

WHO CONTROLS CHINA'S COURTS?

BY QIAO XINSHENG

Local courts are often excessively influenced by local power cliques. But reform that might reduce the autonomy of local courts presents its own problems in terms of respecting the constitutionally-endowed autonomy that serves as the basis of democratic reform.

I was once asked, who actually oversees the Chinese courts? Do higher-level courts have the power to directly manage lower-level courts? If they don't, then why are higher courts able to change sentences passed by lower courts? And why can the Supreme People's Court use judicial interpretation to change existing laws and regulations and require lower courts to execute these changes? Some consider these issues a "hot potato."

According to the Chinese Constitution, the different levels of the people's courts are formed through appointment by corresponding strata of the people's congresses. Therefore, generally speaking, different levels of the people's congress should manage the courts at their respective levels. If the chief judge of a court fails to execute the decision of the people's congress, he may be unable to retain his position.

But the problem is that even though courts at all levels use the laws promulgated by the National People's Congress, if the chief judge of a local court rules, according to law, against a local enterprise, that judge might find himself out of a job. The judges and chief judges of local courts in reality face a very difficult choice between the law and the local people's congresses. Some chief judges of local courts are very capable in rigorously implementing the law while still managing the relationships between various local circles of influence. As a result, these judges tend to rise quickly through the ranks. On the other hand, some chief judges rule strictly "by the book" and are poor public relations managers. As a result, they enter into conflicts with their local people's congresses. In these situations, even if they have great jurisprudence skills, they will ultimately lose their jobs.

Even more complicated is when a local court's ruling offends a higher court. According to the Chinese laws of litigation, the higher court can either order the local judge to conduct a retrial, or can directly change the verdict. According to

China's regulations concerning misjudged cases, if a higher court orders a retrial or changes a verdict, that implies a problem with the lower court, and the judges and chief judges are held responsible. In these cases, local judges and chief judges are like rats in a wind tunnel, buffeted on all sides.

What looks straightforward actually reflects a major constitutional issue. The localized nature of China's courts presents institutional obstacles to the unification of China's judiciary. The hierarchical system that effectively exists within the judiciary also makes relationships that are apparently clear in law ambiguous and complicated. From the standpoint of the Chinese Constitution and law, management of the court system falls to the National People's Congress, but in actuality, different levels of the courts may be controlled by various local government departments, or even by certain enterprises and individuals that provide services to the courts.

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In this way, the Chinese judicial system differs from that of any other country. The Chinese courts play a special role in the national machinery. Sometimes the courts have to operate according to the Constitution and the law, while at other times they must operate in accordance with the subtle rules of local officialdom. For this reason, Chinese law and judicial culture bear an indelible local color. It's not that the Supreme People's Court does not want to change the situation, but rather that under the Chinese Constitution, the Supreme People's Court cannot solve the problem of judicial unification through its case law, nor can it have a direct say over the appointment of judges to the lower courts. The Supreme People's Court wishes to settle the problem of disorder in the various local courts through case precedent or direction, but at present these efforts seem unlikely to succeed. Driven by local interests, local judges and chief judges can only be accountable to the local people's congress that appoints them rather than to the Supreme People's Court.

For this reason, some think this problem should be solved through the Constitution, by undertaking a thorough reform of the current system that empowers the local people's congress to appoint local judges. But it now appears that this way of thinking is flawed. If the Supreme People's Court or other people's courts make errors in trial, who will be responsible for supervising them? At present, the Supreme People's Court's work report can only be reviewed when the National People's Congress is in session, and the supervision of individual cases remains under discussion. If the National People's Congress is put in direct control over all local courts nationwide, even if the number of NPC delegates is increased by a factor of ten, they still could not address all of the problems.

When undertaking judicial reform, we have to pay special attention to three issues: First, we must observe the principle of expanding democracy. Democracy is founded on self-government. If the inalienable right to self-government of the people and of the regions is not respected, and if there is an intention to implement justice through increasing application of power, the result may be the destruction of democracy and the eventual formation of a new autocracy. Therefore, judicial reform must respect the present system of people's congresses, and must respect the high degree of local autonomy endowed by the Constitution and laws relating to the organization of the people's congresses. Only in this way can we prevent our systemic structure from swinging from one extreme to the other.

Secondly, when dealing with the problem of "judicial localization," it should not be assumed that the higher courts are of

a higher standard than the lower courts. Likewise, the higher courts should not be endowed with greater power at the expense of depriving local courts of their autonomy. Current Chinese regulations concerning misjudged cases imply a certain distrust of the lower-level courts. By effectively obliging the lower courts to ask for instructions before passing sentence, the regulations intend to shrink the jurisdiction of the lower courts and expand the powers of judicial review of the higher courts, so that some of the jurisdiction endowed by Constitution and law to the lower courts is turned over to the higher courts. This system violates the Constitution and the law, and should be corrected as soon as possible.

Finally, when allocating jurisdiction, the relationship between different levels of courts should not be the only factor; equally significant is the distribution of power between state and citizens, between citizens and local authorities, and among the local authorities themselves. Therefore, any judicial reforms must be submitted to the National People's Congress for in-depth discussion, and must not be implemented until they have passed through rigorous legal assessment. Any move to divorce judicial reform from the National People's Congress will not be acceptable.

Translated by Shi Rong

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Judges being sworn in at a court in Xi'an, Shaanxi Province. Photo: Reuters