

'96 上海法院 案例精选

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上海市高级人民法院组织编写

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序

具有深远历史意义的党的十一届三中全会,明确提出要加强社会主义民主法制建设。邓小平同志关于加强社会主义民主法制建设的重要思想,为我国逐步走上依法治国的道路指明了正确的方向。在1996年2月中央举办的法制讲座上,江泽民总书记强调指出,加强社会主义法制建设,依法治国,是我们党和政府管理国家和社会事务的重要方针。八届全国人大四次会议审议批准的《国民经济和社会发展“九五”计划和2010年远景目标纲要》,也明确提出了依法治国、建设社会主义法制国家的目标。

依法治国,实行法治,是社会进步、人类文明的一个重要标志。它要求任何机关、组织和个人,都必须在宪法和法律范围内活动,国家的大政方针要依法决策,立法机关依法立法,行政机关依法行政,司法机关依法独立行使各自的职权,公民的权利和自由受法律的切实保护,国家机关的权力受到法律严格的制约。

社会主义法制建设的基础工程,是切实推行法制宣传教育,增强全体公民的法律意识和法制观念,这也是加强社会主义精神文明建设的重要内容。在全体公民中开展普及法律常识教育,是坚决贯彻“两手抓、两手都要硬”方针的重要措施。以案析法是加强法制宣传的重要途径,以其典型性、真实性、准确性提供了生动的、丰富的信息资料,它也是人民法院的一项基本任务,是参与社会综合治理的重要手段,可以促使全体公民知法、懂法、守法、用法。

社会主义法制建设的重要内涵,是大力加强审判工作,保障和促进两个文明建设的协调发展。1996年是上海法院面临各项审判

工作任务最繁重的一年,也是创造新经验,取得积极进展和明显效果的一年。在这一年中,新情况、新问题层出不穷,抓住新类型案件的典型,及时编写成书,发挥其示例作用,可以指导审判工作,并为立法提供依据。

社会主义法制建设的根本环节,是提高法官素质,以适应审判工作不断发展的需要。随着我国社会主义市场经济体制的逐步建立,各种新法律、法规不断颁布,特别是随着刑事、民事、经济和行政审判方式改革的全面推进,对法官的素质要求亦越来越高。法官除了加强学习外,选择典型案件,认真调研,写成案例,是极为重要的方面。对办案过程中适用法律的体会,总结深化,从法理层面上加以再思考,是审判工作的延伸,同时对法官业务水平的提高也大有裨益。

正是由于上述缘故,我们从1994年起,每年都组织全市法院法官编写案例,从中挑选组成“案例精选”,并将持续下去。在本书中,我们特别强化了以下三方面的工作:

• 精心挑选新案。1996年,全市法院共受理和执行各类案件16余万件,我们从中形成179宗案例,再从中挑选89宗编写成书。每个案例都可谓精心选择。入选的案例,涉及面广,典型性强,有不少都是在实践中第一次碰到。如在刑事方面有重大责任事故案、破坏选举案、刑事诽谤案、商业受贿案、挪用资金侵占案等;民事方面有:出版合同纠纷案、银行储蓄案、商品房预售买卖合同纠纷案、排除妨碍公民人身权、劳动权案等;经济方面有:不正当竞争案、股权转让合同案、国际航空货物运输代求偿案、融资租赁案等;行政方面有:不服送工读学校决定案、不服转股与增资申请批复案、不服特别清算决定案、不服户外广告行政处罚案等,这些都是新形势下出现的新类型案件。

• 尊重办案实际。本书所收案例按照基本案情、审判过程、裁判理由、处理结果、申诉复查程序编写。基本案情包括当事人双方

的诉辩主张要点、法院查明的事实；审判过程包括一、二审法院的认定事实、双方主张的分歧；裁判理由包括双方争议焦点、案件定性、事实认定、证据运用；处理结果包括法律适用、量刑确定；申诉复查包括维持或更改的法律依据等。既可以使读者了解整个案件的来龙去脉，也有助于读者由浅入深、由表及里、由此及彼加深对法律原理的理解，提高法学素质。

• 全面评点裁判。在每个案例后，我们还花了不少笔墨针对本案的要点、难点进行全面的解剖、评析，以事实为根据，以法律为准绳，以法理为基础，对正确的予以肯定，对违法的予以批点，对不妥的予以指出，有助于读者从分析比较、正反思索中再次获得提高。

“上海法院案例精选”每年要编，我们力求每年有所发展，有所提高，并衷心祈望在上海法院各级领导、各位法官、法律工作者及广大读者的共同努力下，使这棵法苑中的幼苗茁壮成长。

李昌道

97.1

Preface

The Third Session of the Eleventh Central Committee of the Chinese Communist Party, which has profound historical significance has expressly put forward the task of strengthening the construction of socialist democracy and legal system. The teaching of Comrade Deng Xiaoping to strengthen the construction of socialist democracy and legal system has pointed out the correct way for China to develop along the road of ruling the country according to law. At the legal knowledge lecture held by the Central Committee of the Chinese Communist Party in February 1996. General Secretary Jiang Zemin stressed that it is an important policy of our party and government in administering the country and the society to strengthen the construction of socialist democracy and legal system and to rule the country according to law. The Ninth Five-year Plan of National Economy and Social Development and Object of 2010, which was examined and approved by the Fourth Session of the Eighth National People's Congress, have also put forward the goal of ruling the country according to law and building a socialist country with perfect legal system.

To rule the country according to law and to realize legalism are the important symbol of development of the society and the civilization of mankind. It requires every organ, organization and

individual to act within the Constitution and laws. The policy of the country shall be decided according to law, the legislature shall make laws based on law, the executive organs shall carry on the administration according to law, the judicial organs shall perform its function independently according to law. The rights and liberty of the citizens are protected by law and the state organs' power is strictly restricted by law.

The foundation of the construction of socialist legal system is to raise the legal conscientiousness of the public through education of legal knowledge. This is also an important part of strengthening socialist spiritual civilization. It is a significant measure to educate all the citizens with legal knowledge. To analyze law through cases is an important method, which provides clear and rich information with representativeness, truthfulness and preciseness. It is also one of the people's courts' fundamental work and one way of being involved in comprehensive management of the society. This can help the public know law, understand law, abide by law and use law.

An important task of the construction of socialist legal system is to improve court trial, to promote the coordinated development of both material and spiritual civilization. The year 1996 is one in which the courts in Shanghai have the heaviest case load, it is also one when new methods are being deated, development being made and fruitful result being achieved. In this year, new situation and new problems occurred frequently. Analyzing the new type of typical cases and timely compile them into a book can provide models for future cases and guide the trial work, at the same time, it can provide the legislation with foundation.

The key step in the construction of socialist legal system is to raise the competence of the judges to meet the need of the work. Along with the development of the socialist market economy, new laws and regulations are promulgated. With the reform of court trial procedure in criminal, civil, economic and administrative cases, the requirement to judges are even higher. Besides learning the laws, it is quite important for the judges to choose typical cases, do a serious research and write precedents. It is the extension of the trial for judges to summarize their personal experience in the application of law, and analyze them from the theoretical angle. This is helpful to raise the competence of the judges.

Because of the above reasons, we have organized the judges in Shanghai to write case analysis from 1994. From the cases, we selected some to compile "The Collection of Latest Cases". We will continue this practice. In this book, we emphasized the following aspects:

● Carefully selecting new cases. In 1996 the courts in Shanghai tried and enforced about 160,000 cases, from which we have selected 179 cases and 89 of them were further selected to compile this book. The cases being selected cover a broad range of areas and are representative. Many of them are the first case in their respective area. In criminal cases, there are cases of serious accident, sabotage of election, criminal defamation, receiving commercial bribery and misappropriation and conversion of capital. In civil cases, there are cases on publishing contract dispute, on bank deposit, on building advance sale contract, of elimination of obstacle to a citizen's personal right and the dispute

over the right to labor. In economic cases, there are cases on unfair competition case, over share transfer contract, of subrogation for damages in international air transportation and on finance leasing. In administrative cases, there are cases on objection to the decision of sending to work-study school, on objection to the reply to the application of transfer of shares and increasing registered capital, on objection to the decision of special liquidation, on objection to administrative sanction to outdoor advertisement. These are new types of cases appeared under the new situation.

●Compiling the cases according to the actual process. All the cases are compiled according to the order of basic facts, the process of trial, the reasoning of the decision, the result of the trial, the procedure of petition and retrial. the basic facts of the case include the argument raised by the parties and the facts ascertained by the court. The process of trial includes the facts determined by the courts of first instance and second instance, the dispute between the parties. The reasoning of the decision includes the issues in dispute, the nature of the case, the facts being determined and evidence used. The result of the trial includes the application of law, the determination of sanction. The procedure of petition and retrial includes the legal basis for maintaining or reversing the decision. In this way, it will help the readers to have knowledge of the whole process of trial, and to understand the principles of law from superficial to deep, from the outside to the core.

●Comprehensive analysis and comment of every case. We used quite a lot of space to analyze the important and difficult

points of every case. We confirm the ones that are correct, criticize the ones that are wrong, and point out the ones that are improper, taking the law as criteria, the facts as the basis and the theory of law as our foundation. We think this will be helpful to our readers to learn something in a comparative study and deliberate from both positive and negative sides.

We will compile "The Collection of Latest Cases in Shanghai Courts" every year. We will do our best to improve the work each year. We hope this sprout of the garden of legal materials will be growing healthily with the support of the leaders, judges of the courts in Shanghai and the legal practitioners and readers.

Li Changdao

January of 1997

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