by organs of state power. Furthermore, as to the actual exercise of power, their relationship is mainly incarnated in the treatment of criminal cases. In the light of the article 135 of the Constitution of the People's Republic of China, the people's courts and the people's procuratorates, in handling criminal cases, divide their functions, each taking responsibility for its own work, and they shall coordinate their efforts and check each other to ensure the correct and effective enforcement of the law.

#### **(2) The relationship with public security organs**

The power possessed by public security organs is a kind of executive authority. From the perspective of legal status of power, the power of public security organs is inferior to the power of courts. The latter is directly mandated by the Constitution, put it in another way, it is

secondary to the power of organs of state power. However, the public security organs are authorized by law. This is a power of kind among the executive powers, and it is just a type of power in the whole body of executive powers. Considering the regulations of law, their relationship is also mainly reflected by the way of tackling criminal cases, similarly, pursuant to the article 135 of the Constitution, in handling criminal cases, the people's courts and the public security organs shall divide their functions, each taking responsibility for its own work, and they shall coordinate their efforts and check each other to ensure the correct and effective enforcement of the law.

### **(3) The relationship with the organs of Communist Party**

In the relationship of Chinese state power, the organs of Communist Party of China enjoy a kind of special status. Therefore, it is dispensable for us to study the relationship between organs of CPC and other organs of state power when considering and analyzing various relationships of organs of state power. So is the situation for the power of courts. People's courts set up local entities of CPC and the courts are led by the committees of CPC of the corresponding districts. In China, judges are cadres. While CPC select, train and manage the cadres. Thus, people's courts are led by the committee of CPC.

## **C. THE ORGANIZATION AND STRUCTURE OF PEOPLE'S COURTS**

### **1. The organization of people's courts**

The Organic Law of People's Courts of the People's Republic of China revised in 1983 postulates in detail the organization and systems of Chinese courts. It says, the judicial authority is exercised by the following courts: local people's courts at various levels; military courts and other special people's courts; and Supreme People's Court. The judicial work of lower people's courts is subject to supervision by people's courts at higher levels.

Local people's courts at various levels are divided into basic people's courts, intermediate people's courts and higher people's courts. And basic people's courts are: county people's courts and municipal people's courts, people's courts of autonomous counties, people's courts of municipal districts. A basic people's court may set up a number of people's tribunals according to the conditions of the locality, population and cases. A people's tribunal is a component part of the basic people's court, and its judgments and orders are those of basic people's courts. Intermediate people's courts are composed of intermediate people's courts established in prefectures of a province or autonomous region, intermediate people's

courts established in municipalities directly under the Central Government, intermediate people's courts of municipalities directly under the jurisdiction of a province or autonomous region, and the intermediate people's courts of autonomous region. And higher people's courts include higher people's courts of provinces, higher people's courts of autonomous regions and higher people's courts of municipalities directly under the Central Government.

Special people's courts consist of an important part of the unified organization system of people's courts in China. They are tribunals set up by special institutions for deciding special cases. Military courts are judicial organs established in the army and are special courts belonging to military organization system. Military courts are divided into three levels: 1) military courts of army, military courts having army units, military courts of fleet, air force military courts of greater military areas, military courts of garrisons directly managed in Beijing; 2) military courts of greater military areas and of services and arms, containing military courts of greater military areas, military courts of air force and navy, military courts of the second artillery, military courts of general troops directly managed by PLA; 3) military courts of People's Liberation Army of China. Military courts are special courts administered by the Supreme People's Court, which is also their highest instance of trial.

Maritime courts are special courts for adjudicating maritime cases and maritime commerce cases. A maritime court only has the judicial power of first instance. Cases of appeals and of protests lodged against judgments and orders of admiralty courts fall into the jurisdictions of higher people's courts at the residence of the admiralty courts. Furthermore, maritime courts may exclude the jurisdiction of certain admiralty tribunals according to the necessity of situation. The jurisdiction areas of maritime courts are allocated in accordance with waters, which may stride across several provinces and not be restricted by administrative division.

Railway transportation courts are categorized into basic railway courts and intermediate railway courts. Besides all of the above-mentioned courts, there are also special courts of agriculture, forestry, oilfields and seaports.

## **2. The functions of people's courts**

The functions of courts of different instance stipulated by organic law show the grade jurisdiction that courts have when exercising their judicial power. Except for cases otherwise

provided for by laws or decrees, a basic people's court adjudicates criminal and civil cases of first instance. When a basic people's court considers that a criminal or civil case it is handling is of major importance and requires trial by the people's court at a higher level, it may request that the case be transferred to that court for trial. Besides trying cases, a basic people's court undertaking the following tasks: settling civil disputes and handling minor criminal cases that do not need to be determined by trials; and directing the work of people's mediation committees. An intermediate people's court handles the following cases: cases of first instance assigned by laws and decrees to their jurisdiction; cases of first instance transferred from the basic people's courts; cases of appeals and of protests lodged against judgments and orders of the basic people's courts; and cases of protests lodged by the people's procuratorate in accordance with the procedure of judicial supervision. When an intermediate people's court considers that a criminal or civil case it is handling is of major importance and requires trial by the people's court at a higher level, it may request that the case be transferred to that court for trial. A higher people's court handles the following cases: cases of first instance assigned by laws and decrees to their jurisdiction; cases of first instance transferred from people's court at lower levels; cases of appeals and of protests lodged against judgments and orders of people's courts at lower levels; and cases of protests lodged by people's procuratorates in accordance with the procedures of judicial supervision.

Special courts try the cases of their own departments or areas. Military courts of army handle the following cases: cases of first instance that involve a crime committed by persons of below battalion level who may be given a sentence of less than life imprisonment; cases of first instance that are authorized or assigned by military courts of higher levels to their jurisdictions. Military courts of greater military areas and of services and arms handle the following cases: cases of first instance that involve a crime committed by persons of vice-commander post at division level or of commanding position at the regimental level; capital cases of first instance and cases authorized or assigned by higher level military courts to their jurisdictions; cases of appeal and of protests. The Military Court of PLA handles the following cases: cases of first instance that involve a crime committed by persons of posts higher than division leadership; criminal cases concerning foreign interests; cases authorized or assigned by the Supreme People's Court to its jurisdiction and other criminal cases of first instance that it considers should itself try; cases of second instance, judicial review of death sentence and retrial. Admiralty courts mainly accept the maritime and maritime commerce cases that shall be administered by China in accordance with the law. And railway courts mainly adjudicate the criminal cases that happen along the railway and the economic cases

pertaining to railway transportation.

### **3. The judicatory of people's courts**

- (1) Independent trial. The people's courts shall exercise judicial power independently, in accordance with the provisions of the law, and shall not be subject to interference by any administrative organs, public organization or individual.
- (2) Equal application of law. In judicial proceedings in the people's courts, the law is applied equally to all citizens, regardless of ethnic status, race, sex, occupation, social origin, religious belief, education, property status or length of residence. No privilege whatsoever is allowed.
- (3) Using the spoken and written language of one's own nationality in court proceedings. Citizens of all nationalities have the right to use the spoken and written languages of their own nationalities in court proceedings. The people's courts shall provide translation for any party to the court proceedings who is not familiar with the spoken or written language commonly used in the locality. In an area where people of a minority nationality live in concentrated communities or where a number of minority nationalities live together, the people's court shall conduct hearing in the language or languages commonly used in the locality and issue judgment, notices and other documents in the language or languages commonly used in the locality.
- (4) Public hearing. All cases in the people's courts shall be heard in public, except for those involving state secrets, privacy and the commission of crimes by minors.
- (5) Principle of defense. The accused has the right to defense. Besides defending himself, the accused has the right to delegate a lawyer to defend him. He may also be defended by a citizen recommended by a people's organization or his employer, by a citizen approved by the people's court, or by a near relative or guardian. The people's court may also, when it deems necessary, appoint a counsel to defend him.
- (6) The collegial system. Cases of first instance in the people's court shall be tried by a collegial panel of judges and people's assessors; simple civil cases, minor criminal cases and cases otherwise provided for by law may be tried by a single judge. And a collegial panel of judge handles appealed or contested cases in a people's court. The president of the court or the chief judge of a division appoints one of the judges to act as the presiding judge of the collegial panel. When the president of the court or the chief judge of a division participates in the judicial proceedings, he act as the presiding judge.
- (7) The system of judicial committee. People's courts at all levels set up judicial committees,



which practise democratic centralism. The task of the judicial committees is to sum up judicial experience and to discuss important or difficult cases and other issues relating to the judicial work. Members of judicial committees of local people's courts at various levels are appointed and removed by the standing committees of the people's congress at the corresponding levels, upon the recommendation of the presidents of these courts. Members of the judicial committee of the Supreme People's Court are appointed and removed by the Standing Committee of the National People's Congress, upon the recommendation of the President of the Supreme People's Court. The presidents of the people's courts preside over meetings of judicial committees of the people's courts at all levels; the chief procurators of the people's procuratorates at the corresponding levels may attend such meeting without voting rights.

- (8) The system whereby the second instance is the final. From a judgment or order of first instance of a local people's court, a party may bring an appeal to the people's court at the next higher level in accordance with the procedure prescribed by law, and the people's procuratorate may present a protest to the people's court at the next higher level in accordance with the procedure prescribed by law. Judgments and orders of first instance of the local people's court at various levels become legally effective if, within the period for appeal, none of the parties has appealed and the procuratorate has not protested. Judgments and orders of second instance of intermediate people's courts, higher people's courts and the Supreme People's Court and judgments and orders of first instance of the Supreme People's Court are all judgments and orders of last instance, that is, legally effective judgments and orders.
- (9) The system of judicial supervision. If the president of a people's court finds, in legally effective judgment or order of his court, some definite error in the determination of facts or application of law, he must submit the judgment or order to the judicial committee for disposal. If the Supreme People's Court finds some definite error in legally effective judgments or orders of the people's courts at various levels or if the people's court at a higher level finds such error in a legally effective judgment or order of any people's court at a lower level, it has the authority to review the case itself or to direct the lower-level people's court at any level or if the people's procuratorate at a higher level finds such error in a legally effective judgment or order of any people's court at a lower level, it has the authority to lodge a protest in accordance with the procedure of judicial supervision.
- (10) The system of withdrawal. If a party to a case considers that a member of the judicial personnel has an interest in the case or for any other reason, cannot administer justice

impartially, he has the right to ask that member to withdraw. The president of the court shall decide whether the member should withdraw. If a member of the judicial personnel considers that he should withdraw because he has an interest in the case or for any other reason, he should report the matter to the president of the court for decision.

## **D. JUDICIAL PROCEDURES OF PEOPLE'S COURT**

### **1. Civil procedure**

The judicial procedures that people's courts should obey in civil lawsuits can be mainly divided into following categories: procedure of first instance, procedure of second instance, procedure for trial supervision and retrial, special procedure, procedure for hastening recovery of a debt, procedure for publicizing public notice for assertion of claims, bankruptcy proceedings and procedure of execution.

The procedure of first instance includes ordinary procedure and summary procedure. The ordinary procedure hereof refers to the fundamental proceedings people's courts commonly applies in civil actions. It usually consists of following stages: entertaining a case, trial in court and judgment. Summary procedure is the simplified ordinary procedure in the first instance of trial. Basic people's courts and the tribunals dispatched by them follow the summary procedure when trying simple civil cases in which the facts are evident, the rights and obligations are clear and the disputes are trivial in character. The differences between the summary procedure and the ordinary procedure are that the former is flexible, simple and convenient in proceedings and is tried by a single judge alone. Therefore, summary procedure is not subject to the time limitation of various litigious stages and other formal requisites required in the ordinary procedure.

The procedure of second instance is composed of four stages: filing an appeal, accepting the appealing petition, trying the case on appeal and deciding in the form of orders. Procedure for trial supervision and retrial is the procedure for people's courts to internally scrutinize the legally effective civil judgments and orders.

Special procedure is the judicial proceedings that people's courts apply in the civil cases of specific types. Compared to the ordinary and summary procedure, special procedure has characteristics as follows: the cases are not disputes over civil rights and interests, but the petitions for confirming certain legal facts (*factum juridicum*); the proceedings constituting

special procedure are independent from each other; in principle, cases are tried by a single judge alone, and if there is a collegial panel, it shall be composed of judges, which excludes the participation of people's assessors; the judgment of first instance is final; there is no litigation cost in this procedure; the time for trial is much shorter; and if there are errors in a legally effective judgment or written order, or a new situation appears, people's court shall not retry the case according to procedures for trial supervision, but pass a new judgment or order. There are two classes of lawsuit suitable for special procedure: cases concerning the qualification of voters and non-litigious cases. Non-litigious actions are largely cases concerning the declaration of a person as missing or dead, cases concerning the adjudgment of legal in capacity or restricted legal capacity of citizens, and cases concerning the determination of property as ownerless.

Procedure for hastening debt recovery is a simple, direct and speedy procedure for urging a debtor to pay his debt.

Procedure for publicizing public notice for assertion of claims is the procedure whereby the people's courts may, according to the application submitted on account of legal particulars, issue a public notice for the unidentified parties to assert their rights within the legal period of time, and if no claim is asserted, it shall make an invalidating judgment on the basis of the application (that is, to declare the bill in question null and void).

Procedure for bankruptcy is the specific procedure people's courts apply, in accordance with the application of creditors or debtors, to distribute the bankruptcy property of the debtor to the creditors concerned pursuant to law, when the debtor is unable to repay the debts at maturity.

Procedure of execution refers to the procedure in which the execution organizations of people's courts, in the light of proceedings as prescribed by law, use the coercive state power and take the enforcement measures to execute the items laid down in the effective legal documents. And thus force the parties incurred obligations to fulfil their duties.

## **2. Criminal procedure**

The procedure that people's courts apply in the criminal actions can be divided into procedure of first instance, procedure of second instance, procedure for review of death sentences and procedure for trial supervision.

Procedure of first instance includes general procedure and summary procedure. The general consists of the following stages: acceptance of a case, trial and judgment. It is applied in most cases of public and private prosecution. Summary procedure is the simplified general

procedure furnished for adjudicating the cases in which the facts of crime are clear and simple, the evidence is sufficient and the sentence will be relatively light. Summary procedure can only be applied in basic people's courts. Compared to the general procedure, it has several characteristics: 1) the proceedings are simple and convenient; 2) public prosecutors may not present at the court to support the public prosecution; 3) the time period for trial is short; 4) cases are tried by a single judge alone; and 5) it can be transferred to general procedure, etc.

While procedure of second instance is roughly comparable to the procedure of first instance, it also has its own features as follow: in the circumstances other than trials by a single judge, a people's court shall form a collegial panel to hear a case of appeal; public prosecutor shall appear in court; people's courts may or may not open a court session, but try the case by both reviewing the documents and investigations. Moreover, procedure of second instance has an important principle, that is, no appeal resulting in additional punishment.

Procedure for reviewing of death sentences is a kind of special proceeding pertaining to death penalty. Pursuant to Criminal Procedure Law and Organic Law of the People's Court, "death sentences shall be subject to approval by the Supreme People's Court; a case where an intermediate people's court has imposed a death sentence shall be reviewed by a higher people's court and submitted to the Supreme People's Court for approval; cases where a higher people's court has imposed a death sentence shall be submitted to the Supreme People's Court for approval; and a case which results in a death sentence with a two-year suspension of execution shall be subject to approval by a higher people's court. In addition, the Supreme People's Court may, when it deems necessary, authorize higher people's courts of provinces, autonomous regions, and municipalities directly under the central government to exercise the power to approve cases involving the imposition of death sentences for homicide, rape, robbery, causing explosion and others gravely endangering public security and disrupting social order. Procedure for trial supervision is a procedure with which people's courts internally supervise formal judgments and orders that are legally effective.

### **3. Administrative procedure**

Administrative procedure can be divided into general procedure and procedure for trial supervision. General procedure consists of the following stages: accepting a case, trial in court and passing a judgment. Procedure for trial supervision is also the proceeding by which people's courts internally scrutinize legally effective judgments and orders.

#### **4. Special maritime procedure**

Special maritime procedure is the special proceeding applied by admiralty courts in maritime actions. Combined with the civil procedure, it comprises the judicial proceedings of admiralty courts and it is the only specific contentious procedure in China.

Special maritime procedure contains the following proceedings: procedure for security of maritime claim, which including procedure for detention and auction of ship and procedure for detention and auction of cargo in ship; procedure of maritime injunction; procedure for conservation of evidence; procedure of maritime guarantee; procedure of service; procedure of judgment, which consists of general procedure, summary procedure, procedure for hastening debt recovery and procedure for publicizing public notice for assertion of claims; procedure of establishing funds for limitation of liability for maritime claims; procedure for registration and redemption of debt; procedure for publicizing public notice for priority claim to seagoing ships.

#### **E. THE STRUCTURE OF PEOPLE'S COURT**

The structure of people's court refers to the establishment of internal institutions and personnel composition in the people's courts. The establishment of internal institutions is correspondent to the structure of personnel composition.

Owing to the diversity of individual functions and conditions of people's courts at all levels and in various places, their systems of internal organs are quite different.

I. Tribunal. Tribunals can only be set up in basic people's courts. They are dispatched organs of basic people's courts and they exercise the adjudicative power of basic people's courts in trying civil and economic cases.

II. Office of appeal. People's courts at all levels generally set up their offices of appeal.

III. Division for case filing. People's courts of various levels establish divisions of case filing. All the actions brought to people's courts shall be accepted and registered by the division for case filing. And subsequently, divisions for case filing will allocate the cases to specific division of trial according to their nature. In the circumstance that there exist several trial divisions of the same function, divisions for case filing shall equally allocate the lawsuits among them, while taking account of the number of cases they are dealing with.

IV. Trial division and judicial committee. Trial divisions can be classified as civil

divisions, economic divisions, criminal divisions and administrative divisions. Some people's courts may, when necessary, establish many special tribunals, such as juvenile divisions, intellectual property divisions, etc. Higher people's courts that have special admiralty courts in the areas under their jurisdiction can also set up maritime divisions.

V. Division of judicial supervision. People's courts at levels above intermediate shall establish divisions of judicial supervision. These divisions are mainly for inspecting and supervising the legally effective judgments and order, including the judgments and orders of people's courts at a lower level and the same level.

VI. Organs for medicolegal examination. People's courts at levels above intermediate set up organs for medicolegal examination, namely, center of medicolegal examination.

VII. Personnel department, administrative department, research office or political division. In most basic people's courts, these institutions often have functions of personnel, administration, research, education management and politics simultaneously, although their names can be different.

VIII. General office. Ordinarily, general office take the functions of finance, equipment, secretary, archive, statistics and all the remaining jobs not covered by other departments and divisions.

IX. Team of judicial police. Higher people's courts have teams of judicial police, and intermediate people's courts and basic people's courts set up the divisions of teams of judicial police.

X. Enforcement division. Enforcement divisions are composed of judges and clerks.

XI. Education and training institutions for judges. Intermediate people's courts found spare-time universities to train and educate judges in their spare time. Higher people's courts have judge training centers. And the Supreme People's Court set up the College of Judge, which is a national institution for training and education of judges.

XII. Judicial compensation committee. In accordance with the Law of the People's Republic of China on State Compensation, people's courts at levels above intermediate shall establish compensation committees.

XIII. Party organization. Judges in Chinese courts are all cadres. In a system under which communist party trains and manages cadres, people's courts correspondingly establish various party organizations, such as the offices of party committee and commissions for disciplinary inspection. However, most of the posts in these organizations are concurrently held by personnel of other departments and divisions.

XIV. Reference room. Reference room is a major part of a people's court. Presently,

reference rooms are set up in some basic people's courts and most of the people's court at a level above intermediate. They are the places where judges and other personnel of a people's court study independently and consult relevant materials. Reference rooms have the corresponding management personnel of themselves.

XV. Canteens or dinning rooms. The canteen and dinning rooms are one of the important internal institutions of people's courts at all levels. They provide lunch and in special circumstances, meal to personnel of people's courts.

XVI. Reception office. Reception offices are also one of the internal institutions of people's courts at various levels.

## **F. PARTICULAR COURT SYSTEMS IN SPECIAL ADMINISTRATIVE REGIONS**

In accordance with the basic laws of Special Administrative Regions, the judicial systems of Special Administrative Regions should fundamental be the same as those practiced before the hand-over. And they are component part of the whole body of Chinese judiciary. However, they are independent to the judicial system of mainland. Moreover, as far as the present judiciary of the two Special Administrative Regions is concerned, they are independent to each other. In effect, the judicial system of mainland China is a hybrid of common law system, civil law system and specific systems of China, while Hong Kong Special Administrative Region inherited the judiciary of common law system and Macao Special Administrative Region succeeded to the judiciary of civil law system. And the judicial system of Taiwan would surely be of another special category.

Pursuant to the Basic Law of the Hong Kong Special Administrative Region: "the Court of Final Appeal, the High Court, district courts, magistrate's court and other special courts shall be established in the Hong Kong Special Administrative Region; The High Court shall comprise the Court of Appeal and the Court of First Instance; The power of final adjudication of the Hong Kong Special Administrative Region should be vested in the Court of Final Appeal of the Region, which may as required invite judges from other common law jurisdiction to sit on the Court of Final Appeal"; The common law system previously implemented in Hong Kong shall be maintained; The relationship between the courts and other organs shall be stipulated by the Basic Law and the laws of the Region; The structure, functions, institutions and personnel composition of the courts shall be prescribed by the regulations of the Region.

According to the provisions of the Basic Law of the Macao Special Administrative

Region: The primary courts, intermediate courts and the Court of Final Appeal shall be established in the Macao Special Administrative Region; The power of final adjudication of the Macao Special Administrative Region shall be vested in the Court of Final Appeal of the Region; The primary courts of the Macao Special Administrative Region may, when necessary, establish special courts; Administrative courts shall be established in the Macao Special Administrative Region, which have jurisdiction over administrative and tax cases; If a party refuses to accept a judgment by the administrative court, he or she shall have the right to file an appeal with an intermediate court; The relationship between the courts and other organs shall be stipulated by the Basic Law and the laws of the Region, and courts shall be prescribed by the regulations of the Region.

## **G. THE TREND OF JUDICIAL REFORM IN CHINA**

1999, the Supreme People's Court promulgated a Five-year Blueprint of Judicial Reform. In accordance with the requirements of the Blueprint and the direction of present judicial reform in china, the trend of judicial reform can be embodied in the following points:

- (1) Realizing the constitutional status of people's courts prescribed by the Constitution to achieve the judicial independence. The realization of judicial independence depends on recovering the constitutional status that people's courts should have and establishing the proper legal relationship between people's courts and other state organs. Judicial independence requests to alter the elements that would distort it, for example, the finance and the system of party leadership of people's courts.
- (2) Reforming the establishment of internal judicial institutions and personnel composition to improve the judicial efficiency. The irrationality of the establishment of internal judicial institutions and personnel composition has affected the judicial efficiency. The prerequisite for improving the judicial efficiency is to reduce the number of non-adjudicatory personnel and thus direct the limited resources to adjudicative activities.
- (3) Perfecting the judicial system and to enforce the system of judicial supervision—to safeguard the justice. A reasonable judicial system and an effective system of judicial supervision are the guarantees for prevention of judicial corruption and realization of justice.
- (4) Streamlining the system of judges—to operate the system of judges efficiently. The safeguard for efficient operation of judiciary is to enhance the moral and professional



quality of judges. A rational system for approval, removal and management of judges is a natural requirement deriving from an excellent judiciary.

## H. RELEVANT STATISTICS

**Table 1 Number of Courts in all levels**

Level	Number
The Supreme Court of PRC	1
High People's Courts	31
Intermediate People's Courts	309
Basic People's Courts	3083

**Table 2 The increase of Personnel in Courts since 1979**

Year	Number
1979	58,000
1982	143,939
1986	188,825
1987	195,496
1990	194,836
1991	200,134
1992	250,000
1995	292,000

Note: It is not transparent that how much in the number are really functioning as judges for the reason explained in the text. Some estimated that only about 170,000 are judging cases, and all the others are management personnel and court police.

Reference:

***“Decision and circular concerning judicial reform”***

Five Year plan for Judicial Reforms by the Supreme Court of China, 1999. This is the major legal document on China's Judicial reforms, It contains 50 argument, stated the goal and ways for next five year's Judicial reform.