PRACTITIONERS’ PERSPECTIVE ON ADVANCES IN CHINA’S JUDICIAL REFORM

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Abstract

The annual plenary sessions of the National People’s Congress and the National Committee of the Chinese People’s Political Consultative Conference early March 2016 have reiterated the topic of Judicial Reform in China. Reforms of the Chinese legal system, judicial practices and institution have advanced rapidly in recent years. The ability of legal practitioners to effectively represent clients depends on these reforms. Judicial reforms have impacted all major areas of practice from the filing of claims through the rendering and publication of judgments. Though reforms may sometimes appear piecemeal, practitioners on the ground are able to identify overall trends. Foremost among these is the movement towards increased accountability for individuals and institutions throughout the judicial system.

I. INTRODUCTION

The legal system of the People’s Republic of China (“the PRC”) has in recent decades, developed rapidly. Since the 1970s, the Party and the government have continued to set targets for improving the rule of law in accordance with the core values of socialism. Hsio has described the development of the modern legal system in the PRC as having taken place in various stages. He describes the process as beginning with the purge of the Gang of Four, which was thereafter followed by the reestablishment of People’s Procuratorates in 1978. In addition, the market economy being enshrined in the 1982 Constitution presented a major directional shift for the legal system and the country as a whole. The enshrinement of protection of private investments in the 2004 Constitution may be considered the last major reform.

Current trends in reforms to the judicial system suggest that the PRC may now be on the cusp of a new stage toward the perfection of a modern legal system. Fu Hualing has noted: “In the context of China,

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2 Id. at 119-21.
rule of law and judicial integrity have unique characteristics,"\(^5\) since the origin of the PRC, and persisting through the reforms of Deng Xiaoping, “the People’s Courts will always adhere to the mass line of the party.”\(^6\) However, to outside observers as well as Chinese commentators judicial independence and accountability have been notably absent.

The Chinese judicial system over the past 30 years can be characterized by tensions in the judicial application of the written law, limits to the institutional and social capacity to implement the law, extra-judicial constraints imposed by the political goals of the Chinese Communist Party (“CCP”), and acts of individual corruption by individuals in positions of power. However, recent reform processes appear to indicate a turning point whereby the written law and institutional capacity are both much stronger and much more effective; while at the same time the political goals of the CCP appear to have turned toward prioritization and effective implementation of judicial reform and reducing opportunities for individual corruption in the judicial system.

Judicial reforms have been an important theme of the National People’s Congress (“NPC”) for the past two years. In this essay we will review and analyze major judicial reforms discussed or implemented at the NPC conferences in 2014, 2015, and at the most recent conference in 2016. Recent reforms in China have been broad and wide reaching.

Reform efforts have targeted the processes and outcomes of litigation, and the role of legal professionals on both sides of the judicial bench. At the root of these reforms appears to be recognition that if the people cannot access the court system, nor rely on the system to produce justice, then no amount of incremental reform will have the desired effect. Likewise, if judgments are not effectively enforced, then even a well functioning legal system with highly educated professionals will appear impotent.

This paper seeks to review and analyze recent judicial reforms from the perspective of how they have or will impact typical judicial proceedings from practitioners’ perspective. This review is divided into separate analysis of reforms in each area of the judicial process. We will examine reforms touching on access to justice, including new requirements for clear written decisions on case acceptance or rejection. We will review a series of reforms increasing transparency, responsibility and accountability in litigation. We will review reforms made to strengthen judicial oversight by clarifying issues with remand


and retrial of cases upon appeal. We will address reforms increasing the quality of judicial documents and accountability of judges, including the implementation of a judicial accountability system. We will discuss reforms made to procedures for enforcement of judgments. Finally, there are further discussions of reforms to the roles and responsibilities of lawyers and of judges.

II. ACCESS TO JUSTICE

The first issue a party will encounter when seeking justice before a court of law, is access to the court. Common issues with access to a court are well-known to practicing lawyers in China. For years, some courts have restricted access to the justice system by refusing to officially file a case. The refusal came sometimes directly via a verbal rejection, or came indirectly later, with the court ostensibly accepting the filing papers, but then failing to put the case on the docket. In each of these cases, the lack of official documentation of the rejection deprived a plaintiff of an official appeal which would be the plaintiff’s right under law.

Clearly, the authorities recognized this problem. During the 4th Plenum of the 18th Central Committee of the CCP on October 23, 2014, Major Issues Pertaining to Comprehensively Promoting the Rule of Law (hereinafter “the Decision”) were promulgated. In the Decision, the CCP called for reform of case filing and acceptance systems throughout the PRC by changing from a “case filing review system to a case filing registration system.” The Decision also called for the People’s Courts to “ensure parties’ procedural rights by requiring filing when there is a case and requiring acceptance where there is a lawsuit.” Frivolous lawsuits however, which cause delays and strain on court resources are just as harmful to the resolution of legitimate grievances as failure to accept a legitimate complaint. Recognizing this, the Decision further called for courts to “increase the force of punishments for fake and malicious litigation, and unreasonably entangling litigation conduct.”

Randall Peerenboom notes that “The Decision seeks to increase access to justice” by calling for, “a major change from the current system where case acceptance is based on a preliminary substantive review, and often subject to restrictions based on policy
considerations, to a case registration system where the presumption is in favor of the court hearing the case.” Peerenboom further notes that the Decision seeks “to weed out cases that lack merit by increasing punishments for harassment suits that are intended to intimidate the other party or are malicious in nature.” Peerenboom places these reforms within the context of a broad range of reforms addressed by the Decision, in general, designed to promote “holding judges accountable for their decisions, increasing transparency and increasing supervision.”

The Decision is not a legal document, but a policy document. The legal implementation of the policy occurred on April 1, 2015, when the Supreme People’s Court (hereinafter “the SPC”) issued the Opinions on Carrying out Reform concerning the Case Filing Registration System in People’s Courts (hereinafter “the Case Filing Opinions”).

The Case Filing Opinions clearly delineate specific situations for which the People’s Courts are required to formally register new case applications, these can be paraphrased as follows:

1. Civil lawsuits falling within the relevant court’s jurisdiction, filed by a plaintiff having a direct interest, alleging specific facts and making specific legal claims against one or more definite defendants;

2. Administrative litigations falling within the relevant court’s jurisdiction, filed by a party to the relevant Administrative proceeding or having a direct interest in the matter, alleging specific facts and making specific claims in connection with an administrative proceeding;

3. Cases falling within the relevant court’s jurisdiction, with complaints against definite defendants, making specific claims, where there is evidence that the Procuratorate has failed to prosecute a defendant in the presence of evidence suggesting the defendant’s guilt, or for minor criminal cases in which the victim has relevant evidence;

4. Cases involving enforcement of valid legal instruments (contracts, wills, or others) falling within the relevant court’s jurisdiction and filed within the period of limitations;

5. Where claimants for compensation apply to the People’s Courts for compensation owed by the Courts, and where claimants are dissatisfied with decisions or omissions made by the People’s Courts Procuratorate, or Public Security Organs.

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12 See id.
13 Id. at 17.
14 Guanyu Remin Fayuan Tuixing Li’an Dengjizhi Gaige de Yijian (关于人民法院推行立案登记制改革的意见) [Opinions on Carrying out Reform concerning the Case Filing Registration System in People’s Courts] (promulgated by Sup. People’s Ct., Apr. 1, 2015) (Chinalawinfo).
Additionally, the Case Filing Opinions specifically provide for situations in which a case will not be registered:

(1) Lawsuits which are unlawful or “fail to meet conditions for initiation of a lawsuit,”

(2) Lawsuits for “which proceedings have been concluded;”

(3) Lawsuits involving harm to national sovereignty and territorial integrity, national security, national unification, ethnic unity or national religious policy;

(4) Lawsuits involving other matters “which do not fall within the administration of the People’s Court.”

In short, matters which must be registered include, valid civil lawsuits filed in the court of appropriate jurisdiction, valid administrative litigations filed in the court of appropriate jurisdiction, certain criminal proceedings initiated by a victim of a crime who is able to substantiate claims with relevant evidence, contractual disputes and others originating from legal documents, and importantly cases initiated against government bodies such as courts, administrative bureaus, the public security organs and People’s Procuratorates.

As a practical matter, the Case Filing Opinions indicate that cases should be registered “on the spot” although there is an exception for cases where there is difficulty determining whether the cases are in compliance. Additionally, the Case Filing Opinions call for an immediate assessment and a clear indication of what information or materials may be needed to finalize the case submission. The Case Filing Opinions also contain provisions providing for fines, penalties and possible criminal prosecution for illegal or abusive complaints.

The goals pursued by the Case Filing Opinions are generally to increase registration and acceptance of most types of cases, aside from illegal and abusive cases. As a practical matter, those cases which in the past may have been rejected or ignored without an official decision to decline the application, will be expected to be registered as required, only to be subsequently rejected as not meeting appropriate criteria or for being an illegal complaint. The benefit will be that these declined cases will now be subject to an official review in an effort to determine if the failure to proceed with the case is indeed justified by the law. Some will likely be returned to the court as improperly declined. This

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15 See id. art. 2(2).
16 See id. art. 2(5)(a).
17 See id. art. 2(5)(b).
18 See id. art. 2(5)(c).
19 See id. art. 2(5)(d).
20 See id. art. 3(1).
21 See id.
22 See id. art. 3(2).
23 See id. art. 5.
will result in greater numbers of cases being formally accepted and tried on merit.

The last category of cases, which must be registered, include cases initiated against government bodies such as courts, administrative bureaus, the public security organs and People’s Procuratorates. It is notable that cases in this category are most likely to carry motivations for courts to discreetly avoid hearing the case. This item within the Case Filing Opinions works to guarantee court access for citizens seeking to enforce legal oversight against local government bodies. We expect to see this provision result in increased acceptance rates for cases seeking redress against local Procuratorates, police departments, or local government administrative bodies which have performed official actions unfairly or arbitrarily.

Cases, which the court has no obligation to register, include those which are deemed to harm the various national security interests of the country, and those relating to matters which do not fall within the administration of the court.\(^\text{24}\) It seems likely that in practice, courts which are required to either accept or reject each case will refer to these two somewhat vague categories to justify rejecting unwanted cases on national security grounds, or by denying the matter falls within the jurisdiction of the court (Party affairs and lawsuits against high level officials are likely candidates). Courts may also seek to discourage unwanted case filings by applying the legal penalties outlined for illegal and abusive cases.

While implementing the review process for rejected cases will reduce opportunities for local protectionism, full implementation of the Case Filing Opinions will not improve access to the courts across the board. The courts will still have mechanisms for denial of certain cases. However, these mechanisms are now clearly and officially delineated by the SPC. The Courts will not be forced to hear and decide sensitive cases. Complainants whose cases are declined will have the benefit of knowing that their matter was registered and reviewed, and will know the official ground for the cases rejection. This may contribute to a feeling among these individuals that they have at least been officially “heard.” Implementation of fines and other penalties for illegal and abusive cases may result in easing the burdens of case volume on the courts; however, it is unclear how large the effect will be, considering many of these cases were likely informally rejected under the former standard practices.

Despite these limitations, the Case Filing Opinions are undoubtedly a positive change for the great majority of cases, which are valid disputes, and deserve the attention of a professional judge. The most recent statistics indicate that the number of administrative

\(^{24}\) See id. art. 2(5)(c), 2(5)(d).
cases accepted by the Chinese court system increased by 55%, to 299,765 following implementation of relevant reforms.\textsuperscript{25}

III. TRANSPARENCY, RESPONSIBILITY AND ACCOUNTABILITY

Judicial reform in the past few years has obtained a certain level of success with regards changing the way trials are carried out. The aspects of trial reform emphasized have been the promotion of judicial publicity, including publication of case filings, trials, enforcement, hearings, and legal instruments. As part of this movement, courts at different levels, including the SPC, have released information relating to cases, which have attracted strong social media attention via micro-blogging platforms, and other social media. For example, in August 2013, the Intermediate Court of Jinan provided a live broadcast of the trial of Bo Xilai through its micro-blog account.\textsuperscript{26} And in 2015, a website especially for the live broadcast of trials, “ts.chinacourt.org”, was created.\textsuperscript{27} The SPC has also devoted attention to promoting the utilization of technology in courtrooms, such as the production of video and audio recordings of trials. These actions are intended to facilitate widespread information distribution in connection with the trial process.\textsuperscript{28}

The Interpretation of the Supreme People’s Court on the Application of the Civil Procedure Law\textsuperscript{29} issued in 2015 made more detailed provisions to improve summary procedures,\textsuperscript{30} civil proceedings for small claims,\textsuperscript{31} pretrial proceedings,\textsuperscript{32} preservation and preliminary execution,\textsuperscript{33} time period and service.\textsuperscript{34} Reforms have also included pilot projects for the implementation of faster trials in civil proceedings for small claims,\textsuperscript{35} and for summary procedures

\textsuperscript{25} Data from the Supreme People’s Court on Administrative Cases, SUPREME PEOPLE’S COURT MONITOR (Apr. 2, 2016), http://supremepeoplescourtmonitor.com/2016/04/02/data-from-the-supreme-peoples-court-on-administrative-cases/.
\textsuperscript{26} Report 2014, supra note 6, art. 1, para. 4.
\textsuperscript{30} See id. art. 256-270.
\textsuperscript{31} See id. art. 271-283.
\textsuperscript{32} See id. art. 224, 225.
\textsuperscript{33} See id. art. 152-173.
\textsuperscript{34} See id. art. 125-151.
for administrative cases. Fast trial procedures for select criminal cases have also been implemented.

Reforms of trial management systems have been steadily pursued; and the system for judicial responsibility has been gradually improved. To these ends, Several Opinions on Perfecting the Judicial Responsibility System of the People's Procuratorates (hereinafter “the Judicial Responsibility Opinions”), and the Opinions of the Supreme People's Court on Improving the System of Judicial Accountability of People’s Courts (hereinafter “Judicial Accountability Opinions”) were issued in 2015. These guidelines are aimed at guaranteeing the People’s Procuratorates’ ability to independently and impartially exercise procuratorial power in accordance with the law, and ensuring that judges are able to perform their judicial duties independently and impartially. Further reform with regards to sentence standardization has also been promoted, which should help to minimize potential for confusion in connection with judicial decisions.

Steps have also been implemented to improve the People’s Juror system. The “doubling plan” for the People’s Jurors was launched in 2013 and completed in 2014. The number of People’s Jurors has thus reached 210,000. In 2015, the Notice on Issuing the Pilot Program on the Reform of the System of People’s Jurors were issued to clarify the cases which should be tried by a collegiate bench with People’s Jurors in attendance. These measures also outlined procedures to guarantee that the People’s Jurors perform their duties appropriately during trials in which they participate. These People’s Jurors are now participating in more cases than ever before. The presence of People’s Jurors works to hold courts more closely to the letter of the law.

36 Id. art. 1, para. 4.
37 Report 2014, supra note 6, art. 1, para. 5.
39 Id. art. 1, para. 4.
40 Report 2015, supra note 27, art. 1, para. 6.
The most consequential aspects of judicial reform are changes to the structuring of the court system. Two circuit courts of the SPC were set up in 2015 in Shenzhen and Shenyang respectively, serving as the standing tribunals of the SPC. The judgments entered by the two circuit courts have the same effect as those entered by the SPC. Cross-administrative regional courts have been established in Shanghai and Beijing to handle litigation involving parties from multiple administrative regions. Finally, Intellectual Property Rights courts have been established in Beijing, Shanghai and Guangzhou to handle civil and administrative cases regarding intellectual property rights.

The effect of these structural reforms is to increase specialization of judges and the efficiency of the court system. The creation of regional tribunals of the SPC will service to allow the SPC to hear more cases. Regional courts specializing in cases spanning multiple administrative jurisdictions will work to reduce opportunities for local protectionism such as when a court of one locality will reach a decision contrary to the law in favor of a party from the same locality against a counterparty from a differing locality. Specialized Intellectual Property courts will increase the effectiveness of judgments on intellectual property issues. Judges at these courts focusing on intellectual property matters on a continual basis will have greater competency as regards intellectual property law and issues and will be better places to reach a correct decision in as short a time as possible.

IV. Oversight

Effective judicial reform must include a system for effective review and correction of lower court decisions. In the PRC this is accomplished either through direct retrial or through remanding a case back to the lower court for a new trial at that level. Direct retrial occurs when a higher court, because of complexity or importance of the case, performs retrial of a case which was previously heard by a lower court. Remand for retrial occurs when a higher court remands a case for purposes of a retrial, back to the lower court which had originally tried the case because of the lower court’s violation of procedural regulations.

Provisions of the SPC on Several Issues Concerning the Application of Direct Retrial and Remand for Retrial Strictly in Accordance with Civil Trial Supervision Procedures were issued on

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42 Id.
43 Id.
44 Zhang Weiping (张卫平), Minshi Susong Fa (民事诉讼法) [Civil Procedure Law] 302 (2nd ed. 2013).
45 Id. at 293.
The Retrial and Remand Provisions. The effect of this regulation is to standardize the application of direct retrial and remand for retrial and to improve the efficiency and justifiability of the oversight process.

In practice, where a case is taken for retrial by a higher level court, that court may, and often does, send the case back to the lower court for retrial. This situation violates the principle that in accepting a case for retrial the higher level court should hear the case. It also elicits criticism from claimants, defendants and society that higher level courts use this tactic to shift responsibility and work load to lower courts. Additionally, upon hearing a case remanded for retrial in this way, the original court tends to simply affirm the original judgment. This is a natural result of the lower court not wanting to rectify its own mistakes, or to admit a mistake has been made. This pattern may leave a genuinely wronged party without effective judicial recourse.

For many years there were no clear standards addressing which specific conditions would require a higher court to accept a case for direct retrial, or in which cases a remand for retrial would be appropriate. The Retrial and Remand Provisions purports to solve this problem by applying specific rules and narrowing the discretion of the higher court. As a result of the Retrial and Remand Provisions, in certain situations, the higher court is required to provide a direct retrial rather than simply remanding the case for a new review by the lower court.

According to the Retrial and Remand Provisions, there are six occasions in which a higher court must take over a case instead of directing a retrial:

1. The original judgment or ruling is made by the People’s Court of original trial upon the retrial;

2. The original judgment or ruling is made by the Judicial Committee of the People’s Court of original trial upon discussion;

3. Any judicial officer involved in the original trial commits any acts of embezzlement and bribe-taking, illegalities
for personal gains or erroneous judgment in violation of laws, when trying the case;

(4) The People’s Court of original trial has no jurisdiction over the said case for retrial;

(5) It is required to unify the application of laws or the standards for the exercise of discretionary power;

(6) Any other circumstance in which it is not appropriate to direct the People’s Court of original trial to retry the case is involved.\footnote{Id.}

Furthermore, a higher court is also required to hear a case itself rather than direct a retrial when the higher court identifies errors in the lower court judgment and in the opinion of the higher court, the case requires a retrial. In such cases, the Retrial and Remand Provisions provide a strong improvement over the previous system in which the matter would likely simply be referred to the lower court to reaffirm its initial erroneous decision.

The Retrial and Remand Provisions further specify the circumstances in which the higher court may direct a retrial at its discretion. If in considering the totality of the circumstances, the higher court reaches the conclusion that it is more convenient or efficient for the original court to retry the case, the higher court may so direct. While this is still rather broad and permissive, the definite restrictions in the Retrial and Remand Provisions will result in additional clarification and better distribution of retrials between the higher courts and the lower courts.

V. IMPROVING THE QUALITY AND ACCOUNTABILITY OF JUDICIAL DOCUMENTS

Judicial Documents include judgments, verdicts, decisions, mediation statements and notices issued by people’s courts regarding substantive issues and/or procedural issues in certain cases. Because they are the official output of the judicial body and convey the decision, judicial documents are highly important in terms of conveying the court’s professionalism, ability, and fairness to the public. In the latest round of judicial reform, relevant changes and amendments on the requirements of judicial documents have affected the following:
A. Standardizing the Paperwork for Drafting Judicial Documents

1. Ensuring the Capability of Drafting Judicial Documents
   Section 3 of the Judicial Accountability Opinions specifically indicates that the judges who hear the case shall be responsible for drafting the judicial documents. However, judicial assistants may prepare and draft judicial documents under the guidance of the responsible judges. The result of these guidelines will be that those who did not attend any court hearings and were not involved in the case, will not have the ability to substantially influence the outcome of the case. Also, the guidelines further reflect the importance of judges’ capability to prepare paperwork and draft an effective decision, which improves the overall quality of judicial documents. During the past few years, courts at various levels have set strict criteria for the appointment of judges, and all serving judges must pass certain training courses regarding their daily work in order to improve their capability on drafting judicial documents and other professional skills.

2. Perfecting the Format of Judicial Documents
   Due to their formal nature, there are extremely rigorous requirements on the format of judicial documents. Judicial documents with a unified standardized format will better demonstrate the professionalism of the judiciary. The SPC has recently issued three notices regarding several provisions on the use of case numbers in the judicial documents. Those notices have specified each type of abbreviation for all kinds of cases heard by courts and have built up a

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concrete system for implementation by people's court at various levels to effectively use case numbers.

3. Enriching the Contents of Judicial Documents
The judgment document shall not only embody judicial authority and legal professionalism of courts, but it shall also embody facts of cases, protect legitimate rights and interests for parties concerned, safeguard fairness and justice for society. An important change implemented in connection with the ongoing process of judicial reform is the requirement that judicial documents are required to be reviewed by People’s Jurors. Also, the judicial documents shall incorporate the judge’s evaluation and analysis regarding the dispute between parties concerned and shall indicate the reasons the judge has for adopting or rejecting any evidence or lawyer’s arguments or opinions. Furthermore, judicial documents shall explain the courts application and interpretation of the relevant laws and regulations and shall elaborate on the reasoning behind each decision. Finally, the wording of judicial documents shall be clear, accurate and concise so that all concerned parties may easily understand the decision.

B. Improving the Issuance of Judicial Documents and Implementing Judicial Responsibility System

Any mistake made during the preparation and issuance of judicial documents may damage parties’ personal and property rights and will reduce judicial credibility and the authority of the law. For the purpose of avoiding any such negative influence, the SPC has promulgated the Judicial Accountability Opinions which regulate the issuance of judicial documents. Judicial Accountability Opinions also define

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54 Zuigao Renmin Fayuan Guanyu Jinyibu Zuohao Sifa Bianmin Limin Gongzuo de Yijian (最高人民法院关于进一步做好司法便民利民工作的意见) [Opinions of the Supreme People’s Court on Improving Judicial Activities to Facilitate and Benefit the People] (promulgated by Sup. People’s Ct., Nov. 20, 2014, effective Nov. 20, 2014) art.14 (Chinalawinfo).

55 Zuigao Renmin Fayuan Guanyu Wanshan Renmin Fayuan Sifa Zerenzhi de Ruogan Yijian (最高人民法院关于完善人民法院司法责任制的若干意见) [Several Opinions of the Supreme People’s Court on Improving the Judicial Accountability System for People’s Courts] (promulgated by Sup. People’s Ct., Sep. 21, 2015, effective Sep. 21, 2015) (Chinalawinfo).
liabilities for persons who, in preparing a judgment document, go against the result of deliberations of the collegiate bench or a decision of the judicial committee. Those who make mistakes in the body of the judgment document will also face liability. The SPC Work Statement states that every judge shall, within the scope of their professional duties, take lifetime responsibility for the cases that they hear.

C. Launching Appraisal and Selection Activities for Better Judicial Documents

Periodical selection of excellent judicial documents and awards to the responsible person are expected to stimulate judicial officials’ enthusiasm for work. Superior judicial documents will set a high example for other judges’ work product at all levels.

On December 30, 2015, Beijing Higher People’s Court selected top 100 judicial documents issued by people’s courts in Beijing within the year of 2015 and awarded the responsible judicial officials. Among those superior judicial documents, a judgment issued by the People’s Court of Haidian District regarding a right of reputation dispute won the first prize. The presiding judge of the aforesaid case stated that the judicial document shall be considered as the name card of its responsible judge, and every judge should attach importance to the significance of the judicial document for the professional career and the judicial system.

VI. ENFORCEMENT

Enforcement of judgments obtained from courts, specifically the practical difficulties in doing so, is an issue which has often elicited criticism. Over the past 30 or more years, there has often been no penalty for a party which, facing a court judgment against it, simply fails to comply, or surreptitiously transfers funds into a new bank account, or to a new affiliated company for the express purpose of avoiding the negative judgment. This is a problem practicing lawyers in China see on a regular basis.

According to practical experience, a variety of factors contribute to the dilemma of judicial enforcement system in China, such as the difficulty of tracing debtor assets in order to realize their value, locating the individual subjects of enforcement, and the quality of legal professionals. Chinese policy makers and legislators have noticed such problems and have made a series of judicial opinions,

56 Id. art. 6, 26(5).
57 Report 2016, supra note 28, art. 2, para. 5.
58 Zhao Yan (赵岩), Chen Ying (陈颖), Beijing Gaoyuan Biaozhang Baifen Youxian Caipan Wenshu (北京高院表彰百份优秀裁判文书) [Beijing High Court Praise One Hundred Outstanding Judicial Opinions], BJGY (Dec. 31, 2015), http://bjgy.chinacourt.org/article/detail/2015/12/id/1779179.shtml.
regulations and decisions in this round of judicial reform. The CCP Central Committee considered the solution to this problem as a critical issue and listed it in the Decision. The SPC also issued several judicial interpretations and took relevant measures on enforcement, including: guidelines to calculation of interest when a party fails to pay a debt; measures restricting access to certain public transportation for individuals who have not complied with court judgments; and efforts to organize cooperation in enforcement and penalties among multiple government bodies.

The Decision proposed three measures in judicial enforcement. The first proposal is focused on legislation. In practice, decisions given by the SPC are the most prevalent guidelines in judicial enforcement. The current lack of legislation on enforcement has caused academic and practical problems. The second proposal is about standardizing the procedure of enforcement. Due to the uneven quality of enforcement personnel, there are violent actions or corruption during enforcement, which call for training and supervision from third parties. Thirdly, the last proposal focuses on building a national personal credit system to locate the target property, individual and company with support of police, banks and other public service providers.

The SPC has made great efforts to refine the evolution of judicial enforcement. It has issued three guiding principles: coercive force, standardization and information construction.

Coercive force is a way to guarantee compliance with court decisions. The SPC, along with the Supreme People’s Procuratorate and Ministry of Public Security jointly launched several special actions against refusals to perform judgments or rulings in criminal cases by fine, detention and criminal charges for refusing to execute court judgments or rulings.

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59. Zuigao Renmin Guanyu Zhixing Chengyu zhong Jisuan Chiyan Lüxing Qijian de Zhaiwu Lixi Shiyong Falü Ruogan Wenti de Jieshi (最高人民法院关于执行程序中计算迟延履行期间的债务利息适用法律若干问题的解释) [Interpretation of the Supreme People’s Court on Several Issues concerning the Application of Law in the Calculation of Interest on Debts during the Delay in the Performance of Execution Procedures] (promulgated by Sup. People’s Ct., Jul. 7, 2014, effective Aug. 1, 2014)


63. Zuigao Renmin Guanyu Shenli Jubu Zhixing Panjue, Caiding Xingshi Anjian Shiyong Falü Ruogan Wenti de Jieshi (最高人民法院关于审理拒不执行判决、裁定刑事案件适用法律若干问题
In regards to the standardization of judicial enforcement procedures, detailed guidelines given by SPC came out recently regarding the calculation of fines and interest in late performance and the enforcement of financial penal punishments in criminal cases, and other specific guidelines and judicial enforcement laws are currently in the drafting stage. Another way to ensure standard procedures are followed. To promote efficiency is to separate the power of trial and power of enforcement. For now, all four levels of the Chinese courts system have set up separate enforcement department that are separately administered from their trial departments.

The discussion about who should be in charge of enforcement is still one that needs to be finalized. In many other countries, third parties with a quasi-official function are often used to execute judgments. Examples include Huissiers in France, Sheriff Officers in Scotland, Bailiffs in England. Such third party professionals can, if properly regulated, create an optimal environment for effective enforcement of judicial decisions while minimizing strain of the resources of the courts.

Information construction is the most striking direction during current reforms. It requires the support of the public and will eventually make the procedures, rules and results of enforcement known to the public. The largest and most pervasive one will be the establishment of a national personal credit system which was first officially announced in January 2016. The rules to restrict the extravagant spending of persons subject to enforcement given by the SPC last July will be more effective with the support of such a system. Once the names of persons subject to enforcement have been logged into the system, any extravagant spending such as choosing to take a
plane, purchasing real property, and having a vacation will all be recorded.

Judicial enforcements against individuals will presumably achieve the primary benefits mentioned above. The personal credit system in particular is expected to lead to negative consequences for individual which act in bad faith to avoid paying judgments or other debts. However, enforcement against companies still awaits an effective solution. In theory, applying for the bankruptcy of a debtor company may be a potential method of enforcement; however, in practice, few creditors and few courts would take such measures because of perceived difficulties and uncertainties in implementation.

VII. LAWYERS

In China, the duties of lawyers are outlined in the Lawyers Law.\(^{67}\) However, there is only limited mention therein of lawyers’ substantive rights in connection with the profession. The experience of many lawyers in the past showed that they were unable to carry out their duties due to lacking of certain rights. Authorities have attempted to resolve this issue recently via the Provisions of the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security and Other Departments on Legally Protecting Lawyers Practicing Rights, issued in 2015 (hereinafter “the Lawyers Rights Provisions”).\(^{68}\)

The Lawyers Rights Provisions were enacted to protect “lawyers practicing rights in an effective manner, maximizing the role of lawyers in the party’s lawful rights and interests.”\(^{69}\)

To these ends, Article 2 of the Lawyers Rights Provisions summarizes the main rights of lawyers as the “[r]ight to know, right to apply, right to appeal and their practicing rights in such aspects as meeting, review of case files, evidence collection and questioning, cross-examination and debates within scope of their respective functions.”\(^{70}\) While the scope of these rights is not explicitly delineated in the law, it is possible to develop an idea of the intended scope of these rights through a close reading of the following Articles.

As one may expect, the “right to know” is a right to obtain information. Article 6 of the Lawyers Rights Provisions outlines the

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69 Id.
70 Id. art. 2.
rights of a defense attorney upon accepting to serve as legal representative in defense of a criminal suspect. It states that the lawyer may “[o]btain from the case handing authority the information on the suspect and the alleged crime.” The lawyer is entitled to “the main facts” in connection with the crime, “which have been ascertained at the time, the compulsory measures taken against the criminal suspect,” and any information regarding “the investigation authority’s extension of the custody period.” In this context, the “Right to know” appears oriented toward guaranteeing that information relevant to the defense of an accused is not withheld from the defendant’s legal counsel.

The “right to apply” appears to be a right to file papers, and to only file the papers that are prescribed by law (as opposed to other papers that local officials may request). In practice it is expected that such right will work to limit misconduct by officials who may attempt to refuse applications that they should duly process.

The “right to appeal” is actually a right that is dealt with in other areas of law such as the Civil Proceedings Law. As explained above, reforms were recently passed, which oblige the administrative staff within courts to register the lodging of court actions.

The “right of meeting” is a right that would be most important to criminal defense lawyers; without being able to meet a client, the lawyer cannot with certainty say that they are in fact instructed. This particular right protects clients, possibly even more so than it does lawyers as the clients will be the ones who suffer any adverse consequences from not being able to obtain legal advice.

The “right to a review of the case files” may seem like part of the right to information. However, the right to a review of the case files is more specific. Article 14 describes a process that may be described as disclosure of evidence. This particular right benefits all parties concerned. If the evidence of guilt is overwhelming, this may change the advice the lawyer gives to the client. If, however, the client maintains innocence and the evidence supports this, then the lawyer will be better able to prepare his case. All of this can also help save court time and hence public resources.

The “right to evidence collection and examination” is described in articles 16 to 20. The process involves a written application in respect to materials that prove innocence or mitigating factors. If the evidence is already available, it should be released in a timely manner to the lawyer. If the evidence is presently unavailable and is reasonably required, it should be obtained by the authorities.

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71 Id. art. 6.
72 Id. art. 6.
73 Id. art. 7.
74 Id. art. 14.
Article 21, in particular, relates to the submission of evidence by lawyers. Such evidence should be lodged in the court papers with all other evidence. The right to cross-examination and debate does not appear from the terms of the provisions to be an absolute one. These particular rights also form part of procedural law in litigation cases.

VIII. JUDGES

Judges are the core part of judicial reform. The success of all the other aspects of the judicial reform cannot be achieved without their cooperation. The main regulation on this issue is the Judicial Accountability Opinions, which specifies the powers and the liabilities of judges according to the principles of the judicial reform.

First, judges will have more assistants. In the past, a judge had only one clerk, and in some occasions, several judges shared one clerk. Undoubtedly, judges bore too many responsibilities and could not focus on judgments. By virtue of judicial reform, a judge will have more than one judge’s assistant and clerk who will do the routine work related to the case at the instruction of the judge. However, this may also mean there is less opportunity for a judge’s assistant or a clerk to become a judge. Perhaps some younger judges will be removed from their positions and have to act as assistants because of new limitations on the numbers of judges. One principle is apparent in this reform: the government wants to make judges more elite and professional, in an effort to improve the social status and prestige of judges.

Second, judges will be more independent from leaders of the court or other officials. In the Constitution, the independence of courts is mentioned, but the independence of judges is missing. In past practice, the judge presiding over a case often requires the approval of a chief judge and potentially the president of the court, neither of whom will have participated in trying the case, before issuing a judgment. In this regard, the Judicial Accountability Opinions provides:

A judgment, having been signed by judges in turn, can be issued. With the exception of cases to be discussed and decided by the Judicial Committee, the President, Vice President, and

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75 Zuigao Renmin Fayuan Guanyu Wanshan Renmin Fayuan Sifa Zerenzhi de Ruogan Yijian (最高人民法院关于完善人民法院司法责任制的若干意见) [Several Opinions of the Supreme People’s Court on Improving the Judicial Accountability System for People’s Courts] (promulgated by Sup. People’s Ct., Sep. 21, 2015, effective Sep. 21, 2015) art. 4 (Chinalawinfo).
76 XIANFA art. 126 (1982) (China).
Chief Judges will no longer issue or approve judgments of cases regarding which they do not directly participate in the trial.\textsuperscript{78}

In this way, the power of judicial committees is being narrowed. Only certain cases may be submitted to the committees for discussion and decision. These decision-making rules are clearly specified so as to make the process more transparent and equitable.

The most important change for judges is liability, which has been briefly touched on above. The Judicial Accountability Opinions provide that judges shall be held liable for the performance of their judicial duties and will be permanently liable for their handling of cases to the extent of their duties.\textsuperscript{79} This means, judges may be punished, even after resignation from their role as a judge if they have committed wrongful acts in a case that they heard. That is quite different from the past, when courts bore liability as a group and as a result nobody was held directly accountable, and nobody was punished. Moreover, the liability of the members of judicial committees is specified and all the members’ acts and opinions on the case shall be recorded for a future evidence of liability allocation. The scope of trial liability is provided and judges shall only be responsible for their intentional wrongful acts or gross negligence.\textsuperscript{80} This exempts judges from the unjustified risks of hearing a case.

All in all, we can generalize these ongoing judicial reforms briefly as providing both more independence and higher liability for judges.

Finally, with regards to judges, our sympathy goes out to the family of Judge Ma Caiyun\textsuperscript{81} of Beijing, who was recently murdered in connection with performing her duties as a judge. Judges are a particularly vulnerable group which certain parties and individuals will seek to influence by special privileges or through coercion. Judges need and deserve special treatment under the law; in order for the rule of law to be fully realized. Tough punishments should be implemented for anyone who tries to influence a judge in respect of carrying out their duties, which are so essential to a functioning modern society. Whether judges should receive special protection may be a topic for further review and discussion. If judges do not feel safe in performing their role in society as ultimate arbiter of the law and justice, all of society will suffer.

\textsuperscript{78} Zuigao Renmin Fayuan Guanyu Wanshan Renmin Fayuan Sifa Zerenzhi de Ruogan Yijian (最高人民法院关于完善人民法院司法责任制的若干意见) [Several Opinions of the Supreme People’s Court on Improving the Judicial Accountability System for People’s Courts] (promulgated by Sup. People’s Ct., Sep. 21, 2015, effective Sep. 21, 2015) art. 6 (Chinalawinfo).

\textsuperscript{79} Id. art. 25.

\textsuperscript{80} Id.

IX. CONCLUSION

Judicial reform, like economic reform or political reform, is a difficult change which touches on important social factors. These factors are often in tension and reform is required to remove these sources of tension. Judicial reform in China in recent years may be characterized as a process of building institutional capacity and increasing the role of capable individuals. Essential to this process is accountability. Current reforms seek to increase accountability in the court system. Accountability is increased in the process of accepting cases by requiring court officials to provide explicit, timely, legal justifications for the rejection of complaints. Accountability regarding litigation is increased by increasing interactions with the public, increasing the role of jurors in the court system, and increasing institutional accountability via the introduction of circuit courts. Internal accountability is promoted by reform and clarification of procedures for appeal and remand of trial decisions. The requirements for standardization of judicial decisions, increased detail in judicial decisions and increased publicity of judicial decisions provide increased accountability for judges which previously had very wide latitude in how or whether to present the reasoning used in reaching the court’s decision.

The general trend of accountability is furthered through reforms to the judicial enforcement process. By clarifying certain issues regarding enforcement, recent reforms encourage court’s to be more accountable for the enforcement of their judgments, and the resultant reputation of their institution. Concomitant with this is the inevitable increase in accountability for those who had attempted to evade judicial enforcement in the past.

By granting lawyers specific rights, recent reforms also limit the ability of judges to withhold information from lawyers, or shut them out of proceedings. Judges will be less able to use such tactics to limit the quality of arguments or evidence presented in favor of a particular party. When courts must hear arguments and review evidence prepared by capable legal professionals, it will become more difficult for a court to reach a favored decision which is not supported by the law or the facts of the case. In this way lawyers doing their best to advocate for clients, will make it harder for judges to deviate from the law in favor of local protectionism.

Finally, by increasing potential liability for judges for wrongly decided cases, recent reforms bring accountability home. By raising the specter of penalties against judges for wrongly decided cases, these reforms are expected to result in judges putting more thought into each case, and spending more time identifying relevant laws, regulations, and policies. Judges are expected to put greater intellectual effort into writing their options and presenting a rational analysis of the facts.
based on the law, and an explanation of how this leads to the correct decision in the case.

As political goals of the CCP have turned toward judicial reform, tensions created by limited institutional and social capacity and the corruption of individuals are substantially reduced. Reforms build institutional capacity. Greater trust in judicial institutions creates social buy-in. Greater social buy-in, and stronger judicial institutions limit the ability for individuals to pursue corruption. In this way, the limitations in the past disappear and the process of reform becomes self-reinforcing. Even so, the successful implementation of these reforms will be slow and methodical. Regulatory trends toward transparency in the courts and accountability for judges must be matched by practical action and effective consequences. It will be the responsibility of practitioners to effectively draw attention to official reforms where appropriate, to ensure effective implementation.