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THE PILOT REFORM ON THE PROCURATORATE OF CROSS-ADMINISTRATIVE DIVISION IN CHINA AND ITS REFLECTION - FROM THE PERSPECTIVE OF PILOT PROGRAM IN SHANGHAI

China's procuratorate is established geographically according to administrative division. Its prosecutors are elected and the exercise of its power is guaranteed by local people's congress, which results in difficulties with respect to the independence of procuratorial power. In order to overcome the judicial localization and guarantee judicial fairness, China chose a procuratorate respectively in Shanghai and Beijing to initiate a pilot reform on the procuratorate of cross-administrative division at the end of 2014 and has harvested some fruits. However, from the perspective of the circumstances of the pilot reform in Shanghai, the current situation of jurisdiction over cases is not consistent with the original intention of the reform in some aspects. The scope of cases likely to be intervened by local force shall be made clear and incorporated gradually under the jurisdiction of a procuratorate of cross-administrative division, and a more extensive reform plan shall be carried out at suitable time.

Key Words: *Reform on the Procuratorate of Cross-administrative Division; Practical Exploration; Jurisdiction over Cases; Suggestion on the Route of Reform*

1. INTRODUCTION

Fairness is at the heart of any judicial system and the independent exercise of judicial power is the core for realizing judicial fairness. For a long time, China has taken judicial independence as the basic idea and principle which is enshrined in the constitutional law and various procedural laws. However, there is always a gap between legislation and judicial practice.

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In China, the procuratorate is one of two judicial authorities to exercise legal supervisory power, which includes examination and approval of arrest in cases investigated by the organ of public security and supervision on such cases, examination and prosecution of criminal cases, supervision of court hearings and enforcement of judgments, as well as supervision of lawsuits on civil and administrative cases tried by courts. The procuratorate is a national authority maintaining legal unification of China, protecting social order and securing citizens' rights, thus enjoying significant status in the overall national structure and governance system. At the same time, procuratorates at various levels are dependent on local government and people's congress to different extent and have become a tool of local governance; it is difficult to guarantee the independent exercise of procuratorial power. For this reason, China proposed a reform on procuratorate of cross-administrative division with the hope of transforming some special procuratorates into procuratorates of cross-administrative division to enjoy jurisdiction over special cases in a greater administrative division, thus guaranteeing the independent exercise of procuratorial power and promoting judicial fairness. As a completely new system, it may be impossible for the public to know the background and practical situation of the reform on the procuratorate of cross-administrative division, so it is an inevitable task to research these issues as soon as possible in order to improve this system.

2. BACKGROUND OF CHINA'S REFORM ON THE PROCURATORATE OF CROSS-ADMINISTRATIVE DIVISIONS

With the deepening of China's reform and opening up to the world, the development of market economy puts forward more requirements regarding uniformity and rule of law in the domestic market. Meanwhile, procuratorates on various levels are dependent on local governments, and the persistent problem of judicial localization has become more and more serious.¹ China has obviously recognized this problem and has subsequently proposed the Study on establishing a judicial system separated from administration to guarantee the enforcement of national laws in a uniform and correct way, and the Study on establishing the People's Court and the People's Procuratorate of Cross-administrative Division to hear cross-regional cases in an effort to improve the allocation of judicial powers and increase judicial credibility. The establishment of such policy promotes theoretical research and judicial practice of the current reform on the procuratorate of cross-administrative division.

¹ Zhang, 2016, 34.

2.1. General Structure of China's Procuratorates

The political form of organization of China is a system of the people's congress. The government, the supervision committee, the courts and the procuratorate are established on the basis of the people's congress. According to relevant laws of China such as the constitutional law and the Organic Law of the People's Procuratorates of the People's Republic of China, China's procuratorial system includes supreme people's procuratorate, local people's procuratorates at various levels and special people's procuratorates such military procuratorate. Local people's procuratorates at various levels include the people's procuratorate at the provincial, municipal and district-country levels, which constitute main strengths of China's procuratorates and exercise the main procuratorial functions and powers. Local people's procuratorates, located in administrative regions of corresponding levels, are created by the people's congresses at the same level, report to such people's congresses and are under their supervision. The relation between the procuratorate and people's congress is reflected in the staffing policies. The chief prosecutors of procuratorate at each level are elected and dismissed by the people's congress at the same level which then reports the result to the chief prosecutor of the procuratorate of the next higher level to ask for approval of the standing committee of the people's congress on the same level. Other prosecutors are appointed and dismissed by the standing committee at the same level. Regarding funds, the right of budget proposal and preparation of procuratorates at various levels is exercised by financial authorities at the same level. After examination and decision of the people's congress at the same level, the local financial authorities allocate the funding to procuratorates. Regarding their activities, procuratorates at various levels must report to the people's congress and the standing committee at the same level². The standing committee conducts examination and voting. During the session of the people's congress, a certain number of deputies to the NPC may ask procuratorate questions and the procuratorate must reply. Thus, local procuratorates at various levels, corresponding to local governments one by one and uniformly receiving supervision from the local people's congresses, are a part of local state organs. It is not hard to infer that procuratorates rooted in locality at various levels are likely to be influenced by various local powers.

In order to deal with the possible interference of local powers with the procuratorial power, China chooses a procuratorate in Shanghai and a procuratorate in Beijing at the end of 2014 to conduct the reform on procuratorates of cross-administrative divisions with the purpose of providing replicable models for national reform. According to the design of the central, China established two pilot procuratorates of

² The report is mainly on summarizing and reflecting the procuratorial work rather than details on individual cases.

cross-administrative divisions: Shanghai People's Procuratorate No. 3 Branch and Beijing People's Procuratorate No. 4 Branch on the basis of the former Railway Transportation Procuratorates³. The pilot procuratorates' funds are guaranteed and the staff of such procuratorates are appointed and dismissed by the provincial people's congress of a particular locality. Such procuratorates govern special cases in the two municipalities directly under the central government, opening a new page of China's procuratorial reform.

2.2. The Need to Establish Procuratorates of Cross-administrative Divisions

In European and American countries, there exist procuratorates of cross-administrative divisions and those of administrative divisions. In the USA, the federal procuratores are located in 95 judicial districts which are not consistent with administrative divisions. In each state, the establishment of local procuratorates is dependent on the local population and the number of cases. In Germany, due to the prosecutors and the judges work in the same organ, the areas under jurisdiction of the court and the procuratorates are the same. The elements for determining the areas under the jurisdiction of local courts include the business volume, the number of professional judge and even funds. Although the areas under jurisdiction of local courts are basically towns, not all towns under their jurisdiction belong to a county.⁴ Furthermore, whether the country is federal or unitary, the appointment, dismissal of staff and sources of funding of procuratorates are basically independent from areas under their respective jurisdictions, thus guaranteeing the independence of procuratorial powers to different extent.

China's procuratorates are established according to administrative divisions and funds and the personnel are controlled by the people's congress of their corresponding administrative division, even by the local government to a great extent. For this reason, it is especially necessary to establish procuratorates of cross-administrative divisions:

Firstly, to decrease the outside interference and guarantee the independent, legal and fair exercise of procuratorial power. As to human nature, the control over one's life is equal to the control over one's will.⁵ The personnel, funds and materials of

³ They belong to a kind of specialized procuratorates of China. Besides them, there are other kinds of specialized procuratorates such as the Military Procuratorate and Forestry Procuratorate. The Railway Transportation Procuratorates exercise procuratorial power within their jurisdiction over railway cases, the number of which is few, so this kind of procuratorate has become an important object of reform in recent years.

⁴ *Huang*, 2016.

⁵ (US) *Hamilton*, 1980, 391.

China's procuratorates have been long guaranteed by the local people's congress and government. This results in localization of judicial power and some local officials even participate in trials by taking advantage of powers and functions of their position, causing the phenomenon of different results of lawsuits at home and away. The procuratorates of cross-administrative divisions are able to get rid of interference of local authorities. The committal of some special cases possibly related to local interests or subject to local interferences from the original local procuratorates at various levels to procuratorates of cross-administrative divisions ensures the independent exercise of procuratorial power to some extent and is beneficial to uniform implementation of laws and realization of judicial fairness.

Secondly, to improve judicial allocation of resources and efficiency. Fairness is the core value of justice and judicial efficiency is also an important aspect. There has been a long-lasting disproportion between the number of cases and prosecutors in local procuratorates at each level, but at the same time, Railway Transportation Procuratorates confront a great decrease in the number of cases.⁶ The transformation of Railway Transportation Procuratorates into procuratorates of cross-administrative divisions and incorporation of some special types of cases into their jurisdiction has improved the allocation of judicial resources and reduced the disbalance between the number of cases and the number of procuratores in local procuratorates at each level. Meanwhile, the committal of some cases related to local interests or possibly subject to local interference to procuratorates of cross-administrative divisions can eliminate elements having an adverse impact on fair trial of cases and produce a more fair implementation of trial procedures, thus the parties concerned will be more likely to accept judgments. As a result, appeals and complaints to superior authorities will be decreased thus saving the judicial resources and stabilizing social relations.

Thirdly, to gradually promote judicial reform and reduce reform obstruction. China is a unitary state and the judicial power is regarded as a kind of central power. However, in view of its extensive territory and big differences in development of each place, there are a lot of difficulties in funding and personnel appointment or dismissal which call for immediate transformation of the current local procuratorates at each level into those uniformly under the central leadership. Moreover, the excessive volume of the procuratorial system may result in uncontrolled judicial quality and decreased judicial efficiency. For this reason, China has established procuratorates and courts of cross-administrative divisions to govern special cases, thus forming a new proceedings pattern according to which procuratorates and courts of cross-administrative divisions and original judicial organs in administrative divisions coexist,

⁶ Xu, 2015, 46-51.

which does not only reserve the role of local judicial organs at each level, but also decreases elements influencing judicial fairness in a present situation of limited human resources and materials showing the wisdom of China's judicial reform.

2.3. The Basic Definition of Procuratorates of Cross-administrative Divisions

In order to maintain fair enforcement of laws and improve judicial credibility, the judicial organization structure of cross-administrative divisions is officially proposed. However, what does the cross-administrative divisions mean? Does it mean that the jurisdiction of judicial organs is crossing the administrative divisions, or do the cases accordingly governed enjoy elements crossing the administrative divisions? There has not been a clear and complete definition of procuratorates of cross-administrative divisions so far.

To some degree, the current procuratorates of China are crossing administrative divisions. The lowest level of local government or administrative division is town, national town or township, but the lowest level of local procuratorate is established on the district-level or the county-level administrative division. That is to say, a procuratorate at the county level governs several towns and townships. Correspondingly, current municipal-level procuratorates govern several county-level administrative divisions and provincial procuratorates govern several municipal-level administrative divisions.

The procuratorates of cross-administrative divisions are obviously different from current procuratorates. From the geographic perspective, a cross-administrative division generally means that jurisdiction of a judicial organ covers two or more administrative divisions on the same level rather than several administrative divisions on lower levels. For example, if a procuratorate of cross-administrative division is established in City A and enjoys the same level of A, the jurisdiction shall cover A and another city or more cities. From the perspective of cases, those governed by a procuratorate of a cross-administrative division generally concerns several administrative divisions on the same level, including the parties related to several divisions, or the result of a case related to several divisions. Under the current model of procuratorates in terms of administrative divisions, if a case concerns an administrative division, it is feasible for a procuratorate within such administrative division to deal with the case, which helps two kinds of procuratorates performing their respective functions to jointly realize judicial fairness. If a case has been interfered with or will possibly be interfered by a local authority, even if the case itself is not related to two or more administrative divisions, it shall be committed to a procuratorate of a cross-administrative division.

3. PRACTICAL EXPLORATION OF THE REFORM ON PROCURATORATES OF CROSS-ADMINISTRATIVE DIVISIONS IN CHINA

On Dec. 28, 2014, the procuratorate of cross-administrative division of China-Shanghai People's Procuratorate No. 3 Branch (hereinafter referred to as Shanghai No. 3 Branch) was established on the basis of Shanghai Railway Transportation Branch of Shanghai People's Procuratorate (hereinafter referred to as Shanghai Railway Branch). This paper focuses on this procuratorate given that it is the first procuratorate of cross-administrative division and its reform is most typical.

Shanghai No. 3 Branch makes efforts related to the pilot exploration from the following aspects:

3.1. Organization and Structure

Against the current trend of judicial localization, cases tried in China's courts are mainly civil and administrative ones allowing a lot of discretion and directly relating to public economic interests and local government's interests, so they are very vulnerable to local interference so that the legal supervision of the procuratorate is very important. For this reason, Shanghai No. 3 Branch puts emphasis on the reform of lawsuit supervision department.

In an ordinary procuratorate of an administrative division, the inner agencies often include supervision on investigation, public prosecution, procuratorial practices on execution, procuratorial practices on civil and administrative lawsuits, complaints and petitions and other business segments. Shanghai No. 3 Branch innovatively establishes Intellectual Property Procuratorial Department to impose legal supervision on IPR cases handled by Shanghai Intellectual Property Court, dividing the original Civil and Administrative Procuratorial Department into Civil Procuratorial Department and Administrative Procuratorial Department with the former imposing legal supervision on important civil, commercial and maritime cases tried by Shanghai Nov. 3 Intermediate People's Court and Shanghai Maritime Court and the latter imposing legal supervision on administrative cases tried by Shanghai No. 3 Intermediate People's Court. Through restructuring relevant functional departments, Shanghai No. 3 Branch has enhanced its supervisory capability over civil, administrative, intellectual, and maritime lawsuits, highlighting its characteristics of handling cases across the administrative division, which is beneficial to judicial delocalization and serves as a guarantee of judicial fairness.

3.2. Jurisdiction over Cases

The procuratorate of an administrative division in China exercises jurisdiction over cases according to the territorial scope which is identical with that of such an administrative division. Within the territorial scope, except for the special circumstances when it is inconvenient for the original procuratorate to handle the case and the jurisdiction is designated, all criminal cases within such territorial scope and civil and administrative lawsuits tried by local courts are under the jurisdiction of local corresponding procuratorates. As a newly-established procuratorate of the cross-administrative division, the scope of jurisdiction of Shanghai No. 3 Branch is not prescribed for by law, so Shanghai People's Procuratorate (hereinafter referred to Shanghai Municipal Procuratorate), as its superior procuratorate, gradually determines its scope of jurisdiction through exploration in order to meet the goal of procuratorial reform of cross-administration.

At the beginning of the establishment of Shanghai No. 3 Branch, its scope of jurisdiction is determined as (1) civil and administrative lawsuit supervision specifically concerning supervision of administrative cases and major cross-region civil and commercial cases tried by Shanghai Nov. 3 Intermediate People's Court, cases concerning IPR tried by Shanghai Intellectual Property Court, maritime cases tried by Shanghai Maritime Court; and (2) general criminal cases. Major trans-regional criminal cases specifically concerning the environment and resources protection, food and medicine safety, major criminal cases investigated by public security organs of civil aviation and waterways, criminal cases investigated by public security organs of customs; (3) self-investigation cases.⁷ Major trans-regional duty-related criminal cases and other major cases designated by the superior people's procuratorate.

Obviously, the aforesaid regulation on jurisdiction is sketchy. In practice, the Shanghai Municipal Procuratorate soon redefined the scope: (1) to specify the scope of the aforesaid trans-regional cases: cases with possible sentences of life imprisonment or death and with important influence in Shanghai, relevant cases investigated by Shanghai Bureau of Public Security; (2) to expand jurisdiction to cover new types of cases: major criminal cases infringing upon IPR; (3) to specify and expand jurisdiction to cover cases investigated and handled by industrial investigation organs: clarification of the aforesaid public security organs of civil aviation and water transportation as the Water Branch of Shanghai Bureau of Public Security, Shanghai Port Bureau of Public Security, Shanghai Maritime Bureau of Public Security, Yangzi River

⁷ According to the Supervision Law adopted in Mar. 2018, China's procuratorates cease to enjoy self-investigation power which is the power to directly investigate duty-related crimes. However, considering the need to provide an overall information on the reform, this paper still researches self-investigation system which was in place at that time.

Navigation Bureau of Public Security Shanghai Branch, International Airport Branch of Shanghai Bureau of Public Security, and the expansion of jurisdiction to cover criminal cases with possible sentences of life imprisonment or death or with important influences in Shanghai investigated by Urban Metro and Public Transportation Brigade of Shanghai Bureau of Public Security.

In order to promote a deeper reform of procuratorates of cross-administrative division, regulate designated jurisdiction of procuratorates of cross-administrative division, Shanghai No. 3 Branch and subordinate local procuratorates divide jurisdiction over duty-related crimes as follows: (1) regarding duty-related crimes, those committed by officials at or above the deputy-director level in railway-related enterprises or with important influences in railway system are governed by Shanghai No. 3 Branch, others are governed by local railway procuratorates⁸; those committed by officials at or above the deputy-director level or with important influences in Shanghai metro and transportation system are governed by Shanghai No. 3 Branch, others are governed by the railway procuratorate Shanghai branch; those committed by officials at or above the deputy-director level or with important influences in Shanghai customs, navigation and water transportation system are governed by Shanghai No. 3 Branch, others are governed by local railway procuratorates gradually through designation. (2) as for the aforesaid three types of criminal cases concerning the environment and resources protection, food and medicine safety and IPR infringement, a case of the first instance is governed by a procuratorate within each administrative division and such case of the second instance is uniformly governed by Shanghai No. 3 Branch.

3.3. The Management System

There is a leadership relation between the superior procuratorate and the inferior procuratorate, which is reflected in two aspects: the superior procuratorate enjoys instructs and leads the inferior procuratorate; in terms of human resources, the chief prosecutor of the superior procuratorate is entitled approves the appointment of the chief prosecutor of the inferior procuratorate. The chief prosecutors of provincial procuratorates and the Supreme People's Court are entitled to apply for dismissal of chief prosecutors, deputy chief prosecutors, members of procuratorial committees of inferior procuratorates.⁹

⁸ Shanghai People's Procuratorate Railway Transportation Branch governs Shanghai Railway Transportation Procuratorate and several railway transportation procuratorates of other counties or districts outside Shanghai. Because all of them are local railway transportation procuratorates, they are collectively referred to as local railway procuratorates in this paper. When referring to a specific local procuratorate, it is called XXX railway procuratorate just like Shanghai Railway Procuratorate, the short name of Shanghai Railway Transportation Procuratorate.

⁹ *Xu; Liu, 2006.*

Shanghai No. 3 Branch actively explores the reform on management system by taking advantage of leadership relation between the superior procuratorate and the inferior procuratorate, makes efforts to deepen the reform and expand the pilot effect. Those reforms include the following aspects: the first one is to incorporate some local railway procuratorates into the reform of procuratorates of cross-administrative division. Shanghai No. 3 Branch has no subordinate procuratorate and shares office work with Shanghai railway branch, so it has the role of a superior procuratorate of the Shanghai railway branch as. During the promotion of reform, low-level duty-related offences in fields such as metro and transportation, navigation, water transportation and customs are designated to be under the jurisdiction of railway procuratorate Shanghai branch, thus railway procuratorate shanghai branch is incorporated into the reform of Shanghai No. 3 Branch as a procuratorate of cross-administrative division.¹⁰ The second one is to incorporate local procuratorates within each administrative division of Shanghai into the reform. Shanghai No. 3 Branch has no hierarchical relations with local procuratorates within each administrative division of Shanghai, but with the support of Shanghai Municipal Procuratorate, Shanghai No. 3 Branch gives instructions on criminal cases concerning endangering food and medicine safety, IPR infringement, damaging environment and resources protection to local procuratorates within each administrative division of Shanghai, thus incorporating the latter into the scope of reform to some extent.

4. KEY ISSUES IN THE PILOT REFORM ON PROCURATORATES OF CROSS-ADMINISTRATIVE DIVISION IN CHINA

The purpose of reform on procuratorates of cross-administrative division is to commit a case possibly interfered with by a local authority to a procuratorate of cross-administrative division for realizing judicial fairness. During the reform exploration of Shanghai No. 3 Branch, the organizational structure has guaranteed the improvement in the effective handling of cases under its jurisdiction and the promotion of management system to expand the effect of its jurisdiction. The key issue is the determination of the scope of its jurisdiction over different cases.

¹⁰ According to Opinions on Several Issues of Reform on Management System of Rail Procuratorates, the current railway branch and local railway procuratorates are dispatched agencies of the provincial procuratorates and under uniform management of the provincial procuratorates of locality. The provincial procuratorates lead the railway branch and local railway procuratorates within such provinces in terms of personnel, funds and materials; the railway branch leads local railway procuratorates within such provinces and also leads the professional works of local railway procuratorates established outside such provinces but within the scope of railway bureaus of such provinces. For this reason, it is hard for Shanghai No. 3 Branch to incorporate local railway procuratorates outside Shanghai into the reform on procuratorates of cross-administrative division because they belong to different provincial procuratorates.

4.1. Major Problems in the Current Jurisdiction

Shanghai No. 3 Branch governs three types of cases, i.e. the supervision of cases handled by relevant courts, cases concerning people's livelihood and mass-transportation cases. From the corresponding supervision of the court by the procuratorate in China, it is reasonable for Shanghai No. 3 Branch to impose supervision on relevant cases tried by Shanghai No. 3 Intermediate People's Court, Shanghai Intellectual Property Court and Shanghai Maritime Court. Such cases are directly accepted by those courts and Shanghai No. 3 Branch as the corresponding procuratorate is unable to exercise supervision. There is no direct relation with judicial delocalization. There is no preliminary determination of whether the two other types of cases are governed by Shanghai No. 3 Branch. The logic in the determination mainly reflects the purpose of judicial reform, but the actual situation is not completely satisfactory yet.

Firstly, the meaning of Major Trans-regional Criminal Cases concerning the Environment and Resources Protection, food and medicine safety is unclear and its scope is narrow. First, the formal understanding of trans-regional is not in total compliance with the purpose of jurisdiction of procuratorates of cross-administrative division. Now that the term of trans-regional is used, it generally means that some elements of a criminal case may be trans-regional regardless of being trans-district, county or trans-municipal. However, must trans-regional cases be governed by a procuratorate of cross-administrative division? The purpose of the jurisdiction of a procuratorate of cross-administrative division is to exclude local interference in relevant cases under jurisdiction of local judicial organs, however not all trans-regional cases are belong to such category. Do major cases without trans-regional elements need to be governed by a procuratorate of cross-administrative division? In the situation where a procuratorate relies on local authority, and local interests are closely related to parties of a case, the procuratorate in a locality will inevitably adjudicate on such a case, so it is obviously unsuitable for a procuratorate within the administrative division to handle the case. Secondly, the understanding of the term of trans-regional from the perspective of meaning is not in complete conformity with provisions on the level jurisdiction. According to relevant legal provisions on the level of jurisdiction, a criminal case with important influences in Shanghai cannot be incorporated into the scope of jurisdiction of Shanghai No. 3 Branch because it must be within the scope of jurisdiction of Shanghai Municipal Procuratorate which should not decrease the level of jurisdiction over such type of cases without a clear legal support. Thirdly, cases concerning public people's livelihood and fields needing enhanced protection are obviously not limited to the aforesaid cases, but only such cases are included in the jurisdiction of procuratorates of cross-administrative division, so what is the specific standard? The current typical financial crimes involving a lot of people such as ille-

gally raising money¹¹ are closely related to people's livelihood, but some local procuratorates are unwilling to handle those cases due to difficulties in conviction and evidence collection and a large number of appeals to higher courts or authorities. Obviously, the current scope of jurisdiction is insufficient.

Secondly, a procuratorate of cross-administrative division enjoys the advantage of professional treatment of cases regarding jurisdiction over major criminal cases investigated by public security organs of civil aviation and water transportation, and criminal cases investigated by public security organs of customs, but this kind of jurisdiction is not the key to the reform on procuratorates of cross-administrative division. These cases are mainly criminal cases in special industries, so the jurisdiction of Shanghai No. 3 Branch over them and in theory the jurisdiction over railway-related cases have something in common.¹² However, the current theory itself is doubtful and may cause problems in jurisdiction. In the first place, from the perspective of railway-related cases which have something in common, although the special nature of the railways at the beginning of the establishment of New China determined the need to establish railway procuratorates,¹³ with the development of modern high-speed railways the number of cases handled by railway procuratorates has decreased greatly¹⁴ and a general procuratorate may handle them properly. The lutation and mobility of crimes committed in trains do not present special difficulties for case investigation and prosecution. Some "one-to-one" crimes have the nature of lutation too and the mobility of offenders on the run creates more difficulties in case handling, but these cases are handled by ordinary procuratorates without many problems. Moreover, there is no evidence that the cases investigated by organs such as civil aviation, water transportation and customs need to be handled by special organs. For a long time, these cases have been handled by local procuratorates and there have not been major or many problems reported so far, but there are a lot of proceeding convenience due to the fact that the nearest court exercises the jurisdiction. Thirdly, the foundation for determining jurisdiction over these cases is the level of the investigation organ, which is not consistent with the general foundation for determining the level of jurisdiction in China. The main foundation for determining the level of jurisdiction in China is criminal penalty possibly imposed in the case, so cases under the jurisdiction of Shanghai No. 3 Branch include those with possible life imprisonment and death, but the aforesaid investigation organs also govern some

¹¹ For example, the case of illegal money raising investigated in many places all over China recently involves more than 50 billion Yuan and more than 900,000 investors and is immensely influential. See *Illegal Raising Money of More Than 50 Billion Yuan within One and A Half Year, Disclosure of Hidden Information on the Crazy Ezubao*. *Modern Express*, 02.01.2016.

¹² *Ding*, 2013, 27-29.

¹³ *Liu; Cheng*, 2014, 76-77.

¹⁴ *Ding*, 2014, 55-60.

less serious crimes, so there is no clear legal foundation for Shanghai No. 3 Branch to exercise jurisdiction. Even the subsequent document emphasizes the seriousness of crimes governed by Shanghai No. 3 Branch. The cases investigated by Shanghai Customs are all under the jurisdiction of Shanghai No. 3 Branch, which produces possible inconsistencies with the level jurisdiction.

It can be inferred that the current jurisdiction of Shanghai No. 3 Branch over cases is decided without thorough consideration of potential local interference and somehow in breach of the current legal principle. Even regarding cases concerning people's livelihood and IPR, there are problems such as the limited scope and unclear definition of the jurisdiction. Of course, we are not opposing the jurisdiction of Shanghai No. 3 Branch over these cases, even we are not against its jurisdiction over any other cases, but from the perspective of the reform on procuratorates of cross-administrative division, the jurisdiction over these cases does not reflect the requirements of the reform.

4.2. Future Development of Jurisdiction

The establishment of procuratorates of cross-administrative division is to impose delocalized jurisdiction over special cases, prevent such cases from being influenced by local authorities which can result in judicial unfairness. Delocalization is the essence of the reform on procuratorates of cross-administrative division. For this reason, when determining the jurisdiction, the following aspects should be taken into account: firstly, the determination of the scope of jurisdiction over cases should be focused on the following key elements: cases possibly subject to local interference; judicial delocalization as the main reason for. The establishment of procuratorates of cross-administrative divisions. Whether the case involves cross-administrative elements, whether it is of major importance or not, whether it belongs to special industry or not are not key elements of the jurisdiction. Secondly, the types of cases should be determined according to local situations not according to a fixed standard. The levels of economic development are different, local features and types of cases differ in different places, the cases open to interference are not the same, so a totally identical standard cannot be established. Thirdly, the scope of jurisdiction over cases should be moderate and may be expanded gradually. The number of cases handled by railway procuratorates as a basis of transformation is not high, so if a lot of cases come under the jurisdiction of judicial organs of cross-administrative division which cannot refuse them, the eventual result may be a delay of justice. From the perspective of procuratorates within the administrative division, a large number of cases transferred may lead to the decreased number of cases dealt with and waste of judicial resources. From the perspective of central authorities, for a new type of

proceedings pattern, two systems coexist to play their respective roles in realizing judicial fairness without exclusively relying on any one of them.

Based on the aforesaid analysis, the author believes that, in addition to, the supervision on civil and administrative cases governed by corresponding courts, procuratorates of cross-administrative division may consider incorporating the following cases into their jurisdiction:

Firstly, regarding cases investigated by the Supervisory Commission¹⁵, the first type are duty-related crimes allegedly committed by officials from public security organs, courts or procuratorates. There is no jurisdiction objection system in the current criminal procedure of China and it is more difficult for parties to challenge the procuratorate because a specific reason is needed.¹⁶ It is hard to convince the public if a duty-related crime allegedly committed by officials from public security organs, courts or procuratorates is handled by a local judicial organ. The second type are duty-crimes allegedly committed by heads and subsidiaries of the people's congress, government, and political consultative conference on the same level, persons in charge of organs or departments under the people's congress, government, and political consultative conference on the same level and other leaders on a certain level. These persons have important influence in their local communities and are the main sources of local interference in case handling. The third type are duty-related offences allegedly committed by social groups, enterprises and institutions under the people's congress, government, and political consultative conference on the same level and their personnel. Because there are a lot of semi-official social groups and institutions and also state-owned enterprises on a certain level in China, their leaders enjoy a very high status in the highly administrative society of China and can interfere with case handling. The fourth type are duty-related offences committed by organs, departments, enterprises and institutions directly under the state council and their staff. Due to diversity of subjects of interest, national interests may be encroached by local authorities or conflict with local interests. Staff from central organs or departments, central enterprises and institutions are in the central place of power or close to the center of power, it may be hard for local judicial organs to resist their interference or temptation to interfere. The fifth type are duty-related offences committed by officials from competent authorities in fields such as IPR,

¹⁵ According to Supervision Law, the procuratorates' power to investigate duty-related offences and relevant staff are all transferred to the supervisory authority. However, the present supervisory agencies are established according to administrative divisions, which may be influenced by local forces such as the original procuratorates. If cases investigated by them will be handled by corresponding procuratorates of administrative divisions, it is hard to guarantee their fairness. It is more suitable for procuratorates of cross-administration to handle such cases. At present, there are few discussions on this issue, as pointed out by this paper.

¹⁶ *Chen; Liu; Jin, 2003.*

environment and resource protection, food and medicine safety, which are governed by procuratorates of cross-administrative division. The offence in such fields are not only closely related to local economic interests but are also greatly due to relevant governmental departments' negligence in management. Procuratorates of cross-administrative division have good channels to discover duty-related crimes when handling general criminal cases in these fields. The procuratorates of cross-administrative division may bring into play advantages of investigation, information and deterrent strengths through a combination of struggle against general crimes and relevant duty-related offences in these fields and play a positive role in punishing and preventing crimes.

Secondly, regarding general criminal cases, the first type are non-duty-related offences committed by the first four types of units and staffs in the aforesaid self-investigation cases, including criminal cases involving themselves and their closely socially related persons¹⁷. In view of those persons' influence, they will not await their doom in non-duty-related cases involving their interests. The second type are cases involving a deputy of people's congress, a member of CPPCC of the district or county level or above and their closely socially related persons as well as their units. Most deputies of people's congress and members of CPPCC have important influence on the local economy or relevant industries, so the government, procuratorate and court treat them in a more favorable way due to their supervisory power. There are reports from time to time that deputies of people's congress and members of CPPCC are protected in an improper way,¹⁸ which should be stopped. The third type are cases involving state-owned enterprises belonging to governments on the district or county level or above, main tax-paying enterprises, leading enterprises in their industries. Due to close relations between the government and a state-owned enterprise and importance attached by the government to the GDP, it is an unwritten rule for important local enterprises to receive different degrees of protection. The fourth type are crimes concerning people's livelihood and social order. This type of cases concerns most people's production and life and have a profound influence on the local community, and is possibly closely related to local interests. China should consider the whole picture and incorporate into the jurisdiction of procuratorates of cross-administrative division cases including but not limited to crimes concerning food and medicine safety, environment and resources protection, money raising fraud, part of cybercrimes, gang crimes, which may be determined according to local situations.

¹⁷ Hereby the term of closely social related persons is used other than close relatives in order to cover close classmates, friends and other relatives by marriage to expand the jurisdiction.

¹⁸ *Ding*, 2014; *Chen*, 2014.

Finally, other cases where jurisdiction is subject to the application of the parties. At present, multiple reforms are implemented in order to guarantee the independent and legal exercise of procuratorial power, but on the one hand, a long time is needed to show effects of such measures, and on the other hand, there are obviously still some problems influencing the independent handling of cases which need powerful control and correction. The elements influencing fairness are very complex, so it is hard to specifically illustrate which elements interfere with a procuratorate's case handling and to what extent. Generally, parties have great motives to seek fair handling of the case because it is related to their interests. When parties present convincing evidence to prove that a fair handling of the case cannot be guaranteed, then the case should be reviewed by procuratorates of cross-administrative division and preemptively governed by procuratorates of cross-administrative division.

5. CONCLUSION: SUGGESTIONS ON ROUTE OF REFORM ON PROCURATORATE CROSS-ADMINISTRATIVE DIVISION

The most important feature of the procuratorial reform of cross-administrative division is reflected on the jurisdiction on cases. However, even if the scope of jurisdiction over cases is improved, it is possibly not sufficient to realize the reform goal of delocalization. The author hereby makes a comparative study on the procuratorial system in the USA.

The USA is a federation of states and each state reserves a lot of autonomy including the judicial power. In order to prevent jurisdictional conflicts between the federal government and states, the US establishes independent federal procuratorate system in addition to the state procuratorate system. From the perspective of jurisdictional territory, fifty states of the USA are divided into 94 federal jurisdictions, each of which has a federal attorney's office to handle cases within such jurisdiction. State attorneys and municipal attorneys handle cases within administrative division in principle. From the perspective of cases under jurisdiction, federal attorneys mainly exercise public prosecution power and support actions over general criminal acts violating federal laws, propose suggestion that a grand jury prosecutes a felon, bring a lawsuit to the competent federal court regarding civil cases involving the United States,¹⁹ and all other cases are under the jurisdiction of state attorneys. From the perspective of appointment of attorneys, federal attorneys including chief federal prosecutor are directly appointed by the USA President with the approval of the Senate. In states and their inferior areas, each state appoints their own chief prosecutors. Prosecutors are elected, appointed or employed. In terms of financial

¹⁹ *He*, 1998, 399.

sources, the judicial funds are guaranteed by the federal government, states, counties or towns according to relationships of judicial agencies. The funding of the federal judicial system is undertaken by the federal government. The guarantee systems in each state are different but most of them are in the form of guarantee by the state financial department. According to the actual requirements, federal government will grant subsidies to state and local judicial agencies for their law enforcement. By establishing different procuratorate systems on federal and local levels, the USA has formed organizational foundation for protecting interstate or national interests; by demarcating the two jurisdictions, the USA ensures a suitable demarcation of power between the federal government and local governments; through the arrangement on personnel appointment and dismissal and financial guarantee in the federal procuratorate system, the USA ensures that the federal procuratorial organs situated in localities are able to safeguard the federal interests rather than local interests. Besides, the federal government grants a certain financial support to local judicial organs for their law enforcement activities so as to exert influence on local authorities.

Unlike the USA's federal system, China is a unitary country, so the judicial power is regarded as a kind of central power²⁰. However, in reality, the judicial system within an administrative division of China is basically localized in that the scope of jurisdiction, personnel appointment and dismissal, and funding are closely related to locality, thus splitting judicial power to some extent, just like justice in each state of the USA. However, China lacks procuratorate system similar to that of federal system of the USA, and therefore does not have the means to guarantee fairness of interests among provinces and maintain the integral interests of the country. The transference of cases likely to be interfered with by local forces to a procuratorate of cross-administrative division in the procuratorial reform of cross-administrative division and the comparatively larger scope of jurisdiction of the pilot procuratorate²¹ shows China's resolution and efforts to enhance legal unification and maintain judicial fairness. However, from the perspective of the pilot situation in Shanghai, on one hand, the scope of cases under jurisdiction of the procuratorate of cross-administrative division is also limited and many cases open to local interference are precluded, resulting in insufficient protection of judicial interests; on the other hand, the guarantee for personnel, funding and resources and the scope of jurisdiction of the procuratorate of cross-administrative division are still limited to local factors with the difference that local factors change from the original administrative divi-

²⁰ Li, 2015, 35-43.

²¹ The current pilot regions are Beijing and Shanghai and the pilot procuratorates are at the level of a branch of the provincial people's procuratorate to govern all special cases in the municipalities directly under the leadership of the State Council. Compared with the previous jurisdiction of procuratorates over cases within administrative divisions, the scope of jurisdiction of the pilot procuratorates this time is expanded.

sion at lower level (for example, county, city) to larger administrative division (such as municipality directly under the State Council), which cannot fundamentally solve the problem of judicial localization.

The author believes that in the future, it is necessary to make suitable adjustments in personnel appointment and dismissal, funding and jurisdictional territory for a procuratorate of cross-administrative division on the basis of expanding the scope of jurisdiction over cases. Since China will establish a litigation structure according to which ordinary cases are tried in a court of cross-administrative division and special cases in a court of cross-administrative division,²² the author suggests that on one hand, China establishes procuratorial system directly under the central authority which decides the personnel appointments and dismissal and provides funding to try to avoid local interference in cases handled by a procuratorate of cross-administrative division; on the other hand, the jurisdictional territory of a procuratorate of cross-administrative division should not correspond to administrative division but be determined to cover different administrative divisions.

BIBLIOGRAPHY

1. Zhang, S. (2016). The Court of Cross-Administrative Division Helps Solve the Problem of Judicial Localization. *People Rule of Law*: 1, 34.
2. Huang, L. (2016). Two Trans-regional Procuratorates in Germany, *Procuratorate Daily*. 02.23.
3. (US) Hamilton, A.(1980): *The Federalist Papers*. Commercial Press. Beijing.
4. Xu, X. (2015). Reform on Railway Transportation Procuratorial System. *Journal of National Prosecutors College*: 2, 46-51.
5. Xu, A.; Liu, S. (2006). *Explanation of the Constitution of the People's Republic of China*. Beijing. Available at:http://www.npc.gov.cn/npc/flsyywd/xianfa/2010-04/14/content_1567085.htm (06.01.2016).
6. Ding, G. (2013). Review and Prospect of Special Nature of Railway Procuratorates. *People's Procuratorial Semimonthly, Railway Procuratorates Edition*: 1, 27-29.
7. Liu, G.; Cheng Z. (2014). Five Characteristics of Special Nature of Railway Procuratorates. *People's Procuratorial Semimonthly*: 8, 76-77.
8. Ding, G. (2014). Development of Railway Transportation Procuratorial System. *Journal of National Prosecutors College*: 5, 55-60.
9. Chen, H.; Liu, X.; Jin, L. (2003). Investigation into Murder of President of a Court by a Judge. *Guangdong*. Available at: <http://www.southcn.com/weekend/commend/200309110003.htm> (02.01.2016).

²² XI 2014.

10. Ding, X. (2014). The Identity of a Deputy of People's Congress to be a Free Pass for an Criminal Suspect?. China Youth Daily. 04.14.
11. Chen, Q. (2014). The Identity of a Deputy of People's Congress of County to be a Free Pass?. China Youth Daily. 11.27.
12. He, Q. (1998). Development History of American Laws. Shanghai People's Publishing House. Shanghai.
13. Li, X. (2015). The Route of Restoring the Judicial Power against the Background of Building a Rule of Law China. Research of Administrative Science: 4, 35-43.
14. Xi, J. (2014). The Explanation of Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law. Beijing. Available at: http://www.xinhuanet.com/politics/2014-10/28/c_1113015372_3.htm (11.12.2017).

