

Judicial System in China

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- I. Administrative Hierarchy and Court Level
- II. General Court System
- III. Special Courts
- IV. Organization
- V. Jurisdiction
- VI. Judges

I. Administrative Hierarchy

- State: Unitary System[单一制]
- Provincial Units: 34
 - Provinces[省]: 23
 - Including Taiwan
 - Municipals Directly under the Central Government [直辖市]: 4
 - Autonomous Regions[自治区]: 5
 - Special Administrative Regions[特别行政区]: 2
 - Hong Kong [香港]、Macau[澳]
 - ? the future of Taiwan
- Cities [市:自治州、县、自治县、市]
- Counties[县]
- Town[乡]
 - ? The status of Villages[村]



Court Level

- | | | |
|------------------------|----|--|
| ■ State | → | ■ The Supreme Court:1 |
| ■ Provincial Units: 34 | → | ■ High Courts: 32[mil.court]
(Tai, Kong, Macau) |
| ■ Cities | → | ■ Mid-Level Courts
(Intermediate Courts):
341/409[2010年] |
| ■ Counties | → | ■ Basic Courts: 2901/3117 |
| ■ Town | →? | ■ Tribunals |

II. General Court System

- Constitution: Supreme Court [资料]
- All over China (Mainland): judicial organs
- Hierarchy: 4 Levels
- Circuit Court (2015): First CC; Second CC
- Civil law system tradition: precedent without binding force
- Supreme court: judicial interpretation

Special Situation in SARs & Taiwan

- One Country Two System
- SARs: independent judicial system *de jure*
 - Basic Laws
 - Hong Kong: common law tradition
 - Macau: Portugal law tradition
- Taiwan: independent judicial system *de facto*

III. Special Courts

- Under the Supreme Court
- Special Matters
 - Military Court
 - Maritime Court (Shipping Law)
 - Railway Court [.....*in transition*]
 - Forest Court [.....*in transition*]
 - ...

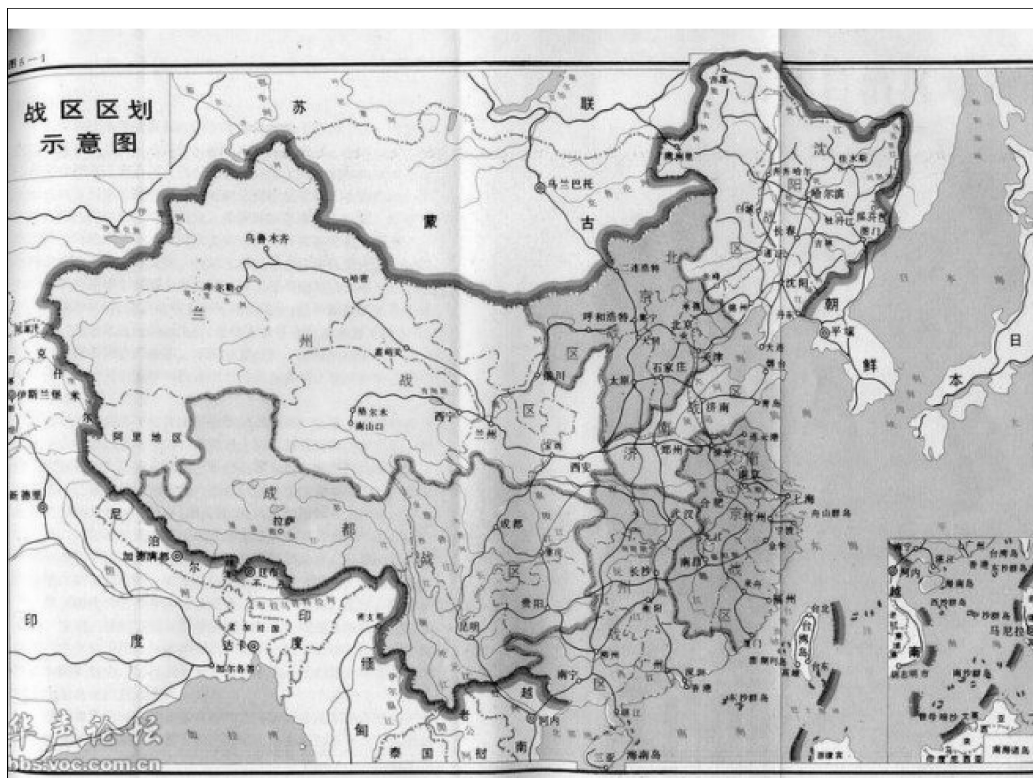
Military Courts-1

■ Military Courts[军事法院]

- PLA M.C. [高院]
- Major Military Regions M.C. , Navy M.C., Air Force M.C. [军区、兵种军事法院:中院]
- Basic M.C.: provincial military region[省军区:基层]

- Jurisdiction

- Criminal Cases [刑事案件]
- Debate: Civil Cases? [2001 S.C. Reply]



Military Courts-2: Court Levels

- PLA M.C. →
- Major Military Regions M.C. , Navy M.C., Air Force M.C. →
- Basic M.C.: provincial military region →
- The Supreme Court:1
- High Courts
- Mid-Level Courts (Intermediate Courts):
- Basic Courts

Maritime Courts

- Maritime Courts
 - Mid-Level Courts: 10 Ports [中院: 10个]
- Jurisdiction
 - Maritime cases: business law

Maritime Court Locations



Court Levels

- The Supreme Court:1
- High Courts
- Maritime Courts →
- Mid-Level Courts
(Intermediate Courts):
- Basic Courts

Railway Transportation Courts

- Railway Transportation Courts[铁路运输法院（刑经民案件）]
 - Mid-Level RTCs: Railway Bureaus[铁路管理局（中级）:14个]
 - Basic RTCs: Railway Sub-Bureaus[铁路管理分局（基层）]
- Jurisdiction [铁路线上、在编职工]
 - Criminal Cases
 - Civil Cases

Court Levels

- The Supreme Court:1
 - High Courts
 - Mid-Level Courts (Intermediate Courts):
 - Basic Courts
- Mid-Level RTCs: Railway Bureaus → ↗
- Basic RTCs: Railway Sub-Bureaus →


Problems?

- abnormal relationship
 - Railway: enterprise
 - Court: national organ
- justice in doubt
 - court, procuratorate, public security organ
 - Case: 2008.9.24. the mentally ill Peasant CAO Dahe[曹大和] tied by the chief conductor HUANG Jiancheng[黄建成] with sticky tape, died next day in the train. two-year imprisonment on probation; RMB 120 thousands compensation.

Forest Courts

- Forest Court [林区法院] :
 - Mid-Level Court: District Forest Bureaus [地区林业局:中级]
 - Basic Court: Forest Bureaus [林业局: 基层]
- Jurisdiction[破坏森林、事故、涉外案件]
 - Cases of forest destroy
 - Cases of accident
 - Cases of foreign factor

Court Levels

- The Supreme Court:1
 - High Courts
 - Mid-Level Forest Courts →
 - Mid-Level Courts (Intermediate Courts):
 - Basic Forest Courts →
 - Basic Courts
- 

Other courts

- Oilfield Courts
- Cultivation Courts

IV. Organization

- Organic Law: 1979, 1983, 2006
- General Provisions
 - Independent Exercising of judicial Power (Art.4)
 - Equally application of law (Art.5)
 - Languages using right (Art.6)
 - Public hearing (Art.7)
 - Right to defence (Art.8)
 - Collegial system (Art.10)
 - Judicial Committee (Art.11)
 - Two Instance Final Adjudication System (Art.12)
 - **Death penalty (Art. 13)**
 - Supervision: president, Supreme Court, Supreme Procuratorate (Art. 14)
 - Withdrawal (Art. 16)

- Organization and functions
 - Basic Court:
 - president, vice-presidents and judges
 - tribunals according to local conditions, population and cases
 - Mid-level Court
 - president, vice-presidents, chief judges and associate chief judges of divisions, and judges
 - criminal division, a civil division and an economic division, and may set up other divisions as necessary

- High Court

- president, vice-presidents, chief judges and associate chief judges of divisions, and judges
- criminal division, a civil division and an economic division, and may set up other divisions as necessary

- Supreme Court

- president, vice-presidents, chief judges and associate chief judges of division, and judges
- criminal division, a civil division and an economic division, and may set up other divisions as necessary
- Judicial interpretation

- Judges and Other Personnel of the People's Courts

- President election: "Citizens who have the right to vote and stand for election and have reached the age of 23 shall be eligible to be elected presidents of people's courts or appointed its vice-presidents, chief judges or associate chief judges of division, judges or assistant judges, except for those persons who have been deprived of political rights. "
- professional legal knowledge: "The judges of the people's courts shall possess the professional legal knowledge."

- Congress & Standing Committee of Congress:
 - Congress elects president, Standing Com. Appoint vice president, chief judges etc
- Term of office:
 - “The term of office of presidents of people's courts at all levels shall be the same as that of the people's congresses at the corresponding levels. ”

- People’s juror:
 - “Citizens who have the right to vote and stand for election and have reached the age of 23 shall be eligible to be elected people's jurors; however, persons who have once been deprived of political rights shall be excluded. ”
- Clerk:
 - “People's courts at all levels shall recruit clerks to record the court proceedings and to handle other matters concerning the legal proceeding.”

- Marshals, forensic physicians and policemen
 - “Local people's courts at various levels shall have marshals to execute judgments and orders in civil cases and, in criminal cases, the parts of judgments and orders concerned with property.
 - Local people's courts at various levels shall recruit forensic physicians.
 - People's courts at all levels shall recruit a certain number of judicial policemen. ”

V. Jurisdiction

- Organic Law, Procedural Laws
- Basic court
- Mid-level Court
- High Court
- Supreme Court

Civil jurisdiction

- Civil Procedural Law: 1991 (1982 test, 2007/10/28 amendment, 2012/08/31 amendment)
- Jurisdiction by Forum Level
 - Basic court
 - Mid-level Court
 - (1) major cases involving foreign element;
 - (2) cases that have major impact on the area under their jurisdiction; and
 - (3) cases as determined by the Supreme People's Court to be under the jurisdiction of the intermediate people's courts
 - High Court
 - The high people's courts shall have jurisdiction as courts of first instance over civil cases that have major impact on the areas under their jurisdiction.
 - Supreme Court
 - (1) cases that have major impact on the whole country; and
 - (2) cases that the Supreme People's Court deems it should try.

- Territorial Jurisdiction: defendant's domicile & habitual residence
- Exceptional situations:
 - (1) those concerning personal status brought against persons not residing within the territory of the People's Republic of China;
 - (2) those concerning the personal status of persons whose whereabouts are unknown or who have been declared as missing;
 - (3) those brought against persons who are undergoing [**rehabilitation** through labour] compulsory rehabilitation measure[2012]; and
 - (4) those brought against persons who are in imprisonment.

- Transfer and Designation of Jurisdiction
 - No jurisdiction, transfer;
 - Can't exercise jurisdiction, designation
 - Jurisdictional dispute: common superior people's court

Criminal Jurisdiction

- Criminal Procedural Law: 1989, 1996, 1998 Judicial Interpretation, 2012
- Basic court
- Mid-level Court
 - (1) counterrevolutionary cases and cases endangering state security;[amended: State security, terrorism]
 - (2) ordinary criminal cases punishable by life imprisonment or the death penalty; and
 - (3) criminal cases in which the offenders are foreigners.[deleted]
- High Court:
 - major criminal cases that pertain to an entire province
- Supreme Court:
 - major criminal cases that pertain to the whole nation

Administrative jurisdiction

- Specific administrative acts vs. abstract administrative acts
- Specific administrative acts:
 - (1) an administrative sanction, such as detention, fine, rescission of a license or permit, order to suspend production or business or confiscation of property, which one refuses to accept;
 - (2) a compulsory administrative measure, such as restricting freedom of the person or the sealing up, seizing or freezing of property, which one refuses to accept;
 - (3) infringement upon one's managerial decision-making powers, which is considered to have been perpetrated by an administrative organ;
 - (4) refusal by an administrative organ to issue a permit or license, which one considers oneself legally qualified to apply for, or its failure to respond to the application;

- (5) refusal by an administrative organ to perform its statutory duty of protecting one's rights of the person and of property, as one has applied for, or its failure to respond to the application;
- (6) cases where an administrative organ is considered to have failed to issue a pension according to law;
- (7) cases where an administrative organ is considered to have illegally demanded the performance of duties; and
- (8) cases where an administrative organ is considered to have infringed upon other rights of the person and of property.

- No jurisdiction:
- (1) acts of the state in areas like national defence and foreign affairs;
- (2) administrative rules and regulations, regulations, or decisions and orders with general binding force formulated and announced by administrative organs;
- (3) decisions of an administrative organ on awards or punishments for its personnel or on the appointment or relief of duties of its personnel; and
- (4) specific administrative acts that shall, as provided for by law, be finally decided by an administrative organ.

- Basic court
- Mid-level Court
 - (1) cases of confirming patent rights of invention and cases handled by the Customs;
 - (2) suits against specific administrative acts undertaken by departments under the State Council or by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government; and
 - (3) grave and complicated cases in areas under their jurisdiction.
- High Court: grave and complicated administrative cases
- Supreme Court:
 - grave and complicated administrative cases in the whole country

VI. Judges[19万]

- Judges Law: 1995, 2001
- Functions, obligations, rights[法官职责、义务、权利]
- Qualifications [任职条件（第9条）、司法考试、兼职冲突]
- Withdrawal [回避、2年限制期]
- Grades of Judges: 12 [法官级别：12级-首席大法官、大法官（1级、2级）、高级法官、法官]
- Acts prohibited[禁止行为：不得罢工等]

- Art. 9 A judge must possess the following qualifications:
 - (1) To be of the nationality of the People's Republic of China;
 - (2) To have reached the age of 23;
 - (3) To endorse the Constitution of the People's Republic of China;
 - (4) To have fine political and professional quality and to be good in conduct;
 - (5) To be in good health; and
 - (6) To have engaged in legal work for at least two years in the case of graduating from law specialties of colleges or universities or from non-law specialties of colleges or universities but possessing professional knowledge of law, or to have engaged in legal work for at least three years for any person who works as a judge of a high people's court or the Supreme People's Court; or to have engaged in the legal work for at least one year in the case of Masters of Law, or Doctors of Law or Masters or Doctors of non-law specialties but possessing the professional knowledge of law, or to have engaged in the legal work for at least two years for any person who works as a judge of a high people's court or the Supreme People's Court.

- Article 10 The following persons shall not hold the post of a judge;
 - (1) To have been subjected to criminal punishment for commission of a crime; or
 - (2) To have been discharged from public employment.
- Article 15 No judges shall concurrently be members of the standing committees of the people's congresses, or hold posts in administrative organs, procuratorial organs, enterprises, or institutions, or serve as lawyers.

- Article 32 No judges may commit any of the following acts:
 - (1) To spread statements damaging the prestige of the State; to join illegal organizations; to take part in such activities as assembly, procession and demonstration against the State; and to participate in strikes;
 - (2) To embezzle money or receive bribes;
 - (3) To manipulate law for personal gains;
 - (4) To extort confessions by torture;
 - (5) To conceal or falsify evidence,
 - (6) To divulge State secrets or secrets of judicial work;

- (7) To abuse authorities, and to infringe upon the legal rights and interests of natural persons, legal persons, or other organizations;
- (8) To neglect his or her duty so as to wrongly judge a case or to cause heavy losses to the party concerned;
- (9) To delay the handling of a case so as to affect the work adversely;
- (10) To take advantage of the functions and powers to seek gain for himself or herself or other people;
- (11) To engage in profit-making activities;
- (12) To meet the party concerned or his or her agent without authorization and attend dinners or accept presents given by the party concerned or his or her agent; or
- (13) To commit other acts in violation of law or discipline.

Discussion

- How many judges needed?
- What is the function of the precedents?
- National Judicial Examination
- What is the status of international treaty?

- Thank you!

- Merci!