The Analysis of the Reform of Judicial System Based on the Checks and Balances of Power

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Abstract. The core of the rule of law is to build a judicial system of equity, probity and high efficiency. However, the key point of the construction of judicial structure is based on every judicial authority that carries out dividing the boundaries of duty and power in various fields and links. According to practical proofs, the way of dealing with dissimilation in power is to build a thorough system, meanwhile, using the law to regulate these systems, and with the force of law to guarantee the implementation effectively. Owing to all kinds of shortcomings existing in the reform of judicial system, it causes many mistrials and irregular perversions now and then which corrode the prestige and equity of our national judicial system, also increasing the sense of urgency in the reform of judicial system.

Theory of the Top-Level Design and the Balance of Rights in the General Plan of the Rule of Law

The judicial equity have an important leading role in social equity, on the contrary, the judicial injustice has the deadly devastating effect on social justice. Therefore, we must improve the judicial management system and the operating mechanism of judicial power, regulate the judicial behavior and strengthen the supervision of judicial activity, which make all efforts for the masses who can feel the justice and equity in every judicial legal cases. At the same time, we must also optimize the collocation of judicial position power; establish clear accountability and shared responsibility in the public security organization, the judicial authority, the judicial apparatus and the administrative organization of justice; and build the system mechanism of the power of investigation, the procuratorial authority, the jurisdiction and the right of execution which can not only coordinate with each other, but also restrict each other.

Proved in practice, it is hard to depend on personal moral cultivation and self-discipline to achieve good management, when losing the power of constraint and checks and balances. The essential way of coping with the power of dissimilation is to establish a complete perfect system, furthermore, using the law to regulate these systems, with the force of law to guarantee the implementation effectively. Hence, the key point of the construction of judicial structure is based on every judicial authority that carries out dividing the boundaries of duty and power in various fields and links.

The earliest power balance theory can be went back to French ideologist, Montesquieu (1689-1755) in the early 18\textsuperscript{th} century, that is to say, Montesquieu can be regarded as the genuine inaugurator in western power balance theory. He thinks, the private property, as the natural right of people, is inviolability. Besides, he thinks, from the nature of things, if we want to prevent against abusive power, we must live up to restrain power by power. Based on that, Montesquieu also expounds systematically the idea of separation and the three powers, clearly coming up with the power balance theory—namely, the theory on legislative authority, executive authority, judicial authority which can not only tie down each other, but also coordinate in advance.\textsuperscript{[1]}

Then, the power balance and the institutional arrangement have always been bringing into play the essential function.
Analysis of Our National Judicial System’s Condition at Present

The Basic Framework the Present Judicial System in China

The judicial system is an important part of the national law system. To put law into effective practice, adequate judicial system is requisite. Now, the judicial organs in China are made up of People's Court, People's procuratorate, judicial administrative organ which is supervised by People's government and is composed by public security, jail, justice bureau, supervision and so on. According to the function distribution, people's court is the judgemental organ of China that is in charge of the judgemental work of China. People’s procuratorate is the national law supervision department that is in charge of national inspection work. Judicial administration department of people’s government is in charge of public security, investigation of cases, implement of law and management.

As the organizational system of judicial department, judicial system in inevitably reflects the settings leadership or inspective system in judicial department, the division of powers between judicial departments and the management system of judicial departments. In our country, to be specific, the settings of judicial departments mainly include the setting between judicial, procuratorial and public security organ and the settings of the interior of the organ. The leadership of judicial organ or supervision system mainly includes the correlation between judicial organ and other national organ, the relation between each judicial organs and the relation between superior and subordinate. These relationships can be mainly shown in the relation between leading and being led, supervising and being supervised. The division of powers between judicial organs mainly includes the jurisdiction and specific powers of judicial organs. The management system of judicial system includes the business, personnel, funds, equipment and other management systems of judicial organ.[2]

The Major Disadvantages of Our National Judicial System at Present

Due to history, culture, the stage of economical development and all kinds of reasons, nowadays, our national judicial system mainly has these disadvantages as following:

The Overlapping of Judicial Power and Administrative Power Is Serious, and the Independence of Judicial Power Is Not Strong

In 1982, provided by the 135th provision of the Constitution, In handling criminal cases, the people's courts, the people's procuratorates and the public security organs shall work in accordance with their respective responsibilities, and shall be in accordance with each other so as to ensure the accurate and effective enforcement of the law. But in reality, in addition to the public security organs, the people's courts and procuratorates, there are political committees and the judicial organs which need to be coordinated and leaded, and that, the position in charge of the public security organ is usually occupied by the secretary of the political science and law commission or the same level leader. Thus, The independent judicial operation system, which should have been dominated by the people's courts and people's procuratorates, yet, has often become a mess of administrative power and judicial power interlaced with the public security organs, and in fact, the judicial independence exists in name only. For example, the government image project as the starting point of the judicial dimension stability, with the relevant departments of the government performance project as the starting point of the murder must be solved so that the consequence of extorting a confession by torture, which are confused of judicial power and administrative power, and evil consequence from error interleaving.

The Judicial Organs Lack the Mechanism of Restriction and Supervision

Judicial independence does not mean that justice can be free from restraint; on the contrary, because of the independence and importance of its implement of rights, it is urgent to supervise and balance effectively. Due to the lack of procedural provisions of legal supervision for the judicial organ, on one hand, it has resulted in the organs of state power, especially local authorities tend to ignore the judicial supervision; on the other hand, it has also caused the judicial organs, especially the supervision of local judicial organs in the name of judicial independence against the authority of the
power. Meanwhile, because of inadequate supervision of the organs of state power, plus, the judicial organs in current China's judicial systems is not mutual, so that many problems in the judicial organs is hard to solve by the current supervise mechanism, and objectively providing the convenience for the abuse of judicial power and judicial corruption.

Judging from the internal supervision of the judiciary, at present, the supervision is mainly from the inspection authorities to the judicial organs and the supervision over the lower level judicial organs by the higher level judicial organs. According to the provisions of the Constitution and laws of our country, the people's procuratorate, as the legal supervision organ of our country, has the right to supervise whether the judicial activities of the state judicial organs are right or not, according to the provisions of the Constitution and laws of our country. However, in practice, the supervision of other judicial organs by the procuratorial organs is still mainly confined to the counterappeal and appeal for the existing legal facts and the effective judgment documents. The process is very long and has little effect. In addition, the procuratorial organ itself is the judicial organ, the current law of our country has already determined the inspection authorities which have the right to supervise other judicial organs, thus, there is no clear rule of how to supervise the inspection rights of inspection authority, which may also foreshadow the abuse of power by procuratorial authority.

The Professional Level of Judicial Personnel Is Low, and the Internal Management Model of the Judiciary Is Rigid

In recent years, with the improvement of professional quality of judicial personnel is increasing, the education level of judges and crown counsels has been improved, but owing that the judicial organs have no actual independent personnel power, leading a number of people from the personnel department of the government or the army of professional recruitment, in contrast, with bachelor degree master, even PhD graduates are often difficult to enter the court's procuratorate through the distribution directly, what's more, many lawyers who have professionally legal ability , it is more rare to transfer the position to become judges.

For the moment, the level of our national judges and prosecutors basically still follow administrative level, there are different position, status and treatment of judges among different judge authority level, besides, the appointment or removal of judges and the promotion or demotion of judges basically depend on the level of high level judges, the position becomes the intensity and scale of dealing with cases, whatever the court or the procuratorate, due to the excessively strict level of leadership and subordinate relationship, the higher judiciary control the lower court through the examination, evaluation, promotion or demotion of the position and other means, the investigators are easily influenced by the superior judicial authorities and their superiors. While the judges and prosecutors at a higher level, the ability to interve with the subordinate normal judicature is greater, the prosecutors' occupation sense of honor, sense of responsibility and sense of achievement is reduced, discontent increased, which also lead to the lack of the judicial personnel self-discipline consciousness and the rise of judicial corruption case to some extent.

The Necessity and Urgency of Judicial System Reform

Because the judicial predicament also forces us to make some adjustments in the judicial field, most of the existing judicial reform is on their own behalf, mostly the key points are the judicial organs to improve the internal business judicial system, various judicial organs for their own benefits and achievements cause all kinds of cases that are unjust and false from time to time, which have already eroded the existing judicial system of our country's prestige and justice, as well as strengthened the sense of urgency for the reform of judicial system that we must do.

The Reform of Judicial System Centered on Checks a Balance of Power

The reform of judicial system is a long way to go, it involves a wide range and influence greatly, thus, the reform could begin on the following sides:
To Supervise by Power-To-Power, and Establish the Judicial Supervisory and Restraining System by CPC and NPC

Supervising by power-to-power mainly includes legislative power, administrative power, judicial power, and the national watch dog, and the checks and balance to the powers form the CPC. Supervising by power-to-power is the most powerful and strongest supervision, and it also the core step to check and counterbalance public rights.

Strengthen and Improve the Party's Leading Position in the Administration of Justice

The reform of the judicial system shall be implemented so as to more effectively carry out the Party's road, guiding principle and policy, which can promote the party and the government's ability of governance, thus better serving the nation and social economy. Therefore, strengthening and improving the party's leadership is not contradictory to strengthening judicial independence and supervision. On the one hand, judicial independence can relieve the ruling party as the leadership from the specific national affairs, such as classified treatment of letters and calls, in which case the party organization can focus on the implementation of national fundamental policy, thus realizing the Party’s overall leadership of national undertakings. On the other hand, strengthening and improving the party's leadership over the judiciary can prevent the abuse of judicial power and deviation from the socialist orientation.

The leadership of the party can not only guarantee the integrity and unity of the judicial system reform, but also guarantee the consistency requirement between the top-level design of judicial reform and other social supporting systems as well as steady and smooth process of the judicial reform. It’s imperative to set up the party's supervision and leadership in judicial work, and focus on the organization construction by recommending leading members of the state judicial organs, judges and prosecutors to state power organs.

Perfect the People's Congress to Supervise the Terms of Reference

At present, due to the constraints of institutional and institutional factors, the National People's Congress's supervisory function has been long-term imagination, the NPC on the "two high" is basically limited to work reports and major personnel elections and appointments, in a large number of daily judicial process, The NPC's supervisory power can not be effectively fulfilled.

Therefore, it is necessary to establish and perfect the daily supervision mechanism of the National People's Congress and set up a special judicial supervision institution to normalize and institutionalize the judicial supervision of the judicial organs.

While people's congresses monitor the performance of the process in the judicial system, establish the NPC commentary system, through the quantitative indicators of core judicial officers, especially judges, prosecutors professional quality, professional ethics, etc., establish major difficult cases, Case of question, impeachment and accountability mechanism.

The people's congresses can take on the unified appointment and removal of heads of the provincial and municipal judges and prosecutors and other local people’s congresses undertake the work of the procuratorates’ annual report to be questioned, recommendations and supervision, to avoid the judicial fall into the jurisdiction of the provincial people's congress excessive localization.

To Establish the Independent Operation and Administration System of Justice Centered on Judge

Judicial System to De-Administration and De-Localization, to Achieve the Classification Management among the Judges, Prosecutors and Civil Servants

First of all, to solve the problems of de-administration and de-localization of the judicial administration system from the constitutional framework design and legal system perfect, and to establish the the independent operation and administration system of justice centered on judge, and to adjust the system of people’s court and people’s procuratorate, especially on the fiscal system and
supervision system, so as to implement the independent national finance system. The core of justice is judge, thus, to establish a reliable and systematized ensuring system for the judges is necessary, and to nominate the independent chief judges and the review committee, with which the judges could be loyal to the laws, and prevent the influence from the leadership.

Moreover, to clear the core status of legislative power of the NPC in the judicial system, so as to secure the statues of state adjudicatory organization all judicial courts at all levels, and to break the 2 in 1 administrative system: the complete overlap of judicial districts and administrative districts.

The procuratorates should exercise its supervision power on the basis of upholding judicial authority and promoting judicial justice. However, the procuratorates should not be prejudiced in exercising their supervisory power, nor can they use it as a condition to force the people's court to decide the penalty according to the procuratorates’ will.

**To Establish the Provincial Direct Governing Mechanism of the Judicial System and the Independent Financial Budget and Final Accounts**

Due to the wide geographical distribution, and the imbalance of economic development in different areas and other factors, the national judicial system of central co-ordination is not realistic. Thus, the mechanism of provincial governing could be take first, which could maintain the functions of the Supreme People's court: to unify the standards of application of law through policy guidance, rule making, and judicial proceedings.

Specifically, administration authority of personal effects administrated by central government and NPC and Supreme Peoples Procuratorate should be established, whereas the provencial judicial system, and the sub-provencial-level could be administrated by provental institutions; as for the unified management mode, the local Party committees, people's Congress, the provincial court, procuratorate should be responsible for it. To explore the establishment of cross regional judicial court and judicial administration system handling of the circuit court and judicial management system, and to prevent the restriction of administrative division based on saving the cost of justice, so as to make full use of the impact of judicial resources and judicial independence to solve the off-site jurisdiction, remote execution and other difficult issues.

At the same time, we should also achieve the provincial untied control of people’s court to people and property from the budget and final accounts, making the judicial independence get the fund’s protection and support.

**To Improve Domestic Supervision and Counterbalance Mechanism of the Judicial Organs, and Enhance Judicial Openness and Transparency**

**The Domestic Supervision and Counterbalance among Public Security Organs**

The investigation power, procurator power and judicial power should be more reasonable and optimized, so as to prevent the abuse of judicial power. The correlation between legal examination and criminal procedure, such as criminal case review, prosecution and trial, can not affect the independence of the judges and procurators, which is also the core requirement of the balance of powers and the protection of procedural justice. For example, the executive power from the people's Court can be implemented by administrative organs, so as to gradually reduce the decision-making power and administrative power of the public security organs. As a result, to separate the power of custody from the public security organs, in order to prevent the abuse of investigation power caused by seeking department or individual interests, and also to prevent the abuse of compulsory disposal power. For the procuratorial organs, the point is to strengthen the supervision on their action and the public prosecution instituted by them, and seriously control the approval power and power to decision. The lifelong responsibility system should be established for judicial officials who handle cases, so that can decrease layers of management for the court and procuratorate system and the affiliation between the superior and the subordinate.
To Promote Judicial Democracy and Judicial Openness

Judicial openness is a project that is crucial to the judicial reform, and it is also an important means to supervise and counterbalance public rights. Efforts to build a open and transparent judicial mechanisms, to promote judicial publicity, and to public judicial enforcement, judicial basis, procedures, process, results and effective legal documents. To strengthen the interpretation of legal facts and legal evidence, to establish effective legal instruments, and to unify Internet access and public inquiry system. In particular, the court trial should be the most important breach of judicial openness, and the trial should be gradually recorded in voice and video, and then be kept in archives. The whole video recording could constraint on the trial activities of judges, and promote litigation participants to exercise their rights according to law. As long as it does not involve personal privacy and state secrets cases, the trial should be free to attend, so as to show the confidence and transparency of the administration of justice. The hearing system for major cases should be implemented, and the press release system should be adopted regularly to establish an interactive platform between the judiciary and the public.

At the same time, we should further improve the people's jury system, the establishment of information disclosure and random jury selection system, guarantee the jury trial right, improve the proportion of jury cases, prevent the jury system into a mere formality.

To Accelerate the Reform of the Judicial Personnel System

The Professional Admittance and Withdrawal System of Judicial Personnel

As it mentioned earlier, the serious problems: low degrees of education background, professional cultivation and skills, and professional mismatch, are among China's current judges, prosecutors and judicial personnel, which has become a bottleneck of improving judicial ability of China's judicial organs, and also one of the important reasons to the fail of power supervision and counterbalance system.

The judge cultivation mechanism of China basically takes the "clerk - Assistant Judge - judge" training mode, which means there is no one from layers. Once they become judges and prosecutors, they have "secure jobs", basically with no withdrawal mechanism. Therefore, the entrance and withdrawal system of judicial officers should be build seriously, especially the judges occupation training system, and occupation evaluation mechanism of judges and prosecutors and judicial personnel database, so as to ensure the quality of judicial personnel. To build the professional entrance and withdrawal mechanism, which means the judicial personnel have serious negligence and dereliction of duty should give punishment even repaying occupation. Attention should be paid to the construction of professional transformation channels from lawyers to judges and prosecutors, so as to enhance the overall professionalism of judicial personnel.

Employment Security Mechanism for Judicial Officials

From its occupation characteristics, judges and prosecutors should not only master the professional knowledge of law, but also have some working experience and social experience, and most importantly, they must have occupation ethics guided by the legal faith. All of these must be built on the employment security mechanism, therefore, the employment security mechanism for judicial officers, especially for judges, is of great importance.

Employment security mainly includes several elements: identity protection, namely the judges have independent judgment rights, and could not be removed or transferred without any legal fact or process, so as to secure the comparatively high social position of judges. Economic security, to secure the judges and procurators have corresponding economic treatment to their occupation, and link the paybacks of judicial officials to their professional skills, case-handling capacity and professional integrity, so as to abolish administrative ranks of judges and procurators.
Safety and security, to ensure that judges and prosecutors and their family would not be threaten by doing their jobs; the government must deal seriously cases that the judges and procurators are retaliated, which means the government should build up the public awe to the judges and procurators.

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