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Tracking the Chinese Innovations in Court Trials and Judicial Enforcements for Judicial Transparency

ABSTRACT

Judicial Openness is an important step to ensure judicial fairness, curb corruption, and bring effectiveness in the judicial system. It is a key to promote constitutional principles and protect the litigation rights of the public. It helps the court to gain confidence of the people and brings legitimacy to the judicial system. Moreover, Judicial Openness is a necessary thing to foster rule of law in the system. People's Republic of China has been paying great consideration to apply the principles of transparency and openness in the judicial sector. Under the phase of recent reform measures, various channels have been developed under the flag of 'Deepening the Judicial Reforms' to expand the depth and width of judicial openness. New innovations and channels have been set up to design an open, transparent, dynamic and convenient judicial system. Openness of trials and enforcement processes is a vital step towards the transparency of judicial system. China has made significant developments in the open trials and open enforcement mechanisms which has made Chinese Judicial System one of the transparent judicial systems in the world. This research paper focuses on the innovation made by Chinese authorities in the fields of open trial and open enforcement for the effectiveness of judicial system.

Keywords: Open Trial, Open Enforcement, Judicial System, Transparency.

INTRODUCTION

The social and economic transformation of the Chinese society, the up-gradation in the living standards of the public, revolution in the information technology and increasing engagements of the country with international community have placed new requirements and increased expectations for the delivery of effective and fair justice on the judicial system.¹ With the rapid development and use of big data technologies, strengthening of social and electronic media and the other mechanisms of dissemination of information, the responsibilities of the judicial organ have become tougher.² Moreover, with the development of legal system, citizens have the stronger demands for the judicial openness. Under this changing scenario openness of the judicial system has become more urgent and important.³

An important actor which has been playing a developmental role in the construction and advancement of judicial openness in China is the Chinese ruling party. Without the support of the party judicial reforms could have not been fruitful. China under the leadership of President Xi Jin Ping has given a great importance to the development of the rule of law and the construction of socialist rule of law with Chinese Characteristics.⁴ The 18th Central Committee of

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¹ Gu, Weixia. "The judiciary in economic and political transformation: quo vadis Chinese courts?." The Chinese Journal of Comparative Law 1.2 (2013): 303-334.

² Chen, Yongxi, and Anne SY Cheung. "The transparent self under big data profiling: privacy and Chinese legislation on the social credit system." J. Comp. L. 12 (2017): 356.

³ Wu, Jinsong, et al. "Information and communications technologies for sustainable development goals: state-of-the-art, needs and perspectives." IEEE Communications Surveys & Tutorials 20.3 (2018): 2389-2406.

⁴ Peerenboom, Randall. "Fly high the banner of socialist rule of law with Chinese characteristics!." Hague Journal on the Rule of Law 7.1 (2015): 49-74.

the Chinese ruling Communist Party through its Plenum Decisions emphasized strongly on deepening the reforms for judicial transparency.⁵

DEVELOPMENT OF OPEN TRIAL SYSTEM

The Openness of the court trial is an important step towards judicial impartiality which brings fairness and transparency in the trial process and helps the people to get knowledge about trial process. It restricts the courts from rendering arbitrary decisions and develops public confidence on the judicial system which enhances the legitimacy of the courts.⁶ The use of information technology plays significant role in the openness of trial process. In the current age, it has become impossible to achieve the goals of openness of trials without the use of information technology. The People's Courts of China at all levels have started using information technology to develop mechanisms for trial disclosure.⁷

The China Judicial Processes Information website online⁸ was officially inaugurated in November 2014 following the release of "*Several Opinions of the Supreme People's Court on the Construction of Three Major Platforms to Promote Judicial Openness*" in 2013.⁹ In addition, through the release of the "*Provisions of the Supreme People's Court on the Broadcasting of Live or Recorded Trial Activities by People's Courts (2010)*", the SPC has developed a system for the People's Courts in China to broadcast live or recorded trial proceedings via television and internet.¹⁰

China Court's Live Trial Website was launched officially in December 2013 to provide the citizens with the live recording and broadcasting of court trials. The trials of important cases are made available in a timely manner.¹¹ Till the end of 2016 People's Courts at all levels broadcasted the trial of 439,000 and got around 1.7 billion views.¹² Furthermore, in order to harmonize the worth of trial openness, the SPC in September 2016, officially launched the "China Court Trial Online" upgrading the "China Court's Trial Website".¹³ With the use of this central platform, citizens can easily watch the live case trials conducted by the people's courts, obtain notice for the live broadcasting schedule of important cases, demand the videos of court trials, access the statistics regarding the trial broadcasting and select and share them through social media apps such as WeChat and Weibo.¹⁴ This step depicts the China's efforts to create judicial openness with full coverage of trials. Real-time interconnection has helped in deepening the judicial reforms.

Trial Openness Practices by People's Courts

The People's Courts of China at all levels are utilizing the advance technologies, i.e. internet platform, mobile applications, and Television channels etc. to open live trial broadcasting.¹⁵ For instance, the People's Courts in the Anhui province of China have developed WeChat IDs and generated the QR codes of official IDs to provide access to the public. The citizens can watch live broadcasting and videos of trials at any time by mobile apps or the

⁵ Wang, Lifeng. "Enhancing Credibility and Transparency Through Judicial Reforms." *China in the Xi Jinping Era*. Palgrave Macmillan, Cham, 2016. 41-70.

⁶ Barendt, Eric. "Courts, transparency and public confidence—to the better administration of justice." *Media Freedom and Contempt of Court*. Routledge, 2017. 3-14.

⁷ Xu, Alison. "Chinese judicial justice on the cloud: a future call or a Pandora's box? An analysis of the 'intelligent court system' of China." *Information & Communications Technology Law* 26.1 (2017): 59-71.

⁸ See China Judicial Processes Information website: <http://www.court.gov.cn/zgsplcxxgkw/> (Last Visited 30 June 2019)

⁹ See China Judicial Processes Information website online: <https://splcgk.court.gov.cn/gzfwwww/> (Last Visited 30 June 2019)

¹⁰ Nesossi, Elisa, and Susan Trevaskes. "Procedural justice and the fair trial in contemporary Chinese criminal justice." *Brill Research Perspectives in Governance and Public Policy in China* 2.1-2 (2017): 1-92.

¹¹ Fan, Hua, and Francis Lap Fung Lee. "Judicial visibility under responsive authoritarianism: a study of the live broadcasting of court trials in China." *Media, Culture & Society* 41.8 (2019): 1088-1106.

¹² See Judicial Transparency by People's Courts SPC's Report 2017, available at http://english.court.gov.cn/2017-03/14/content_28552039_3.htm (Last Visited 30 June 2019)

¹³ Trevaskes, Susan. "Propagating justice through court and prosecution work in China." *Modern China* 43.2 (2017): 156-185.

¹⁴ Woo, Margaret YK. "Court reform with Chinese characteristics." *Wash. Int'l LJ* 27 (2017): 241.

¹⁵ Wang, Lifeng. "Enhancing Credibility and Transparency Through Judicial Reforms." *China in the Xi Jinping Era*. Palgrave Macmillan, Cham, 2016. 41-70.

Platforms like Sina Cloud etc.¹⁶ The Courts in Tianjin have made 1365 open through tape-recorded, videotaped and live broadcasting mechanisms which have attracted the great attention of the public. The courts in Guangzhou have also launched a “full time” court trial network live broadcasting platform which is aimed to “live broadcasting available every day in courts and by every judge”. Moreover, the courts in Henan have established live broadcasting on 400 courts and broadcasted the trials of more than 140,000 trial cases. Chongqing High People’s Court has also issued and implemented the “Court Trial live Broadcasting Rules” to strengthen and promote video and audio recordings of trials of cases and to standardize live broadcasting of trials.¹⁷

The First Intermediate People’s Court of Chongqing has constructed “bi-network synchronous live broadcasting” through its official website and Weibo account and the broadcasting of the Case of JDB v. Wong Lo Kat over Unfair Competition tried by the Court was viewed around 150,000 times. Haidian People’s Court of Beijing opened the broadcasting of the case “Qvodplay” having an issue of earning profits through spreading pornographic items. More than one million people watched the videos during the live broadcasting of the case while around 40,000 peoples watched the live broadcasting directly and 27 Weibo Long messages webcasting the whole trial attracted more than 36 million views. The Courts in Anhui province also have developed the live broadcasting mechanisms whereas the trials are also broadcasted on the screens of litigation centres and the LED screens of the city squares to provide the direct view of live trials to the public.¹⁸

Strengthening the Court Trial Disclosure System

The Court Rules of People’s Republic of China were amended and came into force on 1 May, 2016.¹⁹ The new amended rules have focused on the openness of trial and added new provisions for the contents and the methods of disclosure of court’s information, procedures for the attendance of trial observers and the circumstances under which a trial is qualified to be broadcasted online which provides assurance system for the court trial disclosure.²⁰ The People’s Courts at all levels are developing mechanisms to encourage the general public for attending the courts for trial observation and promoting their right to attend and observe the court trials.²¹ For instance the courts in Anhui proactively have been inviting the members of NPC, CPPCC, procuratorate and the general public to attend and supervise the court trial. From 2013 to 2016 the courts in Anhui invited more than 22,000 members of NPC, CPPCC and the other influential personalities from other social structures to attend and observe the trials. Further, the people’s courts in Jiangsu have introduced the e-booking service for the booking of trial attendance and trial observation seats while, the courts in Nanjing have developed an online platform through which the courts invite the public to attend and observe court trial through the use of internet, which has been acknowledged as making convenience to the public for attending and observing trial.²²

By the end of August 2016, the advance technologies had been employed in more the 20,000 people’s courts to promote external supervision through online means providing audio and video recordings as well as the live broadcasting of the trial. The courts in Jianxi have taken advancement in the use of new technologies as the courts have installed the touchable electronic display screens outside the litigation service centres providing different functions for the watching of trial transmission in real time position. The Jiangsu courts have constructed the “three synchronous” i.e. audio and video recording synchronous, record synchronous and the display of court trial synchronous. Till the end of 2016, trials of 2279 cases were made available using three synchronous in order to promote openness and transparency in the judicial process.²³

OPEN ENFORCEMENT

Enforcement of judicial decisions is the ultimate step in the judicial process and effectiveness of enforcement shows

¹⁶ See White paper: Judicial Transparency of Chinese Courts, available at http://www.chinadaily.com.cn/interface/zaker/1143609/2017-02-27/cd_28361599.html, (Last Visited 30 June 2019)

¹⁷ Daily, China. “White Paper: Judicial Transparency of Chinese Courts.” February 27, 2017 (2017): 2017-02.

¹⁸ Ibid

¹⁹ Zhang, Xianchu. “The New Round of Civil Law Codification in China.” U. Bologna L. Rev. 1 (2016): 106.

²⁰ Nesossi, Elisa, and Susan Trevaskes. “Procedural justice and the fair trial in contemporary Chinese criminal justice.” Brill Research Perspectives in Governance and Public Policy in China 2.1-2 (2017): 1-92.

²¹ Nesossi, Elisa, and Susan Trevaskes. “Procedural justice and the fair trial in contemporary Chinese criminal justice.” Brill Research Perspectives in Governance and Public Policy in China 2.1-2 (2017): 1-92.

²² Finder, Susan. “China’s Translucent Judicial Transparency.” J. Comp. L. 14 (2019): 222.

²³ See Ibid

the efficiency of a judicial system. Openness of enforcement proceeding is significantly important for the construction of judicial openness. It helps in making the enforcement proceeding transparent and impartial. Further, it helps also in resolving the difficulties involved in the enforcement process and consequently build the constructive image of judiciary in the public circles.²⁴ People's Courts of China are proactively developing and promoting the innovative mechanisms for the disclosure of information of enforcement in order to strengthen the openness and facilitate in resolving the difficulties arising in the enforcement process.²⁵

The SPC issued "*Several Opinions of the Supreme People's Court on Making Enforcement Processes of People's Courts Open, 2014*" to pronounce that Website of China Open Enforcement Information would be accessible from courts' online portals in order to make enforcement services information, enforcement announcements, enforcement documents, and other related information readily available.²⁶ Launched in November 2014, China Open Enforcement Information Website²⁷ reportedly has made substantial achievements. This is very useful and convenient platform for the public. Using this platform, the public may get information about the persons subject to the enforcement, access the list of dishonest persons, enforcement process and information about judgement enforcement.

Moreover, litigating parties to the cases, by using China Enforcement Information Online may log into the platform using their ID card numbers or enforcement case numbers and inquire the information about on-going process in the enforcement of cases, change in the enforcement procedure, information on the registration of enforcement cases, treatment of properties subject to enforcement, allocation of enforcement funds, suspension of enforcement process and close of the process etc. Whereas, the common citizens can inquire conveniently about the standards and qualifications for the registration of enforcement cases, information as to initiate the enforcement process, fee standards and conditions for the reduction and exemption of enforcement fee, risks involving in the enforcement process, announcement of reward and auction etc.²⁸

Official account of "China Enforcement" was also launched by the SPC in September 2016 which is effectively providing services for the inquiry of enforcement information, publication of enforcement rules, disclosure of laws, regulations and other enforcement documents in order to provide convenient access to the public at every corner of the country.²⁹

Open Enforcement Practices by People's Courts

People's Courts of China at all levels have launched the websites for the disclosure of enforcement information, developed innovative and diversified mechanisms on the disclosure mechanisms and have established the connections with China Enforcement Information Disclosure Website and thus, playing their roles in the phase of judicial openness. For example, the people's courts in Beijing have developed mechanisms for automatic publication of the enforcement information and the disclosure of enforcement cases in real time to provide public data for social credit system.³⁰

Enforcement command centres in Jiangsu province disclose the list of the persons subject to the enforcement and have developed the hotline for reporting regarding the properties subject to enforcement. Moreover, an interactive platform online for the enforcement information has also been developed which deals with the feedback about the

²⁴ Ahl, Björn, and Daniel Sprick. "Towards judicial transparency in China: The new public access database for court decisions." *China Information* 32.1 (2018): 3-22.

²⁵ Jinping, Xi. "Secure a decisive victory in building a moderately prosperous society in all respects and strive for the great success of socialism with Chinese characteristics for a new era." delivered at the 19th National Congress of the Communist Party of China. Vol. 18. 2017.

²⁶ See Notice of the Supreme People's Court on Issuing the Several Opinions on the Openness of the Enforcement Process of People's Courts, available at <http://en.pkulaw.cn/display.aspx?id=18797&lib=law> (Last Visited 30 June 2019)

²⁷ See Judicial Transparency Report of Chinese Courts 2015, available at http://english.court.gov.cn/2015-07/20/content_21332354_5.htm (Last Visited 30 June 2019)

²⁸ Li, Yuwen. *The judicial system and reform in Post-Mao China: Stumbling towards justice*. Routledge, 2016.

²⁹ Li, Lin, He Tian, and Yanbin Lv. "China Judicial Transparency Index Report (2016)." *China's Rule of Law Index 2017*. Springer, Singapore, 2018. 163-189.

³⁰ Dai, Xin. "Toward a reputation state: The social credit system project of China." Available at SSRN 3193577 (2018).

reported property clues related to the persons subject to the enforcement. Further, the people's courts in Jiangxi use the platform of comprehensive adjudication services to disclose enforcement information and provide the information through WeChat, Weibo official Accounts and 12368 telephone service too in order to provide the parties or their agents with the information about the enforcement process and progress, measures taken during the enforcement process, and other relevant information about the enforcement cases. Furthermore, public can also get access to enforcement information, laws and regulation dealing with the enforcement and other relevant information. Guangdong People's Courts have set up the "*online enforcement bureau*" for publishing real time information about enforcement cases covering the whole province for the operation and circulation of the enforcement work. The parties are notified automatically through text message about the enforcement status.³¹

The people's courts of Shanghai have developed the mechanism for whole process publication on enforcement cases, managed the enforcement procedure through 31 nodes, and activated the 12368 litigation service platform in order to provide full disclosure in enforcement cases.³²

Further, the people's courts in Liaoning province have set up a joint disclosure system to disclose the information of the dishonest persons who are subject to enforcement, and structured a disclosure column of the dishonest persons subject to enforcement on Liaoning Daily and other media cooperation. Moreover the list of dishonest persons subject to the enforcement is also updated and published regularly. People's Courts in Ningxia have developed an online enforcement command centre for disclosing enforcement information, enforcement laws and regulation, case handling procedure, case handling guidance, list of dishonest persons, on-going enforcement case, audios and videos of enforcement cases and other enforcement related information.³³

Intermediate People's Court of Shenzhen also have developed an innovative mechanism using the litigation service platform³⁴ by employing intensive aurora system, control network and hawk-key investigation to set up a most advanced enforcement disclosure platform to upload the information of the dishonest persons subject to the enforcement on Shenzhen Credit Website for increasing the efficiency in enforcement cases.³⁵ Moving forward, the courts in Shaanxi have introduced the video broadcasting of the enforcement activities in order to expand the scope of disclosure in enforcement cases in order to increase the transparency and openness in enforcement work.³⁶

Enforcement Information Sharing and Joint Punishment Mechanism Developed against Judgement Defaulters

The Supreme People's Court have established and promoted the mechanisms for enforcement information sharing and developed innovative ways for the development of the enforcement investigation and control methods through the cooperation of public security organs, finance departments, land and resources bureaus, industrial and commercial administration, rural-urban development departments, and other assistance agencies. Moreover the strict enforcement system has been implemented through the supporting efforts of credit platform of the railway administration, civil aviation administration, commercial and industrial administration, financial and banking institutions by imposing restrictions on the judgement defaulters.³⁷

The SPC has concluded joint agreements with the above mentioned departments to improve the enforcement mechanism and achieve the efficiency. For instance, to force the judgement defaulters to satisfy the claims as per judicial judgments, the dishonest persons are barred to purchase luxury facilities i.e. they cannot buy the birth tickets of the trains, tickets of first class seats and air tickets. Moreover the defaulters cannot hold office as legal representative or as the one of the senior executives of the enterprise. Restrictions also forbid them to apply for loan facilities and other social services which ultimately force the dishonest persons to satisfy the claims of the

³¹ Daily, China. "White Paper: Judicial Transparency of Chinese Courts." February 27.2017 (2017): 2017-02.

³² See The first 12368 litigation service intelligence platform opened in Shanghai, available at <http://www.top-news.top/news-12939328.html> (Last Visited 30 June 2019)

³³ Daily, China. "White Paper: Judicial Transparency of Chinese Courts." February 27.2017 (2017): 2017-02.

³⁴ See <http://ssfw.szcourt.gov.cn> (Last Visited 30 June 2019)

³⁵ See Shenzhen Credit Website; <http://www.szcredit.com.cn> (Last Visited 30 June 2019)

³⁶ See Judicial Transparency by People's Courts SPC's Report 2017, available at http://english.court.gov.cn/2017-03/14/content_28552039_3.htm (Last Visited 30 June 2019)

³⁷ Creemers, Rogier. "China's Social Credit System: an evolving practice of control." Available at SSRN 3175792 (2018).

enforcement proceedings and fulfil the legal obligation.³⁸

In this way the SPC has managed to develop the credit punishment system against dishonest persons who are subject to the enforcement by jointly working with more than 40 national institutions and authorities doing social administration function and the scope of enforcement punishment have been expanded from the realistic social activities to the virtual network space so as to fully restrict the utilization of social services except those which are necessary for living operation.³⁹

Till the end of 2016, information regarding 6.44 million judgement defaulters was made public, 5.76 million persons were effectively prohibited from purchasing air ticket, and 2.07 million dishonest persons were barred from purchasing soft birth or fast train tickets. This mechanism of social facilities restrictions have contributed in the effective enforcement of judicial decisions by forcing the dishonest persons through implementing various restrictions making the enforcement system faster and efficient.⁴⁰

Development of Online Judicial Auction System

The development of mechanisms for the online judicial auction is also another important step towards judicial transparency and the effectiveness of judicial enforcement of the cases. The people's courts of China have been paying huge consideration to create system for the online auction. In order to provide legal basis, clarify the subjects and mechanisms for judicial auction, explain legal effects and assumption of liability, the SPC, in August 2016, issued the "*Provisions on Several Issues Concerning Online Judicial Auction by People's Courts*".⁴¹

Following the guidelines which have been given by the SPC, the People's Courts at all levels have developed mechanisms for judicial auction using the information technology. By the end of 2016, more than 1600 people's courts from 28 provinces had already joined the platform for judicial auction on the platform of Taobao⁴² and effectively carried out more than 320,000 judicial auctions and conducted the sale of more than 190 billion RMB with the successful selling rate of 89% at an average premium rate of 42% and saved commissions of more than 4.2 billion RMB for the concerned parties. It is important to mention here that people's courts in Zhejiang province had launched the online judicial auction platform with www.taobao.com in 2012 becoming the pioneer in developing online mechanisms for judicial auction.⁴³

Since then the courts of Zhejiang province have been actively involved in independent and impartial disposal of properties subject to the enforcement of the cases, by employing latest information technologies without deducting charges or commission for online auction. Moreover, the people's courts in Jiangsu have developed cooperation with Taobao.com connecting all the courts with the platform in order to completely open the online judicial auction. Courts of Jiangsu sold out 11,241 articles from 2014 to 2015 through online auction platform and collected total amount more than 30 billion RMB. People's courts in the Shanghai province have set up the judicial entrustment platform to manage the centralized and uniform judicial entrustment though conducting evaluation, price appraisal, judicial auction and the audit. Hence, it is obvious from the above discussion that in order to enhance judicial transparency in all aspects of the judicial activities including judicial auctions, the people's court are developing and constructing diversified mechanisms.⁴⁴

CONCLUSION

With the advancement in the technologies, the demand of the public of judicial openness has changed. Progress in the internet, electronic media and social media has brought opportunities as well as challenges in the way of judicial

³⁸ See Why Chinese Courts Put So Much Emphasis on Enforcement of Civil Judgments?, available at <https://www.chinajusticeobserver.com/a/why-chinese-courts-put-so-much-emphasis-on-enforcement-of-civil-judgments>, (Last Visited 30 June 2019)

³⁹ See Ibid

⁴⁰ Daily, China. "White Paper: Judicial Transparency of Chinese Courts." February 27.2017 (2017): 2017-02.

⁴¹ See Provisions of the Supreme People's Court on Several Issues concerning Online Judicial Sale by People's Courts, available at <http://en.pkulaw.cn/display.aspx?cgid=276895&lib=law> (Last Visited 30 June 2019)

⁴² See GAO Mou "On the System Construction and Technical Support of Judicial Auction through Network", available at http://en.cnki.com.cn/Article_en/CJFDTOTAL-ZZSF201402009.htm (Last Visited 30 June 2019)

⁴³ See Ibid

⁴⁴ See Judicial Transparency by People's Courts SPC's Report 2017, available at http://english.court.gov.cn/2017-03/14/content_28552039_3.htm (Last Visited 30 June 2019)

openness. As the part of overall plan of informatization and the efforts for the promotion of rule of law in the country, the Chinese People's Courts have been developing, promoting and undertaking innovative measures to play effective judicial role in those efforts. Consequently, during the recent past year diversified methods of judicial openness have emerged making the Chinese Judicial System one of the most advanced technological based innovative judicial systems in the world. Since the announcement of 3rd Plenum Decision of the 18th Central Committee of the Chinese Communist Party, People's courts at all levels have accelerated the efforts to promote judicial openness and judicial transparency. Under the direction of the Supreme People's Court, the courts at all level have been developing innovative mechanisms for achieving judicial openness and transparency to strengthen the judicial credibility. The people's courts at all levels though out the country are advancing network bases, databases and information basis for judicial openness in order to create "smart courts" and transform the methods of judicial openness. The People's Courts of China at all levels have been modernising the concept of judicial openness by constantly improving and innovating the platforms for judicial transparency, expanding the scope of judicial openness and increasing the quality and effect of transparency to satisfy the diversified demands of the public for open, transparent, fair and efficient justice. The overall developments in the area of openness have added credibility and legitimacy to the judicial system. Issuance of the "*Several Provisions on Strictly Implementing the Open Trial System*", "*Several Opinions on Enforcement Disclosure by People's Courts*" and the "*Several Opinions on Strengthening the Trial Disclosure by People's Courts*" the "*Six Provisions on Judicial Transparency*" by the Supreme People's Court has required the People's Courts to place the information related to trials, enforcement and auction, open for the public resultantly adding strength into the judicial openness.