

# Independence of Law

The establishment of circuit courts will help promote judicial justice

By Yin Pumin

**T**he Central Government has recently approved draft plans to set up circuit courts and courts with jurisdiction across different regions in a move to further ensure justice and judicial independence.

The plans, approved on November 2, will enable the Supreme People's Court (SPC) to set up circuit courts that represent its authority, and permit the establishment of cross-regional courts and procuratorates, Xinhua News Agency reported.

The establishment of circuit courts aims to help the judicial authorities better connect with communities and make it more convenient for the parties involved in cases to have their voices heard during the proceedings.

Meanwhile, the setting up of cross-regional courts and procuratorates is expected to help prevent interference from administrative authorities during trials. The ultimate goal is to form a judicial structure in which special cases will be heard at the cross-regional courts and common cases will be heard at regional courts. The circuit courts, cross-regional courts and procuratorates will first act in some regions as part of an effort to form a system ready to be enforced nationwide.

The decision to set up the circuit courts of the top court and interregional courts and procuratorates was made during the Fourth Plenary Session of the 18th Central Committee of the Communist Party of China (CPC) in October 2014. Advancing the rule of law was a key issue at the meeting.

Hu Yunteng, a member of the judicial committee of the top court, said that the circuit courts will represent the top court, which means decisions made by circuit courts will be final. Hu said the top court has to give verdicts to more than 10,000 cases each year and the number is increasing. "The measure will also alleviate the pressure on

the court and give it more time to carry out judicial interpretations," he said.

## An innovative move

On October 28, after the fourth plenum, the 18th CPC Central Committee released a communiqué, in which the Party promised sweeping judicial reforms including setting up circuit courts and establishing courts and prosecutors' offices operating across regions.

Legal experts say the decision will promote judicial independence and reduce interference by local party and government officials.

"The proposals are a breakthrough in China's judicial reform as they will significantly lessen local officials' control over the legal system," said Fan Chongyi, a criminal procedure expert with the China University of Political Science and Law.

"Both measures together will help to effectively sever the direct connection between local judges and local officials," said Zhang Qianfan, a professor of constitutional law at Peking University.

"Circuit courts can improve a country's rule of law through a system of regional law courts that overlap multiple jurisdictions. This separates the courts from local governmental administration and therefore gives local judges more independence from officials," Zhang said.

Ji Weidong, former Dean of Shanghai Jiaotong University's KoGuan Law School, said the plan to set up circuit courts aims at enhancing the power of a unified judicial system.

As a special agency under the Supreme Court, circuit courts will coordinate with local judicial bodies to provide legal protection to the public, he said.

In China, the personnel and property of local courts and prosecutor's offices are supervised by the local government, creating a hurdle

for judicial independence, Ji said.

Bi Yuqian, Director of the Civil Procedure Law Research Institute under the China University of Political Science and Law, agreed. He said the fact that the country's administrative regions and judicial regions coincide contribute greatly to regional protectionism.

"The regional courts are relying on the regional governments as their financial sources. Ensuring their independence is a must to ensure the fairness of their judicial procedures," Bi said.

To reduce intervention by local officials in courts, cross-regional judicial bodies and practices must be set up and the circuit courts will play a role in it, Ji said.

China has a centrally controlled judicial system, but in practice it is highly divided and flexible according to local practice due to the country's size and imbalanced development.

In June 2014, the Leading Group for Overall Reform, directly led by President Xi Jinping, approved guidelines that concentrated the supervision of local courts' personnel and property at the provincial level of government, an effort to cut intervention.

Some legal experts have expressed concerns that such an arrangement will strengthen provincial governments' control of the judiciary at the expense of the SPC, while others say the reforms would strengthen the clout of the judiciary at the national level while maintaining the centrally controlled judicial system.

"With more courts directly under its control, the SPC will exert its judicial power over local government organs, as the new arrangement will strengthen a 'vertical' management system," Fan said, referring to the reform proposal under which courts and prosecutors would no longer report to local governments but to higher levels.

Zhang with Peking University added that





**COURT ON THE MOVE:** Judges of a circuit court mediate civil disputes between the herders at a village in Kangle Town of Sunan Yugu Autonomous Prefecture in northwest China's Gansu Province on November 10

the reform plans were intended to limit provincial and municipal authorities' ability to interfere in judicial proceedings by placing cross-regional judicial bodies and the circuit courts directly under the SPC.

The plans also help fight local protectionism in commerce. Under the plans, courts would hold hearings on a roster of different locations for specific periods. Such arrangements would provide alternative channels for the public to have their cases heard, legal experts said.

"In certain circumstances, such as a case involving parties from more than two regions or a case involving large sums of money, the parties can appeal to either a regional court or the circuit court," Fan said. "It also creates competition between the two judicial systems, which will better promote justice," he added.

However, Bi said that the new plans are only the first step. "To make it a formal procedure would involve a number of law amendments, including to the Constitution," he said.

## Pilot program

In July 2014, Shanghai initiated a program to make judges more accountable and curb

government intervention in trials by creating a clear-cut division between judicial staff and administrative personnel.

Pioneering China's judicial reform, the Shanghai pilot covered measures to improve management and job security of judicial staff, enhance accountability of judges and unify the personnel and finance management of local courts.

In an effort to improve professionalism, a clear division will be set between judges and procurators, other judicial staff, and the administrative personnel, who will be placed under separate management, according to the reform plan.

Judges and procurators may be selected from a pool of lawyers, legal scholars and other legal professionals.

A responsibility system will strengthen the role of trial judges and make their work more independent, changing the practice of their rulings, which will have to go through excessive signing and approvals by the court's chief justices.

The reform also targets the decision-making power of the judicial council, limiting their use in complicated cases on which the collegial panel showed a major split.

"The responsibility system aims to tackle

the administrative intervention in courts and avoid the practice of 'trying but not judging,'" said Zou Rong, a professor at the Shanghai-based East China University of Political Science and Law.

Greater judicial power will also come with greater responsibility, as trial judges and procurators will assume a lifelong accountability to their cases, which means they will be called to account for previous miscarriage of justice.

The plan will also require the judges and procurators at district or county-level courts to be nominated by provincial-level judicial authority. Funds of local courts will come from the provincial, rather than the local finance.

Tang Xiaotian, Vice General Secretary of Shanghai Law Society, said the financial independence will guard the courts from the influence of the local government. ■