Compromise and Breakthrough: Path Choice of Reform on Judge Salary Mechanism in China

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Abstract. With the reform of the judicial system, especially the deepening of the reform of the category system, the judge’s salary growth rate and specific system have already attracted the attention of the academic and judicial circles. This paper takes the salary system of Chinese judges as the object of study, probes into the path of judge’s salary increase from the angle of political economy, and finally puts forward some reform measures for the lack of wage market competition judge remedial measures from macroscopical and microcosmic two respects.

1. Introduction

In all societies, judges form a class themselves, because their activities are so beneficial that they must be differentiated from the ordinary citizen. ——[France] Heinrich Diefrich [1]

At present, theoretical study and practical survey of the increase of judge’s salary are few. However, with the reform of judicial system reform especially the constant promotion of category system reform, how to determine the judge’s salary, growth rate and the specific system have attracted the attention of the academia and judicial circle, and become the topic the top-level designers of judicial reform must take into account and implement. Based on this background, taking the judge salary system of China as the object, this study explores the growing path of the salary of judges in China from the aspect of political economics, such as the resolution of the CPC Central Committee on the proportion of court funds conducive to determining the judicial allowances of judicial authority again, the remedy of the absence of competition in the market of judge’s salary, and proposed reform measures from macroscopic and microscopic aspects.

2. Investigation of Present Situation of Judge’s Wages Mechanism in China

The current frame of judge’s salary of China was established on the basis of the Implementation of the Reform on the Salary of the Staff of Local People’s Court at Various Levels issued in 1985, and has formed a traditional and stable operation model and system dependence affected by many factors like system of administrative control and awareness of the public for a long time. The Civil Servant Law and Judge Law had some new provisions on judge’s wages, but there was no breakthrough and they can’t escape from the old frame. Even in the established frame, the guarantee and increase of judge’s salary and welfare are not ideal. Some regions even can’t guarantee the basic salary, forming many problems and affecting the setting of judicial authority and the profession guaranty of the judge. By investigating the present situation of judge salary mechanism, there are mainly the following problems.

2.1 Institutional regulations are principled and abstract

The institutional regulations of judge salary mechanism are the most intuitive and accurate tool to understand the judge salary mechanism of China, as well as the most effective method to study the problems of judge salary mechanism. Whether the institutional regulation is systematic, perfect and adaptive to the judicial situations of China, as well as the working status of judges determine
whether the mechanism is scientific and applicable. By organizing the relevant laws, regulations and rules, the regulations of judge salary mechanism in China, which are abstract and indistinct, flexible but inoperable, can be found in the Civil Servant Law, the Judge Law and other scheme, notice and decision, but there is no specific, uniform and systematic rules of judge salary mechanism. They can neither embody the guarantee of judge nor can realize the order increase of judge’s salary and welfare, becoming the institutional barrier of the growth of judge’s salary.

2.2 They are not well implemented

Wage system is an important part of judge system. But the Chinese judges don’t have their own wage system for a long time, but apply the wage system of national civil servant. In order to alter this situation, the Judge Law established the judge wage system, and specifically regulated the salary, insurance, and benefits of judges: “the wage standard of judges is regulated by the country according to the features of administration of justice.” Thus the wage system of judge was established legally for the first time, and the wage of judge was separated from the wage system of national civil servant. [2] The Judge Law has been issued for 21 years, but the wage system and standard of judge have not been implemented, and it is the wage system of national civil servant that is implemented now. The Article 36 of the Judge Law stipulates that “judges enjoy the judicial allowances, area allowance and other allowances, insurance and benefits regulated by the country”. However, over the past 20 years, the above provisions have not been implemented, and some regions even can’t pay wages to the judge on time.

2.3 The operation effect is not ideal—the wage level of judges is low with significant regional differences

Under the present judge salary mechanism, the wage level of judges is out of proportion to the judicial authority and workload of judges. For example, the average wage of the civil servants in 2014 was about 62000 yuan, equaling to the wages of judges and the employed person in urban units and other units with great regional differences. The average monthly income of the civil servants in Zhejiang, Guangdong, Jiangsu, Shanghai and Beijing is about 10000 yuan; the income in Tianjin, Liaoning, Hainan, Jilin, Ningxia, Heilongjiang, Xinjiang, Xizang, Shanxi, Gansu, Qinghai and Neimenggu is about 4000-6000 yuan; the income in Shandong, Fujian, Chongqing, Guizhou and Shanxi is about 3000-6000 yuan; the income in Anhui, Yunnan, Guangxi, Sichuan and Jiangxi is about 2500-4500 yuan; the income in Hebei, Henan, Hubei and Hunan is about 2500-3500 yuan [3]. The wage of civil servant is composed of job-based pay and level-based pay, and the standard is determined according to the administrative rank of the civil servant. Since the administrative rank of court is lower than the government at the same level, the actual treatment of the judge is worse than the civil servant at the same level, and the wages and benefits are lower.

Besides, because the economic development levels in different regions are out of balance, in addition to the lack of regional judicial funds provided by the central finance, almost negligible, the judicial funds in various regions in China are lopsided: the judicial funds are rich in developed regions and that in the underdeveloped regions are few [4]. There are big economic differences even in the different counties and cities of the same province, city and municipality, and the judicial funds guarantee is out of balance.

3. Background Analysis: the Practical Dilemma of Playing the Role of Judge Salary Mechanism Under the Judicial Situations in China

The problems of judge salary mechanism of China are related to the judicial traits, localization of jurisdiction and the low level of the present public confidence force of judicature and professionalization of judges, which are the leading reasons of forming the judge salary mechanism of China, and become the realistic predicament of playing the function of judge salary mechanism.
3.1 The dual shackles of localization of jurisdiction and category system of civil servant constrain the judge salary mechanism to play its function

At present, there exist large contrasts between the nature of central government powers and responsibilities of judicial authority and the localization of jurisdiction in China. The most significant performance of localization of jurisdiction is the localization of judicial expenditure guarantee. Although the expenditure guarantee system of people’s court of China has transformed from “classified regulation and afford” to “define responsibility, afford by classification, decouple income and expenditure, full security”, the main source of the court’s funds is still the local finance which restricts the court’s funds. According to the principle of classified regulation and unified financial power of the finance of China, the funds of the judicial authorities at various levels of China (including the construction expenditure, personnel funds, equipment funds and service outlay, etc.) have long been provided by the people’s government at the same level. At the beginning of each year, the people’s government at the same level (by the finance department specifically) develops and puts forward the budget to the people’s congresses at the corresponding level. And it is implemented by the people’s government at the same level after being inspected and approved by the people’s congresses at the corresponding level hold at the beginning of the year.

Meanwhile, the wages of judge are included into the category system of civil servant, and have not realized independent budget. The Civil Servant Law issued in 2006 will be formally included into the category system of civil servant. The responsibilities, rights and management of civil servants apply to Article 3 of the Civil Servant Law. If there are provisions as otherwise stated in respect to the generation, appointment and dismissal, and supervision of leaders and the responsibilities, rights and management of the judges and prosecutors in other laws, such provisions shall be followed. This mechanism makes the salary growth of judges depend on the salary growth of the civil servants and can’t break away from the category system of the salary of civil servants. Moreover, because the administrative rank of court is lower than the people’s government at the same level, the actual benefits of judges is worse than the civil servant of the people’s government at the same level, and the wages and benefits are lower [5]. The source of judge’s funds depends on the local finance. However, there are financial difficulties in some regions who even can’t pay wages, and the economic development levels are out of balance in different regions, [6] leading to the great differences between the wages of judges.

3.2 The economic constrains of the bad operation of judge salary mechanism are the funds deficiency of judicature (court) and the nature of non-market competitiveness

Although the funds of judicature (court) in China increase annually, it is far smaller than the growth rate of the state revenue. In addition, court’s expenditure accounts for much lower (mainly compared with the foreign and international common practice) of the state revenue. In China, court’s expenditure accounts for very small part of the state revenue, usually less than 1%, and not more than half of that of other countries. The deficiency of court’s funds is also reflected from the growth speed of the court’s funds being slower than that of the state revenue. China’s judicial funding is “graded and responsible”, and the proportion of the central government's investment in justice is smaller. Meanwhile, the transfer payment of the central finance to the local courts is not enough, leading to the deficiency of the allocation of judicial outlay of the judicial system, especially, the judicial outlay of the western regions is very difficult.

At the same time, the wages of judges are decided by the state, different from the lawyers and in-house counsels belonging to the same profession community of law, judges can’t participate in the market competition and their income doesn’t follow the market quotation. In addition, judges can’t engage in business or profitable part-time jobs, and their income merely depends on the finance. The nature of non-market competition becomes the important factor of the wages of judges being difficult to grow.
3.3 The low public confidence force of judicature and low level of professionalization of judges result in the significant growth of judge’s wages in a short time being difficult to be recognized by the public.

In order to objectively understand the evaluation of the public on the public confidence force of judicature, through the client platform of the People’s Daily, an intermediate court organized the internet questionnaire investigation about “guarantee the judicial fairness and improve the public confidence force of judicature”. The first question is what is your evaluation of the present public confidence force of judicature? Trust a lot; Trust a little; Don’t trust; Unknown; the second question is where are you unsatisfied with the administration of justice of courts? Difficult to place a case on file; Relation case, monetary case; Low efficiency of judgment; Bad judging style of judges; High cost of lawsuit; Deficient judicial capacity and low level of judges; Hard to implement; Others. [7] The investigation result shows that the proportion of “Trust a lot” and “Trust” of the present public confidence force of judicature is less than 50%; the public are unsatisfied with the relation case and monetary case, deficient judicial capacity and low level of judges, and hard to implement. It can be seen that the public confidence force of judicature is not at a better stage. Based on the low public confidence force of judicature and professionalization of judges, hastily implementing the judge high salary system easily motivates the antagonistic mentality and conflicting mood of the society, difficult to obtain the public recognition.

4. Reference and Consideration: Theoretical Exploration and Dimensional Analysis of the Reconstruction of Judge Salary Mechanism

There are many problems and inevitable actual dilemma of the present judge salary mechanism, and make the reform of judge salary mechanism enter the vision of the theoretical circle and judicial circle, becoming the problems that the top-level designers have to consider. The growth of judges’ wages is a judicial issue. Judicature is the part of the superstructure, and its reform is the important content of the reform of the political structure, which makes it become a political issue; meanwhile, it is also an economic issue, involving the budget allocation of the state and the market competition, etc. Therefore, no matter from the dimension of judicature and market or the dimension of occupation group, it is necessary to establish order and increasing judge salary mechanism.

5. Compromise and Breakthrough: Value Guidance and Reform Path of the Reconstruction of Judge Salary Mechanism

The present problems and the actual dilemma of the judge salary mechanism leading to the problem being difficult to solve make the problem of judge’s wages not only be the object of present judicial mechanism reform and the important shackle affecting the authority of judicature, but also the significant factor driving the judicial reform and other reforms. No matter from the dimension of the market, politic or vocation group, it is imperative to relocate the wage level of judges.

(1) The funds of the court’s staff should be first included to budget of central finance and implement independent budget mechanism. (2) The wage level of judges should be localized scientifically and the proportion of the judicial outlay in the budget of central finance should be increased properly. (3) Balance the difference between regions, enhance the slant force and the communication and training of the low-income region. The contradiction between the special property of judicial judgment and the present judicial administration negatively affects the judicial authority to some extent. One of the embodiments is that the judges are not separated from the civil servants, and both the management and wages are consistent with that of the civil servants, and are difficult to realize judgment independence and embody judicial authority.

6. Conclusions

Reform of high status, much benefits and high full responsibilities of judges is an important work...
of the judicial system reform of China, and also an inevitable trend of democratization and legalization of a country. If the economic treatment of judges can’t maintain the basic decent life of them and their families, thus, it is difficult to keep the judges who afford the construction of rule and law stable. The reform of wage system of judges is not only related the guarantee of material life of judges, but also has relation to the questions such as the evaluation of social status of judges, the stability of the vocation of judges and legal independent judgment. Even though it is an arduous task and the road is long, the sword has gone forth out of the sheath. It is hoped that it can hit the target and realize gorgeous turn.

References