

"Regulating Local Governments in China: Have Courts in Shanghai Made a Difference? "
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One important means to regulate local governments in China is administrative litigation. Under this mechanism, courts can review the legality of administrative actions.

Unfortunately, Chinese courts have had difficulty playing this role effectively because of three major problems: interference from administrative officials and communist party members, inter-court and intra-court influence, and judicial corruption. Detailed discussion of these three problems can be found in my article titled "China's WTO Commitment on Independent Judicial Review," which is available outside and at Carnegie's website.

The question today is: Have courts in Shanghai, a pioneering city in China, made a difference? To answer this question, I examine in this paper whether the three problems are of lesser magnitude in Shanghai. This study is based on extensive literary research, a survey of about 800 residents in Shanghai, and my interviews with judges, officials, professors, and lawyers in the city.

If courts in Shanghai have indeed made a difference, we also need to ask:

- what measures has Shanghai taken to accomplish this?
- what lessons about administrative litigation in China can be learned from Shanghai's experiences?

INTERFERENCE

The problem of interference is reflected in Chinese courts' small administrative caseload because many government officials and party members, especially those at lower ranks, pressure judges to reject administrative cases filed by aggrieved parties.

On average, administrative cases account for only 1.4 percent of all first-instance cases accepted by courts in China. The percentage in Shanghai is only 0.9 percent. Does this suggest that interference is more serious in Shanghai?

No: this deduction is not supported by a comparison of the withdrawal rates of administrative cases in Shanghai and China as a whole. Many government officials and party members pressure aggrieved parties to withdraw their administrative cases. If there is more interference in Shanghai, one would expect to see a higher withdrawal rate. But Shanghai's average withdrawal rate is 34 percent, which is lower than that of the national average, 42 percent.

The main cause of smaller administrative caseload in Shanghai is that residents in that city lodge fewer complaints against government agencies. This favorable situation is largely due to Shanghai officials' and party members' better respect for law. This, in turn, is a result of the city's relative success in recruiting more qualified personnel as well as providing them with training.

But interference still exists in Shanghai and is most evident in “major and complex” cases. Final decisions in these cases are made by each court’s adjudication committee, which consists of senior judges of the court. Adjudication committees usually make their decisions after consultation with the CCP’s political-legal committees at corresponding levels. Such a decision-making mechanism leads to more interference.

The existence of interference in Shanghai shows two fundamental problems in the Chinese court system.

- *Judges’ uncertainty about how to realize social and legal effects in adjudication opens a door for interference.*

Leaders in Shanghai, like others in China, emphasize that adjudication should realize both legal effects and social effects (*shixian falu xiaoguo yu shehui xiaoguo*). Authorities, however, offer no clear explanation about how to achieve this goal. Excessive emphasis on the integration of these two effects, along with the facts that judges are not provided with clear guidance and that China’s legislation has many ambiguities, has given the CCP’s political-legal committees opportunities to put party policies above laws during adjudication.

- *Financial and personnel arrangements of the courts are controlled by local governments and party organizations.* Judges in Shanghai have the same problem, even though there have been some improvements in these arrangements.

INTRACOURT AND INTERCOURT INFLUENCE

This is another major problem in administrative litigation. A lower-ranking judge is quite ready to report to and seek instructions (*qingshi*) from higher-ranking judges whenever he/she encounters difficulties. Sometimes, senior judges simply step in to instruct junior judges. Influence within Shanghai’s court system is perceived as less serious because judges in Shanghai are of better quality and local governments prescribe clearer rules for judges to follow. Judges in Shanghai are, therefore, less likely to need supervision from senior judges.

But influence still exists in Shanghai because there is still much room for improving rules and judges’ overall competence. Another reason is that Shanghai judges are, like other judges in China, wary of being unfairly held accountable for making erroneous decisions. To avoid making mistakes, they still participate in *qingshi*. One scholar observed: “Judges in Shanghai are not stupid. They can give critical comments during private conversations. But their judgments look so silly because they don’t want to make mistakes. The more they write, the more easily they will get caught. Thus, the ‘accountability for erroneous cases’ system only encourages more *qingshi*.”

JUDICIAL CORRUPTION

Administrative litigation is also hampered by judicial corruption. But the problem seems to be less serious in Shanghai. Official sources report that none of Shanghai’s administrative judges have ever been punished for violating laws or discipline. Poll results also shed some light

on this topic. About 46 percent of 715 surveyed Shanghainese agreed or strongly agreed that corruption is least serious in Shanghai compared with other places in China. Only 22 percent disagreed.

According to interviewed experts, the better situation in Shanghai is not only because of Shanghai judges' greater legal awareness, but also because of Shanghai judges' better pay and social status as well as their being subject to stricter discipline.

In Shanghai, a holder of a bachelor of laws degree who has worked as a judge for four to five years earns about 70,000 renminbi (\$8,750) per year, including benefits. Many judges in other places in China earn only 20,000 renminbi (\$2,500) per year or even less.

High social status of Shanghai's judges is reflected in poll results. About 73 percent of 831 surveyed Shanghainese considered judges to be the "most respected," "very respected," or "relatively more respected" profession.

Interviewees spoke highly of the strict enforcement of judicial disciplinary rules in Shanghai. For example, in 1999, a judge allowed a party to a case to pay for his bowl of noodles, which cost only about 12 renminbi (\$1.50). The incident was reported to the high court, after which the judge confessed and was reprimanded.

LESSONS FOR JUDICIAL REFORM IN CHINA

The following observations and useful lessons about administrative litigation in China can be derived from Shanghai's experiences:

- Shanghai's prosperity enables it to organize intensive training for judges and officials, offer attractive employment packages to lure China's best talents to join Shanghai's bench and government, and discourage judges from taking bribes. All these help alleviate interference, influence, and judicial corruption. These economic advantages cannot, however, be easily developed nationwide because their development depends on other conditions such as good education and economic structures.
- Shanghai's judiciary still suffers from interference and influence because some reforms have yet to be implemented in China. These reforms include:
 - Individual judges must be guided clearly on how to integrate legal effects with social effects in adjudication without compromising the rule of law.
 - the system of accountability for erroneous cases should be abolished.
 - Most important, institutional reform should be implemented to redefine the relationships among courts, local governments, and party organizations to stop the courts' financial and personnel arrangements from being controlled by local governments and party organizations.

In the report of the CCP's Sixteenth National Congress, the party explicitly vowed to reform the courts' financial and personnel arrangements. This seems to mark the beginning of actual reforms. Whether this is really the case depends on the SPC's second five-year court reform plan to be issued later this year, and the proposed amendment to the Organic Law of People's Courts (Professor He will speak on this topic). I believe that current Chinese leaders, though seen to be moderate reformers, are not ready to allow fundamental reforms in these areas.

Thank you.