

# Research on the Judicial Credibility Promotion in the Context of Comprehensively Implementing the Rule of Law\*

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**Abstract**—The report of the 19th National Congress of the Communist Party of China proposes to further promote the four comprehensive constructions, including comprehensively implementing the rule of law. The rule of law requires the people to believe in the law, and the judicial credibility is an important guarantee for the formation of the rule of law. The paper discussed the problem from the aspects of concept and characteristics of judicial credibility, foundation of judicial credibility, function of judicial credibility, the reasons for the lack of judicial credibility in China and the ways to improve it.

**Keywords**—implementing the rule of law; judicial credibility; promotion

## I. INTRODUCTION

The report of the 18th National Congress of the Communist Party of China proposes to comprehensively complete the comprehensive strategy of law-based governance by 2020. The Fourth Plenary Session of the 18th Central Committee put forward a major decision on ruling the country according to law, and raised the importance of governing the country according to law to a prominent position. The reports of the 19th National Congress of the Communist Party of China also proposed that the rule of law is a major revolution in the form of state governance, and the central leading group for the comprehensive governance of the country has been established, which shows that the strategy of governing the country according to law has been raised to an unprecedented degree. Besides, General Secretary Xi Jinping has always attached great importance to the rule of law. Since the 18th National Congress of the Communist Party of China, several important instructions have been made, and justice is crucial for comprehensively implementing the rule of law for the reason that although legislation is the basis of the rule of law, what really makes people feel is the daily judicial behavior. Therefore, only by making every citizen feel fair and just in the daily judicial cases can they establish their faith in the concept of the rule

of law.

However, although the current judicial credibility of China has made great progress compared with the past, there is still a big gap with the general demands of people in the new era. Therefore, it is necessary to carry out further researches to improve the judicial credibility.

## II. THE CONCEPT AND CHARACTERISTICS OF JUDICIAL CREDIBILITY

Judicial credibility is first of all a kind of trust, which is a kind of psychological feeling, while credibility refers to a kind of universal trust. Therefore, judicial credibility mainly refers to the degree of recognition of judicial behavior by the public. Judicial credibility mainly has the following characteristics.

### A. Vulnerability

The improvement of judicial credibility is a very slow process, which requires the constant efforts of the judiciary staff. However, once a judicial practitioner has committed favoritism and perverted the law, the credibility would suffer greatly and it will be difficult to recover. Even ten fair sentences cannot offset the bad effect of one unfair one.

### B. Finality

Judicature is the last ditch for fairness and justice in the whole society, so judicial credibility is characterized by finality.

If the masses cannot feel fairness and justice in the judiciary, then they will have distrust of the society with rule of law. Therefore, whether the act is lawful or not will not be regarded as an important criterion for the consideration of the act in the future, and as a result, the culture and atmosphere of rule of law in the whole society will deteriorate day by day, which is not conducive to the development of judicial behaviors.

### C. Systematicness

Judicial credibility is a systematic project and it is not just the efforts of the courts alone, for the reason that judicial

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credibility requires people to believe and respect the judicial judgment, and the most important thing is that the people respect the judgment from the bottom of the heart. However, the lawsuit has its own characteristics: the interests of the accusers and defendants are antagonistic, and sometimes it is difficult to balance the interests and there is a gap between the legal truth and the objective reality. The court can only judge according to the truth of the law, and it is inevitable that being different from the psychological expectations of the ordinary people. If there is no high judicial credibility, it will certainly cause doubts and even dissatisfaction of the ordinary people.

### III. THE ROLE OF JUDICIAL CREDIBILITY

Judicial credibility plays a decisive role in the comprehensive construction of comprehensive law-based governance. Therefore, after the central government put forward the goal of comprehensively administering the country according to law, the Supreme People's Court and the Supreme People's Procuratorate have been emphasizing judicial credibility improvement and the judicial credibility plays the following roles in the comprehensive legal system.

#### A. *Judicial Credibility Can Establish the Legitimacy of the Rule of Law*

Different scholars have different views on the legitimacy of the rule of law. Professor Su Li once pointed out that the rule of law is a local resource and there is no unified model; the rule of law is a kind of local knowledge. To a certain extent, it has eliminated the legitimacy foundation of the rule of law. This is also what Marx Weber said that many systems will be re-enchanted after the disenchantment. Judicial credibility just provides the basis for this regeneration. Because the judiciary has credibility, the rule of law is justified. If the judiciary loses its credibility, even the good law can't achieve its original institutional effect.

#### B. *Judicial Credibility Can Promote the Formation of Citizens' Thoughts on the Rule of Law*

Ancient Chinese jurists have sharply pointed out that "relying on law only is not enough to realize the rule of law", which emphasizes that the realization of the rule of law is a systematic project, and it is impossible to achieve this simply by judiciary authorities, for one of the most important elements is citizens' thoughts on the rule of law. If the judicial credibility of a country is strong, generally speaking, citizens' thought of the rule of law and the quality of the rule of law are also relatively strong. In the process of handling daily affairs, they can use the rule of law to consider problems. On the contrary, if a country's judicial credibility is relatively low, then the rule of law and the quality of the rule of law of citizens will be relatively low. When considering the problem, it may not be possible to adopt the rule of law thinking. On the contrary, they will often use some illegal means to solve problems. For example, the frequent petitions and repeated entanglement petition in China are important manifestations of the rule of law thinking, and this will cause vicious circle, and further aggravate the legal environment.

#### C. *Judicial Credibility Can Help to Settle Disputes*

For the case of entering the judicial process, the most ideal state should be that when the case is over, the dispute is completely settled and resolved. However, it is actually very difficult to do this in real life. After the judgment is made, the parties will often continue to appeal, apply for retrial and petition. Why does this happen? A big reason is that China's judicial credibility is not strong, so both parties do not recognize the fairness of the judgment, which will consume a lot of valuable judicial resources unreasonably.

### IV. THE STATUS QUO OF JUDICIAL CREDIBILITY IN CHINA

Since the 18th National Congress of the Communist Party of China, China's judicial credibility has been improved greatly. However, it is undeniable that there still is a large gap between current situation and the new expectations of the people. China's judicial credibility has the following problems:

#### A. *The Professional Quality of Judicial Personnel Needs to Be Improved*

After the 18th National Congress, the judicial system carried out the reform of the staffing system, and selected a large number of high-quality judges, prosecutors, and the quality of judicial personnel has been greatly improved. However, with the development of China's social economy, various new types of cases emerge one after another. Therefore, it is necessary to further improve the ability of judges and prosecutors to handle cases, and the continuing education of judicial personnel is currently not formal enough. The pace of knowledge renewal of judicial personnel has not kept pace with social development and change.

#### B. *The Moral Quality of Judicial Personnel Needs to Be Improved*

After the 18th National Congress of the Communist Party of China, the Party Central Committee put forward higher requirements for the strict administration of the party. The anti-corruption of the judicial system has also got great achievements. However, at present, we have only achieved the goal of not daring to corrupt and the goal of not being able to as well as unwilling to corrupt has not been achieved. The micro-corruption in the judicial field still exists. Therefore, it is necessary to further intensify efforts to fight corruption and standardize the system to ensure the integrity and justice in the judicial field. At the same time, education on ideals and beliefs should be reinforced. The corruption of the judicial system is very harmful to society because justice is the last guarantee of social justice.

#### C. *Judicial Personnel Lacks Simple Legal Concepts*

Many judicial personnel are too eager to pursue the logic of law, apply law stiffly without implementing the concept of justice for the people or meeting the requirements of judicial activism. Therefore, the result of the judgment seems to be strict in accordance with the law, but it is far from the

psychological expectation of the ordinary people and cannot be trusted by the people. Based on this, we should increase the learning of some simple legal concepts when training judicial personnel.

#### *D. The Judicial System Lacks Unified Values*

China is in a period of social transformation, and various values are in constant conflict. Therefore, society demand on judicature becomes particularly large. The law has gradually become an important tool for social governance. However, facing sudden pressure, the judicial system lack staffs and cannot bear corresponding responsibility.

### V. SEVERAL MEASURES TO IMPROVE THE JUDICIAL CREDIBILITY OF CHINA

#### *A. The Reasoning of the Judgment Documents Should Be Further Strengthened*

The judgment documents are facing the people directly, so the judges should further strengthen the reasoning in the process of writing the judgment. When explaining to the litigants how the judgment decisions are formed, the following should be stated clearly that for the evidence submitted by both parties what has been adopted, what has not been, and why not. At the same time, the judgment should conform to the socialist core values, so that human feeling, the truth, and the law are consistent with each other. At the same time, for some cases that really have no legal basis in civil cases, the method of following precedent should also be adopted. It should first refer to the treatment method that the court adopted with similar cases in the past, and then deal with the case considering the specific circumstances.

#### *B. The Enforcement of Cases Should Be Further Increased*

The case execution has a major impact on judicial credibility. Many people have developed a distrust of justice because many plaintiffs won the case and didn't get paid in the civil case, which makes them distrust the rule of law. Therefore, it is necessary to further increase the enforcement of enforcement cases to ensure that each winning party is able to obtain legal benefits in accordance with legal judgments.

#### *C. The Professional Security Mechanism of Judges and Procurators Should Be Improved*

After the system reform for specified number of personnel, the quality of judges and prosecutors was greatly improved, and the original idea of reform was reached. However, there have also been some problems, that is, the workload of the judges has been greatly increased compared with the previous ones, but the treatment has not been improved accordingly, which is not conducive to improving the enthusiasm of the judges and the prosecutors in handling cases, and will also lead to the loss of judges and prosecutors. Therefore, the existing system of determining the treatment of judges and prosecutors should be changed from their administrative level to the rank of judge instead. At the same

time, judges, the retirement age of prosecutors should also be different from general civil servants. Judicial work is a very professional job. The older the procurator is, the more experience he has. However, many judges and prosecutor now retired at the age of 60, which is actually a waste of resources. In the future, it can be stipulated that the retirement age of judges and prosecutors can be extended to 70 years on a voluntary basis. In the meantime, the punishment of public procurators shall be strictly in accordance with the law, and judges and prosecutors cannot be disciplined without a legal cause. At the same time, it should be clear to the judges that the main job of the prosecutor is judicial trial. Some practices unrelated to the main business cannot require the participation of judges and prosecutors, such as attracting investment.

#### *D. It Is Necessary to Further Improve the Management System of the Court and the Procuratorate*

It is necessary to further promote the unified management of the people's property in the system of courts and procuratorates below the provincial level.

One of the important reasons for the lack of credibility in the courts and procuratorates before is localization management. Localized management would inevitably cause the judiciary authorities to be interfered by the local administrations. We often hear that the judiciary authorities should escort the local economic and social development is a manifestation. However, the nature of judicial power should be neutral and impartial. If it is managed locally, human and property will be balanced by the local government and cannot be completely neutral. The promotion of the unified management under provincial level can be a good solution to this problem, and in this way the courts and procuratorates can guarantee the fairness of the judiciary better and improve the credibility of the judiciary. At the same time, the reform of the internal institutions should also be carried out within courts and procuratorates. The original internal institutions are bureaucratic, and there is no difference between them and the administrations, which does not conform to the characteristics of the judiciary authorities. Because judicial behavior and administrative behavior are essentially different, administrative behavior gives priority to efficiency, so it emphasizes obedience. However, judicial behavior is different, and it requires judges to make their own judgments independently and take fairness as value orientation. Therefore, the internal organizations of the judiciary authorities must serve this goal, and reform internal institutions centered on judgment. The internal institutions must guarantee judicial adjudication.

#### *E. The Judicial Supervision Mechanism Should Be Improved*

All rights must be supervised, and judicial power is no exception, because that unsupervised power will inevitably lead to corruption. The existing supervision is mainly the supervision of the National People's Congress and the supervision to the court by the procuratorate. However, the supervision is not good enough and its effect is not satisfactory. The main reason is that the startup process of

the procuratorate's legal supervision is now strict and the protest against the effective judgment of the court is relatively strict. At the same time, the supervision of the National People's Congress is weak, and there is also a lot of controversy about whether the NPC and its Standing Committee can implement case supervision theory. Moreover, the main responsibility of the Standing Committee of the National People's Congress is to legislate. With the further progress of reform, the task of legislation is getting heavier, so it is hard to put a lot of effort into legislation. Therefore, we should follow the mass line in judicial supervision, mobilize the masses to supervise, and pay attention to the supervision of the news media. With the development of technology, the role of the news media in the disseminating information is increasingly important. The media is often called the fourth power, so its role in supervising the judiciary disseminate is increasingly prominent. At the same time, the supervision of the news media can make people understand the truth of many hot cases, and thereby understand the facts and basis that judicial authorities make judgments as well as improve the credibility of the judgment. At the same time, the extension of the media has also expanded compared with the previous ones, and Weibo, WeChat, and Official Accounts are also in the ascendant. Compared with traditional media, they spread faster and are easier accepted by ordinary people. Therefore, its supervision of the justice should also be paid more attention. However, the media also has its inherent weakness, that is, it is often impossible to report cases objectively, easy to cause events of public opinions.

#### *F. Judicial Transparency Should Be Further Promoted*

Judicial transparency plays a major role in improving judicial credibility. Sunshine is the best preservative. Only judicial transparency can effectively prevent judicial corruption and promote judicial justice, thereby enhancing judicial credibility. Moreover, with the development of science and technology, the means of judicial transparency are also developing day by day. Especially with the advent of artificial intelligence technology and virtual simulation technology, higher requirements have been put forward for judicial transparency. At this stage, the following aspects should be promoted. First, the judgment document should be open. The disclosure of judgment document has great practical significance. It can make the parties have a reasonable expectation, realizing that people learn from law. In the meanwhile, it's conducive to the realization that judges make the similar judgments referring to the previous similar cases, which are helpful for the unification of referee criterion. Besides, the disclosure of judgment document can also play a role in removing ambiguities and answering questions, especially in cases that the public are concerned about, so that public can truly understand the real situation of the case. Second, court hearing should be open. Due to the development of Network broadcast technology, live trials have become technically possible, and the publicity of the trial also has its practical significance. Watching the live broadcast of the trial makes the ordinary people see more directly how the judge make judgments, how the two parties conduct the evidence and the cross-examination are carried

out, how the procuratorate accused the suspects, how the lawyers of the two sides conduct the court debate, and how the judge conduct the court investigation, which can dispel the mystery of judicial conduct. Third, the executive information should be open. Difficulties in implementation are now common problems in courts all over the country, and they are also the focus of the people. It has prompted the courts to further open the relevant progress of the cases such as what cases can be implemented, what cannot, what the reasons for not being able to implement are, and what measures have been taken against the person subjected to execution. Only in this way can ordinary people feel that the implementation process is fair.

#### *G. The People's Jury System Should Be Further Improved*

The people's jury system is an important manifestation of judicial democracy, and it also plays an important role in improving judicial credibility. The people's jury system can enable ordinary people to participate in judicial trials, know and contact the judicial process closely, and understand the entire process of judicial judgment through personal involvement, thus inspire confidence in judicial decisions.

## VI. CONCLUSION

American jurist Pound has sharply pointed out that law is the most effective means of social governance. Therefore, the 19th National Congress also put forward the general goal of governing the country according to law. Enhancing judicial credibility is the only way to run the country by law, so we should further take measures to improve judicial credibility.

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