
Analysis on case acceptance system in Chinese mainland

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Abstract

Concrete manifestation of litigation are the right of prosecution, the right to counterclaim, right of appeal, retrial litigation right and the right to be sued. For a long time, because of the unclear distinguish between prerequisite in prosecution and prerequisite in lawsuit, the court are actively and passively in debug. The usual strategy is "limited acceptance" and "difficulties in case filing" are questioned and criticized. So, obviously, the case filing system is not a mechanism system to open their doors to welcome. Changing the examining system of civil filing cases to filing cases registration system can not only provide opportunity to abolish "difficulties in case filing" matters and also highlights the judicial bear in pushing the construction of China's rule of law and is bound to boost national modernization management system and management ability. But if ignore the justice's own capacity and the construction of diversified dispute settlement mechanism, the ration to the construction of national advance system reform contrasts so well with the blind worship. In this situation, we must change concept of litigation, carry out the case-filing register system and strengthen the rampant litigation regulation to achieve multiple work. Only then, it can realize the discard and beyond from the review case to case-filing register.

Keywords

case acceptance, litigation right safeguard, indiscriminate litigation regulation, multiple work

1. Situation investigation of the examining system of filing cases

1.1 Abundant phenomenon of filing cases difficulty

From 2011 to 2014, the national court case growth are 5.85%, 8.82%, 6.82% and 7.54%, respectively. In 2014, for example, the national court solves 14.38 million pieces of all kinds of cases and criminal cases accounted for 8.30%, civil and commercial matters accounted for 63.43%, administrative accounted for 1.31%, appeal, retrial cases accounted for 0.91%, 0.02% of state compensation, perform cases accounted for 21.07%, commutation and parole accounted for 4.44%, other accounted for 0.52%. On the other hand, in recent years, the number of appeals of "tell" class in national court always far higher than the "complaint" class, which reflects the narrow of the competent range the justice "ring-fencing" and it also exposed how difficult of the filing cases difficulty the people reflected. Appeals of "non-judicial" class and other class also represent a significant proportion of the handling of complaint reporting, reflecting the necessity of implementing litigation separation and it also reflect that it must enhance people's awareness of the importance of the rule of law and insist that the dissemination and law-abiding to be a basic project of governing the country according to law for a long time. Obviously, the Chinese cultural logic system is stronger than the western logic. In the western countries, under the premise of the court can't refuse the referee, even for the new type case, it needs to use analogy. "If you can't find the corresponding laws, it must be to invent", thus to promote the growth of the law. But in China, the court is strictly limited to the applicable law role, the legislation and perfect the

law is not the duty of the court. The court can only wait for the new specification of legislation for the new type case.

In particular, in addition to the situations are reversed in 2014, from 2011 to 2013, the national court new revenue in administrative prosecution cases declined from 136000 to 123000, the state compensation cases also manifested a shrinking from 2108 to 2050. Visibly, affected by subjective multiple factors, administrative cases acceptance threshold is high. Just because the situation that so many administrative dispute is not into litigation channels, more and more people were forced to join the army "complaint reporting" especially "Capital Appeals force", which leads to the shake of people's respect for the law and the beliefs for the rule of law. In fact, the judicial power as a kind of rule of law can only reveal itself in the process of dispute resolution, and produced the rationality and necessity of its existence in the legislative and administrative process of dispute resolution. The reason is that in terms of jurisdiction, the dispute is the only object of adjustment and the court shall not refuse to accept the case materials and the judge also shall not refuse to judge as well.

1.2 Dispute type of filing case difficulty

Table 1 Number of first cognizance cases in province A in 2014

Type	Criminal		Civil prosecution	Administrative charges (including state compensation)	Total
	public prosecution	Private prosecution			
Real	34795	86	324588	4425	363894
Potential		2630	56458	5719	64807
Subtotal	37511		381046	10144	428701

Province A has a total of 127 courts, one the Supreme Court, 16 intermediate courts, 110 grass-roots court. In 2014, level 3 courts in province An actually accepted 363894 first instance cases, 9.6% of criminal cases, civil and commercial accounted for 89.2% and executive cases (including state compensation case) accounted for 1.2%. According to statistics, in 2014, involving potential cases increase quantity in level 3 court in province A were 64807, among this, potential increase quantities of intermediate court were 4632 and potential increase was 60175 in grass-roots court. In fact, the potential increase in the number of cases, in a sense is the current situation reflection of "prudent filing cases " or "filing cases difficulty". Because it was estimated from the position of a court of first instance, so the data might be conservative and it didn't consider the existence of appeal or protest cases. Visibly, the number of potential increased cases took up 17.8% of the actual filing cases of first instance. So many disputes cannot enter litigation channel, which precisely reflects how urgent and needed to conduct filing registration system reform.

Through type analysis of province A, its filing cases difficulty disputes mainly reflect in: (1) as for the administrative prosecution, the potential increase was 5719 in 2014 which was more than the actual number of cognizance, namely 4425 pieces. Mainly were related to land expropriation, housing demolition disputes; health, family planning, transportation, agriculture, tax administrative disputes; workers laid off from state-owned enterprises, cadres who were ex-servicemen working in enterprise and retired soldiers who filed for implementation of resettlement policy, endowment insurance, equal pay for equal work treatment. And administrative lawsuit after processing due to the illegal behavior of petitions.(2) As for the civil and commercial prosecutions, potential increasing number was 56458 in 2014, accounted for 17.4% of the actual number of cognizance cases which mainly involves policy enterprise restructuring, disputes of workers laid off, unpaid wages, pension insurance, retirement benefits, etc. caused by bankruptcy reorganization. And cases prosecuted by illegal fund-raising victims cannot enter into the prosecution of criminal procedure. The homestead building business, and small property right equaling disputes; large private lending but without contract and transfer credentials;

compensation and the collective income distribution dispute of rural land; resettlement compensation, compensation for prosecution caused by the requisition of stakeholders.(3) As for criminal prosecution, its potential increase was 2630 in 2014 but the actual number of cognizance was only 86 pieces. For four types handling after telling cases, especially eight kinds of minor criminal cases that the people's procuratorate doesn't prosecute, but the victim directly filed, they are not received often on the grounds that the criminal facts is not clear and the lack of evidence or informs the victims to report to the public security organ. (4) For execution cases, potential increasing number was 22448 in 2014 and the actual number of cognizance was 110373. Execution cases, execution filing of administrative case, execution filing of administrative non-judicial cases filed and the execution filing of the mediation case filing tend to decay.

1.3 The logic and harm of case-filing review system

Under the thinking of "prudent case filing", case filing chamber plays the role of "checking". Usually, the case filing review becomes a "filter", "screening machine" according to the standard of "can be filed", "can be solved" and "can be initiated". So it first entrusts to the government solve the problem. A typical example is the litigation caused by "Sanlu milk powder" incident. The court tries to lead litigants to go through the way of government coordinate compensation payments because it holds on the grounds that it belongs to the heavy, sudden public events. Secondly, it can be solved by the market on its own. For instance, as for companies, the field of securities and futures, the court will not accept the cases mainly using the reason that the time to accept and hear cases was not mature originally. Moreover, it entrusts the cases to alternative dispute resolution mechanism and actively guide the parties to resolve through the way of mediation, arbitration, administrative reconsideration. In the end, it comes to case filing after passing through the review. Visibly, through this way, different appeals may have found the different solutions, thus it can divert some cases, but these streamed out cases are often labeled "can't filed" or "deferred registration" by the court. With the continuous improvement and development of the above cases technology, it can form the so-called "limited to acceptance" road. Although this obtained the cushion for court, but the parties will make the echo of the "filing difficulty", which reduces the legitimacy of case-filing review system. "Limited acceptance" means the case judge delimit limits and category, for the cases beyond the delimited scope, a judge may be completely legal aside. This may sound a little "heart-pounding", but it is also the picture of reality. The complexity of the problem is that for those cases which meet the requirements of the law to accept but involve new type, sensitivity, group and other words, the court always maintain a high level of alert and put those which will associate with other social factors in judgment as far as possible and tend to refuge to the solution of the party and government framework like camera quick case filing, suspend the case, part of the case or no case filing so as to try to ease the pressure of the judicial and avoid getting involved in the vortex of public opinion. However, negative effects which caused by the "limited case acceptance" are with confrontational and long-term features. From client's perspective, "case-filing difficulty" means they are deprived of right to appeal and the impeded judicial channel also causes no gate to tell. When dispute happens, the difficulty to start the judicial process gives rise to the contradiction transfer between the parties and transfers into the contradiction between prosecutors and judges, and court which causes universal doubt for justice, respect for the law and the rule of law beliefs are also shaken. From the perspective of the court, although case filing reduces the pressure on the trial and execution, but it provides an opportunity like the delay, and refused to case filing behaviors. And the rule of "don't put cases on record by the end of the year" ignores the indicial law which results in some disputes to transfer from the "suits cases" into "complaint reporting cases". From the perspective of the power configuration, as a result of the infeasibility of normal public aid force, social contradictions cannot obtain timely resolution, so the parties may turn around to seek private relief means, even extreme way to protect rights, increase the social unstable factors. "Case filing difficulty" especially in administrative cases, it can't play the function of judicial power to restrict and supervise the executive power and completely ignores the "policy formation function" of the lawsuit or sentence and justice seems to be subservient to the executive power or its extension. Obviously, if the judicial ignores how the executive power running, and takes no

concern about the social whole justice, the judicial power in the power structure will have always been at a disadvantage position.

2. Background of case-filing review system

2.1 Legal principle analysis

From the dimension of civil rights for, "it is not produced in the lawsuit, but it is a natural rights of all people, this right shall not transfer and it also can't be deprived." The lack of litigation right at this level means the defect of civil rights as the main body personality. Treated right of action from the height of the human rights, litigation have achieved the legitimacy provided by the constitution which is so-called "litigation right is the first system of human rights in modern society under the rule of law". From the constitution dimension of litigation, the constitution of the litigation right is one of the development trend of modern constitutional government. As a basic human rights of constitution, it has derived civil litigation, administrative litigation and criminal litigation on the level of empirical method. And its content is manifested by the way of right of prosecution, should be litigious right, the right to counterclaim, right of appeal, the right to apply for retrial, etc. Among them, the right of prosecution is the core content of right to appeal and is one of the main appeal. Visibly, litigation, as a kind of public property rights, is bound to find the appropriate position on the constitution. From the judicial power attribution dimension, the judicial is produced from state power organs, but its source also lies in the people's sovereignty. The belonging of sovereignty and the location of sovereignty go from unification to separation, namely from oneness to division of the owner of the sovereignty and the power holder of sovereignty, which is a basic sign of maturity of sovereign relationship. So it can be thought that right to appeal is generated from the transformation process from private aid force to the public aid force. Because people have passed the right of self-defense and revenge by contract to the judicial organs, so of course, they have the right to require the public aid force from the judicial organ when their rights are damaged and the judicial organs should assume obligations of providing the judicial aid to the people. At the same time, in sequence of the litigation right and jurisdiction, litigation first and then jurisdiction. The initiative of litigious right and the passive of jurisdiction shows that the exercise of litigation right is the precondition of the occurrence of jurisdiction and it emphasizes the parties' litigation right with the value of calibration trial runaway constitutional and the value to shape the main body spirit of the right to appeal. From the dimension of power balance, the people's court exercises the judicial power in accordance with the law independently, namely known as "trial independence" and its differences from "judicial independence" is that the former is the power allocation based on the combination, but the latter one is a system structure under the system of separation of powers. However, although the combination of discussion and action is different from the separation of powers, but on the power balance, both one should not be different. In particular, protecting parties the rights to start the administrative litigation can play the supervision and restriction functions of the jurisdiction on the executive power.

2.2 System deconstruction

(1) The basis of a register case filing. Article 51 of "Administrative procedural law" prescribes that the people's court should register and put cases on record when the cases meet the conditions for prosecution. For those which can't be decided whether it meets the conditions for prosecution on the spot, it shall receive and point out the date of receipt of the bill of complaint, and decide whether to put on record within 7 days and decide not to put the cases into record when the cases can't meet the demand of the conditions of prosecution. Article 208 of "About the interpretation of apply the civil procedure law of the People's Republic of China" prescribes that when the people's court receives the civil indictment of the parties, if the indictment complies with the stipulations of article 119 of the civil procedure law and does not comply with the 124th regulation, the people's court shall register and put it on record. Article 112 of "Criminal procedural law" regulates that as for a case of private prosecution, the victim shall have the right to bring a suit directly. If the victim of the death or incapacity, its legal

representatives and near relatives shall have the right to sue and the people's court shall accept it according to law. For cases acceptance system reform, "about the opinions of the people's court filing registration system reform" focuses on the standard filing registration system reform from the macro while "several issues of regulations of the people's court case filing registration" is based on the clear operation and make sure the case filing registration process.

(2) The connotation of the case filing registration. Principles of judicial final settlement includes "judicial solution" and "final solution" two layers of meaning. In comparison, the western countries court's "logic" is to allow that all disputes has the possibility to enter the field that among the court's responsibility and then through the ADR or other mechanism, they are streamed out. Chinese contemporary judicial logic is "limited acceptance" thinking. First it passivates to the government, market and other dispute resolution mechanisms, and then through a case review system, it comes into the court's control landscape. Under the different logic, there is a different file system. The former is register and put on record and belongs to the open mode while the latter is the review case, belongs to control mode. The former first includes and then streams out while the latter one first streams out and then includes. On May 1, 2015, filing registration system is in the national court synchronous away, which not only helps to ensure easy exercise of all types of rights to appeal, but it also can regulate the behavior of the court's case-filing and reversely it regulates litigation right abuse behaviors and other behaviors that the parties are against the principle of good faith. At the same time, it refines the entity constructive rules and the procedure sexual rules of case filing registration and preliminary sets up the registration filing system which matches the condition control and process control, gives consideration on the trial supervision and litigation regulation and it also combines prevention and punishment of the abuse of litigation right in order to realize the balance between jurisdiction and litigation, register case filing in accordance with the law and the regulation of rampant litigation behaviors.

(3)The scope of case filing register. Case filing is the premise and foundation of the trial and it is the key to science of the jurisdiction. The people's court doesn't file the case in accordance with the law for those meeting the prosecution conditions, which is not a fair trial. But at the same time, only when disputes belong to the scope of actionable, dispute subject can exercise the right of prosecution, therefore, actionable range and scope of accepting cases reflect the relationship between the right of prosecution and trial. "On the one hand, the scope of accepting cases subject to actionable range and actionable range is the scope of accepting cases in principle and scope of accepting cases is determined by the actionable range. On the other hand, actionable range of implementation depends on the scope of accepting cases and scope of accepting cases embodies and reflects the actionable range. "According to the system design of the filing system reform, the range of case filing register will only apply to the five kinds of "initial" cases that the people's court accepts, namely the first-instance civil prosecution, administrative proceedings, criminal prosecution, and enforce the application and state compensation. But for the case filing of the appeal, the application for retrial, criminal complaint, executive reconsideration, and state compensation complaints filed, they are not applicable to the provisions of the case filing register. In addition, the case shall be made and will be manage, which does not mean that any prosecution can be accepted according to the order. The premise of case filing must comply with the legal prosecution conditions, and belongs to the director and jurisdiction scope of the people's courts.

(4)The process of case filing registration. First, it carries out register on the spot. "Registration" is for "complaint", "acceptance" is for "charged". For the "sue", except for requirement to submit the "complaint", it also demands to submit "materials" and other "evidence", so "registration" and "case filing" should be separated moderately. Of course, in most cases, for those conform to the rules of law suit, and the application of private prosecution, it should be "registered" and "case filing" on the spot. For those can't be decided whether meet the requirements of the law or not on the spot, it shall be decided whether to filed within the time limit prescribed by the law. Within the statutory time limit, those prosecution, private prosecution can't be determined whether conform with the law, they should be first filed. Besides, the costs is no longer the case premise and paying the fee for accepting the case will no longer be the necessary condition of court accepting the case. After register case filing, in addition to the

situation of allowing slow, reduction and exemption of costs, if the parties did not pay costs within the statutory time limit, the case will be withdrawn. In other words, the system with the principle of case filing on the spot and special case of delay the filing, on the one hand, relies on "on the spot" to crush any delay in filing work and perfunctory desire and on the other hand, it strictly regulates the exception of the filing on the spot principle and provides powerful means of checks and balances for the implementation of the principle. The second is a one-time fully informed and corrected. Sue, private prosecution and application materials which do not conform to the form, the disposable corrected materials and deadlines shall be notified in writing at one-time. In the specified time limit, materials has been made and conforms with the requirements as prescribed in the law, it shall be registered and filed. Third, it will not be accepted or not to put on record when it do not conform to the law of prosecution, and the application of private prosecution. The parties can file an appeal or apply for reconsideration. Fourth, it has to strictly implement case standard. And it is prohibited to set acceptance conditions outside the law and comprehensively cleans and prohibits the "local rules" which is not in conformity with the laws and regulations to ensure that the parties do not suffer discrimination by jurisdiction, the trial level so as to make the system to carry out a thoroughness. The fifth is to strengthen the construction of litigation service center, build service hall, legal services, 12368 service hotline trinity of legal service pattern providing convenience for the people to close to judicial justice, experience judicial and supervise judicial.

2.3 Rampant litigation regulation

In recent years, false lawsuits, malicious prosecution, illegal litigation are frequently occurred. Some timid to add parties, fictional or default facts or disputes, ask for litigation with "unreasonable" facts disorderly, "wicked" first, "evil" crooked a lawsuit and other abuse of litigation acts have become a public nuisance. In the long term, the court is bound to become the field for the implementation of illegal behavior and gaining profit. It is not hard to find that "filing registration system does help protect litigious right, but only protect the procedure of litigation and how much the parties may benefit needs further study. The concept of litigation should not be sanctified. "If the suit starts too easily, it will cause others to suffer from harassment from improper action game". Not only that, the current litigation cost type is not complete. One of the parties ask for rampant litigation, they may only need to bear the fees for accepting the case, but the victim of another party need to burden the litigation lawyer fee which thus forms a vicious circle caused by system design flaws.

So, following the permission configuration principle and the two-way interaction of "litigation-jurisdiction", the efficient and effective carrying out of filing system can not only depend on the court to regulate on the register case filing, but it also needs to norm and punish the abuse litigation right behaviors of the parties. On the one hand, it has to contrast prosecution conditions prescribed by the law to examine the eligibility and the interests of the litigants. Traditional parties' fitness lattice theory puts the litigants entirely upon the basis of the management and disposition. But, with the development of litigation and the reality of conflict and the growing recognition and emphasis on the suit confirming and suit forming and the expanding of the function of the judicial dispute resolution, litigant advantage theory of interests is put into use. Interest of litigation is originated from the situation that the entity benefits that plaintiff argued are realistically in danger and unrest. This "dangerous and disturbing" is originated from the infringement or dispute status, which not only holds the key to start the claims into the trial, but also an important start to the process of creating substantive law norms through the trial. Visibly, the function of the interests of litigant is to exclude the disputes without the interests of litigation and include the disputes with the interests of litigation. And the role of the interests of litigation is the basis to judge whether the objective method can form the subjective method, thereby, the interests of litigation has two fields of nature in entity and procedure. In addition, it has to establish damage compensation mechanism of litigation right abuse behaviors and victims can ask for compensation litigation based on the material damage and mental damage of them. Four is to perfect the legislation and for those abuse of litigation behaviors like false action, malicious action, unreasonable litigation, it has to clear administrative punishment and judicial punishment, criminal punishment standard. Fifth is to

enhance the concept of rule of law and include litigation integrity information into the social credit system cultivating public rational concept of litigation.

3. Construction of multiple dispute resolution mechanism

According to statistics, the first five months (May to September, 2015) of the implementation of case-filing register system, Province A court have filed 226057 cases, up 30.3% from a year earlier. The administrative cases have increased by 81.9%, criminal cases of private prosecution by 846.4%, the state compensation cases by 846.4%. Obviously, under the influence of superposition of in the case filing registration system and the judge, it has no way out only by continuously increasing the supply of judicial resources and emphasizing the monopoly role of justice for dispute resolution, and one-sided making public people blindly praise highly of "justice" can easily make the beginning difficulty of case filing to the end difficulty of "trial" and "execution". In this case, it shall follow the relative principle of dispute solution and dispute nature and envisage capacity of judicial itself and synchronous follow up the non-litigation dispute resolution mechanism in order to achieve multiple work.

3.1 Improve multiple dispute resolution system

It has to improve the mediation, arbitration, administrative verdict, administrative reconsideration, litigation and other organic link, coordinated diversification of the dispute settlement system. Otherwise, "overly stimulating legal requirements and using of litigation mechanism tend to cause court stress and push the reform of the utilitarianism so as to counterproductively weaken the judicial authority." One way is the mediation. Playing the role of the foundation of the people's mediation and the palm, professional and comprehensive functions of administrative mediation and judicial mediation norms and authority advantage in order to pursue the solution of the situation and the maintenance of the sense and ease the tensions between "official" and "folk law". The second is the arbitration way. Law has regulated the exclusion effect of arbitration agreement to the jurisdiction. This is the respect and compromise of national judicial power for the social autonomy. Three is administrative adjudication. Administrative adjudication belongs to the administrative organ of authority with the quasi-judicial nature and it generally includes the administrative ruling and tort administrative adjudication. Fourth is the administrative reconsideration. The newly revised "administrative procedure law" regulates that the administrative body for reconsideration decides to maintain the original administrative act after the administrative reconsideration, the administrative organ making the original administrative act and the administrative body for reconsideration are the common defendant. The administrative body for reconsideration does not make a reconsideration decision within the statutory time limit and citizens, legal persons or other organizations prosecute the inaction of the administrative body for reconsideration, the administrative body for reconsideration is the defendant. Legislative changes have significant breakthrough to improve the system of administrative reconsideration and will greatly improve the size of the administrative reconsideration to solve social disputes. Fifth is litigation. It represents the formal exercise of state judicial power of litigation and it uses the definition of the rights and obligations as the foundation, which not only has the function of dispute resolution, but also carries the function of confirmation and even the development of legal norms and maintenance of the authority of law.

3.2 Strengthen the link between legal and non-legal procedure

Except for the attached ADR of court, the cohesion between non-litigation procedure and judicial application refers to the judicial review, confirmation and relief procedure. The purpose is to guarantee the legitimacy and effectiveness of ADR, and set up the necessary correction and relief way. One the one hand, establishment of full-time mediator, inviting the court mediation organizations and mediator system and perfecting register management, qualification certification, code of ethics give full play to the important role of special mediation organization and invited mediator to resolve disputes. On the other hand, it has to strengthen the docking between public security, industry and commerce, health, transportation, labor and social security and other administrative organs in order to actively promote the establishment of administrative verdict and administrative mediation system. It has also to strengthening

the docking with the people's mediation organizations and promote the industrial, special mediation organization construction of family disputes, medical disputes, labor disputes, traffic accidents, property management, land appropriation, environmental protection, protection of the rights and interests of consumers. Strengthening the docking with arbitration institutions can actively deal with commercial arbitration, labor dispute arbitration, property preservation and preservation of evidence submitted in accordance with the law and application of executing the arbitration put forward by the parties in the process of rural land contracting arbitration.

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