

# **A STUDY ON THE JURISDCITIONAL AND ESTABLISHMENT MODELS: TRANS-REGIONAL COURTS IN CHINA<sup>1</sup>**

## **Abstract**

In 2014, China's judiciary reforms included the establishment of a trans-administrative provincial (trans-regional) court. Merely two trans-regional courts have been developed so far, the Shanghai No. 3 Intermediate People's Court and the Beijing No. 4 Intermediate People's Court. The fact that the trans-regional court has transcended the existing structural structure under the Organic Law of the People's Courts in that (1) it is neither a specialist court that hears specific types of cases, nor a municipal court formed entirely in accordance with administrative divisions, is one significant explanation for the slow speed. As a result, the legal existence and position of this modern judicial structure can only be explained and justified if the Organic Law of the People's Courts contains a specific description of it. For the creation of trans-regional courts, many models have been suggested, including the autonomous set-up model, absolute reshuffling model, and selective transformation model. The minimal transformation model, which aims to recreate current railway transportation courts, is the most realistic and effective of these models. Unique, alienage, or supplemental authority can be granted to trans-regional courts. Each form is tailored to specific forms of special and large trans-regional events, as well as other situations.

**Keywords** trans-regional courts, establishment model, jurisdiction rules, specialized courts, judicial reform transformation

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## INTRODUCTION

The Communist Party of China (CPC) Central Committee suggested in November 2013 to “investigate the creation of a judicial authority structure properly segregated from administrative divisions.”<sup>1</sup> An additional proposal was made in October 2014 to “investigate the creation of people's courts and people's procuratorates through administrative divisions to handle trans-regional litigation.”<sup>2</sup> Under the guidance of such proposals, the Shanghai No. 3 and Beijing No. 4 Intermediate



<sup>1</sup> See *(The Decision of the CPC Central Committee on Several Major Issues Concerning Comprehensively Deepening Reform)*, adopted at the Third Plenary Session of the 18th CPC Central Committee on Nov. 15, 2013, available at [http://www.scio.gov.cn/zxbd/nd/2013/document/1374228/1374228\\_1.htm](http://www.scio.gov.cn/zxbd/nd/2013/document/1374228/1374228_1.htm) (last visited Sep. 27, 2020).

<sup>2</sup> See *(The Decision of the CPC Central Committee on Several Major Issues Concerning the Comprehensive Advancement of the Rule of Law)*, adopted at the Fourth Plenary Session of the 18th CPC Central Committee on Oct. 28, 2014, available at <http://politics.people.com.cn/n/2014/1028/c1001-25926121.html> (last visited Sep. 27, 2020).

At the end of 2014, People's Courts were developed as pilot projects of the trans-administrative-regional (trans-regional) courts.

The CPC Central Committee proposed the above-mentioned recommendations in response to the current state of judicial procedure in China, where judicial impartiality and court authority are under serious threat. This resulted in an agreement that the trend of localization of courts should be reversed. All courts, including the Supreme, High, Intermediate, and Basic People's Courts, are organised according to the administrative divisions of the central, regional, local, and district governments. All court personnel and financial budgets are subject to the local party committee, the people's congress, and governments, which can exercise disproportionate control, directly or indirectly, on local courts and judges, especially when dealing with cases concerning important local issues. Non-local groups still have a tendency to believe that the court is skewed in favour of locals.

The creation of trans-regional courts has been given a high priority in order to improve the judiciary's reputation. In 2014, a new wave of judicial changes took place, heating up the debate over trans-regional courts to the point that there was an outpouring of papers on the topic.<sup>3</sup> From the standpoint of civil law, some authors debated the constitutionality of trans-regional courts.<sup>4</sup> Others, on the other hand, used the extraterritorial experience to address the creation of China's trans-regional courts from a comparative law viewpoint. From an analytical standpoint, the status of trans-regional courts and their activities has also been studied and analysed.<sup>5</sup>

Despite the excitement of academics for trans-regional courts, no new trans-regional courts have been created since the pilot in 2014. The status and organisational form of trans-regional courts were not specified in the 2018 revision of the Organic Law of the People's Courts, indicating that the pilot projects in Shanghai and Beijing are still in their early stages and that further study and observation is needed.

The models and jurisdiction laws for trans-regional courts are examined in depth in this paper. Despite the fact that trans-regional courts will hear both civil and regulatory litigation, this paper focuses on civil cases due to the author's academic interest.

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<sup>3</sup> By inserting “(Trans-Administrative-Regional Court)” as the search keyword in the CNKI database, a comprehensive mainstream Chinese database, it was found that only one article was published before 2014, namely YAO Li, (*Reconstruction of Trial Organization in the Process of Legal Modernization*), 5 (Chinese Journal of Law), (2004). However, there were 36, 44, and 34 articles, respectively, in the following three years from 2015 to 2017.

<sup>4</sup> See DI Gaoyang, (*Objectives, Limitations and Approaches: A Constitutional Reflection on Judicial Jurisdiction Across Administrative Divisions*), 34(1) (Studies in Law and Business), (2017).

<sup>5</sup> See CHEN Weidong, (*Research on the Reform of Trans-Administrative-Regional People's Courts*), 6 (Law and Economy), (2016).

## I. SOME CLARIFICATIONS ON THE CONCEPT OF TRANS-REGIONAL COURTS

What is a trans-regional court, and how does it work? What characteristics does it have? Until considering the models and jurisdictional laws of trans-regional courts, these questions should be addressed.

### A. Connotations of Trans-Regional Courts

A trans-regional court functions similarly to a common people's court. Local people's courts at all levels are required to report their work to local people's congresses and standing committees of the people's congresses at each particular level under the Constitutional and Organic Law of the People's Courts. People's courts, at all levels, are administrative-regional courts to some degree. The four tiers of people's courts, from basic to Supreme, are organised in accordance with the regional levels of government, namely district, prefectural, regional, and state. The political divisions at the township level are too limited to have corresponding courts.

As a result, cases that are important are referred to the basic people's courts. This is expressed in the names of people's courts at different stages, as laid out in Articles 20, 22, and 24 of the current Organic Law of the People's Courts. Before we look at the judiciary legislation, it's necessary to remember that the local party committee and council are in charge of the court staff and their budgets.<sup>6</sup>

The trans-regional court, on the other hand, is a novel idea that does not fit into the current context of the People's Courts Organic Law. It is distinct from the traditional judicial system in that it does not correspond to a certain administrative level of government or geographic area. Trans-regional courts are intended to have greater autonomy and are better suited to situations that are more likely to be handled differently in regular courts.

### B. Main Features of Trans-Regional Courts

Trans-regional courts have more discretion, which is reflected in the fact that their authority does not correspond to the separation of administrative areas. The separation of geographical space by the state for the convenience of the central government in administering the whole country is referred to as administrative districts.<sup>7</sup> A judicial district, or a district under the authority of a judge, is an authority where a court has jurisdiction.

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<sup>6</sup> See ZHANG Wusheng & WU Zeyong, (*Judicial Independence and Adjustments to the Organizational Structure of Courts I*), 2 (China Legal Science), 64 (2000).

<sup>7</sup> See ZHU Jianhua, CHEN Tian & WANG Kaiyong et al., (*Analysis of the Evolution and Driving Forces of the Administrative Regions' Pattern in China since the Reform and Opening-up*), 34(2) (Geographic Studies), 247 (2015).

To exert judicial authority under the constitution, the state splits its territory into various degrees and sizes.<sup>8</sup> The exercise of state authority and the geographical division of the nation result in administrative and judicial districts. The division of court authority in accordance with the division of administrative districts is appropriate and fair because it would make courts become more available to the public, promote the enforcement of the law, optimise the use of local judiciary services, and integrate national and local legislation in the operation of the legal system.<sup>9</sup>

However, courts' reliance on local governments eventually leads to an undue localization of courts, which jeopardises the country's judicial integration. Setting up trans-regional courts, which are meant to be more autonomous, is one way to alleviate the crisis. The fact that (1) there is no counterpart government at the same level and (2) trans-regional courts have authority over a significantly wider geographical area and less forms of cases than ordinary courts reflects their freedom. While the Beijing No. 2 Intermediate People's Court lacks a corresponding governmental authority and has control over many administrative districts in Beijing, its jurisdiction is also limited by the administrative divisions in effect, and it lacks the basic characteristics of trans-regional courts. Despite its location in Beijing, the Beijing No. 4 Intermediate People's Court's jurisdiction is limited to three categories of cases: (1) financial loan contracts, (2) insurance, and (3) trade disputes affecting international nations, China's Hong Kong SAR, China's Macao SAR, and China's Taiwan SAR that satisfy the jurisdictional requirements of intermediate courts in Beijing. The Beijing No. 4 Intermediate People's Court could theoretically have authority over large trans-regional cases within the North China region, such as the Beijing-Tianjin-Hebei region.

In brief, while the Beijing No. 4 Intermediate People's Court has authority over just a few types of litigation, the cases themselves go far beyond those heard by ordinary courts as the No. 2 Intermediate People's Court.

Furthermore, trans-regional courts still have a certain degree of autonomy. The independence of trans-regional courts does not imply that their authority is untouched by administrative divisions. Geographically, both the CPC Central Committee and the Supreme People's Court believe that trans-regional courts lack centralized authority over specific categories of cases throughout the country. The authority of the courts was established to accommodate the caseload of the courts and for the ease of the parties involved.

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<sup>8</sup> See WU Zhigang, (*A Study of the Adjustment of Judicial Divisions—An Analysis of Setting up Courts Across Administrative Divisions*), 8(3) (Northern Legal Science), 121 (2014).

<sup>9</sup> See JIANG Huiling, (*The Advantages and Disadvantages of the Localization and Reform of Judicial Power*), 2 (People's Judicature), 30 (1998).

There must be certain limitations on trans-regional judges.<sup>10</sup> Otherwise; it may have a significant effect on the current structure and functioning of the ordinary court system, potentially leading to confusion in China's jurisdiction law.

### *C. Nature of Trans-Regional Courts*

Before considering trans-regional court setup models, it is important to define what trans-regional courts are. A better awareness of the structure of trans-regional courts makes it easier to define clear distinctions between particular models, differentiate them from comparable court systems, recognise legal challenges that might arise when introducing changes, and identify pre-existing rules that need to be changed.

Article 12 of The Organic Law of the People's Courts establishes a hierarchy that includes: (1) the Supreme People's Court; (2) state people's courts at different levels; and (3) special people's courts. Will trans-regional courts, on the other hand, find a spot in this classification?

To begin with, trans-regional courts differ from the Supreme People's Court described in Item 1. Between 2015 and 2016, the Supreme People's Court created six circuit courts and promulgated the Provisions of the Supreme People's Court on Many Issues Concerning the Hearing of Lawsuits by Circuit Courts, which stated that circuit courts will have authority over several cases within their circuits. These circuit courts serve various administrative areas nationally, but they are nevertheless Supreme People's Courts and cannot be called representative or trans-regional in nature.

Second, the trans-regional court is not a part of the state court system. Local courts are ordinary courts that hear and enforce general criminal, civil, and administrative litigation at different levels. Local people's congresses are in charge of appointing judges to local courts. The local people's congresses are governed by local courts. This partnership specifies the institutional division of local courts' local attribute. Trans-regional courts, on the other hand, should avoid tight ties with administrative branches when establishing courts, and therefore are not local people's courts in the ordinary court system.

The trans-regional court, third, is not a specialist court. Trans-regional courts, on the surface, seem to belong to specialized courts because they conduct roles that are distinct from those of ordinary courts.<sup>11</sup> “However, Justice LI Shaoping, Vice President of

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<sup>10</sup> A common misunderstanding is that once a trans-regional court is established, all cases in which the parties concerned reside in different administrative regions or cases with an impact on several administrative regions would be heard by the trans-regional court.

<sup>11</sup> See SU Zelin, (*Significance of the Rule of Law in the Establishment of People's Courts across Administrative Divisions*), (*People's Court Daily*), Oct. 27, 2014.

the Supreme People's Court, specifically refuted this view, pointing out that trans-regional courts are not specialized courts."<sup>12</sup>

On the one hand, the function of trans-regional courts differs significantly from that of specialised courts. A specialised court is supposed to deal with a certain category of case,<sup>13</sup> The specialisation of judicial staff and procedures improves judicial performance. The aim of creating trans-regional courts is to settle different forms of cases that may be caused by China's judicial practice's so-called "host and guest problem," which relates to situations in which local authorities intervene in litigation, where one party acts like a host and the other acts like a guest, and the court appears to treat the guest unfairly. A trans-regional court could list certain cases that are likely to be interfered in by local governments, but it will fall short of categorising case categories with standardised and consistent criteria. As a result, trans-regional courts do not follow the theory that led to the creation of specialised courts, and they cannot increase trial performance by honing judges' technical abilities and hearing comparable cases, as specialised courts do.

The model of trans-regional courts, on the other hand, differs from that of specialised courts. Military, marine, intellectual property, Internet, oilfield, and forestry courts are among the current specialist courts. Many other specialist courts are overseen by the regional high court or an appellate court, with the exception of the military court system,<sup>14</sup> Despite being experts on their respective "economic lines," they are nevertheless unable to prevent pressure from local regulatory bodies under the new management model, which is incompatible with the original goal of developing trans-regional courts.

To summarise, the trans-regional court is a brand-new kind of court that does not fall into any of the existing Organic Law of the People's Courts' categories of courts. It is appropriate to amend the People's Courts Organic Law or enact a resolution by the National People's Congress to categorise and define trans-regional

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<sup>12</sup> See LI Shaoping, (*Why Should We Set up Trans-Administrative-Regional Courts?*), 14 求是 (Qiushi), 43 (2015).

<sup>13</sup> On Apr. 25, 1953, the Second National Judicial Meeting proposed the establishment of specialized courts for the first time in its resolution. It emphasized that specialized courts should accept and hear "cases concerning production and labour protection within their respective jurisdictions," whereas other general civil and criminal cases should still be under the jurisdiction of ordinary courts.

<sup>14</sup> The military court has a particular status in China's judicial system. Although it is an organic part of the people's courts, it has distinct military characteristics. The organizational setup, jurisdiction rules, and judicial procedures shall all meet the needs of the military. Although they are subject to the supervision and guidance of the Supreme People's Court, they are still functional departments of the political organs of the army. They are not led by the local CPC committees and political organs at all levels and perform the duties and functions as granted by the (*Regulations on the Political Work of the Chinese People's Liberation Army*). See WAN E Xiang, (*The Path and Outcomes of Specialized Court Reform*), People's Court Press (Beijing), at 9–11 (2013).



courts with precision The Supreme People's Court has recognised that there are structural barriers to creating trans-regional courts and argues that, in order to eliminate these barriers and create a new operational structure for trans-regional courts that meets the conditions of ongoing judicial changes, an overhaul of existing laws is inevitable.<sup>15</sup>

There is no reason to be constrained by the structure of existing laws when designing the model and jurisdiction rules of trans-regional courts because the new rules do not provide for them.<sup>16</sup> Certain specific needs, however, should be considered when coordinating the establishment of trans-regional courts.

## II. PURPOSES OF ESTABLISHING TRANS-REGIONAL COURTS

The assumed function determines the configuration, whereas the objective determines the model. To fully comprehend the concept and structure of trans-regional courts, it's necessary to first explore why these courts were established in the first place, in order to ensure that they will function correctly while in place and that its founders will be fully appreciated.

“to explore the establishment of trans-regional courts under the principles of scientificity, streamlining, efficiency, and benefiting the realisation of judicial justice, and to construct a litigation framework under which ordinary cases are heard by trans-regional courts,” according to the Outline of the Fourth Five-Year Reform of the People's Court.<sup>17</sup> Railway transportation courts will be transformed into trans-regional courts that will primarily hear cases involving administrative jurisdictions, large administrative cases, natural resource management cases, business bankruptcy cases, food and drug safety cases, and other cases influenced by local factors, such as cases brought by railroads.

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<sup>15</sup> See The Office of the Judicial Reform Leading Group of the Supreme People's Court, (*Reading Texts of the Opinions of the Supreme People's Court on Comprehensively Deepening the Reform of the People's Courts*), People's Court Press (Beijing), at 43–45 (2015).

<sup>16</sup> Influenced by legal dogmatism, there are some reflections on and criticisms of the legality and constitutionality of the trans-regional courts. See ZHAI Guoqiang,?—(*How to Set up Trans-Administrative-Regional Courts? A Perspective from the Constitutional Hermeneutics*), 33(5) (Studies in Law and Business), (2016). It is not wrong to adhere to a strict interpretation of the existing laws, but it is not very constructive for the future of trans-regional courts. This article is based on a constructive viewpoint and is therefore different from the dogmatic perspectives adopted by the quoted article.

<sup>17</sup> See (*Opinions of the Supreme People's Court on Comprehensive Deepening of Reform of People's Courts—The Fourth Five-Year Outline of the Program for Reform of People's Courts*), available at <http://bjgy.chinacourt.gov.cn/article/detail/2018/04/id/3281188.shtml> (last visited Sep. 27, 2020).



The original railway transportation courts, as well as trans-administrative-regional people's procuratorates, accept criminal and civil complaints.

The Supreme People's Court had a number of objectives in mind when it came to establishing trans-regional courts. As a result of the existing system's implementation, the following issues should be resolved.

#### *A. Ensuring Fair Trial*

The major purpose of establishing trans-regional courts is to overcome the previously mentioned "host and guest dilemma." ("With the deepening of the socialist market system and the emergence of regulatory prosecutions, there are a rising number of trans-administrative-regional and even trans-border cases, and the challenged sum in these cases is growing," President XI Jinping remarked. As a result, relevant local departments and leaders where courts are located pay increasing attention to the handling of such cases, and even intervene using their powers and relationships, resulting in the phenomenon of the "host and guest problem" in relevant proceedings, which is incompatible with the equal protection of non-local parties' legitimate rights.<sup>18</sup>) The main goal of establishing trans-regional courts, according to this official understanding, is to minimise local administrative department influence in cases and ensure independent and unbiased court sessions. The main goal of trans-regional courts, according to Justice LI Shaoping, vice president of the Supreme People's Court, is to maintain the fairness of trans-regional procedures and avoid the "host and guest dilemma."<sup>19</sup>

In order to ensure a fair trial, transregional people's courts should preserve their impartiality. In theory, judicial power must be employed with impartiality, independence, and neutrality in mind. Judges, on the other hand, may be subjected to a variety of external interferences in the exercise of judicial power, resulting in their incapacity to maintain impartiality while assessing situations from an external and systemic viewpoint. Local protectionism in judicial trial and enforcement has been increasingly aggressive in recent years, and the problem of judicial localization<sup>20</sup> must be addressed as soon as possible.

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<sup>18</sup> See XI Jinping, (*Explanation on the Decision of the Central Committee of the CPC on Several Major Issues Concerning the Comprehensive Advancement of the Law-Based Governance of China*), available at [http://www.xinhuanet.com/politics/2014-10/28/c\\_1113015372\\_3.htm](http://www.xinhuanet.com/politics/2014-10/28/c_1113015372_3.htm) (last visited Sep. 27, 2020).

<sup>19</sup> See LI, fn. 12 at 42.

<sup>20</sup> Judicial localization refers to the acts and processes in which judicial organs tend to protect local interests while handling cases, largely because they are subject to local restrictions in respect of personnel, finance, supervision, etc. See HE Yang, (*Research and Innovation on the Governance Path of Judicial Localization—An Analysis Based on Literature*), 16(2) (*Journal of Southwest Jiaotong University*), 130 (2015).

The growing independence of judicial power may be able to counteract this tendency. Trans-regional courts are not depending on local governments for employees or funding, and they are not as closely related to local interests, allowing them to maintain their neutrality and impartiality. Their appearance of upholding the rule of law boosts public confidence in the judiciary by earning more trust from litigants. The creation of trans-regional courts supports in judicial localization , and promotes courts' autonomous exercise of judicial jurisdiction. Internally, because ordinary courts have a structure that is quite similar to that of administrative entities.<sup>21</sup> Higher-level courts can establish jurisdiction by issuing an order, or they can have an impact on the merits of a matter by offering guidance and intervening. As a result, trans-regional courts not only limit local government intrusion in courts, but also (1) help maintain the constitutionally mandated connection of supervision and direction between higher and lower courts, rather than an administrative leadership relationship, and (2) increase the independence of courts in case handling.

#### *B. Maintaining Judicial Unification*

The second goal of establishing trans-regional courts is to provide adequate separation between judicial and administrative districts, allowing judicial authority to operate in its own domain while maintaining judicial unity. There is no need for a distinct trans-regional judicial system if we just want to avoid the "host and guest problem." The use of designated jurisdiction, the exercise of jurisdiction by higher courts, and other procedural processes have previously been established. By revising the unified administration of people, finance, and property, the current judicial reforms also aim to ensure that local administrative authorities have no methods of interfering with courts. The proposed goal of hearing ordinary cases within administrative regions and special cases across administrative regions means that trans-regional courts will attempt to create a partially separate jurisdiction that is not aligned with administrative regions so that they can exercise competent judicial power over trans-regional cases.

The first goal of avoiding the "host and guest problem" is closely connected to, but distinct from, the separation of the judicial district from a particular administrative district. Local administrative authority can be successfully prevented by such separation.

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<sup>21</sup> The second paragraph of Art. 127 of the Constitution of the People's Republic of China provides that the supervision by superior people's courts over the trial work of subordinate people's courts is different from the leadership of the government and the procuratorates.

from interfering with the legal system. The creation of a judicial district, on the other hand, has far-reaching implications for the court system. This refers to the redistribution of judicial authority when it comes to hearing cases. This creates a structural restructuring that differs from the existing administrative connection to some extent. The achievement of judicial unity is the most fundamental significance of the rearrangement of judicial authority.<sup>22</sup>

The circuit court systems of the United Kingdom and the United States show the intrusion of national judicial power, which is an essential component of a country's central power, into local regions, as well as a desire for legal unification. Circuit courts, according to English jurist Frederic Maitland, have succeeded in allowing central power to infiltrate local regions at a low cost, effectively limiting the creation of local courts and new power centres while avoiding the legal inconsistencies that arise from conflicts between local and national laws.<sup>23</sup> Within the federal court system of the United States, the separation of powers is created between federal and state courts, allowing federal laws to traverse state borders. Federal laws now have a significant influence on the daily lives of ordinary people.

The consistent application of the law is a critical component in ensuring a fair trial and may be seen from two angles. First, no other entity has the authority to exercise judicial power except the court. Second, judicial power must be exercised in accordance with uniform laws and regulations. In principle, because all applicable laws are the identical, all Chinese courts, regardless of their location, would reach the same conclusion if the facts of the cases were the same or comparable. Different court decisions in the same or comparable instances would jeopardise the legal system's unity and undermine the rule of law's dignity.

If courts can reach the same conclusions while dealing with the same legal challenges across the country, civil and commercial parties' expectations will be more solid. This can improve the trading environment's stability and the certainty of economic decision-making, with the goals of lowering transaction costs of doing business, promoting communications among economic entities across the country along with the flow of economic factors, and improving resource allocation efficiency in addition to the economy's development all being met.

The unification of legal application can also help to speed up national integration. China's regional integration is controlled by political power; that is, to preserve a civilised and orderly country, China depends on individual power, administrative methods, and powerful force, from which, however, inadequate protection of individual values may be drawn.

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<sup>22</sup> See DI, fn. 4 at 27.

<sup>23</sup> See Frederic Maitland, (*The Constitutional History of England*), translated by LIHonghai, China University of Political Science and Law Press (Beijing), at 93 (2010).

Trans-regional trade and communications are suffering as a result. With judicial rationality, the country may be integrated by unifying judicial norms and standards of civil and commercial operations via judicial trials, increasing the value of freedom and advancing equality and democracy.<sup>24</sup> By promoting logical judicial integration, trans-regional courts can unify the application of law in important domains without weakening the role of political integration, which is also in keeping with continuing administrative decentralisation measures.

### *C. Vitalizing Judicial Resources*

The transformation of railway transportation courts and the renewal of existing judicial resources are two other practical reasons of the establishment of trans-regional courts. The CPC Central Committee mandated in July 2009 that courts within the railway system, which were originally established and managed by administrative authorities, be integrated into the national judicial system and their management transferred to appropriate provincial party committees and high people's courts. All railway courts were merged into the national legal system by the end of June 2012. The Provisions of the Supreme People's Court on the Jurisdiction of Railway Transportation Courts over Cases based on these revisions were proclaimed by the Supreme People's Court on July 2, 2012.

However, following the merger, a big issue arose. Railway transportation courts started hearing much fewer cases than regular courts. They were out of work, although judges in regular courts were still dealing with a backlog of cases. As a result, the creation of trans-regional courts has a second practical goal: to reform railway transportation courts and increase the number of cases they hear.

## **III. MODELS FOR TRANS-REGIONAL COURTS**

### *A. Overview of Three Proposed Models*

Existing research has presented three models for trans-regional courts.

1. *Independent Set-up Model.* — The independent set-up model refers to a trans-regional court system that is completely independent of administrative divisions. Some scholars have proposed that a trans-regional court shall be established under the judicial framework of “four real districts” and “three virtual districts.” The four real districts are the central, high, appellate, and primary judicial districts. Except for the central judicial district, the other three are geographically larger than the provinces, prefecture-level cities, and counties, respectively. The three virtual districts are the subdivisions of the high, appellate, and primary judicial districts, which constitute

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<sup>24</sup> See LIU Xu, (*Studies on the Establishment of Trans-Administrative-Regional Courts*), Ph.D. Dissertation, School of Law of Nanjing Normal University, at 15–16 (2017).

multiple venues to hold hearings.<sup>25</sup>

This model is somewhat like the US federal court system, which is entirely independent of the state court system. This model helps achieve the purposes of a trans-regional court system effectively. In keeping with this model, the trans-regional court system would be entirely isolated from the ordinary court system and can help avoid staggering operations in the exercise of jurisdiction, which is ideal according to some scholars.<sup>26</sup> The drawback of this model is that it requires tremendous investments in terms of money, manpower, and material resources.

2. *Full Reshuffling Model.* — The full reshuffling model refers to the expanded construction of a nationwide trans-regional court system based on the existing railway transportation court system. While discussing trans-regional courts, the former head of the Political and Legal Affairs Commission, Mr. MENG Jianzhu, once pointed out: “This reform can be achieved only by slightly transforming the existing railway transportation courts and procuratorates, and reasonably allocating and enriching personnel of such courts and procuratorates.”<sup>27</sup> The full reshuffling model intends to (1) transform the existing 18 intermediate courts and 57 basic railway transportation courts into trans-regional courts; (2) establish new trans-regional courts where no railway transportation courts exist; and (3) enable high people’s courts to uniformly guide and manage trans-regional courts.<sup>28</sup>

This model is expected to encounter fewer obstacles as it (1) retains the original railway transportation courts, (2) conforms to the original intention of revitalizing judicial resources of railway transportation courts, and (3) connects with the reform of the unified management of personnel, finance, and property at the provincial level alongside this round of judicial reform.

However, the distribution of railway transportation courts, which are located in the railway hubs of the early 1950s, can barely match the current economic and social development status of China. A complete reshuffle would require the establishment of more trans-regional courts in densely populated and economically developed regions, and this would consume a large number of public funds. It may also lead to the insufficiency of cases in the existing railway transportation courts following the reshuffle. Perhaps because of doubts around the full reshuffling model both within and outside the court system, there is no sign that trans-regional courts will be expanded nationally, leaving

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<sup>25</sup> See ZHAO Xinghong & ZOU Bing, (*Reflections on the Reform of Judicial Divisions in China*), 2 (Yunnan Social Sciences), 134–138 (2013).

<sup>26</sup> See CHEN, fn. 5 at 27.

<sup>27</sup> See MENG Jianzhu, (*Improving the Judicial Administration System and the Operating System of Judicial Power*), available at <https://www.chinacourt.org/article/detail/2014/11/id/1480257.shtml> (last visited Sep. 27, 2020).

<sup>28</sup> See CHEN, fn. 5 at 25–26.

Beijing and Shanghai remain the only two in the pilot program since 2014.

3. *Limited Transformation Model*. — The limited transformation model refers to the establishment of seven trans-regional courts comprising (1) six intermediate railway transportation courts with trans-provincial jurisdiction in Beijing, Shanghai, Wuhan, Nanning, Chengdu, and Lanzhou, and (2) one of three intermediate railway transportation courts with provincial jurisdiction in Shenyang, Changchun, and Harbin.

Some of the existing basic and intermediate railway transportation courts can be transformed into circuit courts under the ambit of trans-regional courts. They can facilitate trials and cater to the convenience of the parties involved. A trans-regional court shall be positioned as a court at the department level, equivalent to the provincial high people's court, and shall be directly elected by and be held responsible to the National People's Congress. A trans-regional court shall be responsible for hearing first-instance cases, and corresponding appellate cases shall be submitted to the Supreme People's Court, including its six circuit courts.<sup>29</sup>

### *B. Justification of the Limited Transformation Model*

It is more appropriate to adopt a limited transformation model in China for the following reasons:

1. *Advantages of the Limited Transformation Model*. — First, it features a low cost. The limited transformation model is a simplified version of the independent set-up model as it (1) only retains the high judicial district in the independent set-up model and (2) does not set up the appellate and primary judicial districts, thus avoiding the drawback of excessive costs in the independent set-up model. The limited transformation model has comparative advantages over the full reshuffling model, as it does not need to set up any new court, and is capable of establishing the entire trans-regional court system based on the existing railway transportation system. Therefore, the limited transformation model is more practical and feasible and can bring the least amount of changes in the existing court system.

Second, the limited transformation model can achieve the core purposes of establishing trans-regional courts. As mentioned above, trans-regional courts are aimed at ensuring fair trials, maintaining judicial unification, and vitalizing judicial resources. Once trans-regional courts, which are supposed to be more independent than ordinary courts, are established, the possibility of a fair trial also increases. It is important to address whether it is possible to ensure that all cases suspected of undue influence as a

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<sup>29</sup> There is no study on the proposed downsizing model, but relevant conceptual assumptions are not uncommon. See WU Zaicun & HUO Zhenyu, (*Studies on the Establishment and Jurisdiction of Trans-Administrative-Regional Courts*), 9 (Journal of Law Application), 100–101 (2017).



result of local protectionism is heard before trans-regional courts or not. The limited transformation model affirms the high-level position of trans-regional courts and avoids the establishment of a large number of them, which is conducive to linking its relationship with ordinary courts and ensuring judicial unification. The limited transformation model conforms to the current situation of the railway transportation court system by focusing on the transformation of the existing intermediate railway transportation courts.<sup>30</sup>

Third, the limited transformation model accords with the basic position of trans-regional courts, which means that trans-region courts shall cover several administrative divisions in the jurisdiction and have no corresponding relationship with administrative divisions.

Yet, the full reshuffling model emphasizes that a trans-regional court shall be established in each province, that is, it will be directly subordinate to provincial authorities, which can only break up administrative divisions from within the province rather than nationwide. The current Shanghai No. 3 and Beijing No. 4 Intermediate Courts are set up based on this model and are directly responsible to the Shanghai and Beijing Municipal People's Congresses. Field surveys show that such a model has encountered obstacles in exerting jurisdiction over certain types of cases. For example, the Beijing No. 4 Intermediate Court intends to have trans-regional jurisdiction over the food and drug safety and environmental protection cases in the Beijing-Tianjin-Hebei region. In the course of coordinating with courts in Tianjin and Hebei, potential conflicts can only be resolved under instructions from the Supreme People's Court. The same scenario also occurs when Shanghai No. 3 Intermediate Court intends to take cases crossing provincial regions.

*2. Defects of the Limited Transformation Model and Ways to Overcome Them.* — Despite the abovementioned advantages of the limited transformation model, it has certain weaknesses and deficiencies when compared with the independent set-up and full reshuffling models. Nevertheless, these defects are not insurmountable and can be overcome through particular means.

First, some may argue that the limited transformation model would partially fail to realize the original purposes of establishing trans-regional courts, as the small number and narrow range of jurisdiction of trans-regional courts under this model would result in cases with the greater impact being contained within their jurisdictions, such as high-profile cross-provincial civil and commercial disputes. This would leave little room for cross-city

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<sup>30</sup> The railway transportation court system is quite different from the ordinary court system. If all railway transportation courts are transformed into trans-regional ones without a choice, the author is rather concerned that such new courts may not be able to cope with the surge in cases. In contrast, if key resources are concentrated in the intermediate courts, it will reduce the resistance and promote the success of the reform.



or cross-county cases to be heard by trans-regional courts. However, all judicial reforms are complementary to each other, so the expectation of resolving all problems about unfair judicial trials with a single reform is only a daydream at best. Some researchers have found that the “host and guest problem” has been significantly reduced with the deepening of judicial reforms, especially the reforms of the unified management of personnel, finance, and property of courts below the provincial level. Against this background, the value of trans-regional courts taking up cases within the provincial region is decreasing.<sup>31</sup> Therefore, the allocation of high-level cases to trans-regional courts, with some trade-offs, may result in the incapacity of some trans-regional cases to seek judicial protection in the trans-regional courts, but would often be without prejudice to their substantive interests.

Second, some may argue that the limited transformation model would increase the burden on the Supreme People’s Court. Compared with the full reshuffling model, the trans-regional court is directly positioned at the department level, which is higher than the current intermediate railway transportation court. Thus, it is equivalent to the provincial high court, whose appellate body is the Supreme People’s Court. This would in turn lead to a large increase in the number of appeals before the Supreme People’s Court. However, on the one hand, the Supreme People’s Court has already set up six circuit courts. If appeals from the trans-regional courts are assigned to these circuit courts, their impact on the headquarters of the Supreme People’s Court will be significantly mitigated and the workload of the circuit courts will increase, so the circuit courts will not become petition and retrial courts. Many cases that are subject to the jurisdiction of trans-regional courts originally come under the jurisdiction of the provincial high courts, and the appellate courts are originally the Supreme People’s Court. Therefore, such cases will not necessarily increase the burden on the Supreme People’s Court.

Third, some may argue that the limited transformation model has a great impact on the railway transportation court system and cannot use all resources of the current railway transportation courts effectively. In essence, trans-regional and railway transportation courts are like chalk and cheese. The trans-regional courts under the limited transformation model are different from the existing railway transportation courts both in level and size, so the process would not only include the direct use of court premises but would also pertain to personnel retention and case acceptance. The personnel and property of most railway transportation courts would not be compatible with the needs of trans-regional courts. Therefore, it is unreasonable to have very high expectations of

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<sup>31</sup> See GUO Xinjiang, — *(Research on Centralized Jurisdiction of Administrative Lawsuits — Understanding and Practice of the Circular on Launching the Pilot Program for Relatively Centralized Jurisdiction of Administrative Cases)*, 5 (Journal of Law Application), 6 (2014).

compatibility between both these courts.

In sum, the limited transformation model is the most economic and efficient one, and can fully realize the purposes of establishing trans-regional courts. Although there may be some disadvantages, they can either be avoided or are not necessarily essential. Therefore, it is worth an in-depth consideration by the decision-makers in charge of judicial reforms. The subsequent discussion on the jurisdiction of trans-regional courts is also based on the limited transformation model.

#### IV. JURISDICTIONAL RULES OF TRANS-REGIONAL COURTS

The next issue is to design jurisdictional rules for trans-regional courts. The existing civil, administrative, and criminal procedural laws of China do not take the jurisdiction rules of trans-regional courts into account. The policy document that mentions the creation of trans-regional courts, The Fourth Five-year Reform Plan of the People's Courts (2014–2018), only has a general description of the jurisdiction of trans-regional courts. Therefore, it is necessary to comprehensively construct the jurisdictional rules of trans-regional courts. There are three related concepts: exclusive, alienage, and supplemental jurisdiction.

##### *A. Exclusive Jurisdiction*

Although newly introduced, courts with trans-regional jurisdiction have emerged since modern times, such as the circuit courts in Judge MA Xiwu's era and the land adjudication courts handling all cases involving land disputes under the implementation of Land Law promulgated in the era of the Republic of China,<sup>32</sup> present maritime courts, and recently established intellectual property rights courts. Professor JIANG Wei once categorized military, maritime, intellectual property, railway transportation, and other similar courts as courts with exclusive jurisdiction.<sup>33</sup>

This article first insists that exclusive jurisdiction shares the essential attributes of "subject matter jurisdiction" but weakens its exclusiveness. Though exclusive jurisdiction is a traditional concept, the author holds that granting jurisdiction for certain types of litigation cases exclusively to trans-regional courts also falls within the scope of exclusive jurisdiction.

The U.S. law provides for an exclusive jurisdiction system on federal issues. The U.S. courts are divided into federal and state systems, where the concurrent jurisdiction of federal and state courts may operate in some cases. Cases arising under federal law and

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<sup>32</sup> See LIU Yuhua, (*On Civil Procedure System of the Republic of China*), China University of Political Science and Law Press (Beijing), at 194–195 (2015).

<sup>33</sup> See JIANG Wei, (*Civil Procedure Law*), 5th ed., Higher Education Press (Beijing), at 137–138 (2016).

relating to federal issues can only be heard by federal courts such as cases involving maritime affairs, bankruptcy, patents, protection of plant species, trademarks, copyrights, and so on.<sup>34</sup>

China's current pilot judicial reforms show that there are provisions that can be considered to provide for the exclusive jurisdiction of trans-regional courts. For example, some provisions indicate that the Beijing No. 4 Intermediate Court has exclusive jurisdiction over all disputes about financial loan contracts, insurance, and commercial cases involving foreign elements, including cases about Hong Kong, Macao, and Taiwan within the jurisdiction of Beijing. In other words, other intermediate courts in Beijing are excluded from the enumerated cases.

This article also holds that the exclusive jurisdiction of trans-regional courts is a system of multiple levels and diversity. The law, based on the nature and characteristics of cases, may stipulate that certain specialized cases involving professional knowledge or technical issues fall specifically under the jurisdiction of trans-regional courts.

The term “specialized cases” refers to cases involving specialized knowledge, both inside and outside the legal discipline. The former includes cases concerning insurance, bankruptcy, maritime, securities, negotiable instrument, trademark, patent, copyright, and financial tax laws, etc. The latter refers to cases involving professional knowledge of other disciplines: For example, patent cases require specialized knowledge in science and engineering, medical disputes require specialized knowledge in medicine, and disputes over construction and engineering contracts require specialized knowledge in architecture, and so on.

Several factors shall be taken into consideration comprehensively when the scope of exclusive and specific jurisdiction is determined. Disputes over financial loan contracts, insurance, securities, and labour disputes can be incorporated into the special jurisdiction system of trans-regional courts. With exclusive jurisdiction over specialized cases within a specific region, trans-regional courts can, to some extent, fill in the gaps left behind by specialized courts. For example, trans-district cases with the disputed amount of over 50 million were submitted to different intermediate people's courts in the past, while currently, such cases can be heard by the trans-regional court with relatively stronger professional capabilities. The trial of cases involving professional knowledge in finance and insurance in trans-regional courts contributes toward improving trial quality and optimizing the allocation of judicial resources.<sup>35</sup>

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<sup>34</sup> See Richard D. Freer, (*American Civil Procedure I*), 2nd ed., translated by ZHANG Limin, ZHAO Yanmin & SUN Guoping, The Commercial Press (Beijing), at 182 (2013).

<sup>35</sup> See DING Wei, (*Advantages and Disadvantages of the Situation of Concentrated Jurisdiction of Foreign-Related Civil and Commercial Cases in China— Comment on the Provisions of the Supreme People's Court on Some Issues Concerning Jurisdiction in Foreign Civil and Commercial Litigation*), 8 (Law Science), 118 (2003).

## B. Alienage Jurisdiction<sup>36</sup>

Alienage jurisdiction refers to trans-regional jurisdiction over cases in which the parties are not located in the same administrative region; such cases are also significant.<sup>37</sup> The following factors are considered while determining whether a case is a trans-regional case with significant importance: (1) the parties or matters involved, (2) the potential social impact of the case, and (3) the disputed amount involved.

1. *Observation from a Comparative Perspective: Diversity Jurisdiction of U.S. Federal Courts.* — The free flow of personnel and the complexity of economic activities augment the difficulty in determining whether parties to disputed claims and legal relationships in a case are trans-regional or not. From the perspective of comparative law, the federal diversity jurisdiction in the US determines whether parties are trans-regional or of different state citizenships.

First, state citizenship requirements shall be met when two specific rules, namely the complete and minimal diversity rules, are satisfied. The complete diversity rule is general and mandatory. Justice John Marshall wrote in *Straubrich v. Curtis*<sup>38</sup> that each plaintiff must be alien from each defendant. When even one of the plaintiffs and one of the defendants are of the same state citizenship, the case cannot be heard by a federal court. The underlying reason is that if the defendants and plaintiffs have the same state citizenship, there is no need to worry about unfair treatment owing to local interest, which is unconvincing as many are more willing to believe that it is part of the control mechanism of federal courts to avoid pending cases.

The minimal diversity rule is an alternative to the complete diversity rule under statutory conditions. It applies when the accident occurs in a state of which the defendant is not a citizen, or where at least two defendants being sued come from different states, or when the accident occurs in more than two different states. For example, according to 28 U.S.C. § 1369(c)(1), the minimal diversity rule may be applied in any civil action between adverse parties that arises from a single accident, where at least 75 natural persons have died in the accident at a discrete location, subject to the satisfaction of other conditions. Under 28 U.S.C. § 1332 (d)(2), it is sufficient if any member of a class of plaintiffs is a citizen of a state different from that of any defendant.

Some may argue that frequent migration and the improvement of communications technology have reduced the cultural differences across the country and have mitigated the negative influence of local interests, and therefore the diversity jurisdiction rules can

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<sup>36</sup> To avoid possible misunderstandings and confusions, the author chooses to use “alienage jurisdiction” as the term under China’s legal context, and only use “diversity jurisdiction” when discussing U.S. law.

<sup>37</sup> See ZHANG Weiping, (*Civil Procedure Law*), 3rd ed., China Renmin University Press(Beijing), at 148 (2015).

<sup>38</sup> See *Strawbridge v. Curtiss*, 7 U.S. 267 (1806).

be abolished. However, the diversity rules remain in effect and play an important role in striking a balance between the goals of fair trial and preventing federal courts from taking up a large number of cases.<sup>39</sup>

Second, the amount of controversy, exclusive of interest and costs, is also a requirement. The matter in controversy must exceed the sum or value of \$75,000. There are also other rules determining whether the amount in controversy requirement is satisfied or not.

The diversity jurisdiction develops under the two well-established U.S. federal and state legal systems. A unitary country with a single legal system, China, with legislative power over the National People's Congress, intends to maintain the uniform application of laws across the nation. The trans-regional court is still in the pilot stage. It lacks a well-established organizational setup. The U.S. experience is of little reference value, except for its rules in determining whether the diversity requirement is satisfied or not.

*2. Identification of Trans-Regional Cases in China.* — In an action seeking performance, the determination of major trans-regional cases shall mainly consider the specific matter leading to the request. The applicable conditions are as follows: (1) The parties making requests are located within the jurisdiction of several ordinary courts;<sup>40</sup> (2) the legal facts of the subject matter occur within the jurisdiction of several ordinary courts; (3) the disputed “property” of the subject matter is located within the jurisdiction of several ordinary courts, and (4) the outcome of the case would have an impact on the jurisdiction of several ordinary courts.

In the action of formation, an action to change a certain legal relationship, and declaratory action, the main considerations shall include the parties involved, the subject matter, and the object of the action. The legal relationship itself is impermanent.<sup>41</sup> It exists between persons and involves certain rights and obligations. The specific conditions for its existence are: (1) There are many parties in the substantive legal relationship that fall within the jurisdiction of several ordinary courts; (2) the realization of rights and performance of obligations in the substantive legal relationship involving the jurisdictions of several ordinary courts; and (3) the objects of the rights and obligations that are directed in the substantive legal relationship are located in the jurisdiction of several ordinary courts at the same time. If any of these circumstances exist, where the amount in controversy is relatively large and the hearing of the case by the ordinary court would be met with great difficulties in upholding a fair trial, such a case can be considered a major cross-regional one.

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<sup>39</sup> See Freer, fn. 34 at 188–196.

<sup>40</sup> For natural persons, the place of domicile or habitual residence is the standard. For organizations, the place of registration or the place of main business premises is the standard.

<sup>41</sup> See WANG Zejian, (*General Code of Civil Law*), Peking University Press (Beijing), at 90–91 (2009).

With the increasing frequency of economic activities, following the progressive difficulty encountered in finding purely local cases, not all cases with trans-regional factors are major trans-regional ones. To balance the workload between ordinary and trans-regional courts, only when (1) the amount in controversy is relatively large and (2) ordinary courts would run into a grievous quandary by hearing the case if they were to adhere to the principle of a fair trial, would such a case be deemed a major trans-regional one and fall under the jurisdiction of a trans-regional court. The threshold for the amount in controversy shall be determined according to the economic situation of the different regions in question.

Where legal issues involved in a case related to the uniform application of the law, it can be submitted to a trans-regional court by the parties of their own volition or may be designated by a higher-level court to a trans-regional one. Such cases involving the uniform application of law fall into the category of cases where the outcome of judgments would affect the jurisdiction of several ordinary courts. The difference here is that there is no longer a requirement for the amount of controversy.

The contents in the plaintiff's statement of claim should serve as the basis for determining whether the case is significant or not. Jurisdiction can significantly affect the substantive interests of the defendants and plaintiffs. Therefore, it requires prompt notice of litigation and needs to ensure the parties' rights to make representations and to be heard. The law shall protect the parties' rights to choose the jurisdiction and raise jurisdictional objections. There are only general rules around the initiation of civil proceedings within the current legal framework in China. In theory, the content in the plaintiff's statement of claim must be detailed enough to sufficiently determine the exact type of lawsuit based on a formal review. As it serves as the basis for determining jurisdiction, the object of action mentioned in the statement of claim is necessary in the civil procedure rules and case laws in the UK, the US, Japan, and Germany. In the US, the reasons for the establishment of jurisdiction also need to be mentioned in the statement of claim.<sup>42</sup>

For trans-regional cases where the number of parties can be ascertained, all parties concerned on one side may negotiate and collectively select an ordinary court to exercise jurisdiction. Otherwise, the case goes within the jurisdiction of a trans-regional court. Where the negotiations fail and the plaintiffs file lawsuits separately, the trans-regional court that accepts the case first shall have jurisdiction. Major trans-regional cases belong to optional special jurisdiction and are subject to the autonomy of the parties concerned. For a trans-regional case where the number of plaintiffs can be ascertained, where the

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<sup>42</sup> See FU Yulin, *(The Function and Structure of the Case-Filing Procedure of Civil Proceedings: A Reconsideration)*, 1 (Journal of Shanghai University [Social Sciences Edition]), 47–48 (2014).



parties concerned, upon negotiation, agree to waive the jurisdiction of the trans-regional court without any other reason, the case should be submitted to an ordinary court for trial. As the parties themselves are the best spokespersons of their own interests, respect for their choices remain in favour of their own gain. Thus, the law should respect the parties' full right of choice. This is instrumental in reducing the court's intervention in the litigation process and in promoting the transformation to the adversary litigation pattern—which will ensure that the principle of efficiency can be fully incorporated.

However, each party has an equal right to be heard and arriving at a consensus involves taking the views of each party into account. If the number of parties remains uncertain, jurisdiction should not be determined by negotiation for the protection of the potential parties that may be unable to participate in the proceedings. To prevent undue delays in the proceedings, the law may stipulate that a case is under the jurisdiction of a trans-regional court if the number of parties is ascertained. However, it is difficult for them to agree to a consultation. This method can, to some extent, impel the parties concerned to arrive at a consensus as soon as possible. On the other hand, stipulating that such a case being heard by a trans-regional court is conducive to the fair hearing of cases is consistent with the nature of trans-regional courts and the original purposes for the establishment of trans-regional courts.

3. *Compatibility between Public Interest Litigation and the Major Trans-Regional Case Standard.* — The Civil Procedure Law amended in 2017 has already provided for a civil public interest litigation system to protect national and public interest. Most civil public interest litigation cases are trans-regional ones.<sup>43</sup> The main feature of public interest litigation is that the plaintiff's initiation of the action aims to protect both private and public interests. The effect of the judgment is expansive and binding on the public, specific state organs, and public interest organizations.<sup>44</sup>

Although there are differences in defining the term in environmental and consumer protection public interest litigation, the “public interest” element is one of the prerequisites for the initiation of a public interest litigation in Civil Procedure Law. Therefore, all types of “public interest” in different proceedings shall be interpreted within the framework of Civil Procedure Law.

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<sup>43</sup> As mentioned in (2017) 30) (*Opinions of the Supreme People's Court on Comprehensively Strengthening the Judicial Guarantees for the Ecological Civilization Construction and Green Development of the Yangtze River Basin*) (*Fa Fa* [2017] No. 30), “[the Supreme People's Court intends to] optimize the trial mechanism, promote the centralized jurisdiction mechanism of environmental public interest cases, trans-administrative-regional environmental pollution cases and ecological damage cases in the basin ... and promote the construction of a special jurisdiction mechanism for the trial of administrative cases regarding major environmental resources in trans-administrative region courts.”

<sup>44</sup> See QI Shujie, (*Civil Procedure Law*), 4th ed., Xiamen University Press (Xiamen), at 168(2017).



The public interests protected in environment-related civil public interest lawsuits are not just the material system composed of natural resources, but also the rights of people, organizations, and the society as a whole to survive, obtain social services, and enjoy spiritual pleasure and development by exploiting and utilizing natural resources. Environmental public interest is expansive, and natural persons in a specific area have an abstract or specific, direct or indirect interest brought about by environmental ecological risks<sup>45</sup> that can be described as constituting a major trans-regional case from different perspectives, such as those of the involved parties, the facts, and impacts.

In the context of consumer public interest litigation, Article 47 of the Law on the Protection of Consumer Rights and Interests replaced “public interest” with “the legitimate rights and interests of numerous consumers.” If the latter is satisfied, the infringement on “public interest” must be satisfied first. Damage to the legal rights and interests of many consumers is not the aggregated damage of many rights and interests, but rather the damage of public interest as a whole. The specific elements are as follows: (1) The number of consumers suffering damage cannot be counted accurately; (2) a large number of consumers’ personal rights and interests or property have been infringed; and (3), the extent of the damage has significant regional impacts.<sup>46</sup>

Obviously, both environment-related and consumer civil public interest cases share the following characteristics: (1) Numerous but uncertain number of parties are involved, (2) various regions are involved, (3) have great and extensive impacts, and (4) may involve huge amounts in controversy if the matter pertains to property damage, personal injury, and mental and punitive damage. If such cases are heard by ordinary courts, even basic courts, it would be difficult for them to effectively collect evidence, draw out facts, and prevent adverse influences exerted by local interest.

The legislators were aware of these issues and elevated the jurisdiction of public interest cases to the intermediate people’s courts. However, the environmental and consumer public interest lawsuits often involve many professional issues and ordinary intermediate courts offer little advantage in addressing such cases. The existing jurisdiction system has brought many cases into intermediate courts. Handling such cases involves extensive social interest or numerous parties and the incentives and capacity of intermediate courts would be reduced.

In short, if trans-regional courts hear such cases, they will play an important role not only in promoting factual investigations, evidence collection, and application of the law,

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<sup>45</sup> See HUANG Zhongshun, (*Expanded Interpretation of Environmental Public Interest Litigation System*), 30(2) (Journal of Renmin University of China), 37(2016).

<sup>46</sup> See ZHOU Lei, (*Definition of Public Interests in Consumer Public Interest Litigation*), (*People’s Court Daily*), Jun. 10, 2015.

also in balancing the burden of caseloads among courts. This article thus argues that environmental and consumer public interest cases should fall under the jurisdiction of trans-regional courts.

### *C. Expansion through Supplemental Jurisdiction*

1. *General Rule.* — Supplemental jurisdiction, also known as consolidated jurisdiction, refers to a system where a court has jurisdiction over a case and may exercise it over other related cases. Where consolidated jurisdiction is impossible, the same plaintiff or other parties may be based on the same factual or legal relationship, file different claims in different courts. The establishment of trans-regional courts would undoubtedly increase the complexity of the issue. This is because of the differences in public order, good morals, and local interests in different places, and also comes from the under-development of *res judicata* and issue preclusion theories in China.<sup>47</sup> If parties may file claims arising out of the same factual and legal relationship with either trans-regional or ordinary courts, it will cause great risks to the uniform application of the law, which is also contrary to the original intention of the uniform application of the law when the trans-regional courts were established.

Supplemental jurisdiction has not yet become an express provision under Chinese law but has been applied in practice. From the perspective of the court, it is of great significance to provide an alternative channel to bring related lawsuits into one trial, if possible. From the perspective of the parties involved, supplemental jurisdiction is also conducive to the ultimate settlement of disputes, which is in line with the practice of the dominant theory on the identification of the subject matter or object of action in China.

In Chinese judicial practice, the Supreme People's Court has innovatively put forward the "theory of three identities" and the "dispute theory." In deciding whether there are repeated actions, the theory of three identities argues that the key issue is to find out whether the same claim is made by the same party based on the same legal relationship or facts. The dispute theory defines the object of action as the dispute between parties. However, most courts still follow the traditional theory of the object of action and take the right of claim or legal relationship as the standard to identify whether the lawsuits are repeated or not.<sup>48</sup>

In such a situation, many disputes under the same facts are independent, and the ultimate one-time settlement of disputes often depends on whether parties bring up the suits together on their own initiative, which is a part of the parties' right of disposition.

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<sup>47</sup> See ZHANG Jinhong, (*Study on the Legislation of Consolidated Jurisdiction of Civil Actions*), 2 (China Legal Science), 150 (2012).

<sup>48</sup> See YAN Renqun, (*The Localization Pathway of the Object of Action*), 35(3) (Chinese Journal of Law), 94–96 (2013).

However, the ultimate one-time settlement of legal disputes is extremely significant with the continuing development of today's commercial society.

The supplemental jurisdiction system constitutes a good supplement to the current theory of the object of action, which is conducive to the one-time settlement of disputes. With supplemental jurisdiction, the trans-regional court can also amplify its inherent advantages, such as in fact-finding and evidence collection. Where a trans-regional court has jurisdiction over a particular case, other related lawsuits, even those not under its jurisdiction, may also be consolidated into the already accepted case. The requirements for the application of supplemental jurisdiction in trans-regional courts can be as follows.

First, a trans-regional court must have no jurisdiction over the case to be supplemented if it is submitted independently. If the trans-regional court has primary jurisdiction over the case, the joinder of trials does not need supplemental jurisdiction, which only justifies a court's expanded jurisdiction over cases that it would not originally hear.

Second, the supplemented case must have close connections with the case falling under the jurisdiction of the trans-regional court, that is, the trans-regional court has jurisdiction over a case and that case has close connections, factually or legally, to another case. Factual connection refers to different lawsuits based on the same facts, such as a suit for damages for a tort or a breach of contract and the claim for insurance liability in a road accident. Legal connection refers to different lawsuits based on the same legal relationship, where several rights of claims concur.

In determining specific standards, it is necessary to notice that supplemental jurisdiction is like a double-edged sword that can enhance the value of efficiency and weaken efficiency if too many cases are brought into one proceeding.

Therefore, the standard should be neither too narrow nor too extensive. A proper standard is the "theory of the double connected relationship," which limits the connected relationship to the unity of the object and causes of action. The unity of the object of action refers to the same requests or requests with a causal relationship, and the unity of causes of action refers to the connected relationship between parties' attacks and defences.<sup>49</sup>

There are many descriptions of the stereotypical actions about cases having a connected relationship, such as adding more claims by the plaintiff, filing counterclaims by the defendant, common joint actions, lawsuits in which a third party applies for participation, all of which fall into the category of claims with a connected relationship. Where the trans-regional court has jurisdiction over a certain case, and the plaintiff makes

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<sup>49</sup> See LIAO Zhonghong, *(A Study on Several Issues Regarding the Improvement of Counterclaim Legislation)*, 6 (Journal of Southwest University of Political Science and Law), 57 (2008).

an additional claim, the defendant files a counterclaim in court, a third party files a lawsuit to participate, and/or a party in a common joint action applies to join the lawsuit, jurisdiction may be obtained through the supplemental jurisdiction system if the court does not have original jurisdiction over these four types of cases.

Only closely connected cases can be consolidated into one proceeding and the parties concerned must apply for consolidation on their own initiative, which means that a trans-regional court cannot have jurisdiction over connected cases by exercising its discretionary power. In theory, the court shall only add the parties *ex officio* when the added party is within the same substantive legal relationship in dispute, where necessary joint action applies. However, other cases with connected relationships, such as adding more claims by plaintiffs, filing counterclaims by defendants, common joint actions, and third parties that may apply to participate in the proceedings cannot *ex officio* be consolidated into the proceeding by the court.

The U.S. experience with supplemental jurisdiction is relevant. U.S. Federal courts can have jurisdiction over other related cases that do not fall under federal jurisdiction only at the initiative of the parties.<sup>50</sup> The reason for this is that standards must be high in bringing cases that independently do not fall within the jurisdiction of federal courts into their purview. The same applies to the scope of cases accepted by trans-regional courts. Ideally, the scope of cases that a trans-regional court can take shall be a closed circle and is strictly limited to specific or even enumerated major trans-regional cases that are expressly stipulated by the law. Supplemental jurisdiction can only be an exception to such a closed circle. Therefore, it is necessary to raise the threshold and limit the scope of the connected relationship.

Finally, a case falling under the exclusive jurisdiction of an ordinary court shall not be consolidated through supplemental jurisdiction, as exclusive jurisdiction is a mandatory provision under the law.

*2. Expansion Rule.* — Whereas trans-regional courts can apply the general rules of supplemental jurisdiction, they also need to expand the interpretation of general rules under special circumstances. Regardless of whether the objects of action are similar or not, as long as they are closely connected, there is sometimes a need to conduct a unified trial in the form of joint action.<sup>51</sup> In certain circumstances, although each action alone does not meet the conditions of a major case that can be heard by a trans-regional court, it is possible that the aggregation of cases can meet the requirements.

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<sup>50</sup> See Freer, fn. 34 at 259.

<sup>51</sup> This is so even if the objects of action in different cases are not the same or similar, but the facts of the cases are related to each other. This can be called “necessary joint action arising from the related relations.” See ZHANG Wusheng & DUAN Housheng, (*Theoretical Misunderstanding and Institutional Reconstruction of Necessary Joint Actions*), 1 (Science of Law), 119–120 (2007).

In theory, trans-regional courts can only have jurisdiction over major cross-regional and specialized cases that are clearly stipulated in the laws and judicial interpretations. According to the general rules, at least one case should fall within the ambit of the trans-regional court's jurisdiction, which is a prerequisite for supplemental jurisdiction. However, under the expansion rule, although each individual case does not meet the jurisdiction requirements of trans-regional courts, they may still be adjudicated as a whole by trans-regional courts if the requirements can be satisfied if multiple cases are submitted altogether.

The most significant difference between the expansion and general rules is that the former requires that at least one of the cases should meet the conditions of jurisdiction, but when the expansion rule is applied, no single case, but rather the aggregation of cases satisfies the requirements. For example, when many plaintiffs across the country file lawsuits against a food and drug manufacturer, the expansion rule can provide a proper basis for the trans-regional courts to hear such cases. If we look at each object of action separately, no single lawsuit can likely meet the requirements, such as exceeding a certain monetary amount in dispute, having a large number of affected parties or having trans-regional impacts. However, if potential claims all over the country are put together, the abovementioned requirements can easily be met. The consolidation of such cases in trans-regional courts plays an important role in finding out facts thoroughly, unifying compensation standards, disclosing relevant information promptly to the public, avoiding the influence of local interventions, gaining trust from parties concerned, and promoting fair trial.

The Civil Procedure Law has already stipulated rules regarding the system of representative action to address actions involving a large number of parties. However, representative actions are rare and not welcomed by judges for various reasons. For example, it may threaten the stability of social order or even turn into riotous incidents. As it is not optimistic that the representative action would play its role in the short run, accepting trans-regional cases involving multiple parties by trans-regional courts becomes a very promising and effective alternative. Trans-regional courts have inherent advantages in dealing with such class actions, as they are generally at a higher level, with limited types of cases under their jurisdiction, a smaller burden of caseloads, and less external interference, thus being more likely to win the trust of parties.

In short, the expansion rule would allow trans-regional courts to accept cases with major trans-regional impact, that would either originally have been a joint or representative action.

*3. Observations from a Comparative Perspective: Supplemental Jurisdiction Rules of the US.* — U.S. law also provides for supplemental jurisdiction to facilitate a one-time settlement of disputes. Supplemental jurisdiction rules under U.S. law indicate that a federal court can independently exert jurisdiction over claims that do not fall within the

jurisdiction of federal courts but are closely related to a claim that does have federal jurisdiction.

There are five conditions for the application of supplemental jurisdiction. First, there are more than two claims. Second, the claim that triggers jurisdiction must satisfy the federal court's jurisdiction, such as diversity or federal question requirements, whereas the additional claims do not independently satisfy the jurisdiction requirements of federal courts. Third, additional claims include claims that were originally included by the plaintiff in the complaint, claims subsequently supplemented by the plaintiff, counterclaims brought by the defendant, claims against co-defendants, and/or claims filed or intervened into by persons who are not a party to the litigation. Fourth, the court cannot introduce an action *ex officio*, but has the discretion to add additional claims. Fifth, the following relationship shall exist between claims that trigger jurisdiction and additional claims: the state claim is so closely tied to questions of federal policy that the argument for the exercise of pendent jurisdiction is particularly strong.<sup>52</sup>

The underlying logic of grabbing jurisdiction over state claims through supplemental jurisdiction by federal courts is to use "subject matter" or "disputed matter" as the standard to identify the cause of action, and the additional claims constitute a part of the same incident or dispute.

Federal courts may exercise discretion in refusing supplemental jurisdiction where (1) additional claims raise a novel or complex state legal issue; (2) additional claims substantially dominate claims that raise federal subject matter jurisdiction; and (3) courts have dismissed all claims that raise federal subject matter jurisdiction, etc. The period of limitations of the additional claims is tolled during the trial in federal courts and within thirty days of dismissal under 28 U.S.C. § 1367(d).

When trans-regional courts in China apply the supplemental jurisdiction rule, if they find particular cases more suitable to be heard by ordinary courts, the application for the consolidation of such additional cases can be excluded. Similarly, the statute of limitation shall also be suspended upon the court's refusal to hear the additional case.

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<sup>52</sup> See *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966).

## CONCLUSION

The establishment of trans-regional courts is an important development in China's judicial reform. However, no unified and specific standards have been formed since the pilot initiatives in Beijing and Shanghai in 2014. There are still disputes regarding the nature and position, the model, jurisdiction rules, and other matters of concern regarding trans-regional courts.

This article indicates that trans-regional courts are neither specialized courts that only hear certain types of cases, nor local courts established completely in line with administrative divisions. They must make breakthroughs under the framework of the current Organic Law of the People's Courts, thus formulating new jurisdictional rules, independent of ordinary and specialized courts, and under the direct guidance of the Supreme People's Court.

Although several models have been proposed to establish trans-regional courts, the most practical one is to reconstruct the existing railway transportation courts to build a national trans-regional court system within a short time. The jurisdiction of a trans-regional court should be regulated from three perspectives: exclusive, alienage, and supplemental jurisdiction. This also proves that a trans-regional court is not a specialized court, but a new court system in parallel to the existing local court system that can hear specific cases at a national scale.

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