

THE ADMINISTRATION OF JUSTICE IN THE PEOPLE'S REPUBLIC OF CHINA

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The judicial system of the People's Republic of China is undergoing a period of transition. It will be recalled that as a result of the completion of the "liberation" of the Chinese mainland, the legal organs and the whole body of laws of the Nationalist Government were swept away, following Lenin's principle that a revolutionary regime must abolish "such ruling apparatus of the bourgeoisie as the court" and "the laws of the government which has already been overthrown".¹ Thus, on September 29, 1949, at its First Preliminary Session, the Chinese People's Political Consultant Conference at Peking adopted what is now known as the "Common Program of the Chinese People's Political Consultative Conference". Pursuant to Article 17 thereof, a complete abolition of the laws and courts of the nationalist government was declared, thus: "All laws, decrees and judicial system of the Koumintang Reactionary Government which oppress the people are abolished and laws or decrees protecting the people shall be enacted and the People's Judicial System shall be set up." In the same conference, the Organic Law of the Central People's Government and the Organic Law of the Chinese People's Political Consultative Conference were also approved. The Organic Law of the Central People's Government provided for the organization of the Supreme People's Court (Articles 27-27) as the highest judicial body, responsible for directing the work of all judicial organs. Subsequently, a system of People's Courts at various levels was gradually established. In 1951, the Central People's Government Council, which exercises legislative powers under the Organic Law of the Central People's Government of September 29, 1949, adopted "The Provisional Organic Regulations of People's Courts in the People's Republic of China". These regulations provided for a three-level and two trial system in the People's Judiciary, which consisted of the Country Courts, Provincial Courts and the Supreme People's Court. It was only in 1954, however, as a

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¹ LIEH NING CHUAN CHI (Complete Works of Lenin), cited in TAO-TAI HSIA. GUIDE TO SELECTED LEGAL SOURCES OF MAINLAND CHINA 1 (1967).

result of the approval of the Constitution of the People's Republic of China, that a new period in the transformation of the legal institutions occurred. During that same year, the Organic Laws of the People's Courts and the People's Procuratorates were promulgated. These two Organic Laws gave permanence to the judicial structure. There are two notable features of their judicial system: (1) the participation of the masses in the judicial trials as "assessors"; and (2) the People's Conciliation Committees as instruments for resolving "contradictions among the people". These two institutions will be discussed in detail in this paper.

The People's Republic of China is a socialist state. It is a socialist state predicated on the "dictatorship of the proletariat led by the working class and based on the alliance of workers and peasants."² The Constitution of a Communist state, unlike its Western counterpart, "is not intended to be an enduring document but rather a temporary programmatic interest written to serve the purpose of the state during a certain stage of its progress towards the ultimate goal of communism."³ Thus, the Constitution of the People's Republic of China, adopted by the First National People's Congress on September 20, 1954, was designed to see the People's Republic through the stage of transition to socialism.⁴ According to its preamble, "during the transition the fundamental task of the state is, step by step, to bring about the socialist industrialization of the country and, step by step, to accomplish the socialist transformation of agriculture, handicrafts and capitalist industry and commerce." The same constitutional purpose is embodied in the Constitution of the People's Republic of China, adopted on March 5, 1978, by the Fifth National People's Congress of the People's Republic of China at its first session. Thus, according to the preamble of the 1978 Constitution, "the general task for the people of the whole country in this new period is: to persevere in continuing the revolution under the dictatorship of the proletariat, carry forward the three great revolutionary movements of class struggle, the struggle for production,

² Const. (1978), art. 1.

³ BLAUSTEIN & FLANZ, CONSTITUTION OF THE COUNTRIES OF THE WORLD (1972).

⁴ This Constitution is based on the Common Program Conference of the Chinese People's Political Consultative Conference of 1949. According to the Report of Liu-Shao-Chi delivered at the first session of the First National People's Congress on September 15, 1954, the draft Constitution is "an epitome of the historical experience of the Chinese people's revolutionary struggle over more than a century as well as an epitome of the historical experience of Chinese constitutionalism in modern times."

"In order to understand the legal system in China today", wrote a Canadian attorney after a visit, "you must understand public policy; you must study the social purposes of the Chinese Revolution and the political objectives of government at various levels." (Woodsworth, *The Legal System of the People's Republic of China*, 4 CANADIAN BAR J. 299, 300 [1961]).

scientific experiment, and make China the great and powerful socialist country with modern agriculture, industry, national defense and sciences and technology by the end of the century." In his Report on the "Work of the Government" delivered at the first session of the Fifth National People's Congress on February 26, 1978, Premier Hua Kuo-Feng emphasized the need of strengthening the nation's legal institutions, thus: "Our Constitution lays down in clear terms the rights of the people. The organs of the state at all levels must take effective measures to ensure that the people enjoy and exercise their rights. Violations of these rights will be dealt with strictly and in serious cases will be punished according to law. It is essential to strengthen the socialist legal system if we are to bring about great order across the land. Our laws protect the people's interests. Basing ourselves on the the new Constitution which is to be discussed and adopted at this session, we should draw on our twenty-eight years of experience with the dictatorship of the proletariat, give a ready ear to the opinions of the masses and gradually make and perfect our socialist laws. We should give wide publicity to the significance of cultivating a sense of respect for socialist laws. Cadres should be law-abiding, as should the masses and indeed everyone. We should rely on the masses in enforcing public order and dealing firmly with crimes of different kinds." The Constitution provides equality before the law, freedom of speech and of the press, assembly, petition, procession and demonstration, and of religion as well as the right to work, to leisure, to education and social assistance. Protection against arbitrary arrest is specifically insured by Article 47, which provides that "the citizens' freedom of person and their homes are inviolable. No citizen may be arrested except by decision of a people's court or with the sanction of a people's procuratorate, and the arrest must be made by a public security organ."⁶

⁶ The fundamental rights and duties of citizens are:

"Art. 44 — All citizens who have reached the age of eighteen have the right to vote and to stand for election, with the exception of persons deprived of these rights by law.

"Art. 45 — Citizens enjoy freedom of speech, correspondence, the press, assembly, association, procession, demonstration and the freedom to strike, and have the right to 'speak out freely, air their views fully, hold great debates and write big-character posters.'

Art. 46 — Citizens enjoy freedom to believe in religion and freedom not to believe in religion and to propagate atheism.

"Art. 47 — The citizens' freedom of person and their homes are inviolable.

"No citizen may be arrested except by decision of a people's court or with the sanction of a people's procuratorate, and the arrest must be made by a public security organ.

"Art. 48 — Citizens have the right to work. To ensure that citizens enjoy this right, the state provides employment in accordance with the

COURTS OF JUSTICE

The organization of the courts of the People's Republic of China is prescribed by the Constitution and by the laws enacted for that purpose according to Article 73 of the 1954 Constitution in the People's Republic of China. Under the National People's Congress and its Standing Committee,

principle of overall consideration, and, on the basis of increased production, the state gradually increases payment for labour, improves working conditions, strengthens labour protection and expands collective welfare.

"Art. 49 — Working people have the right to rest. To ensure that working people enjoy this right, the state prescribes working hours and systems of vacations and gradually expands material facilities for the working people to rest and recuperate.

"Art. 50 — Working people have the right to material assistance in old age, and in case of illness or disability. To ensure that working people enjoy this right, the state gradually expands social insurance, social assistance, public health services, co-operative medical services, and other services.

"The state cares for and ensures the livelihood of disabled revolutionary army men and the families of revolutionary martyrs.

"Art. 51 — Citizens have the right to education. To ensure that citizens enjoy this right, the state gradually increases the number of schools of various types of other cultural and educational institutions and popularizes education.

"The state pays special attention to the healthy development of young people and children.

"Art. 52 — Citizens have the freedom to engage in scientific research, literary and artistic creation and other cultural activities. The state encourages and assists the creative endeavors of citizens engaged in science, education, literature, art, journalism, publishing, public health, sports and other cultural work.

"Art. 53 — Women enjoy equal rights with men in all spheres of political, economic, cultural, social and family life. Men and women enjoy equal rights with men in all spheres of political, economic, cultural, social and family life. Men and women enjoy equal pay for equal work.

"Men and women shall marry of their own free will. The state protects marriage, the family, and the mother and child.

"Art. 54 — The state protects the just rights and interests of overseas Chinese and their relatives.

"Art. 55 — Citizens have the right to lodge complaints with organs of state at any level against any person working in an organ of state, enterprise or institution for transgression of law or neglect of duty. Citizens have the right to appeal to organs of state at any level against any infringement of their rights. No one shall suppress such complaints and appeals or retaliate against persons making them.

"Art. 56 — Citizens must support the leadership of the Communist Party of China, support the socialist system, safeguard the unification of the motherland and the unity of all nationalities in our country and abide by the Constitution and the law.

"Art. 57 — Citizens must take care of and protect public property, observe labour discipline, observe public order, respect social ethics and safeguard state secrets."

"Art. 58 — It is the lofty duty of every citizen to defend the motherland and resist aggression.

two (2) separate but interlocking hierarchies of judicial administration were established, *viz.*: (1) the People's Court; and (2) the People's Procuratorate. The "People's Courts", under the Supreme People's Court were given the sole authority of administering justice, while the "People's Procuratorates" headed by the Supreme People's Procuratorate, exercise the investigative function and prosecution of criminal cases. The duty of the People's Procuracy is to protect the interest of the state, to ensure the observance of the law, and to prosecute counter-revolutionary and other criminal elements. The "task of the People's Court is to try criminal and civil cases, and, by judicial process, to punish criminals and settle civil disputes, in order to safeguard the people's democratic system, maintain public order, protect public property, safeguard the rights and lawful interest of citizens", and ensure the successful execution "of socialist constitution and socialist transformation of the country." In addition, the courts are expected to "educate citizens in loyalty to their country and voluntary observance of the law."⁶

The court system consists of the Supreme People's Court, Local "People's Courts" and Special "People's Courts". The Local People's Courts consists of three (3) levels commencing at the grass roots with the *basic* "People's Courts", then the "Intermediate People's Courts", and the "Higher People's Courts."

BASIC PEOPLE'S COURTS

These courts consist of: (1) the County People's Courts; (2) the People's Courts of autonomous countries; and (3) the People's Courts of municipal districts.⁷ Each People's Court in this level is composed of a President, one or two Vice-Presidents, and Judges. It may set up a criminal division and a civil division, each with a Chief Judge and when necessary, Associate Chief.⁸ Presidents of Local People's Courts are elected by the local people's congress at the corresponding levels. Vice-Presidents, Chief Judges of divisions, Associate Chief Judges of divisions and Judges are appointed and removed by the local people's councils (now revolutionary committees) at the corresponding levels.⁹

"It is the honourable obligation of citizens to perform military service and join the militia according to the law.

"Art. 59 — The People's Republic of China grants the right of residence to any foreign national persecuted for supporting a just cause, for taking part in revolutionary movements or for engaging in scientific work."

⁶ Organic Laws of the People's Court, article 3.

⁷ Article 15, Organic Laws of the People's Courts of the People's Republic of China, adopted by the First National People's Congress, September 21, 1954.

⁸ *Ibid.*, art. 16.

⁹ *Ibid.*, art. 32.

As their chief responsibilities, they are courts of first instance for ordinary civil and minor criminal cases. Besides trying cases, they are charged with the duty of: (1) settling civil disputes and minor criminal cases which do not need a trial; (2) directing the work of the people's conciliation committees; and (3) performing the judicial administrative work within the scope of the authority given by an upper judicial administrative organ.¹⁰ In the settlement of civil disputes, "people's reception offices" are usually set up in the basic people's courts to give *legal advice* to those who come to the court in person, to answer legal questions submitted by the people through mail, and to settle minor cases with a minimum of formality. The President, Chief Judge and Judges are usually required to set aside certain office hours weekly or daily to interview prospective litigants and to try to settle cases in a parental and informal manner, thus reducing the number of cases in the docket.¹¹ Aside from the foregoing, these courts are also charged with the duty of directing the work of the people's conciliation committees, which is one of the salient features of their legal system.

INTERMEDIATE PEOPLE'S COURTS

To facilitate the disposition of litigations and relieve the burden of the Upper Courts, Intermediate Courts were established in 1954. Under Article 20 of the Organic Law, Intermediate Courts may be established in various areas of a province or autonomous regions, in municipalities directly under the central authority¹² and other large municipalities, and in autonomous *chou* (prefectures). This court is composed of a President, one or two Vice-Presidents, Chief Judges of divisions, Associate Chief Judges of divisions and Judges. It has a criminal division and a civil division, and such other divisions which are deemed necessary (Section 21). Presidents of Intermediate People's Courts established in various areas in provinces or municipalities directly under the central authority are elected by the people's congresses of the provinces or of the municipalities; Vice-Presidents, Chief Judges of divisions, Associate Chief Judges of divisions are appointed and removed by the people's councils of the provinces or of the municipalities (Article 32).

The Intermediate People's Courts take cognizance of: (1) cases of first instance assigned to their jurisdiction by the law; (2) cases of first

¹⁰ Local revolutionary committees at various levels are the executive organs of local people's congresses at the corresponding levels. A local revolutionary committee is composed of a chairman, vice-chairman, and other members.

¹¹ TAO-TAI HSIA, *op. cit.*, note 1, p. 7.

¹² Peking, Shanghai and Tientsin are considered municipalities.

instance transferred from the basic people's courts; (3) appeals and protests against judgments and orders of the basic people's courts; and (4) protests lodged by the people's procuratorates in accordance with the procedure of judicial supervisions of the procuratorates. When it considers a case pending before it of great importance, an Intermediate People's Court may request an Upper People's Court to take jurisdiction (Article 25).

HIGHER PEOPLE'S COURTS

At the apex of the judicial hierarchy in provinces, autonomous regions and municipalities under the central authority are the Higher People's Courts. These courts take initial jurisdiction of the cases assigned to them by laws and decrees, and cases transferred from Lower People's Courts. They also hear appeals and protests against judgments and orders of the Lower People's Courts as well as protests lodged by the people's procuratorates (Article 25).

A Higher People's Court is composed of a President, Vice-Presidents, Chief Judges of divisions, Associate Judges of divisions and Judges. Each court has a civil as well as a criminal division, and such other divisions deemed necessary (Article 24). These judicial officers are elected or appointed and removed by the organs of self-government at the corresponding levels. We are informed that the Shanghai Higher People's Court has very few cases.

SPECIAL PEOPLE'S COURTS

Prior to 1954, there existed three (3) Special People's Courts which were classified as: (1) Military Courts; (2) Railway-Transport Courts; and (3) Water-Transport Courts. These courts were charged with the responsibility of handling cases of counter-revolutionary activities, sabotage, corruption, larceny and negligence of duties in the transportation system, for the purpose of protecting production and reviving the economic reconstruction of the country. In August 1954, Peking abolished all the special transport courts and transferred the cases under their jurisdiction to the regular courts.

SUPREME PEOPLE'S COURT

The Supreme People's Court is the highest judicial organ. It is composed of a President who is elected by the National People's Congress,¹³ Vice-Presidents, Chief Judges of divisions, Associate Chief Judges of

¹³ Chiang Hua was elected President of the Supreme People's Court on March 5, 1978, by the Fifth National People's Congress.

divisions and Judges, all of whom are appointed by the Standing Committee of the National People's Congress.

Since the separation of power is rejected in the communist theory of state and law, the Supreme People's Court is not empowered to rule on the constitutionality of laws. This duty is reserved for the Standing Committee of the National People's Congress, which has, among its functions, the power "to interpret the Constitution and the laws and to enact decrees" and "to change and annul inappropriate decisions adopted by the organs of state power of provinces, autonomous regions, and municipalities directly under the Central Government."¹⁴ The jurisdiction of the Supreme People's Court includes: (1) cases of first instance which it considers of national importance or those assigned to it by law; (2) appeals and protests against judgments and orders of higher people's courts; and (3) protests lodged by the Supreme People's Procuratorate in accordance with the procedure of judicial supervision.¹⁵ By resolution of the Standing Committee of the National People's Congress the judicial committee of the Supreme People's Court was authorized to rule on questions raised by the concrete application of laws and decrees in the course of trial, but the power to interpret the laws was still reserved in the Standing Committee. On July 15, 1952, the Congress required that all death sentences of the lower courts be submitted to the Supreme People's Court for approval. On April 28, 1959, Congress abolished the Ministry of Justice and transferred its administrative work to the Supreme People's Court. It was their view that this would serve to integrate the functions of adjudication and judicial administration and simplify the line of leadership, ensure the proper guidance over the courts, and eliminate overlapping of work.

PEOPLE'S ASSESSORS

According to Article 41 of the 1978 Constitution, "the people's courts apply the system whereby representatives of the masses participate as assessors in administration of justice. With regard to major counter-revolutionary or criminal cases, the masses should be drawn in for discussion and suggestions." Article 35 of the Organic Law of the People's Courts provides that any citizen over 23 years of age who has the right to elect or be elected and has not been deprived of political rights is eligible to be elected a "people's assessor". In case of lower courts, the assessors are elected by local residents directly or by the "people's congresses" or chosen

¹⁴ Constitution of the People's Republic of China, March 5, 1978, art. 25[3] and [5].

¹⁵ Organic Law of the People's Republic of China, September 21, 1954, art. 30.

from among the workers of institutions, people's organizations, and enterprises at the corresponding level. In higher courts, the assessors are selected from among the workers of people's organizations and enterprises at the same level. The term of office is usually two years. Their participation in court is arranged through the combined use of unscheduled invitations and a fixed system of rotation. Specific invitations are used by the courts when cases come up which demand of the assessors special and technical knowledge.

Theoretically, the assessors enjoy "equal rights" with the judges in the exercise of their functions.¹⁶ They can examine the records of the case, verify all the facts and evidence, and interrogate the parties and their witnesses at the trial. They are entitled to sign with the judge the court decision. Since a court decision is reached through a majority vote, it is conceivable that two assessors can outvote the judge. In case of a stalemate in voting, the judicial committee of the court is the final authority for the decision.¹⁷

COLLEGIATE SYSTEM

According to Article 9 of the Organic Law of the People's Courts, the courts carry out the collegiate system in the administration of justice. In cases of first instance, justice is administered by a collegiate bench of a judge and "people's assessors", with the exception of simple civil cases, minor criminal cases, and cases otherwise provided for by law. In cases of appeal or protest, a collegiate bench of regular judges is required. If a collegiate bench includes the President of the court or the Chief of the division, he acts as the presiding judge, otherwise, a presiding judge is appointed from among the judges.¹⁸ A collegiate bench usually consists of a judge and two "people's assessors" in the first instance and three judges in the second instance. The collegiate bench is subject to the direction of its Chairman and the Court President. If a difference of opinion exists between the Court President and the bench, the matter is transferred to the judicial committee for examination and solution. The actual decision making process involves a great deal of consultation and discussion. Whenever relevant or necessary the judge in charge seeks the view of procurators, the Court President, party officials and even the community concerned, before a decision is reached.

¹⁶ Judicial Organic Law, article 36.

¹⁷ SHAO-CHUAN LENG, citing Hei-lung Chiang Jih-Pao, "Questions Concerning Elections of People's Assessors" Answered.

¹⁸ TAO-TAI HSLA, *op. cit.*, note 1, p. 23. Organic Law of the People's Courts. Article 9.

JUDICIAL COMMITTEES

One unique feature of the judicial system in the People's Republic of China is the establishment of judicial committees in the people's courts at all levels. The Committees are important organs through which the Communist principle of "collective leadership" is implemented. The tasks of judicial committees are "to sum up judicial experience and to discuss cases of great importance or difficult cases as well as other questions relating to the judicial work."¹⁹ Their major functions are: (1) the review of a legally effective judgment; and (2) the summarization of judicial experience. Pursuant to Article 12 of the Organic Law, the judicial committee has the power to review a legally effective court decision if some definite error is found. It may ask the court for retrial or the procuratorate for additional investigation. Another important function is the summarization of judicial experience. A more specific form of summarization is the collection of exemplary cases and court decisions. This would entail the classification of decided cases, selection of model cases from each category, analysis of the causes of crimes and civil disputes, and generalization of uniform standards for determining punishment and rendering judgments. Summarization of judicial practice has reportedly improved the efficiency and quality of work of the judicial officials and ensured the correct implementation of party policy by the courts.²⁰

Members of the judicial committees are appointed and removed by the people's councils at their corresponding levels upon the recommendation of the president of the local people's courts. Similarly, members of the judicial committee of the Supreme People's Court are appointed and removed by the Standing Committee of the National People's Congress upon the recommendation of the President of the Court.

Meetings of the judicial committees are presided over by the Court President, and the same is attended by the Chief Procurator at the corresponding level.

PEOPLE'S PROCURACY

To have a comprehensive view of the socialist criminal procedure, one must have an understanding of the People's Procuracy. This is one of the major institutions of the judicial system in the People's Republic of China. Pursuant to the Organic Law of September 21, 1954, a system of People's Procuratorate was established. As the highest organ of the hierarchy the

¹⁹ Organic Law of the People's Courts, article 10.

²⁰ SHAO-CHUAN LENG, JUSTICE IN COMMUNIST CHINA; A SURVEY OF THE JUDICIAL SYSTEM OF THE CHINESE PEOPLE'S REPUBLIC 84-86 (1967).

Supreme People's Procuratorate "exercise procuratorial authority over all departments of the State Council, all local organs of state, persons working in organs of state, and citizens, to ensure observance of the law." (Article 3). Local People's Procuratorates are established in provinces, autonomous regions, municipalities and counties (Article 1).

The People's Procuratorate has the duty "to see that the investigatory activities of investigation departments conform to the law". If it discovers that "investigatory activities are being conducted in an illegal manner by an order of public security at the corresponding level", it must "notify that public security organ to rectify its illegal practices." A procuratorate may either investigate a criminal case itself or transfer it to a public security organ for investigation. It has the right to read the files and other documents of the investigatory organs and demand data and explanation from them. If, after having conducted an investigation of a criminal case, a public security organ is of the opinion that the case requires prosecution, it must transfer the case to the appropriate procuratorate "for examination and decision as to whether legal proceedings are to be instituted." The procuratorate also may approve the arrest of any citizen. There is also a provision in the Organic Law of the People's Procuratorates for a mutual check between the procuratorial and public security organs. Thus, if a public security organ discovers errors in any decision by a people's procuratorate denying its request for arrest, or a decision not to prosecute, it may "submit its views or bring charges before a people's procuratorate at the next higher level." (Article 31).

Through their participation in the judicial process, the People's Procuratorate may, if it finds an error in a judgment of first instance of a people's court, lodge a protest and demand its review by a higher court (Article 15). A copy of the protest should be sent for review to the procuratorate at the next higher level, which may annul the protest if it finds it in error. If it approves the protest, it should submit its written opinion to the court at the corresponding level (court of appeal) (Article 16).

An upper people's procuratorate can lodge a protest against the judgment or order only of a lower people's court. In other words, a procuratorate cannot lodge a protest against the judgment or order of a court at the corresponding level; it can only send a proposed protest to the procuratorate at the next higher level, which after review can lodge the protest with the people's court of the same level. The upper people's court, after having confirmed the error pointed out in the protest, may review the case itself or direct a lower court to conduct a retrial. It may reject the protest if it finds no such error exists in the judgment or order of the lower court.

In the investigation of a criminal suspect, the use of coercion or torture to exact confession is officially prohibited. Arbitrary arrest is not allowed. Thus, Article 47 of the Constitution prohibits the arrest of any citizen except by decision of a people's court with the sanction of the people's procuratorate. The Regulations on Arrest and Detention of December 1954 specifically provides that the organ making the arrest should interrogate the prisoner within twenty-four (24) hours of the arrest and should immediately set him free upon discovery of unwarranted arrest and detention.

"SOCIALIST" CRIMINAL PROCEDURE

The "socialist" criminal procedure in the People's Republic of China may be divided into four (4) principal stages: (1) preliminary investigation, (2) adjudication; (3) appeal; and (4) execution of sentences. The preliminary investigation is the one performed by the People's Procuratorate adverted to in the preceding paragraphs. The process of *adjudication* consists of two (2) phases: (a) the *preliminary sessions* or preliminary hearing — wherein the court determines whether the *preliminary investigation* has been conducted in accordance with law and whether there is sufficient evidence to bind the accused over for trial; and (b) the *session proper* (trial). In the preliminary session, if the court finds the evidence insufficient, it may reject the indictment and release the accused. The session proper is further divided into four (4) stages: (1) preparation; (2) investigation; (3) debate; and (4) judgment. At the preparatory session and the session proper, the court, which is composed of a Judge and two "People's Assessors", follows an inquisitory procedure. The judges, the assessors and the interrogators play an active part in examining and verifying the evidence presented by both sides as well as those collected at the court's initiative. For instance, the Shanghai Intermediate People's Court has one Chief Interrogator and two Deputy Interrogators whose main function is to examine witnesses and verify the evidence under the supervision of the judge. The authorities attach considerable importance to the gathering of comprehensive and reliable evidence. In the course of the trial the accused is assured of his legal rights, such as to have a counsel for his defense, to introduce new evidence, or to make a final statement, etc. We were informed that the accused can be assisted by a lawyer and present evidence in his behalf. In this phase of the proceedings, the judges may question the accused, interview witnesses and experts, examine other evidence, and consult with the relevant procurators and police officers.²¹ We were also informed that after completing the investigation,

²¹ SHAO-CHUAN LENG, *op. cit.*, note 20, p. 165.

the judge consults the masses before imposing the penalty. The sentence then would be the result of the consensus reached at such meetings.

TWO LEVEL OF COURTS

In the Republic's judicial system, a case ordinarily only goes through two levels of courts. The court of second instance is usually the court of *last* instance. Hence, while an appeal may be taken from the judgment or order of a local people's court at the next higher level, the judgment of the latter is considered final. Similarly, while the people's procuratorate may lodge a protest against the judgment or order of a local people's court before the court at the next higher level, the judgment or order of the intermediate people's courts or the court of second instance is considered final. The judgment or order of the Supreme People's Court, being the highest court of the land, is also considered final and subject to execution. According to Chinese jurists, the limitation of one appeal to a case has the following advantages: (1) the parties are not burdened with great delays in the final settlement of the controversy, hence, the time and energy of the litigants are saved for productive use; (2) it lessens inconveniences and hardships for the parties and makes the litigation less costly; and (3) in criminal cases, violations of the law are punished promptly, hence, it serves as a more effective deterrent against criminal recidivism and the example becomes an educative force in the community.

SETTLEMENT OF CIVIL DISPUTES

As a consequence of the communization of the entire economic life of the country by laws such as the Agrarian Reform Law, statutes and regulations on cooperatives, communization of farms, and other socialist measures the area of private property relationship has been narrowed. To be sure, the system of private ownership is not wholly eliminated. There are still disputes over property rights, contracts and inheritance. It has also been noted that contractual disputes are gaining new importance as the communes and other economic units have come to use increasingly the institution of contracts.

CONCILIATION COMMITTEES

In the settlement of disputes over property and contracts, litigants have invariably resorted to the conciliation committees. Thus, in the People's Republic of China, there are today numerous semi-official conciliation committees specifically charged with the responsibility for conciliatory settlement of civil and petty criminal cases. This form of settlement is in conformity with the traditional preference of the Chinese for

the informal manner in which they usually settle controversies. It has been observed that since 1957 greater efforts have been made to expand the role of conciliation as an instrument for resolving "internal contradictions". Conciliation committees have been set up in the cities — in stores, schools, residents' communities, enterprises, factories, and workshops and in the rural areas — in production brigades and production teams. It is their view that settlement of disputes through conciliation serves to strengthen internal solidarity, preserve social order, and promote production. Conciliation committees also serve the party and the government by conducting propaganda and education, and instilling law and discipline among the citizenry.²²

The conciliation committees usually consists of three or five or seven members who are elected by the masses usually by a show of hands at public meetings. Those chosen are resident of the communities where they are designated to serve. They are selected for their political background, good reputation and enthusiasm for conciliation work. While conciliation is not compulsory, as the committees cannot compel disputants to appear nor can they apply punishment and make arrests, parties in a civil dispute usually appeal to the committee for help before filing any case in court. Even when a civil case is filed in court, in actual practice the courts usually rely upon methods of persuasion and education, and use legal judgment sparingly as a last resort. "The overriding objectives is to settle internal contradictions by conciliation, uphold law and discipline, facilitate production work, strengthen the unity of the people, and promote development of socialist virtues. * * * The Court hearings are generally conducted in an informal atmosphere, with the participation of the relatives, friends, neighbors, co-workers of the litigants in a joint endeavor to resolve the disputes."²³

According to Chao Pao-Ling, Vice-President of the Higher People's Court in Shanghai, this method of settlement is based on Chairman Mao's formula of "Unity-Criticism-Unity". She explained that while unity can be fractured by disputes, such disputes, after mutual criticism, can be settled and unity among the parties restored. Li Hai-Ching related a case which

²² The activities of these committees are centered around the "patriotic pact of socialism", which is made by the masses themselves under the guidance of the party cadres. The content of the pact varies in accordance with the emphasis of each committee, but it generally contains the following points: "love the country, love the commune, love the family, ardently love socialism and labor, love and protect public property, observe public order, observe labor discipline, and respect the ethic of socialism." The pact is used as a vehicle for teaching and indoctrinating the people in the observance of law, party directives, and policies. The masses are asked by the party cadres to express their opinions concerning the content of the pact and to pledge their allegiance.

²³ SHAO-CHUAN LENG, *op. cit.*, note 21, p. 173.

is illustrative of this method of conciliation. The case involved a husband and a wife who were both working in separate factories. The husband imposed restrictions on the movements of the wife, preventing her from attending meetings, etc. When the wife refused, she was maltreated. Finally, the wife got so incensed with the maltreatment that she reported the matter of her husband's misbehavior to the officials in her factory. The factory officials tried to mediate in their disputes through the conciliation committees. When this failed, the wife filed an action for divorce with the People's Court. Upon the filing of the case, the court set in motion the first phase of the proceedings by sending interrogators to verify the facts alleged by the complainant from the neighbors of the spouses, their relatives and even co-workers. Upon submission of the report by the interrogators, and verifications of the complainant's allegations, the court convened a meeting between the spouses. In said meeting, in the presence of the relatives, friends, neighbors and co-workers of the spouses, they were confronted with the facts and the husband was asked the reasons for his actions and whether or not he will mend his ways. When the wife expressed her lack of trust in the promises of her husband, the others were allowed to give their views on the matter. There was a joint endeavor to reconcile the parties to the suit. On the basis of the consensus reached in such "democratic debate meetings", in addition to the assurances given by the community elders and the superiors of the husband that they will see to it that the latter will keep his promises, the divorce proceedings ceased and the spouses were reconciled.²⁴ The same effort to mediate the dispute is also resorted to in cases on appeal. The importance of conciliation as a measure of settling disputes is reflected in a 1959 report that in Honan Province they disposed of fifteen (15) times as many civil disputes and small criminal cases as those decided by the people's courts at various levels.²⁵

THE PENAL SYSTEM

On May 27, 1978, we had occasion to visit Shanghai Prison and confer with the officials in charge, namely: Mao Teh Hsia, Political Commissar; Huan Pin, Deputy Political Commissar; and Hsu Tu-Ching, Officer-in-charge of Control and Education. Shanghai Prison is a modern penal institution. It has a modern hospital with complete surgical facilities. One of its noteworthy features is its employment of the prisoners in pro-

²⁴ The applicable provisions on rights and duties of husband and wife and on divorce are Articles 7-12, and 17-19, respectively, of the Marriage Law of the People's Republic of China.

²⁵ TAO-TAI HSIA, *op. cit.*, note 7.

ductive labor. In the People's Republic of China's ideology, criminal penalties are not merely to punish and reform criminals. They are intended to educate the citizenry and deter the commission of crimes. Forced labor or the so-called reform through labor is a basic institution in their penal system. According to Article 30 of the Statute on Labor Re-Education, which governs the administration of prisons, the "industrial activity of corrective labor institutions must serve the cause of state economic construction and be included in the overall plan for production and construction." Labor reform institutions, according to Mao Tse Tung, performs the function of training convicts in the Communist spirit and with labor discipline. The policy objective is to combine punishment and control with ideological reform, productive labor activity and political education.

When we toured the Shanghai prison, we found that every floor of the prison was a factory unit. Thus, on one floor, we found about a hundred men, with at least two men to each machine, producing thousands of metal watch cases. In another area, garments were produced. In one section, thick piles of cloth were cut into patterns by an automatic cutter, while in another they were sewn into pants and jackets. The female prisoners were similarly engaged in the manufacture of various kinds of ladies garments. The lower portion of the prison was the printing section, where labels for merchandise, paper bags, wrappers and packages were made.

The officer-in-charge of the prison informed us that the prisoners have been previously trained to develop their basic industrial skills. Although the convicts are not paid for their work, we were told that they are assured of a stable and lucrative employment upon their release from prison, it being the obligation of the government to assure the gainful employment of the convict prior to his release. To show the magnitude of the industrial operation of the Shanghai prison, we were informed that from the goods produced last year, the prison realized a gross income of twenty million Yuan.²⁸

SUMMATION AND RECOMMENDATION

As a whole, the trip to the People's Republic of China was a fruitful one. Similarities between the traits, customs and traditions of the Chinese and the Filipino peoples were observed by us and, to our minds, these make feasible the adaption into our own judicial system of some aspects of the Chinese legal structure that may enable us to make the administration

²⁸ One U.S. Dollar is approximately 1.70 Yuan.

of justice more responsive to the needs of the masses. To this end, it may be desirable to encourage conciliation as a means of settling minor civil disputes in the barangay level, without resort to time-consuming court litigations which may exacerbate discord and enmity and unnecessarily clog the dockets of the courts. We, therefore, recommend that the conciliation procedure being utilized in the People's Republic of China should be further studied and evaluated, with the end in view of applying it in our barangays. From the community elders, leaders and superiors in places of employment could be selected the Conciliation Committee in the barangays. To complement and augment such legal instrument, it might be worthwhile to look into the possibility of employing social and community sanction to ensure compliance with obligations and observance of the law, good customs, morals and public policy. Since Filipinos are usually deeply concerned about close familial and community ties, we are hopeful that conciliation methods at the barangay level will be fully appreciated and taken advantage of by our people. The courts, therefore, will be resorted to only as an ultimate remedy, when all efforts at conciliation have failed, thus greatly reducing the number of pending cases and resulting in a more effective and speedy administration of justice.