

# **A Brief Introduction to Civil Procedure in China**

Zou Bihua, Chief judge & director of No. 2 Civil Division of Shanghai High People's Court

## **1. When a case is brought in a court in China, what will happen?**

### **1. First step: Docketing the case**

Every court in China has a division called Docketing Division, which is composed of judges who are in charge of accepting or rejecting cases, giving rulings on the motions about jurisdictions, and case management, etc.

One of the job of docketing the case is to determine the types of the cases filed by the litigants because different type of cases go to different divisions, and in China, a court includes a lot of divisions, such as criminal division, civil division, Commercial Division, administrative division, IP rights division, etc.. The Supreme People's Court of China issued A Guide to the types of Cases which covers more than 300 types of cases, so it often causes disputes in that field.

### **2. Second step: Service of the Documents**

In China, service of legal documents, including litigant documents, complaints, summons, etc., ought to be taken by court, which makes court system facing a lot of difficulties and causes a series problems on efficiency.

### **3. Third step: Preparation of trial**

At pretrial stage, main tasks of judges are to serve documents and sometimes(though few) to organize the litigants to exchange the materials of evidence. We don't have the rules of disclosure of evidence, interrogation, etc.. For many cases, the courts directly enter the session without any pretrial works.

### **4. Fourth step: Trial**

The trial includes opening statement by the plaintiff and reply by the defendant, the introduction of evidence and examination and cross-examination, debate, closing statement, etc..

### **5. Fifth step: Judgment and Ruling**

The courses of deliberating the cases by collegial panels are not open to the public. After the deliberation, the judgments should be

delivered. The judgments and opinions are combined together.

#### **6. Sixth step: Enforcement of judgments**

In China, the court takes the charge of enforcing the judgments rendered by itself. Every court has an enforcing division.

## **II. Some differences of civil procedure between US and China**

With the development of economy, a great deal of changes have been happened in China. The reform of civil procedure has absorbed all kinds of knowledge and experience from all over the world. It is very hard to predict that China will adopt inquisitorial way of adjudication or adversarial one. Whichever way China takes, one thing we can say is that no way will be pure. Maybe it'll be the mixture of both ways. For the time being, we can find the differences of civil procedure between US and China as below:

### **1. Trial level**

In China, the court system is composed of four levels of courts, which refer to district courts, intermediate courts, high courts, and the Supreme People's Court. Theoretically, each case may have two times of chances, i.e. the first instance and the second instance. Each level can be the first instance court of a case. That a case goes to which level depends on the type, influence of the case. If the Supreme People's Court is the first instance court of a case(though that has never happened), that means the case can only have one chance because the Supreme Court is the final court.

In US, a case has to go to a district court, then gets a second chance at appellate level. The appellate court and the Supreme Court will never be the first instance court of a case.

### **2. Service of documents**

In China, the courts take the responsibility of serving all kinds of documents, while in America, the litigants take the responsibility. And the difficulties in the service of document have caused the delay of adjudication and the courts have to face the complaints from the public.

### **3. Response**

In China, to respond to a claim is the right of a litigant, so the litigants can waive the right. Thus, unlike America, China has no summary judgment or default judgment, even if a defendant doesn't appear at a court session, the court still has to hold the session, though only between judges and one party.

#### **4. Rules of evidence**

The Supreme People's Court of China issued Rules of Evidence on Civil Procedure in 2002, but the Rules lack several important rules, such as oral testimony, disclosure of evidence, exclusion of hearsay, etc.. That means that the witnesses most of times don't have to appear and accept the examination and cross-examination, and their written testimonies can be adopted. Thus in China, the technique on examination and cross-examination is not so developed.

#### **5. Trial Organization**

For a first instance case, we have two categories, the one belongs to ordinary procedure which usually applies to complicated cases, the other belongs to simplified procedure which applies to simple cases. The former must be dealt with by collegiate bench and the latter can be tried by a single judge.

Another important body inside court in China is Adjudicating Committee, which is the most authoritative adjudicating body in the court. Its function is to ensure the uniformity of legal application, adopt rules and make the decisions of important judicial policy within its territory. Its decisions are binding to the judges of itself and lower courts. Its member should be the senior judges of the court and its member is appointed by the People's Congress.

#### **6. The Scope of the review of the Second Instance**

In China, the scope of the review of the Second Instance covers all aspects, legal and factual issues, so new evidence can be introduced at any time, even after the court session is over.

#### **7. Mediation**

Judges should do their efforts to enable and encourage resolution of disputes by agreement rather than adjudication. The judges who will adjudicate the case can play the role of mediator of the case.

#### **8. Time limitation**

In China, The Civil Procedural Law Provides that A case that is heard by the people's court in accordance with the ordinary procedure shall be concluded within six months from the day the case is filed, in special circumstances the time limitation may be extended by another six months with the approval of the president of the court; approval from the people's court at the higher level is needed for further extension(Article 135) , that a case with simple procedure should be concluded within three months from the day it is placed on file(Article 146) , and that the people's court shall complete handling resolved appellants cases within three months after they have been placed on

files for second instance, and where an extension of time is needed because of special situation, the approval shall be granted by the president of the court(Article 159).

The time limitation is very controversial, because it may break the balance between justice and efficiency. To my observation, for about 90-95% of cases, the justice is ensured and for about 5-10% of cases, there are some legal or factual issues, more or less, not to be properly dealt with.

#### **9. Dissent opinion**

In China, the Civil Procedural Law provides that the principle of the minority being subordinate to the majority is followed in the deliberation of the collegiate bench, the minutes of the deliberation shall be made and signed by all members of the collegiate bench, differing opinions must be recorded accurately(Article 43). Dissenting opinion is not publicized, though it is recorded in a secret file.

#### **10. Power of contempt**

In US courts, judges exercise the power of contempt, which is of course helpful for the authority of judges. Unfortunately, judges in China don't have the power, though in ancient China the judges had it. One of the reasons is that the people are afraid of the abuse of the power. That is to say, the court still needs some time to earn the power.

Though there exist so many differences, one thing in two system is in common: the judges are trying their best to deliver more justice to the public.