

## Research on the Issuance of Judgment Documents with the Background of China's Judicial Reform

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### Abstract

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*Based on China's judicial reform, judicial mysticism which covers up the abuse of power should be substituted by judicial openness, and issuing the judgment documents is one of the most important tasks in China's judicial openness. Issuing the judgment documents not only means presenting the documents to the public, but rather as a systematic project which involves updating the judicial ideology, refining the rules of procedure and advancing the organizational system. The system of issuing the judgment documents counts for much in ensuring impartiality of justice and safeguarding the authority and dignity of judiciary. Furthermore, it reflects the level of political civilization of a nation. Achieving justice through public interaction between judicial authority and people's democratic rights is the essence of this task. Currently, Chinese authority has achieved significant progress on the issuance of judgment documents. However, there is still a lot to do to realize the further genuine judicial openness and the supporting mechanism should be established as soon as possible.*

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**Keywords:** judicial reform, judicial mysticism, judicial openness, issuance of judgment documents

### ***1. The Background of Judicial Reform in China***

Throughout the twentieth century, the wave of judicial reform in China went one after another. In reality, every judicial reform movement is an important element of social change in the specific political-economic background, which reflected the intention and attitude of policy makers and showed the direction of social development, as well as embodied the civic interest demands.

Marked by the birth of the Constitutional Guidelines Made by Imperial Order, the sovereign's judicial reform played a crucial role in its political reform and constitutional movement in late Qing dynasty, which opened China's century-long constitutional journey. In 1952, under the guidance of "dictatorial justice", the movement of "combat the old law and reform the whole judiciary" swept China, the socialist judicial system was set up. A dozen years later, the legal administration was deadly destroyed in the national turmoil named the Great Culture Revolution. After the Great Culture Revolution, rebuilding the destroyed justice system is of great importance in China's reform and opening up since the late 1970s, which includes breaking the unitary judicial organization up, cultivating career judges and recovering the lawyer system.

In spite of the great achievements above, however, the current judicial system just meets the requirements of public ownership and planned economy system, it can not satisfy the demands of the socialist market-oriented economy mechanism. Within the small reforms of court system, it is impossible to really solve the problems of “biased judgment” and “difficult enforcement of judgments”.<sup>1</sup> A crucial reform in accordance with the demands of market economy is urgent.

Personally, the so-called market economy demands refer to the administration of justice, which belongs to superstructure, is rooted in market-oriented economy whose intrinsic attributes contains political democracy and civil liberty. It especially values the worship to the constitution, as well as the independence and transparency of justice. It is opposite to the ideology of “people's justice” or “dictatorial justice”. At that time, judicial power is highly centralized in the planned economy system, and the extreme phenomenon that “the public security bureau, the procuratorate and the courts operated together, the public security bureau is the leader” appeared. High-pressure justice, judicial mysticism, ignoring the rules of procedure and neglecting human rights were the main characters of “dictatorial justice”.

On the contrary, in the market-oriented economy, national prosperity hinges on people's freedom, people's freedom lies in guaranteeing the individual rights and guaranteeing the individual rights is rooted in democracy and justice. Furthermore, the country should be ruled by law, it requires independent judicial authority, constrained administrative authority and effectively protecting the individuals. **It fights against the judicial mysticism which covers up the abuse of power.** After more than 30 years' reform, the market-oriented economy has been established. With the material needs continue expanding, the needs of spiritual life, freedom and stability become the main interests of the people, the reform steps into deep water.

On November 12, 2013, The Decision on Major Issues Concerning Comprehensively Deepening Reforms was passed in the Third Plenary Session of the 18th CPC Central Committee. The decision clearly pointed out that CPC will deepen the reform of the judicial system, accelerate the building of a just, efficient and authoritative socialist judicial system to safeguard the people's rights and interests, and ensure that the people are satisfied with the equality and justice in every court verdict. Personally, the decision is necessary for the sustainable progress of economic and society in China, on the other hand, the decision indicates that the authority attempts to remedy the principle “Ensure independence in exercising jurisdiction under the rule of law”, which was weakened over the past decade, hence conform to the development trend of the times, as well as the people's concerns.<sup>2</sup>

## ***2. The Relationship between Judicial Reform and the Issuing of Judgment Documents in China***

Judicial openness should be strengthened in the judicial reform, because the judicial mysticism which contrary to judicial openness will lead to power rent-seeking system and increase people's doubts about the law, therefore undermine the judicial authority.

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<sup>1</sup> See Liang Huixing. 2003. “Thirteen Standpoints on Judicial Reform”. *Journal of Northwest University of Political Science and Law*. 5, 11—11.

<sup>2</sup> According to a report issued by the Chinese national media, Xinhua News Network, on July 9, 2014, China's top court published a guideline for reforms in the country's court system over the next five years, underlining efforts to ensure independent trial. The guideline includes 45 major reform measures, which fall into eight key judicial issues such as personnel, finance and judicial selection, according to a document issued by the Supreme People's Court (SPC) at a press conference. The reform will be focused on efforts to remove some deep-rooted problems affecting the capability and fairness of the country's judicial system, and to ensure the courts exercise their judicial power in a legal, independent and just manner.

Modern political civilization needs judicial openness, many citizens see the transparency of judicial system as a basic factor of political civilization. Judicial openness can not only enhance people's identification with justice, effectively protect the legal authority, but also deliver the core values of fairness and justice to the society. Generally speaking, the openness of trial process, the issuance of judgment documents and the openness of execution information are key elements of judicial openness. Among the three elements, the issuance of judgment documents is the core. Because judgment documents belongs to public goods, directly reflect the trial activities, take the responsibility of promoting the spirits of law, stimulating communication between the judicial authority and public, as well as inspiring the construction of honesty-credit social system. Issuing the judgment documents means representing the logic of justice, which is important in safeguarding the justice and authority of law. As for China, publishing the judgment documents has further functional significance, for it may generate a "Forced" mechanism to guarantee justice, which plays a significant role in the judicial reform.

### ***3. The Jurisprudential Basis and Value of Issuing Judgment Documents in China***

#### **3.1 Issuance is Based Upon the Nature and Independent Value of Judgment Documents**

In substance, the judgment documents is the reflection and written carrier of judgment's foundation and processing, as well as the result of the operation of judicial power. The essence of whether issuing the documents or not is that whether the results and process of the court's jurisdiction should be opened.<sup>3</sup> To solve this problem, we should research what the China's constitution--the national fundamental law--rules about judgment. The 125th of the Constitution provides: "the court, except in special circumstances provided for by law, shall be heard in public." In another words, the fundamental law of the nation has clear provisions on the public trial.

As a constitutional principle, public trial should run through the whole proceeding. Merits examination, presenting evidences, cross-examinations, court arguments, verifying facts and citing clauses are main steps of a trial process, the judgment document is the record and summary of this proceeding. The essence of issuing the judgment documents is to bring the trial process into the public. Speaking from a deeper level, the issuance of judgment documents is a significant requirement in maintaining judicial democracy, as well as guaranteeing the public's right to know and the public's right of supervision. According to China's constitutional, the court as a judicial organ is created by the National People's Congress, and is responsible for it, the operation and work of the court should be under NPC's supervision. Consequently, only do the court issues judgment documents, can it be supervised by the People's Congress. Without issuing, it is impossible for the representative' and elector' right to know on this point to be well guaranteed.

#### **3.2 The Tool Merits of Issuing the Judgment Documents**

Besides intrinsic value, the external value or instrument value of issuing is also important. The merits of issuing the judgment documents can be seen in such aspects: increasing the transparency of justice, clarifying the facts of cases, exchanging ideas between judges and public, conducting the people's behaviors in legitimate direction and stimulating the improvements of judges, etc.

### ***4. The Future of Issuing Judgment Documents***

Up to now, through implementing a series of reform measures, Chinese authority have achieved significant progress on the issuance of judgment documents. It is a milestone that the Provisions of the Supreme People's Court on the Issuance of Judgment Documents on the Internet by the People's Courts came into force on January 1, 2014.

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<sup>3</sup> See Li Yougen. 2010. "Issuance of Judgment Documents and Protection of the Litigant's Right to Privacy". *Legal Science*. 5, 126—134.

According to the provisions, an effective judicial document of a people's court should be issued on the Internet, except under any of the following circumstances: (1) It involves any state secret or individual privacy; (2) It involves any juvenile delinquency; (3) The case is closed by mediation; (4) Any other circumstance under which it is inappropriate to issue the judgment on the Internet. People's courts at all levels shall be liable for the quality of the judgment documents issued on China judgment documents website.<sup>4</sup>

#### **4.1 The Issuance of Judgment Documents Should be Further Fined and Implemented**

Although the advancement is crucial and obvious, numerous of judgment documents are still not issued. 4 months after the implementation of the provisions, according to the statistics released by the Chinese media, *Legal Evening News*, from January 1 to April 11, out of 31 provinces of mainland China, 30 provinces separately issued judgment document on China judgment documents website, which were less than 8% of the whole documents. Moreover, only less than 1% of the whole judgment documents were issued in five provinces. Several influential serious criminal cases' judgment documents have already come into force but have not been issued on the website, such as "10.25 Wenling murder case", "4.28 Hengyang murder case", etc.<sup>5</sup>

Personally, notwithstanding that the exceptions of the provisions exist, the issued documents rate is very low, the reason why this phenomenon occurs is that part of the local courts intentionally selected the excellent, typical judgment documents being issued. A large number of documents in accordance with the provisions should have been published still being concealed, especially some criminal judgments, written rulings on execution and decisions on state compensation.<sup>6</sup> But on the other hand, indeed, some district courts are not eager to issue the judgment documents results from the shortage of experiences, staffs and financial support which are needed for setting up databases and issuing documents, as well as they may lack confidence, worrying the impacts which result from the issued judgment documents on citizens.

Personally, the solutions to the issue above is to steadily push forward the implementing of the provisions, to further regulate the judicial process, to perfect the judgment documents drafting, to provide financial aid to the technology-starved courts, to correctly interpret the scope of the issuance of judgment documents, and then by protecting the legitimate individual privacy and ensuring that the people oversee the exercise of power and that power is exercised in a transparent manner, China ultimately realize the transparency and impartiality of justice.

#### **4.2 The quality of Issued Judgment Documents Should be Improved**

In addition to the issue above, another important problem is the quality of issued documents. The Decision on Major Issues Concerning Comprehensively Deepening Reforms asserts that enhance the persuasiveness of legal documents and press ahead with issuing court judgment documents that have come into effect. In fact, it emphasizes the quality of issued judgment documents.

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<sup>4</sup> See PKULAW. "Provisions of the Supreme People's Court on the Issuance of Judgments on the Internet by the People's Courts", [Online] Available: <http://en.pkulaw.cn/display.aspx?cgid=213603&lib=law> (last visited July 8, 2014)

<sup>5</sup> See Wang Gang&Zhang Lei&Wang Xiaofei.2014. "The Rate of Issued Judgment on China Judgment Documents Website is Not High", *Legal Evening News*. [Online] Available: [http://www.fawan.com.cn/html/2014-04/18/content\\_487002.htm](http://www.fawan.com.cn/html/2014-04/18/content_487002.htm) (last visited July 16, 2014)

<sup>6</sup> Up to 15 August, 2014, according to the data on China judgment documents website, out of 31 provinces of mainland China, 11 provinces have not yet realized the issuance of judgment documents of people's courts at all levels on China judgment documents website. 6 provinces have not issued any written rulings on execution and decisions on state compensation on China judgment documents website. Except that, 3 provinces have not issued written rulings on execution and 4 provinces have not issued decisions on state compensation on China judgment documents website .

Based upon numerous Chinese media reports and personal observation of the issued judgments, some of them indeed lack persuasiveness and logic, even seem like the mixture of formulaic hollow words and simple facts without legal reasoning and analysis.

The intrinsic reason for this problem lies in that some judges still lack the confidence to present the judicial process to the public. They are sensitive to the influences which the issued judgment documents may bring about, their attitude towards complete judicial openness is negative. From my perspective, the “confidence” depends on the judge’s legal skills, which is also rooted in the effective supporting mechanism and conscience society system. However, currently, those foundations in China are not solid. **Actually, owing to the intricate institutional milieu and the dissatisfactory professional quality of judges, the judicial openness in China has a long journey.** Although the absence of persuasiveness must be reformed, acquiring advancement is simply not an overnight process and it may tread as if on thin ice. Personally, legal means seems to be a proper choice in the reform. On the one hand current law should be refined by ruling that the detailed process of verifying facts, citing clauses and legal reasoning should be included in judgment documents. On the other hand, the authority oughts to take measures, including perfecting punishment mechanism and promotion mechanism of judges, to improve the judge’s professional quality, hence guarantee the justice in judicial process and further stimulate the improvement of persuasiveness, as well as the judicial openness.

#### **4.3 The Evaluation Mechanism of Issued Judgment Documents Should be Established**

Without evaluation mechanism, the issued judgment document may become the garbage and victim of the age of information overload, hence the positive effects of the issuance of judgment documents will decline, the authority’s purposes of establishing judicial authority, monitoring judicial procedures and supervising the judges will be difficult to achieve.

In reality, the evaluation mechanisms functions in the following aspects: evaluating the realization degree of justice, hence promotes the consolidation of judicial public faith force; evaluating the level of judges in their work, hence promotes the upgrading of practical skills of judges; evaluating the criterion for the promotions of judges, hence stimulate the authority to perfect of the legal occupational system. In fact, the issuance system and the evaluation mechanism complements each other, issuing the judgment documents is one of the basic prerequisites for establishing evaluation mechanism. On the other hand, the evaluation mechanism is the continuation of issuing the judgment documents, and it will profitably react against the issuance of judgment documents.

Personally, for the sake of guaranteeing the representative’s and citizen’s right of supervision, the following specific steps are supposed to taken: Setting up the public network evaluation columns; setting up random inspections and annual review as the main working manners of evaluation mechanisms, therefore establish the comprehensive and efficient public evaluation system of issued judgment documents in the end.

## 5. Conclusion

Issuing the judgment documents not only means presenting the documents to the public, but rather as a systematic project which involves updating the judicial ideology, refining the rules of procedure and advancing the organizational system. The system of issuing the judgment documents counts for much in ensuring impartiality of justice and safeguarding the authority and dignity of justice. Furthermore, it reflects the level of political civilization of a nation. **Achieving justice through public interaction between judicial authority and people's democratic rights is the essence of this task.** After the Third Plenary Session of the 18th CPC Central Committee, the authority steadily promotes the judicial reform, which provides a favorable opportunity for the issuance of judgment documents. Issuing the judgment documents must conform to the trend of the reform and opening, basing on the particular social and institutional system, associating with the ongoing judicial reform in China, hence establish the issuance system of judgment documents, which is well corresponded to the judicial system and gives full play to its overall effectiveness.<sup>7</sup>

## References

2. See Liang Huixing. 2003. Thirteen Standpoints on Judicial Reform. *Journal of Northwest University of Political Science and Law*. 5, 11—11.
4. See Li Yougen. 2010. Issuance of Judgment Documents and Protection of the Litigant's Right to Privacy. *Legal Science*. 5, 126—134.
5. See PKULAW. "Provisions of the Supreme People's Court on the Issuance of Judgments on the Internet by the People's Courts", [Online] Available: <http://en.pkulaw.cn/display.aspx?cgid=213603&lib=law> (last visited July 8, 2014)
6. See Wang Gang&Zhang Lei&Wang Xiaofei. 2014. "The Rate of Issued Judgment on China Judgment Documents Website is Not High", *Legal Evening News*. [Online] Available: [http://www.fawan.com.cn/html/2014-04/18/content\\_487002.htm](http://www.fawan.com.cn/html/2014-04/18/content_487002.htm) (last visited July 16, 2014)
8. See Wang Baowen. 2005. "Review on the System of America's Judgment Documents and Research on the Reform of the System of China's Judgment Documents---the Views of Judicial Process". *Forward Position*. 10, 161—165.

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<sup>7</sup> See Wang Baowen. 2005. "Review on the System of America's Judgment Documents and Research on the Reform of the System of China's Judgment Documents---the Views of 'Judicial Process'". *Forward Position*. 10, 161—165.