

II. Maintaining Social Fairness and Justice

Maintaining social fairness and justice is the value to be enforced in China's judicial reform. China aims its judicial reform at strengthening its judicial organs' capability in maintaining social justice by optimizing the structure of the judicial organs and allocation of their functions and power, standardizing judicial acts, improving judicial proceedings, and enhancing judicial democracy and legal supervision.

1. Optimizing the Allocation of Judicial Functions and Power

The rationalization and optimization of judicial functions and power has a direct bearing on the materialization of justice. China, starting from removing the institutional barriers that affect judicial impartiality, has enhanced internal checks in judicial organs, clarified the work relationship between the people's courts and the people's procuratorates at different levels, standardized and improved retrial procedures, and established consistent law-enforcement system and judicial authentication management system. These reforms have improved judicial organs' capacity for maintaining fairness, helped to safeguard social equity and justice, and fulfilled the public's new expectations and demands for the judicial system in maintaining justice.

Separation of filing, trial and execution of cases. The people's courts at all levels have established case-filing tribunals, execution bureaus and other departments in addition to the original criminal, civil and administrative adjudication tribunals. Case-filing, trial and execution are handled separately by different offices, which act independently

and exercise a mutual-check function to ensure the fair exercise of adjudicative and execution power.

Standardizing the retrial of remanded cases and designated cases. To correct the irregular practices in the procedures regarding retrial of remanded cases and designated cases, the Civil Procedure Law amended in 2012 revised and improved the procedure for the retrial of remanded cases. The new provisions clearly state that after the original people's court makes its ruling in the retrial of a remanded case, if the litigant makes an appeal, the people's court of second instance shall not send the case back for a retrial. The Criminal Procedure Law, amended in 2012, articulates that a criminal case designated for retrial by a lower-level people's court shall be tried by one other than the original court in principle.

Regularizing and improving a unified execution mechanism for civil and administrative cases. Full and effective execution of a judgment or verdict given by the court bears on effective protection of the lawful rights of all parties involved and the expression of judicial authority. In recent years, local people's courts have established a mechanism of execution that works closely with departments in charge of public security, procuratorial work, finance, land resources, construction, business and commerce, as well as exit-entry administration. The people's courts exercise separation of jurisdiction from execution. The higher and intermediate people's courts have established execution command centers for unified management and coordination of execution, and, when necessary, can have their power elevated or allow them to carry out the execution beyond the prescribed region. The reform of the execution system has further strengthened the internal checks on the exercise of execution power, promoted impartial and standardized execution, and effectively protected the legitimate rights of the parties concerned.

Reforming the procedures for examining and approving arrests in power-abuse cases. To prevent arrests by mistake, China has reformed

the procedure for examining and approving arrests in power-abuse cases. For power-abuse cases filed with and investigated by a people's procuratorate below the provincial level, the approval for an arrest shall be examined and determined by the people's procuratorate at the next higher level. This reform has strengthened the supervision of a people's procuratorate at a higher level over one at a lower level on law enforcement.

Improving the system of judicial authentication management. Judicial authentication refers to the activity of an authenticator applying scientific technology or specialized knowledge to identify and determine the specialized issues involved in a lawsuit and giving authentication opinions. Before the judicial reform, the judicial authentication system in China had problems as legislation was incomplete, management was not standardized and standards were not consistent. To solve these problems, China's legislative organ promulgated the Decision on the Management of Judicial Authentication in 2005, thereby establishing a uniform management and registration system for judicial authentication. The judicial administrative departments of the State Council take charge of the registration and management of judicial authenticators and judicial authentication institutions in China, while the judicial administrative departments of the people's governments at the provincial level are responsible for the registration upon examination, roster formulation and roster announcement of judicial authenticators and judicial authentication institutions. The people's courts and judicial administrative departments do not have judicial authentication institutions any longer; judicial authentication institutions already set up by investigation organs to meet the needs of their work will not provide judicial authentication services to the public. The state promotes a mechanism that combines administrative management with trade associations' self-disciplinary management, and adopts the system of judicial authenticators' independent practice in

accordance with the law, which ensures that judicial authentication is standardized and neutral. By the end of 2011, there were 5,014 judicial authentication institutions and 52,812 judicial authenticators approved and registered in China.

2. Standardizing Judicial Acts

Social fairness and justice shall be ensured in the trial of every case and in each judicial act. Due to the country's unbalanced economic and social development, different law-enforcement capabilities of judicial personnel and remnants of local protectionism, there are still problems like non-transparent exercise of judicial discretion and non-standardized judicial acts. In recent years, China's judicial organs have vigorously pushed forward the standardization of penalties, established the case guidance system, and enhanced case management, all of which have promoted standardization of judicial acts.

Standardizing penalties. To regulate acts in giving out a sentence, the Supreme People's Court, by summarizing pilot experiences, has formulated the Guiding Opinions on Sentencing by the People's Courts (Trial Implementation) and Opinions on Several Issues Concerning the Regulation of Sentencing Procedures (Trial Implementation). Both documents clarify the sentencing processes, subdivide the range of statutory sentencing and clarify the quantification standards for different circumstances when giving out a sentence. For cases of public prosecution, the people's procuratorate provides suggestions on sentencing in accordance with the law, while the litigant, the defender and the procurator may give opinions on the penalty. Comparatively independent sentencing procedures have been established for court trials, so as to facilitate investigations and debates over the facts and evidence concerning conviction and sentencing in a case. The people's courts should explain the reasons for sentencing in their documents of criminal judgment. These reforms have further

standardized sentencing jurisdiction, and maintained transparency and impartiality of sentencing.

Establishing the case guidance system. In 2010, China's judicial organs issued regulations on building a case guidance system, marking the establishment of a case guidance system with Chinese characteristics. Different from the system of case judgment in the common law, China's case guidance system - under the statutory law - uses cases to give directions for the accurate understanding and appropriate application of the provisions of laws. In recent years, judicial organs have made public cases that are typical in the application of laws as guiding cases and references for judicial personnel at all levels to settle similar cases. The case guidance system has improved the standardized exercise of judicial discretion, and enhanced uniformity in the application of the law.

Enhancing case management. The people's courts and people's procuratorates have set up special case management institutions to improve the management of case-handling procedures and quality. By the end of May, 2012, nearly 1,400 people's courts had set up special trial management institutions, and nearly 1,600 people's procuratorates had set up special case management institutions. Public security organs have arranged for full-time/part-time legal personnel at the basic-level law enforcement organs to supervise and examine the process of case handling. Judicial organs have widely established information platforms for case management, which have realized online case handling, supervision and appraisal, and improved the level of standardized case handling.

3. Expanding Judicial Openness

In view of multiple social conflicts, large numbers of cases, and newly emerging problems and situations, China's judicial organs, while building up their judicial capacity, are comprehensively promoting

judicial openness, so as to ensure that judicial power is exercised openly, fairly and impartially under the supervision of all the people.

Expanding the items and content of judicial openness. People's courts extend judicial openness in court trial to all other processes such as case-filing, execution, hearing, issue of documents, and jurisdiction affairs. The people's procuratorates make fully public case-handling procedures, case review procedures, litigation participators' rights, interests and obligations, and results of legal supervision in accordance with the law. Public security and judicial administration organs make known to the public their main functions and responsibilities, the basis, procedures and results of law enforcement, and discipline in the case of police affairs.

Diversifying the forms and carriers of judicial information disclosure. The form of judicial openness has been changed from separate information release by each judicial department to unified information disclosure through a designated information service platform. The carriers of judicial information disclosure have been extended from the traditional public notice boards, newspapers, periodicals and pamphlets, to websites, blogs, microblogs, instant communication tools, and other newly emerging online media. A press spokesman news briefing mechanism has been established and improved for timely judicial information release.

Enhancing the effectiveness of and guarantee for judicial openness. The reasoning and argumentation of all documents in relation to judgments, procuratorial work and public security affairs will be strengthened. Ordinary people and experts are invited to attend hearings and arguments. Email boxes are opened as a means of communication with the people and hotlines of the same number across the country are created for people to report offences. There are designated days when heads of judicial departments meet with visitors. The state has strengthened the manpower and material guarantees for judicial openness. All these measures have ensured that judicial

openness advances in an orderly way and achieves positive results.

4. Enhancing Judicial Democracy

The people's courts as the judicial organs and the people's procuratorates as the legal supervisory organs also need to promote democracy to ensure judicial impartiality. China is striving to establish and improve the systems of people's jurors and people's supervisors. This provides a significant guarantee for developing socialist democratic politics, and realizing the people's participation in the administration of state affairs in accordance with the law.

Improving the system of people's jurors. The system of people's jurors is a major way for the public to directly participate in and supervise judicial work. In 2004, China's legislative organ promulgated the Decision on Improving the System of People's Jurors. The state has expanded the sources of people's jurors to all walks of life, and determine the people's jurors for cases by random selection from the rosters. In a collegiate panel, people's jurors have the same power as the judges, except that they cannot serve as chief judges, and exercise the right to vote independently for the findings of fact and the application of law. The people's courts at all levels have held training sessions for people's jurors, mainly focusing on judicial procedure, professional skills and awareness of the rule of law, so as to improve their capability to perform their duties.

Attempt to establish the system of people's supervisors. In 2003, the Supreme People's Procuratorate launched a pilot program to establish the system of people's supervisors. In October 2010, this system is comprehensively implemented in procuratorial organs throughout the country. People's supervisors are selected from all walks of life who supervise and assess, according to supervisory procedures, the following situations in power-abuse cases handled by the people's procuratorates: failure in putting a case on file for investigation,

Table 1. Cases with the Participation of People's Jurors (2006-2011)

Year	Number of Cases with Participation of People's Jurors	Proportion of Cases with Participation of People's Jurors in Regular Cases of First Instance
2006	339,965	19.73%
2007	377,040	19.31%
2008	505,412	22.48%
2009	632,006	26.51%
2010	912,177	38.42%
2011	1,116,428	46.50%

The graphics shows cases with the Participation of People's Jurors from 2006 to 2011, according to China's white paper on judicial reform published by the Information Office of the State Council on Oct. 9, 2012. (Xinhua)

wrongfully putting a case on file for investigation, and withdrawing a case or stopping prosecution. From October 2003 to the end of 2011, people's supervisors in China supervised 35,514 cases, and gave opinions different from the original ones of the people's procuratorates in 1,653 cases. People's supervisors' votes in 908 cases were adopted by the people's procuratorates, accounting for 54.93% of the total.

5. Strengthening Legal Supervision by Procuratorial Organs

The people's procuratorates exercise legal supervision over judicial activities, such as investigation, trial and execution. China sets enhancing supervision over judicial power as the focus of its judicial reform, and has taken a range of measures to strengthen legal supervision.

Strengthening legal supervision over case-filing and activities of the investigation organs. The people's procuratorates and organs of

public security have established a briefing system and information-sharing platform for criminal cases. By means of examining and approving for arrest, handling people's petitions and visits, complaints of litigants, public opinion and media reports, the people's procuratorates and organs of public security can promptly find clues to failures in putting a case on file for investigation, or wrongfully putting a case on file for investigation, so that they can review and deal with such situations in accordance with the law. When accepting a case, a charge or a reported offence, or discovering that investigation personnel have collected evidence illegally, the people's procuratorates give suggestions for correction based on investigation and affirmation, and in the meantime, enhance supervision over the examination and approval of an arrest, the extension or recalculation of an investigation or detention. In 2011, the procuratorial organs in China supervised the filing of 19,786 cases. They urged the correction of unlawful procedures during the investigation of 39,432 cases.

Strengthening legal supervision over the judicial activities of the people's courts. For criminal, civil and administrative judgments, rulings and mediation decisions that have come into effect, if mistakes are found in them or which might damage the national or public interest, or contravene legal procedures and affect judicial justice, the procuratorial organs are entitled to lodge a protest or give procuratorial suggestions and take other supervisory measures. The people's courts shall deal with the matter and give a written reply within a month after receiving the procuratorial suggestion.

Strengthening legal supervision over penalty execution and surveillance and control process. In view of the exposure of some pernicious incidents in detention houses and prisons in recent years, the procuratorial organs, along with related departments, have launched a campaign to review law-enforcement work in detention houses and to "remove hidden dangers of accidents and promote safe custody" in prisons, in order to ensure the implementation of

surveillance and control according to law. The procuratorial organs have intensified supervision over prison and other places of surveillance by regulating and strengthening the work on resident procurator's offices established at these places, building up a network to share information on law enforcement and monitoring in these places, and improving and implementing mechanisms for supervision over detention procedures and for on-site inspections. In addition, the procuratorial organs have intensified supervision over commutation of punishment, parole and temporary execution of sentences outside prison, worked to establish a supervision mechanism for the punctual implementation of penalty changes, and conducted special checks on the implementation of medical parole and the use of enforcement tools and punishing confinement at detention houses. The newly amended Criminal Procedure Law promulgated in 2012 stipulates that prisons, detention houses and other surveillance agencies, when giving suggestions or written proposals to the people's courts for commutation of punishment, release on parole or execution of sentence outside prison, should send the written proposals or copies of them to the people's procuratorates, which can submit their opinions to the people's courts in writing.

Strengthening supervision over judicial functionaries' acts of dereliction of duty. The Supreme People's Procuratorate, together with the Supreme People's Court and other relevant organs, have formulated Some Regulations on Intensifying Legal Supervision over Judicial Functionaries' Dereliction of Duty in Litigation Activities. It makes clear that procuratorial organs can exercise their supervision over 12 acts of dereliction of duty (including bending the law for personal gains) on the part of judicial functionaries by investigating and confirming the alleged violations, giving rectification opinions, and suggesting that the judicial functionaries in question be replaced, in order to punish dereliction of duty, to curb judicial corruption and safeguard justice.