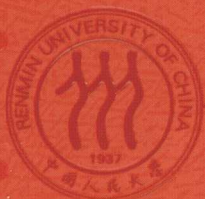


中国人民大学 中国法律 发展报告 2012 中国法律工作者的职业化



RENMIN UNIVERSITY OF CHINA
REPORT ON CHINA LAW DEVELOPMENT 2012
PROFESSIONALIZATION OF CHINA'S LEGAL WORKERS

主编 朱景文

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2002年以来,中国人民大学年度系列发展报告(即《中国人民大学中国社会发展研究报告》、《中国人民大学中国经济发展研究报告》和《中国人民大学中国人文社会科学发展研究报告》)的出版发行,引起了社会各界和广大读者的广泛关注,产生了较大的社会影响,成为我校一个重要的学术品牌,这让我们深感欣慰,也增强了我们继续做好这项工作的责任和信心。正是基于这样的责任和信心,加上近一年的努力,我们又编写出版了中国人民大学系列发展报告2012。

中国人民大学系列发展报告2012的各个子报告均由编委会负责审定选题、整体框架、主要内容和编写体例,组织有关专家召开研讨会,审核报告的写作提纲。各报告实行主编负责制,主编由校学术委员会主任、秘书长会议确定,学校聘任;主编聘请副主编或执行副主编。各报告根据主题,分别聘请相关部门的领导和知名学者担任顾问。中国人民大学社会学理论与方法研究中心、中国人民大学中国经济改革与发展研究院和中国人民大学中国人文社会科学发展研究中心分别作为《中国人民大学中国社会发展研究报告》、《中国人民大学中国经济发展研究报告》和《中国人民大学中国人文社会科学发展研究报告》的依托单位,在组织和写作方面发挥了主要作用。

根据实际情况及学者建议,学校对年度系列发展报告进行了一些调整。



《中国人民大学中国人文社会科学发展研究报告》调整为逢奇数年出版。2010年,《中国人民大学中国法律发展报告》开始列入年度系列发展报告。现在,报告的编写出版工作已纳入学校的年度科研计划,成为一项常规性工作。

由于报告所涉及的问题大多具有重大、复杂和前沿性的特点,加上写作与出版周期较短及研究水平的局限,尽管我们尽了努力,报告中的不足或易引起争议的地方仍在所难免。欢迎专家和学者批评指正。

中国人民大学发展研究报告编委会

2012年12月28日



2012

前 言

本报告把我国法律工作者分为法官、检察官、律师、公证员、仲裁员、基层法律服务工作者、人民调解员（其中法官、检察官、律师和公证员通称法律职业），分别论述各法律工作者的历史沿革（1949年以来，重点是改革开放以来）、有关法律规定、组织机构、人员及其构成、执业纪律监督、职能和经费收入。

中国法律发展报告：中国法律工作者的职业化研究框架

	法律规定	组织机构	人员及其构成	执业纪律监督	职能	经费收入
法官	法官法	法院	法官和人民陪审员数量、学历、司法考试	法院	审判	国库（中央和地方），收诉讼费
检察官	检察官法	检察院	数量、学历、司法考试	检察院	批捕、公诉、监督等	国库（中央和地方）
律师	律师法	律师事务所	数量、学历、司法考试	司法机关、律师协会	诉讼业务，非讼业务、顾问等	自负盈亏，收代理、辩护、顾问费



续前表

		法律规定	组织机构	人员及其构成	执业纪律监督	职能	经费收入
公证员		公证法	公证事务所	数量、学历、司法考试	司法机关、公证员协会	公证	自负盈亏，收公证费
仲裁员	商事	仲裁法、土地承包经营纠纷调解仲裁法	仲裁委员会	数量、规模	仲裁委员会	民商事仲裁	自负盈亏，仲裁收费
	劳动	劳动争议调解仲裁法等	劳动仲裁委员会	数量、规模	劳动仲裁委员会	劳动仲裁	国库，仲裁收费
基层法律服务工作者		基层法律服务工作者管理办法等	基层法律服务所	数量、分布	司法机关	民事代理、非讼事务、法律咨询、顾问、代书	政府拨款，自负盈亏，混合式，收费
人民调解员		人民调解法	各类人民调解委员会	数量、分布	法院、司法机关、基层政府、调解员协会	调解民事纠纷	国库与自筹，调解不收费

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法官部分：（1）历年《中国统计年鉴》，中国统计出版社出版；（2）历年《中国法律年鉴》司法统计部分，中国法律年鉴社出版；（3）历年《人民法院年鉴》，人民法院出版社出版；（4）何兰阶、鲁明健主编：《当代中国的审判工作》（上下册），当代中国出版社 1993 年版；（5）最高人民法院历年工作报告；（6）政府发布的有关法治发展的白皮书；（7）最高人民法院研究室编：《全国人民法院司法统计历史资料汇编（民事部分）：1949—1998》，人民法院出版社 2000 年版；（8）最高人民法院研究室编：《全国人民法院司法统计历史资料汇编（刑事部分）：1949—1998》，人民法院出版社 2000 年版。

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全书由朱景文负责统稿、主编。

朱景文

2013年2月1日于世纪城



Abstract

I. A Trend of Professionalization of Legal Workers in China

Before reform and opening up, legal workers in China were far from professionalization. Courts played very limited role in resolving disputes. Professional knowledge judges owned was poor and limited because character of cases was very simple. Most judges and lawyers were not trained in law schools. Most disputes were handled by the neighborhood committees or units which the parties worked in.

Reform and opening up brings about deep change in the Chinese society, including complication of social relations and diversification of interests. So role of the neighborhood committees and units in resolving disputes become poorer than before, and one of courts become larger. It seems to appear a tendency, namely, more litigation, more judges, more lawyers and more law students. This is the background of development of legal profession in China for more than 30 years.

Quantity of judges grew from 59,000 to 195,000, grew by 2.31 times between 1979 and 2011; one of procurators grew from 112,379 to 151,092 between 1988 and 2011, namely 34% growth rate; one of lawyers grew from 8,571 to



214,968 between 1981 and 2011, namely 24.08 times growth rate; one of notaries grew from 6,286 to 12,163 between 1986 and 2011, namely 93% growth rate.

In term of educational level, judges who got university degree grew from 6.9% in 1995 to 60.8% in 2005 in all judges, procurators grew from 15.14% in 1998 to 67% in 2006, lawyers grew from 49.1% in 2000 to 92% in 2011.

Along with growing quantity and educational quality of judges, the trial's efficiency, namely, annual average quantity of cases tried by a judge grew from 8.8 to 38.6, increasing by 3.39 times.

China's legal profession has owned a considerable scale after more than 30 years' development, including 195,000 judges, 151,092 procurators, 214,968 lawyers and 12,163 notaries, all together about 573,000 legal professionals in 2011.

The development of quantity and quality of different legal workers was closely related with institution of exam for access to legal profession. The exam for access to legal profession firstly began in profession of lawyers in 1986 and expanded to other legal profession, like judge, procurator in 2001 and notary in 2005. The rate of passing the national judicial exam was 8.06% in 2002, rose to 22.39% in 2007, since then keeping the passing rate about 23%.

II. Impact of Professionalization on Other Legal Workers

Along with development of legal profession, other legal workers, including arbitrator, grass-root legal service worker, people's mediator were greatly impacted by professionalization.

Arbitrator can be divided into business arbitrator and labor arbitrator, which were differently impacted by professionalization. Arbitration committee was set up in 1995, which just built up 11 arbitration organs then, 107 cases filed by all arbitration organs. In 2011 quantity of arbitration committee grew to 215, and quantity of cases filed by arbitration committees increased to 88,473. Comparing to the quantity of contract cases tried by courts, although the growth rate of cases of business arbitration was very fast, the quantity of cases of arbitration was



very small.

In 1994, the labor arbitrator committees handled 19,000 cases. In 2010, this number increased to 601,000, which was 30.63 times growth and the average annual growth rate was 191.4%. Unlike the business arbitration, labor arbitration plays an important role in labor disputes resolution. From 2000 to 2009, the quantity of labor cases tried by court in the first instance was 1,443,954, on the other hand, the quantity of labor disputes handled by the LAC was 3,319,900 in the same period, which was 2.3 times that of the quantity of labor disputes tried by court.

In the 1980s, our country had a shortage of lawyers, which made the country unable to fulfill the people's needs to legal service. In such situation, grass-root legal service worker (GRLSW) filled this blank. In 1988, there were 81,520 GRLSWs. In the 1990s, the quantity of GRLSWs basically remained between 100,000 and 120,000. While the number of lawyers increased swiftly, the complementary relation in which the GRLSW and lawyers used to be has gradually turned into a competitive relation. In 2000, the quantity of GRLSW reached its peak, 121,904. After that, along with the increase of the quantity of lawyers, the quantity of GRLSW started to drop, and, in 2011 the number dropped to 73,000.

In 1981, our country had 4,767,700 mediators, and in 2011, the quantity of people's mediators was 4,335,500, dropping by 9%. During this period, the quantity of mediated disputes has risen from 7,805,400 to 8,935,341, which grew by 14%. People's mediation was used to be the major form of civil disputes resolution. From 1981 to 2011, the quantity of cases tried by court in the first instance was 126,235,233, while the quantity of civil disputes handled by people's mediation was 192,644,933. The number of cases handled by people's mediation was 1.53 times those of the cases tried by court in the first instance. However, the people's mediation has been weakened after the reform and opening up. In 1981, the quantity of cases handled by people's mediation was 7,805,400, and the quantity of cases tried by court in the first instance was 894,782—the former was 8.72 times that of the later. In 2011, the quantity of cases handled by people's media-



tion was 8,935,341, and the quantity of cases tried by court in the first instance was 7,534,955—the former was 1.19 times that of the later. The proportion of these two was continually dropping, which the quantity dropped to 86.4% in 2011 and the annual rate of decrease was 2.8%.

III. Imbalance of Distribution of the Legal Profession

Whether on the quantity of lawyers or on the business income created by lawyers, provinces of our country have a huge gap. On the quantity of lawyers, the first five provinces averagely own 16,891.4 lawyers and the last five provinces averagely own 966 lawyers, which is only 1/17.5 of the former. Taking the factor of population for example, on the quantity of lawyers per 100,000 people the first 5 provinces own 46.7 lawyers, but the last 5 one own 7.0 lawyers, which is 1/6.7 of the former.

On the business income of lawyers, the first five provinces' lawyers earned 6.12 billions RMB, but the last five provinces' lawyers only earned 38.3 millions RMB, which was 1/160.1 of the former. Considering the population factor, on the business income per a lawyer, the first 5 provinces earned 373.8 thousands RMB, but the last 5 only earned 19.2 thousands RMB which was 1/19.5 of the former. By the analysis above, we can basically draw a conclusion that, areas with the most well developed legalization mainly concentrate on several municipalities, especially Beijing and Shanghai, and also concentrate on provinces with better developed economy.

On the other hand, we have also noticed the relation between the distribution of lawyers and people's mediators in our country. For the whole country, there are 15.95 lawyers and 321.8 people's mediators per 100,000 people. But the distribution of them in all provinces is extremely imbalanced. This situation reflects the complementary relation between lawyers and people's mediators in distribution of different areas, that is, there are more lawyers in the areas with well-developed economy, while people's mediators are more active in less-developed areas. Of course, there are many areas with a great number of lawyers as well as people's mediators, such as Beijing. Still there are some other areas which are less developed both in lawyers and people's mediators. The relations among them need further research.



IV. Issue of Judicial Corruption

Judicial corruption can be divided into two categories, the first one caused by the moral quality of law-enforcers who use the power to try or the power to enforce to bend the law for personal gain and engage in fraud; another one caused by the institutional weakness, such as the courts do business to create income, local protectionism and departmental protectionism, no challenge system, etc.

Along with more litigation, China appeared high tide of litigation-related complain for many times, so that the quantity of litigation-related complain outdistanced the one of litigation for a certain period. To a certain extent, the quantity of litigation-related complain is a wind indicator to evaluate courts' trial by the people.

Between 1986 and 2010, total quantity of cases tried by court in all instance was 134 millions, on the other hand, the one of litigation-related complain to courts was 145 millions which outdistanced the one of cases tried by courts. It was necessary for people to present a doubt if the courts' decisions were just, executable and efficient.

The judicial credibility can be evaluated in term of the NPC's voting on the Supreme People's Court and the Supreme People's Procuratorate. The NPC voting dissention and abstention on the Supreme People's Court was averagely 23%, the one on the Supreme People's Procuratorate 22% between 2000 and 2012.

Comparing voting on the State Council and the Standing Committee of NPC's working reports, the dissention and abstention voting on the Supreme People's Court and Procuratorate were much higher than the first two. The one on the State Council and the Standing Committee of NPC were only 6.5%. Although the reasons voting against and abstention by the deputies to the NPC may be various, an undeniable reason was whether judicial decisions were just or executable, if the courts and procuratorates owned the credibility.



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