

## The Judicial System of the People's Republic of China

*Gao Zongze, Chairman of All China Lawyers Association*

The judicial system is an important integral of our political regime. The construction of the judicial system had been attached great importance since China adopted reform and opening policy. The basic judicial principles of the uniform implementation of judicial power, entering judgment basing on facts and taking the law as the criterion, applying law equally to all citizens, dividing the responsibilities of judicial organs, coordinating their efforts and checking each other to ensure the lawful rights of litigation participants have been established in accordance with the tradition of legal culture and the need of political and economic life of our own, absorbing the useful experience of other countries constantly. A whole set of judicial system of our own characteristics, including judicature, procuratorial system, investigation system, judicial administrative system, prison system, notary system, people's mediation system, legal aid system, state compensation system, arbitration system and lawyer's system, which plays an important role in the state regime, is being built step by step. This article makes brief introduction of some key points.

### **1. Judicature**

According to "Constitution of the People's Republic of China" and "Organization Law of The People's Courts of the People's Republic of China", the people's courts of China are the judicial organs of the state, which 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.

In the administration of justice, the people's courts adopt the system whereby the second instance is the last instance. The organization system of the people's courts is composed of the Supreme People's Courts, local people's courts at various levels, and the special courts. The local people's courts at various levels are then divided into: basic people's courts, intermediate people's courts and higher people's courts. The local people's courts are set up by administrative region and the special courts upon the approval of the Standing Committee of the National People's Congress. At present, those special courts are military courts, maritime courts, forest courts and railway transport courts, etc.

The Supreme People's Court is the highest judicial organ, which supervises the administration of justice by the people's courts at various local levels and by the special people's courts. People's courts at higher levels supervise the administration of justice of those at lower levels. 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 that created them.

In respect of judicial organization, People's courts at all levels set up single judge tribunals, collegial panels of judges and judicial committees. The judicial committees practise democratic centralism in the people's courts and task of which is to sum up judicial experience and to discuss important or difficult cases and other issues relating to the judicial work. Single judge tribunals, collegial panels of judges, should obey the decisions that the judicial committees make.

People's courts at all levels have powers to try cases of first instance and the Supreme People's Court shall have jurisdiction as the court of first instance over major cases that are nationally influential. The intermediate people's courts and higher people's courts have powers to judge appealed cases and make final verdicts.

The judicial power of people's courts is just limited to judicial discretion and administrative adjudication, not including the power of enacting law and judicial review. I hereby introduce two points:

#### 1.1 The power to enact laws and the power of people's courts to interpret laws

According to the provisions of "Constitution of the People's Republic of China" and "Legislation Law of the People's Republic of China", the state legislative power shall be exercised by the National People's Congress and its Standing Committee. Local People's Congress and its Standing Committee have power to enact local regulations, autonomous regulations and special rules in accordance with law. Meanwhile, in respect of administrative legislation, the State Council and all of its ministries and commissions, provinces, autonomous regions, municipalities directly under the central government and autonomous regions may respectively enact administrative regulations, administrative rules and local rules. The people's courts, as judicial body, have no power to enact laws. But as it is stipulated in article 33 of "Organization Law of The People's Courts of the People's Republic of China", The Supreme People's Court gives interpretation on questions concerning specific application of laws and decrees in judicial proceedings. Accordingly, The Supreme People's Court has power to interpret laws. The judicial interpretation has become a special but important part of our legal system because of its universality and authority in the trial practice.

#### 1.2 Judicial review power

The people's courts have no power to conduct review of constitutionality. It is explicitly stated in "Constitution of the People's Republic of China" that The National People's Congress exercises the functions and powers to amend the Constitution and to supervise the enforcement of the Constitution. The Standing Committee exercises the functions and powers to interpret the Constitution and supervise its enforcement. The power to supervise the enforcement of the Constitution is given to The National People's Congress and its Standing Committee.

## **2. Procuratorial System**

According to “Constitution of the People’s Republic of China” and “Organization Law of The People’s Procuratorates of the People’s Republic of China”, the people's procuratorates of China are state organs for legal supervision, which exercise procuratorial power independently, in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual. Although the people’s procuratorates are also judicial organs as the people’s courts, they adopt vertical leadership system.

The organization system of the people’s procuratorates is composed of Supreme People's Procuratorate, the people's procuratorates at various local levels, and other special people's procuratorates. The special people's procuratorates, which include military procuratorates, railway transport procuratorates and forest procuratorates, etc, are established running parallel to the special people’s courts in order to handle cases in accordance with law.

The Supreme People's Procuratorate is the highest procuratorial organ, which exercises the highest power of prosecution and directs the work of the people's procuratorates at various local levels and of the special people's procuratorates. People's procuratorates at higher levels direct the work of those at lower levels. The Supreme People's Procuratorate is responsible to the National People's Congress and its Standing Committee. People's procuratorates at various local levels are responsible to the organs of state power that created them and to the people's procuratorates at higher levels.

The leading official of the Supreme People's Procuratorate is the Procurator-General who exercises unified leadership over the work of the procuratorates. People's procuratorates at all levels shall each set up a procuratorial committee. The procuratorial committee shall apply the system of democratic centralism and, under the direction of the chief procurator, hold discussions and make decisions on important cases and other major issues. In the case of the chief procurator disagreeing with the majority's opinion over a decision on an important issue, the matter may be reported to the Standing Committee of the People's Congress at the corresponding level for final decision.

The prosecutorial power is exercised in three major aspects: to conduct investigation on cases involving crimes of corruption, violation of the citizens personal rights or democratic rights and dereliction of duty, which the people's procuratorates handle directly themselves; to initiate public prosecutions on criminal cases and defend such prosecutions; and to exercise supervision over the judicial activities, including the investigation activities, the trial activities of people's courts, the execution of judgments and orders in criminal cases , the activities of prisons, house arrests and organs in charge of reform through labor, the activities of law enforcement by police,

and other supervising functions that the laws impose.

As Judges and procurators are specific operators in excising judicial power, procuratorial power and legal supervision power, the qualifications and morals of them are meaningful to the execution of adjudication and legal supervision function. So, some laws and regulations relating to this were enacted and amended since 1995, such as “Judges Law of the People's Republic of China” and “Public Procurators Law of the People's Republic of China”, which define and regulate the functions and duties, obligations and rights, appointment and removal, grading, appraisal, training, salary, insurance and welfare, resignation and dismissal and retirement of judicial personnel. The qualification for appointment has been enhanced and uniform national judicial test system has been set up since the enactment of “National Judicial Test Implementation Measures (Interim)” in 2001. These laws and rules explicitly put forward the requirement to abide by discipline and professional ethics and ensure judicial justice, and provide legal guarantee for enhancing judicial personnel’s quality and reinforcing the administration of judges.

### **3. Investigation system**

The public security organs and the state security organs, which exercise the state’s administrative power, are important departments of our administrative body. But as they are respectively awarded powers of investigation concerning most of criminal cases in accordance with laws, and exercise judicial power, the nature of them is dual, both administrative and judicial. So they are also parts of our judicial system.

The organization system of the public security body is that: the State Council set up Ministry of Public Security in charge of leading the polices of whole country, organizing and managing the public security work. The public security department (bureau), sub-bureau, police substation, grassroot public security station etc. are set up by administrative region and administrative subordination. Meanwhile, Ministry of Railway, Ministry of Forestry and Bureau of Civil Aviation set up public security bureaus according to work requirements, which are agencies of Ministry of Public Security. With respect to leadership system, the public security organs at various levels, as components of corresponding people’s governments, shall be under the unified leadership of the respective people's governments as well as the leadership of the public security organs at higher level.

The public security organs shall be responsible for acceptance of cases, filling cases, investigation, taking compulsory measures and making recommendation to initiate prosecution in criminal cases.

As indicated above, the state security organs, which are the government agencies with the same nature as the public security organs, carry on the important mission of protecting state security.

#### **4. Judicial administrative system**

Judicial administrative system, which undertakes the task of maintaining the political and social stability according to law, protecting the lawful rights and interests of the state, collectives and citizens, executing effective administration on social life through providing legal security and legal services, plays an significant role in our administrative regime. At the same time, it is also an important part of judicial system, which cooperates with and checks on other judicial organs by participating in kinds of lawsuits and criminal punishments. Moreover, the judicial administrative system of our country is composed of prison system, labor education and rehabilitation system, people's mediation system, lawyer's system, notary system, and legal aid system.

Ministry of Justice, as the functional department in charge of judicial administration set up by the State Council, is the highest judicial administrative organ of the state. The judicial administrative organs at various levels shall be under the leadership of the respective people's governments as well as the leadership of the judicial administrative organs at higher level. The major tasks of them are: to administrate labor education and rehabilitation work, lawyer's work, notary work, training of judicial personnel and legal education, direct the work of people's mediation commissions, organize legal advertisements, judicial foreign affairs, research of judicial administrative theories, and the National Judicial Test for candidates to be judges, prosecutors and lawyers.

I will make brief introduction of prison system, lawyer's system, notary system, people's mediation system, and legal aid system that constitute our judicial administrative system.

##### **4.1 Prison system**

Ministry of Justice shall be in charge of the work of prisons in the whole country, under which the bureau of prison administration operates as the functional department.

The prisons shall, with regard to prisoners, implement the principle of combining punishment with reform and combining education with labor, in order to transform them into law-abiding citizens. The prisons shall exercise supervision and control over prisoners according to law, and shall, in accordance with the needs of reforming prisoners, organize prisoners to engage in works and receive ideological, cultural and technical education among them.

Our prisons practise separate custody and separate control with respect to male adult prisoners, female adult prisoners and juvenile delinquents. Activities in prison administration, execution of criminal punishments, and education and reform of prisoners conducted according to law by the people's police of a prison shall be

protected by law. People's procuratorates shall exercise supervision in accordance with the law over the legality of activities conducted by prisons in execution of criminal punishments.

The prison administration system of new era was fully established since the enactment and execution of "Prison Law of the People's Republic of China". And then, with the ensuing enactment and execution of relating administrative regulations, a comparatively advanced prison administration system has been set up and improved to ensure healthy and successful enforcement of the prison system.

#### 4.2 Lawyer's system

Since the reform and opening of our country, the rank of lawyers was quickly developed and expanded. Ministry of Justice and its subordinates have done audacious experiment and reform to the lawyer's system by inheriting the practical achievement of our lawyer's work and absorbing the useful experience of foreign lawyers since 1986. Our lawyer's system is going through a transformation from the joint management system by judicial administrative organ and bar association to bar association management system. Meanwhile, the construction of lawyer's working disciplines and professional ethics has been reinforced step by step. "Law of the People's Republic of China on Lawyers" of 1996, systemically stipulates condition of practice by lawyers, organization of practice, businesses, rights and obligations, lawyers association, legal aid and legal liabilities. The enactment and execution of "Law of the People's Republic of China on Lawyers" indicate that the reform of lawyer's work enters into a new stage, and our lawyer's system has set out those standards up to normalization, specialization and modernization.

All China Lawyers Association was established in 1986, which has executive council to discuss and determine important issues. Provinces, autonomous regions, municipalities directly under the central government set up local lawyers associations, and cities may set up local lawyer's associations according to needs. A lawyer must join the local lawyers association where he practises, and at the same time automatically becomes a member of All China Lawyers Association.

#### 4.3 Notary system

For long time, notarization work of our country goes to notary offices specifically established by the state, in charge of notarial certification of civil legal relationships according to law.

On October 2000, "Measures for Deepening the Reform of Notary Work" was enacted and implemented by Ministry of Justice; in order to push the transformation of notary organizations to government sponsored institutions. After the reform, a notary organization became an institutional legal person of public good and non-profit other

than part of administrative organ, which performs the attesting function of the state, carries out businesses independently, assumes the liabilities on his own and operates in accordance with market rules and self-disciplined mechanism. Since then, the government would no longer approve the establishment of any notary organizations of administrative nature, and the National Notary Test organized by Ministry of Justice has become open to the public other than only taken by personnel of notary organizations. In a word, the notarial system is being on good track. At present, the scope of notarial business includes three major areas: notarial certification, endorsing the effect of compulsory execution by notarizing instruments of creditors and other affairs relating to notarization.

In 1990, China Notaries' Association was set up in Beijing. As the national organization composed of lots of notaries, it has independent legal personality and is administered by Ministry of Justice. The task of it is to manage the notaries, ensure their practices lawful and protect the legitimate interests of them.

#### 4.4 People's mediation system

People's mediation system means a non-litigation process in which the people's mediation commissions conciliate civil disputes. It is both a judicial accessory system and people's democratic self-governance system. This judicial accessory by which the people could settle disputes themselves carries our own characteristics.

The institutional framework in the system of people's mediation is the people's mediation commission. In accordance with "Constitution of the People's Republic of China" and "Regulations on the Organization of the People's Mediation Commission", mediation commissions are mass organizations set up by villager's committees and neighborhood committees, which conduct conciliation among the people under the guidance of the grassroot people's governments and the basic people's courts. People's mediation commissions shall abide by basic principles of rationalization, legality, voluntariness, equality and protecting litigation rights. The tasks of them are: mediating civil disputes, promoting laws, regulations, rules and policies and educating citizens to observe disciplines and laws and respect social morality.

#### 4.5 Legal aid system (pro bono)

"Legal aid" was explicitly recognized in "Revised Criminal Procedure Law of People's Republic of China" for the first time in 1996. It could be said this was an important milestone in the construction of our legal aid system. "Law of the People's Republic of China on Lawyers" in May of the same year definitely set out the scope in which the citizens could obtain the legal aid and the duty that the lawyers would have in accordance with law. After that, Legal Aid Center of Ministry of Justice was formally set up in Beijing, which uniformly direct and coordinate the legal aid work of the whole country. On the same day, China Legal Aid Fund Commission was set up, the

major task of which is to raise, manage and use legal aid fund to advertise national legal aid system and to promote justice.

In 2003, the State Council formally enacted “Regulation on Legal Aid”, which comprehensively and systematically stipulates the framework, scope, procedures and other aspects of China legal aid system. At present, lawyer, notary and grassroots legal functionary are three professional service providers. The primary sources of legal aid fund are governmental appropriation, societal donation and trade contribution.

## **5. State Compensation System**

In China, state compensation was first provided in “Constitution of the People’s Republic of China” of 1954 principally. And then, the principle of state compensation was reaffirmed in “Constitution of the People’s Republic of China” of 1982. Afterwards, lots of separate laws and regulations specified relevant rules on state compensation from different perspectives and at different levels. But they lack of coordination and could not form a system. In 1994, Law of State Compensation was formally enacted. It was an important event in China’s building democracy and legal system, which made our state compensation system enter into a stage of development.

“Law of the People's Republic of China on State Compensation” provides two kinds of state compensation: administrative compensation and criminal compensation. Administrative compensation is the major part. The main method of state compensation shall be payment of damages. State compensation shall take the form of payment of damages in the main. If the property is able to be returned or its original condition is able to be restored, the property shall be returned or its original condition restored. Also, disciplinary rules are included in the same law.

## **6. Arbitration System**

Long-term practice of arbitration, helped in forming china’s arbitration framework that historically included foreign-related and administrative arbitration institutions. In 1994, the enactment of “Arbitration Law of the People’s Republic of China” unified the arbitration system of China. It adopts generally accepted basic principles, regulations and customs of voluntary arbitration, independent arbitration, “arbitrate or adjudicate”, and “final award for one arbitration”, systematically combining and coordinating the domestic arbitration and foreign-related arbitration system with the international arbitration practice. The current arbitration system mainly includes economic arbitration, foreign-related arbitration and labor dispute arbitration. Besides, China joined in “New York Convention” in December of 1986.

The China Arbitration Association is a self-regulation organization of arbitrators, which shall conduct supervision over any breach of disciplines of arbitration



commissions and their members or arbitrators in accordance with its articles of association. Arbitration commissions are permanent institutions of arbitration. They may be established in the municipalities directly under the Central Government, in the municipalities where the people's governments of provinces and autonomous regions are located or, if necessary, in other cities as permitted. The establishment of an arbitration commission shall be registered with the judicial administrative department of relevant provinces, autonomous regions or municipalities directly under the central government.