

Study on the Development of Chinese Judicial Committee System

Yang Liu¹, Jun Jiang²

¹Ph. D. Candidate of Law School, Beijing Normal University, Beijing, China

²Third Intermediate People's Court of Beijing, Beijing, China

Abstract: As the supreme judicial organization of the people's courts at all levels, the judicial committee is an unique judicial system of China, which, based on the principle of democratic centralism, exercises such functions as summarizing judicial experiences, discussing important and difficulty case, and studying problems occurred in judicial work. The judicial committee system emerged in the new democratic revolution period and gradually matured with the development of revolutionary struggles and founding of the People's Republic of China, and developed a distinct self-function evolution during the tortuous development of judicature thereafter.

Keywords: Judicial committee; historical study; historical limitations.

1. DEVELOPMENT AND EVOLUTION PROCESS OF THE JUDICIAL COMMITTEE SYSTEM

The judicial committee system is a unique judicial system of China, which is closely linked to the regime development and judicial system construction of China. Based on the evolution of functions of the judicial committee system and the grade of maturity of the judicial committee system, the formation and development thereof in China may be divided into four stages, namely, the embryonic stage in the new democratic revolution period, the progressive formation, establishment and period development stage from founding of People's Republic of China to the socialist transformation in 1955, tortuous development stage from anti-right deviation in 1957 to the end of the Great Cultural Revolution in 1976, and the reestablishment and renovation and improvement stage after the Third Plenary Session of the 11th Central Committee of the Chinese Communist Party convened in 1976.

1.1 Embryonic stage in the new democratic revolution period (before 1949)

Emerged and developed along with the revolutionary struggles, the embryonic stage of the Chinese judicial committee system covers the whole new democratic revolution period. It is referred to as "embryonic" stage for three reasons: firstly, during this stage, the judicial committee showed no obvious systemic characteristic or systemic boundary, and the structure,

organizational form, and staff composition are mainly established in accordance with other systems; secondly, the new democratic revolution led by the Chinese Communist Party had not successfully seized the state power at that time and the judicial system was neither stable nor complete; thirdly, the functions and role of the judicial committee at that time are quite different from that of the modern judicial committee, and the judicature, integrating administration and judicature, partly exercises the function of revolutionary struggle and political purposes. To be specific, the embryonic stage of the judicial system can be further split into the following two phases.

Chinese soviet republic period (1931-1936)

The Chinese Soviet Republic was established on November 7, 1931 in Ruijin, Jiangxi province. The promulgation of the Interim Ordinance of the Judicial Department on Organization and Judgment¹ made by the Central Executive Committee in 1932 marks the initial establishment of the organizational form of judicial work as “the judicial work being exclusively administrated by the Supreme Court at the central level and being handled by judicial departments at the local level under the system of ‘integration of case trial and judicial administration’²”. Under such organizational form, the central government established the Ministry of People’s Judicial Committee consisting of the Central Judicial Committee and the Soviet judicial departments at province, county, and district levels. It is provided in the Interim Ordinance of the Judicial Department on Organization and Judgment that a judgment council shall be set up for each judicial department as its internal organization, which shall have the authority to make decisions on the issues and problems arising in the judicial administration, procuratorial work, and case trial within the jurisdiction thereof. On the other hand, in respect to personnel composition, the Ordinance requires the judicial department shall adopt the “double leadership system” of the government at the same level and the superior judicial department, and the judicial department at each level shall have the director, vice-director, judges, secretary, and clerks.³ Furthermore, Article 6 of the 1933 Directions of the Ministry of People’s Committee of Chinese Soviet Republic on the Work of Judicial Authorities (Extract) stipulates that with respect to each case, the judgment council shall carry out discussion and reach a principle for judgment, and such principle shall be the standard for judgment of the case

¹ Article 7 of the *Provisional Ordinance of the Judicial Department on Organization and Judgment* provides that a judicial committee composed of the director and vice-director of the judicial department, judges, and the director of the police and otherwise shall be established for each judicial department (i.e. court) above the county level.

² The “integration of case trial and judicial administration” means the judicial department at each level shall be in charge of both case trial and judicial administration.

³ See Zhang Jinfan, “History of Chinese Judicial System”, People’s Court Press, June of 2004: 565.

to avoid errors.⁴ Later, the Interim Organic Law of Local Soviet of Chinese Soviet Republic (Draft) was enacted in 1933, giving more specific provisions on the tasks, number of personnel, members, appointment procedures and other matters of the judgment council⁵. It stipulates therein that the judgment council shall consist of the director of the judicial department, judges, prosecutors, persons in charge of political administration organs and police organs, and representatives of Workers' and Peasants' Supervisory Committee, labor department, labor union, military political organs, and otherwise, with the director of the judicial department being the director of the committee. All committee members shall be reviewed by the soviet presidium at the same level and approved by the superior judicial department.⁶ So it is easy to note that the core personnel of the judgment council was existed together with the head of executive at the beginning, as the appointment thereof shall be reviewed by the head of superior executive. The provisions in relation to judicial department and judgment council in the aforesaid documents jointly sketch the basic mode of local judicial work during the period of Chinese Soviet Republic, that is, "judicial department handles cases with the decision-making power conferred to the judgment council". Therefore, it is generally believed in the theoretical circle concerning researches on the emergence of judicial committee system that, since the judicial decision-making power was held by the judicial committee, such judgment council system at that time is the predecessor of our judicial committee system.

It should be noted that, in addition to the concept of "judgment council, the Organic Law of Chinese Soviet Republic enacted on February 17, 1934 introduced the concept of "organizing committee" with respect to the Supreme People's Court in charge of the judicial adjudication at the central level. Article 38 of the Law provides that an organizing committee shall be set up in the Supreme Court with the number of personnel being determined by the chairman of Central Executive Committee subject to necessity and the Chief Justice of the Supreme Court being the chairman thereof, to discuss and make decisions on the important problems and cases within the authority of the Supreme Court. Hence, besides the local judgment council, the "Organizing

⁴ See Wu Yanping, Liu Genju et al., "*Compilation of Reference Materials in Relation to Criminal Procedure*" (1st volume), Peking University Press, October of 2005: 19.

⁵ The tasks of the judgment council are to discussing and proposing suggestions on issues and problems in relation to judicial administration, procuratorial work, and case trial. The number of personnel thereof shall be decreased from the province, municipality, county, and district level successively. The judgment council shall consist of the director of the judicial department, judges, prosecutors, persons in charge of political administration organs and police organs, and representatives of Workers' and Peasants' Supervisory Committee, labor department, labor union, military political organs, and otherwise, with the director of the judicial department being the director of the committee. All committee members shall be reviewed by the soviet presidium at the same level and approved by the superior judicial department. See the Legal History Teaching and Research Office of Southwest University of Political Science and Law, "*Compilation of Materials concerning Chinese Legal History*" (3), 1982: 261-263.

Committee” of the Supreme Court at that time has similar duties and functions to the judicial committee established in each court after the founding of the People’s Republic of China, and can be also regarded as the embryonic body of judicial committee.

Shaan-gan-ning border region government period (1937-1948)

In July of 1937, the Central Committee of the Communist Party of China, under the direction of the Chinese united front against Japanese aggression and for the purpose of cooperation with the Kuomintang Party in resisting the Japanese invasion, dissolved the Northwest Office of the Central Government of Chinese Soviet Republic, and established the Shaan-Gan-Ning Border Region Government in September 6, 1937. The judicial system of the Soviet government was retained in the Border Region while Soviet Central Ministry of Justice established in February of 1937 was renamed as the Supreme Court of Shaan-Gan-Ning Border Region. In August 1938, the Supreme Court of Border Region issued the No.4 Order and declared therein that judgment council in each county (or municipality) as the local judicial authority thereof to take charge of the first instance of cases. The judgment council of each county (or municipality), consisting of the county magistrate, secretary of the county committee, and judges and other personnel, shall discuss and decide major and importance cases, with a view to drawing on the wisdom of the masses, and guaranteeing the achievement of correct judgment and proper sentencing, and implementation of the Party’s policies⁷. The governments at all levels in Liberated Area in North China all had judiciary committees or judgment councils, which were changed into the judgment research committees in March, 1949.⁸

During this period, the concept of judicial committee was introduced in the construction of judicial system in liberated areas. In August 1942, the Shaan-Gan-Ning Border Region Government officially decided to set up judicial committee, and the No. 446 Order issued by the Shaan-Gan-Ning Border Region Government on August 22 approved the Organic Rules of Shaan-Gan-Ning Border Region Government on Judicial Committee, which contains provisions on the organization, personnel composition, authority and case handling procedures of judicial committee. With respect to personnel composition, the five members of the judicial committee shall be the chairman and vice-chairman of the government, and government

⁶ See “*Code of People’s Republic of China*”, Editorial Committee of Code of PRC, China Economic Publishing House, 1994: 221.

⁷ See Ma Xiwu, “*Judicial Work in Shaan—Gan-Ning Border Region During New Democratic Revolution*”, quoted by Legal History Teaching and Research Office of Southwest University of Political Science and Law in “*Compilation of Materials concerning Chinese Legal History*” (3), 1982: 531.

⁸ See “*General Order for the Change of People’s Government of North China and Judiciary Committees at All Levels into Judgment Research Committees*”, quoted by Legal History Teaching and Research Office of Southwest University of Political Science and Law in “*Compilation of Materials concerning Chinese Legal History*” (3), 1982: 524.

committee members. The judicial committee shall have a secretary-general and a secretary. The authority thereof shall include: acceptance of criminal appeals against judgment of first or second instance made by high court; acceptance of civil appeals against judgment of second instance made by high court; acceptance of administrative cases and matrimonial cases; review of death sentence; and interpretation of statutes. The judicial committee shall handle with cases by two methods: on one hand, the committee meeting shall be convened once a month for discussion and judgment of cases, and such meeting may also be convened temporarily if necessary; on the other hand, any criminal case in which the sentence being imprisonment of less than five years, or any civil case in which the subject matter is subject to a contract signed before January of 1941 with a value less than 2,000 Kuomintang currency, or subject to the contract signed after January of 1941 with a value less than 10,000 Border Region Dollars, shall be handled by the chairman and vice-chairman of the committee with a report of such being made to all committee members at meeting. It shall be pointed out that the concept of “judicial committee” firstly referred to in the Organic Rules of Shaan-Gan-Ning Border Region Government on Judicial Committee is largely different from the present judicial committee, for, as we can tell from the duties thereof, such committee, being officially dissolved in accordance with the No. 849 Order of the Border Region Government on February 15, 1944⁹, exercises part of the functions of the third trial level.

1.2 Formation, establishment and period development stage (1949-1956)

Pursuant to Article 6 of the Ordinance of the Central People’s Government on Organization of Supreme People’s Court promulgated on December 20, 1949 by the Central People’s Government, “the judicial committee of the Supreme People’s Court shall be consisted by the president, vice-presidents, and committee secretary-general, to decide trial-related policies and guidelines, major and important cases, and other significant issues.” Such Ordinance defines the judicial committee as the internal trial organization conferred with leadership in trial work for the first time, and the three functions of the judicial committee provided in the Ordinance, namely “to decide trial-related policies and guidelines, major and important cases, and other significant issues”, are similar to those of the present judicial committee, and therefore can be deemed as the predecessor thereof to some extent. So it is reasonably believed that the provisions on judicial committee system contained in the Ordinance of the Central People’s Government on Organization of Supreme People’s Court symbols the formation of the judicial committee system in China. However, the Central People’s Government only makes provisions

⁹ See Liu Quan’e, “Historical Development of the Judicial Committee under Shaan-Gan-Ning Border Region Government”, Journal of Yunnan Administration College, 2012(1).

in the Ordinance to set up judicial committee under the Supreme People's Court but it has not been adopted on a national scale as the People's Republic of China was just founded and political, economic, cultural and all other undertakings were in start-up stage.

In order to meet the local judicial demands, the first National Judicial Conference held in 1950 passed the General Rules for Organization of the People's Courts, which requires each people's court at the county and municipal level and divisions thereof to set up a judicial committee consisting of the chief judge, vice chief judge and judges. However, the judicial committee provided in the General Rules is fundamentally different from that of the Supreme People's Court provided in the Ordinance of the Central People's Government on Organization of Supreme People's Court in nature, as the former is more of a collegiate body in charge of case trial judging from the provisions in the General Rules concerning the approval authority and case trial. In 1951, the Interim Ordinance of People's Republic of China on People's Courts was promulgated, and Article 15 thereof provides that "Each people's court at provincial or county level shall set up the judicial committee thereof consisting of the president or vice president, chief judge (in case of any division) and judges. The president or vice president shall take the post of chairman of the committee. In case of convening any meeting of the committee, the persons in charge of relevant bodies and other personnel used to participate in the trial of the case or cases concerned shall be invited to attend the meeting. The judicial committee shall be responsible for the handling of important or difficult criminal and civil cases, and make direction with respect to policies and trial principles." Since then, the judicial committee of modern significance has been introduced to every provincial or county people's court of the country, which milestones the establishment of judicial committee system in the national court system of China.

The first Organic Law of People's Court of People's Republic of China was enacted in 1954, which established the judicial committee system with Chinese characteristics in the form of state law for the first time. Article 10 of the Law provides that: 1. people's court at each level shall set up the judicial committee thereof; 2. the judicial committee is designed to summarize case trial experiences, discuss major or difficult case and deal with other trial-related problems; 3. members of the judicial committee of the local people's court at each level shall be appointed and removed by the people's council at the same level upon the recommendation of the president of the court, and the members of the judicial committee of the Supreme People's Court shall be appointed and removed by the National People's Congress upon recommendation of the president of the Supreme People's Court; 4. the meeting of judicial committee shall be presided over by the president of the court and the chief procurator of the

people's procuratorate at the same level shall have the right to attend the meeting. The aforementioned provisions in the Organic Law not only further confirms the judicial committee system in the form of state law, but also contains express provisions on the tasks, personnel composition, appointment and dismissal, meeting host and other issues of the judicial committee. So far, the modern judicial committee system has been officially established.

The judicial committee system of China achieved temporary development from the promulgation of the Organic Law of People's Court in 1954 to 1957. The Supreme People's Court convened the first judicial committee meeting on March 10, 1955 pursuant to the aforesaid provisions and declared at the meeting the establishment of the judicial committee of the Supreme People's Court, and set up relevant working systems. Soon afterwards, judicial committee has been established at each local people's court. With the increasing deepened judicial practices, local people's courts successively put forward questions and problems after establishment of the judicial committee, and the Supreme People's Court made clear and detailed explanations and statements on the structure, tasks, working procedures, and authorities of the judicial committee by means of "letter", "reply" and otherwise.¹⁰ Besides, the connotation of the judicial committee system has been constantly improved in practices and the working systems thereof have also been gradually improved.

1.3 Tortuous development stage (1957-1978)

Beginning with the "Anti-right Deviation" in 1957, Chinese judicial system has been weakened and the left-leaning (progressive) thoughts risen to dominance in judicial work since the second half of 1957, believing that judicial authorities are the instrument of dictatorship and has to be controlled by the politically reliable personnel, which caused a lot of problems in judicial work, such as inaccuracy in qualitative determination of crimes, unfair penalty measurement, and arbitrary judgment of crimes. Therefore, some authorities of local judicial committees were gradually exercised by organs such as "court executive committee", and the judicial committee was unable to function properly. Though the judicial personnel made great endeavors to improve the judicial environment during this period,¹¹ the "Great Cultural Revolution" from May of 1966 to October of 1976 still caused deadly and irreparable damages

¹⁰ For example, the Supreme People's Court, in the *Reply to the Questions Concerning Signature on Judgment of Cases Discussed by the Judicial Committee* made on July 23, 1957, clearly defined "the judicial committee is case trial body of the people's court and is empowered to directly make the final and binding decisions on the substantial handling of cases".

¹¹ The 6th judicial working meeting of the Supreme People's Court was convened in December, 1962, in which the *Rules on Certain Issues in the Work of People's Court* was amended and passed after discussion and deliberation. It is provided in the Rules that "all major and difficult cases, summary of trial experiences, and major issues in relation to judicial work shall be discussed and decided by the judicial committee." Thus, the functions of judicial committee were partly reestablished.

to the established judicial system. For instance, some judicial authorities including court were smashed by the rebels, people's courts at all levels were replaced by military control teams, and the internal bodies and systems of court including judicial committee were paralyzed or dissolved. From the ending of the "Great Cultural Revolution" to 1978, the people's courts had been restored but the judicial committee system had not been recovered yet, and the original functions thereof were mainly exercised in the form of group discussion by the leading Party Group of court.

1.4 Reestablishment, renovation and improvement stage (1978-)

After the Third Plenary Session of the 11th Central Committee of the Chinese Communist Party held in 1978, the judicial system of China begun to restore and achieved development. The Second Session of the 5th National People's Congress held on July 1, 1979 passed the Organic Law of People's Court of People's Republic of China, which retained most of the provisions on judicial committee system contained in the 1954 Organic Law of People's Court, marking the reestablishment of the judicial committee system. Meanwhile, the 1979 Organic Law contains new regulations on the appointment and dismissal of the judicial committee members of the people's courts at all levels, substituting the "be appointed and removed by the people's council at the same level upon the recommendation of the president of the court" for "be appointed and removed by the people's council at the same level upon the recommendation of the president of the court", and adding that "the judicial committee shall adopt the system of democratic centralism". Thus the fundamental principles are established for the duty exercise of judicial committee. In the sequent amendments to the Organic Law of People's Court made in 1983 and 1986, no major change has been made in respect of the provisions on judicial committee, but specific provisions has been made on the judicial committee system in procedure law. For example, Article 107 of the 1979 Criminal Procedure Law of People's Republic of China provides that "in case of any major or difficult case that the president of the court deems necessary to be submitted to the judicial committee for discussion, the president of the court shall submit such case to the judicial committee for discussion, and the decision made by the judicial committee shall be executed by the collegiate bench", giving clear definition on the leading role of the judicial committee over the collegiate bench. Also Article 39 of the 1982 Criminal Procedure Law of People's Republic of China (Trial) also contains similar regulation, providing that "the handling of major or difficult cases shall be submitted by the president of the court concerned to the judicial committee for discussion, and the decision made by the judicial committee must be executed by the collegiate bench". Nevertheless, the administrative procedure law of China has no similar provisions.

In order to meet the demands in construction and development of socialist market economy, the judicial system of China has experienced a long term of reform and improvement since 1990s, during which the judicial committee system has also entered into smooth and steady reconstruction and fast reform and improvement.

2. HISTORICAL EVALUATION ON JUDICIAL COMMITTEE SYSTEM

2.1 Historical inevitability of the emergence and development of judicial committee system in China

Judicial committee system is a significant component of Chinese judicial system and the emergence and development thereof depend on relevant factors like regime basis, economic development and particular situations of China. Firstly, as an institutional achievement of judicial localization, judicial committee system is the historical choice made by the Chinese society. State creates laws while laws reflect the will of the ruling classes of the state and serve the state and such ruling classes.

Due to the state nature of people's democratic dictatorship, China is bound to carry out the people's judicial system, which will definitely confirm, safeguard and promote the political system of people's democratic dictatorship. Therefore, the emergence of judicial committee system will inevitably be closely connected with politics and the ruling party. More specifically, judicial committee system emerged in the time of revolution and struggle. Under the circumstance that the Communist Party has not fully seized power, the candidates for the offices of judicatory, to the larger extent, or of the judgment council, in the core sense, must and have to be someone with political background in order to win the recognition of the Party. To some extent, the appointment of judicial offices in the time of revolution and struggle has been treated as a part of political appointment for the fact that a man serving the Party and its regime is more likely to win the trust of people compared with someone without such experience or with opposite experience.

Judging from the features of sprout development of the judicial committee system in China, its nature and functions are basically determined by the basic principles followed by the regime construction in revolutionary base. For example, the basic principle for regime construction in Shaan-Gan-Ning Border Region is the combination of legislation and execution. The supreme organ of power in the Border Region is the People's Council, the functions and duties of which include formulation of laws, election and supervision of government and judicial organs thereof and otherwise. In other words, the judicial organ of the Border Region is created by and

shall be accountable for the People's Council, with its working goals and functions being in consistency with the regime of the Border Region.

To sum up, the emergence and development of judicial committee system leads to the high consistency between laws and political decisions made by the ruling party in such fundamental aspects as class nature, economic base and guiding ideology. As the judicial committee system owns high relevance and correspondence with the political system, judicial system, legal traditions, practical needs and international environment of Chinese society, we believe that the emergence and development of judicial committee system is not an accidental event in history or the product of personal will of a particular leader, but an inevitable choice of society and history. Secondly, as a unique Chinese judicial system with long-term stable existence in Chinese society, judicial committee system is the product of judicial practices in Chinese society. Before the end of the Qing dynasty, the significance of judicature is "only to protect the dominant position and interests, failing to protect the fundamental interests of the masses radically". In stark contrast, people's judicial system is established under the leadership of the Chinese Communist Party in modern times, with a view to protecting the fundamental interests of the people. The people's judicial system is tested by history and is the inexorable outcome of the development of judicial practices in modern China.

As an important component of the judicial system in China, judicial committee system has, for a long time in history, protected the stability of judicial system, effectively refrained the antagonists of revolution and crimes at wartime and the early years of the nation, fully implemented the Party's concepts of solid position and founding of nation and achieved democratic centralism of people's justice in a smooth and efficient manner. Comparing with the existing legal construction, the judicial practices in history are not perfect, but under the circumstances of that time, the Party has, by establishing correct concepts of justice, led the judicial organs to rectify legal formalism, remedy the inherent defects of laws and achieved the goal of substantive justice of law, which is also the only choice of practice, to the largest extent with certain historical limitations existed. The reason for the lasting vitality of judicial committee system lies in the fact that it combines with the specific situations of China at different historical periods, reflects the interests of people, possesses distinct Chinese characteristics and complies with the fundamental realities of China.

2.2 Historical limitations of judicial committee system in development

With the constant completion and development of democracy and legal system, the judicial modernization has put forward increasing demands for judicial organizations and procedures with respect to democracy, science, fairness, openness and otherwise. Judicial committee

system is the product of specific historical conditions and judicial circumstances and is subject to inevitable historical limitations due to certain objective conditions in the process of development. Such limitations can be categorized as follows:

On the one hand, the defects in judicial professionalization. The judicial work of the new-born regime in the new democratic revolution period develops from nothing, the space-time conditions of which decide that there is no environment for professionalization of justice. Taking the Shaan-Gan-Ning Border Region as an example, in the Judicial Report dated in October 1941, Lei Jingtian, the president of High Court of Justice, said that “Due to lack of judicial personnel, the judicial organization in the Border Region is extremely incomplete. There are also many defects in real practices, such as lack of statutory basis, roughness of interrogation (illegibility of record and incompleteness of oral confession), belief in ex parte confession, procrastination in case processing, lack of execution with respect to case with judgment and otherwise. Such phenomenon as shallow trial grade, disordered procedures and backlog of cases exists in the judicial work at that time and the judicial personnel at that time are required to “implement judicature in accordance with politics”¹². Due to the influences of conditions and environment at that time, both leaders and judges in the judicial department have a weak understanding of justice, let alone any legal thinking. They treated judicial power only as a tool of class dictatorship. Objectively, it is the environment that limits the development of judicial professionalization and certain sacrifice in concepts and requirements for judicial professionalization can be understood.

On the other hand, the defects in judicial procedure. Neither the judgment council in the new democratic revolution period nor the judicial committee of the Supreme People’s Court and the judicial committees at provincial and county level in the early years of the nation has any specific procedural legal provisions on the performance of functions and duties. Until 1993 and 2010, the Supreme People’s Court issued the Working Rules of Judicial Committee of the Supreme People’s Court and the Implementation Opinions on Reforming and Improving the Judicial Committee System of the People’s Court successively in the form of normative documents, with a view to adjusting the power operation of judicial committee of people’s court. Objectively, the system design of judgment council in the new democratic revolution period values substantiveness over procedure, even ignores procedure. The reasons therefor can be summarized as: firstly, the legal tradition of valuing substantiveness over procedure for thousands of years still have strong influences. We cannot require the implementation of

¹² Lei Jingtian, “Report on Judicial Working Conference of Shaan-Gan-Ning Border Region” [R]. Edited by Han Yanlong. “Essays on Legal History” (5) [M]. Legal Press, 2006.

judicial work to completely break the restrictions of ritual indoctrination and establish legal procedures with unique value immediately upon ending of the long-existing feudal rule and secondly, the roughness in provision and unsophistication in system of the system design at the beginning can also account for such phenomenon. The problems of valuing practical operation over theoretical exploration and function exertion over rule design may be integrated into the orbit of legal system only when the history develops to a specific period and the regime is relatively stable.

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