

The position of mediation in contemporary Chinese civil justice

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APPENDIX VI:

Valorization Addendum

Civil justice in China is in a state of flux. On the one hand, court leaders are struggling hard to push ahead reform measures that were intended to significantly transform the old landscape of civil litigation by reestablishing the position of adjudication and enforcing procedural formalities. On the other hand, the judicial culture that overly emphasize the search for substantive justice is so ingrained that a mere change in the procedural rules is not going to bring about real change in civil court proceedings. Hence, the research adopted an approach that combines the proceduralist perspective with an empirical enquiry covering 24 different courts in China. The research gives attention not only to the theoretical or ‘black-letter law’ aspects of procedure, but also addresses pragmatic issues that the Chinese courts are facing in the context of civil mediation. The ultimate objective is to provide concrete solutions to existing problems that can be valorized to bring tangible and meaningful change to the practice of civil litigation in China.

1. What is the social and/or economic relevance of your research results?

The research is intended for an international academic audience, as well as judges and legal practitioners in the West, with interest in Chinese civil procedure and the operational mechanics of Chinese courts. It offers a proceduralist perspective on the subject and offers solid recommendations on civil justice reform, e.g. recommendations to bring Chinese court mediation more in line with international standards of practice. The views expressed in the work would equally benefit policy-makers of the Supreme People’s Court (SPC) and drafters of civil procedure at the National People’s Congress in their tireless efforts to bring about real change in the Chinese civil justice system.

2. To whom, in addition to the academic community, are your research results of interest and why?

The research methodology adopted is catered for practical application of research findings. The research adopted a predominantly proceduralist approach in dissecting the intricate relations among stakeholders of Chinese civil justice with the view of aiding future rule-making and influencing the policies of the SPC. The proceduralist approach is supplemented by a thorough qualitative empirical enquiry into the practice of judicial conciliation. The empirical analysis, which challenges the effectiveness of the current judicial reform effort insofar as it relates to judicial conciliation, is the starting point of a wider debate on what it takes to modernize civil justice in China.

To be more specific, the empirical research results are mainly addressed to the SPC, which apart from being the highest court in the land also plays an important regulatory role within the Chinese judiciary. The important finding that the vast majority of judges in the survey still consider the principle of *Anjie shiliao* (i.e. to resolve disputes in such a way that ‘the case is closed and the dispute is [truly]

resolved’) as an important objective of civil justice should be of particular interest for the SPC. Since 2013, the SPC has implemented a number of reform measures with the aim of establishing procedural formalism in civil justice. However, top-down policy changes are only effective if the underlying judicial culture is willing to change as well. The empirical findings will help the policy-makers of the SPC understand the magnitude of the challenge that lies ahead and be able to devise a realistic and effective way to implement the reform.

Practitioners are very much disoriented with where China’s civil justice reform is going. The research findings (especially the findings that reveal the mind-set of judges) will help manage the expectations of practitioners, and provide useful practical insight for more junior practitioners on handling civil and commercial lawsuits in China.

The research results also help bring to light in the international legal community the destructive practices of coerced mediation in China, particularly during the time of former SPC President Wang Shengjun’s tenure (March 2008 – March 2013). It serves as a case study and timely reminder for courts in China and abroad that a judiciary driven by policy risks losing its intended functions (such as the enforcement of rights of citizens) and endangering access to justice.

3. Into which concrete products, services, processes, activities or commercial activities will your results be translated and shaped?

On the basis of my research results, I will develop a practical procedural guide on mediation for foreign enterprises litigating in China. To date, such practical guides in the English language are scant.

A meeting of experts, involving Chinese and international academics, judges and practitioners, will be organized to review the current practice of mediation in China. The objective of the expert meeting is to devise proposals for better regulating mediation in China.

The research results can also be valorised by way of framing them in the form of draft judicial interpretations of the SPC. This is the most practical and effective way to valorise the research as judicial interpretations of the SPC have the normative effect of statutes. If this valorised product is considered by the policy-makers of the SPC and influenced the next SPC judicial interpretation on civil procedure, the research will have national influence.

4. To what degree can your results be called innovative in respect to the existing range of products, services, processes, activities and commercial activities?

The dissertation is innovative in three aspects: (1) it is the first piece of major research intended for an international audience that critically reviews China’s mediation system as a whole from a Western proceduralist perspective; (2) it provides practical recommendations for reform with the objective of arousing interest within the international legal community and triggering a debate that would eventually bring about substantive and concrete changes to the mediation system in China; and (3) it

presents the findings of perhaps one of the most extensive qualitative empirical surveys on the practice of judicial conciliation in the English language.

While there are quite a number of articles on the subject of Chinese civil justice from a socio-legal perspective,⁹⁴⁴ a focused procedural study of this subject in the English language is lacking. The intention of the research is to fill this gap in the international literature. It is hoped that by drilling into detailed procedural rules of practice, a critical and holistic view of the subject can be presented.

As stated above, the practical recommendations in the dissertation can be valorised by way of framing them in the form of draft judicial interpretations on civil procedure of the SPC.

The proceduralist approach is supplemented by a thorough qualitative empirical enquiry into the practice of judicial conciliation in China. Unlike existing empirical studies on Chinese courts that tend to focus only on a few courts,⁹⁴⁵ this empirical study covers 24 courts from a wide geographical spread.⁹⁴⁶ The larger scope of the survey strengthens the representativeness of the study. China's geographic diversity in judicial practice calls for a wider sampling.

5. How will this/these plan(s) for valorization be shaped? What is the schedule, are there risks involved, what market opportunities are there and what are the costs involved?

Valorization will be carried out in three stages.

Stage 1 involves organizing a meeting of experts to bring together international and Chinese proceduralists, judges and practitioners to review the current practice of mediation in China with a view to better regulate mediation in China. This should happen between late 2016 to mid 2017, depending on the scale of the meeting and availability of speakers. A possible output of the meeting is an edited book (**Conference Book**) that captures the competing views of experts on the subject.

Stage 2 involves the drafting of a practice manual on court mediation for foreign enterprises litigating in China. The manual focuses on judicial conciliation, providing updates on practice and identifying trends. The practice manual, which is intended to be a high-level guide, is expected to complete by the end of 2017.

Stage 3 involves the drafting of judicial interpretations (in Chinese) for the SPC to consider. The draft should be based on concrete recommendations set out in the Conference Book. The timeline of this stage depends on the actual timing of Stages 1 and 2.

⁹⁴⁴ For example, see Ng & He 2014, p. 285-312.

⁹⁴⁵ See Ng & He 2014, p. 288.

⁹⁴⁶ The survey encompasses courts from a wide geographical span: 5 intermediate courts and 6 basic-level courts are located in first-tier coastal cities, 3 intermediate courts and 4 basic-level courts are located in second-tier coastal cities or mid-sized coastal counties, 3 intermediate courts and 3 basic-level courts are located in inland cities or counties. Needless the say, the first-tier coastal cities are wealthier and more densely populated than the second-tier/ mid-sized coastal cities. Comparatively, inland cities or counties tend to be less developed than coastal cities in China.