Depuis le retour de Hong-Kong et de Macao en Chine en 1997 et 1999, le nombre de transactions entre la Chine continentale et ces deux régions administratives spéciales augmente à grande vitesse. Comme indiqué par la politique étatique fondamentale « Un pays, deux systèmes », Hong-Kong et Macao sont toutes deux dotées d’un degré d’autonomie élevé, et jouissent d’un pouvoir exécutif, législatif et judiciaire indépendant. Afin de trouver une solution permettant de protéger les intérêts des parties dans les transactions interrégionales, une série d’accords ont été mis en place. Cet article présente les systèmes judiciaires de la Chine continentale, de Hong-Kong et puis de Macao, dont le système est mis en avant compte tenu de son rôle important. Après une étude comparative, cet article va plus loin en analysant le système actuel d’assistance judiciaire et propose des méthodes pour améliorer son fonctionnement.

Abstract provided by the Editorial Board

Introduction

Ever since the return of Hong Kong and Macao to China in 1997 and 1999, transactions between mainland China and these two SARs have increased with high speed. As indicated by the “One Country, Two Systems” fundamental state policy, both Hong Kong and Macao are endowed with a high degree of autonomy and do enjoy executive, legislative and independent judicial power. A direct result is the co-existence of different jurisdictions within one sovereign country. Therefore, one question arises in terms of solution to protect parties’ interests in interregional transactions. In response, the mainland and the two SARs have set up a series of mutual arrangements that concern certain aspects of a legal process to establish a well-operated interregional judicial assistance. For a better understanding of judicial assistance within China, this article first introduces judicial systems of mainland, Hong Kong and Macao, in which the court system would be emphasized in consideration of the significant role it plays. After comparative study, this article will further analyze the current judicial assistance system and propose methods for a better operation thereof.

I. People’s Courts in Mainland

A. Background

“The people’s courts in the People’s Republic of China are the judicial organs of the state.”

As prescribed in the Constitution Law of the People’s Republic of China (“the Constitution Law”), the people’s courts shall exercise independently judicial power endowed by the National People Congress. The legislative power is exercised by the National People’s Congress (“the Congress”). In parallel with the people’s courts, governments are the state organs that exercise its executive power with no interference to the people’s courts judicial power. In China, the highest organ of state power is the State Council, that is, the Central People’s Government. The court shall directly report to the corresponding level of government and be responsible for it. Within the court system, the higher level of court has the right of supervision (not regulation).

B. Court Division

The people’s courts in mainland are divided into: The Supreme People’s Court, local people’s courts and special people’s courts. The Supreme People’s Court is the highest judicial organ, it enjoys two exclusive rights:

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1 Article 123 of the Constitution Law of the People’s Republic of China.
2 Article 126 (n 1)
3 Article 58 (n 1).
4 Article 85 (n 1).
the right of approval towards death sentence\(^5\) and the judicial interpretation\(^6\). The local people’s courts are divided into three levels in accordance with the administrative division,\(^7\) which are: high people’s court, intermediate people’s court and basic people’s court. The special courts include military courts, maritime courts, intellectual property courts, financial courts, and so forth.\(^8\) In addition to these long-existing special people’s courts, two new kinds of special courts were recently established, which are: financial court and Internet court. China has established three main Internet courts: the Hangzhou Internet Court\(^9\), the Beijing Internet Court\(^10\) and the Guangzhou Internet Court\(^11\). These three cities are Internet Industry hubs, especially Hangzhou, where the world’s famous online business enterprise Alibaba Group sets up its headquarters. The exercise of China’s Internet Courts has been proved to be a success.\(^12\) Accompanied with ICT (Information and Communication Technology) \textit{ad hoc}, it suits the demand for both efficiency and justice from consumer group. The three Internet courts shall have centralized jurisdiction over the cases that shall be accepted by the basic people’s courts within the jurisdiction in their respective cities as courts of first instance.\(^13\)

It could be seen that, the innovation to the specific people’s court shows China’s concern on certain legal relationships generated, which needs high level of professional knowledge and to be treated specifically. This article endorses the view that, with the development of sociality and technology, people’s way of behavior would be influenced. In response to this, the future of the court system in mainland might appear to be more dispute-specific, which could as well be helpful for caseload relief.

II. Court Systems of Hong Kong and Macao

The Government of the People’s Republic of China resumed the exercise of sovereignty over Hong Kong and Macao with effect separately from 1 July 1997\(^14\) and 20 December 1999\(^15\). The principle of “One Country, Two Systems” has been successfully applied for the governance over Hong Kong and Macao. “One Country” means there is only one sovereignty country, which is the People’s Republic of China. “Two Systems” refers to that the mainland China continues its socialism, whereas Hong Kong and Macao remain their capitalism unchanged. Guided by this principle and in accordance with the two basic laws, both Hong Kong and Macao are authorized to exercise a high degree of autonomy and to enjoy executive, legislative

\(^5\) Article 17 of People’s Courts Organic Law of the People’s Republic of China. In the 1954 People’s Courts Organic Law, the right of approval of death sentence were exercised all together by the Supreme People’s Court and high people’s courts. Although the 1997 Criminal Procedural Law of PRC has clearly prescribed that only the Supreme People’s Court had such right, the People’s Courts Organic Law still allowed the exercise of the right by high people’s courts. It is not until 2007, when the 2007 People’s Courts Organic law came into force, the right of approval of death sentence was finally be regulated as the exclusive right of the Supreme People’s Court. One main reason for doing so is to integrate differed criteria on approval of death sentences that each High People’s Court used to adopt.

\(^6\) Article 18 (n 1).

\(^7\) As to the administrative division, it is prescribed by the Constitution Law that the country is divided into provinces (23), autonomous regions (5), and municipalities directly under the Central Government (4). Provinces and autonomous regions are divided into autonomous prefectures, counties, autonomous counties, and cities; counties and autonomous counties are divided into townships, nationality townships, and towns (Article 30 (1) (n 1)). Meanwhile, according to article 31 of the Constitution Law, special administrative regions may be established when necessary, which are Hong Kong and Macao.

\(^8\) Article 15 (n 1).


\(^10\) Established on 9 September 2017, see official website: https://www.bjinternetcourt.gov.cn (09.04.20).

\(^11\) Established on 28 September 2017, see official website: https://www.gzinternetcourt.gov.cn (09.04.20).

\(^12\) According to the statistics published by the Supreme People’s Court in the White Book on Internet Justice of China’s Courts on 4 December 2019 that, by 31 October 2019, the three Internet Courts have received 118, 764 cases, in which 88, 401 were concluded; the online filing application rate has reached 96.8%; the online trial took an average of 45 minutes, and the average case trial period was bout 38 days, and the rate of satisfaction on the judgments of first instance was 98%.

\(^13\) Article 2 of Provisions of the Supreme People’s Court on Several Issues Concerning the Trial of Cases by Internet Courts.

\(^14\) Preamble of the Basic Law of the Hong Kong SAR of the People’s Republic of China.

\(^15\) Preamble of the Basic Law of the Macao SAR of the People’s Republic of China.
and independent judicial power, including that of final adjudication.\textsuperscript{16}

A. Hong Kong

The Court of Final Appeal is the highest appellate court in Hong Kong, it hears appeals on civil and criminal matters from the High Court.\textsuperscript{17}

The High Court includes the Court of Appeal and the Court of First Instance. It has both appellate and original jurisdiction, it can both hear appeals sent to it and try cases first taken to it.

B. Macao

Macao adopts a three-layer court structure that includes: The Court of Final Appeal, the Intermediate Court, and the Court of First Instance. The Court of Final Appeal is the highest judicial organ in Macao, it shall exercise the right of final adjudication. As the second level of court in Macao, the Intermediate Court exercises its jurisdictions over fourteen kinds of cases,\textsuperscript{22} these are the cases that used to be within the Court of Final Appeal before the return of Macao. The Court of First Instance contains two specific courts\textsuperscript{23}: The Basic Court, with general jurisdiction, and the Administrative Court, with jurisdiction over administrative, tax and customs cases.\textsuperscript{24}

\textsuperscript{16} Article 2 of the two Basic Laws.

\textsuperscript{17} See : https://www.judiciary.hk/en/about_us/courtchart.html (09.04.20).

\textsuperscript{18} Article 4 of the Hong Kong Court of Final Appeal Ordinance.


\textsuperscript{20} It has civil jurisdiction to hear monetary claims over $50,000, but not more than $1,000,000. In the case of claims for recovery of land, or where the title to an interest in land comes in question, the annual rent or rateable value or the annual value must not exceed $240,000.

\textsuperscript{21} In its criminal jurisdiction, the court may try the more serious cases with the exception of a few very serious offences such as murder, manslaughter and rape. The maximum term of imprisonment it can impose is seven years. It also exercises limited appellate jurisdiction in hearing appeals from tribunals and statutory bodies conferred on it under various ordinances, including the Stamp Duty Ordinance (Cap. 117), the Pneumoniosis (Compensation) Ordinance (Cap. 360) and the Occupational Deafness (Compensation) Ordinance (Cap. 469), see official website : https://www.doj.gov.hk/eng/legal/ (09.04.20).

\textsuperscript{22} Article 36 of Lei de Bases da Organização Judiciária.

\textsuperscript{23} Article 27 (n 22).

\textsuperscript{24} Article 30 (n 22).
cases via different tribunals, which are established in accordance with the subject matter they concern.\textsuperscript{25}

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Figure 3. Court structure of Macao

III. Conclusion: Promoting Interregional Judicial Assistance

A. Current Situation

Judicial assistance usually refers to cooperation between courts of two jurisdictions in terms of exchange of information, service of relevant documents and enforcement of a judicial order. Since it involves more than one jurisdiction, it is usually a method for two states to establish judicial cooperation. However, the judicial assistance we are talking here in China refers to the one within one sovereign country, which is “interregional judicial assistance”. Judicial assistance between different legal systems could be discussed from civil and commercial as well as criminal perspectives.

From aspect of civil and commercial matters, judicial assistance is conducted via mutual arrangements on certain legal issues, achievements have already been obtained during the past two decades. Until now, mainland China has already signed nine agreements separately with Hong Kong and Macao, issues regulated in these agreements cover the following parts of a judicial process: 1. The service of judicial documents; 2. Evidence taking; 3. Recognition and enforcement on judgment; 4. Recognition and enforcement on arbitral award. Notably, according to the new decision made in 2020 regarding service of judicial documents and evidence-taking between mainland and Macao,\textsuperscript{26} not only more levels of courts in mainland get involved into the procedure (art. 1), but also Internet judicial assistance is set up and be deemed as the premier solution (art. 2).

Compared with what have been done on civil and commercial issues, it is quite disappointing that, from aspect of criminal matters, there still lacks an effective mutual arrangement between mainland and two Special Administrative Regions. This is mainly due to differed legislations regarding certain issues, for instance the death sentence.

B. Recommendations

To sum up, this article would like to propose suggestions to certain questions remained for better promoting interregional judicial assistance within China. First, the Internet Court and Internet technology used by courts in general have all bring the judicial procedure into another period. With the amendment made by the Supreme People’s Court in 2020, it could be predicted that the judicial procedure for both mainland and two Special Administrative Regions would be more relied on the Internet technology. Although the Internet court and technology ad hoc are still in their infancy, it worth considering the judicial assistance online and be well prepared for its future implementation. Second, under arrangements agreed between mainland and two Special Administrative Regions, scope of cases that could be enforced are gradually enlarged, there are still requirements to fulfill for the final enforcement. The next step for the promotion in this respect is to simplify the enforcement procedure that pursue the automatic enforcement mechanism. Third, although the basic level of judicial assistance has been established between mainland and two Special Administrative Regions, there lacks enough assistance between these two regions,\textsuperscript{27} efforts shall be put on promoting mutual arrangements in between them as well. At last, the blank of judicial assistance in criminal matters are in urgent to be filled, which calls for continuous mutual talks and negotiations.

\textsuperscript{25} So far, the Basic Court comprises the following tribunals: 1. One Administrative Center; 2. Three Civil Tribunals; 3. Five Criminal Tribunals; 4. One Small Claims Tribunal; 5. Two Criminal Investigation Tribunals; 6. One Labor Tribunal; and 7. One Family and Minors Tribunal.

\textsuperscript{26} Decision of the Supreme People’s Court to Amend the Arrangement concerning Mutual Entrustment of the Service of Judicial Documents and the Obtainment of Evidence in Civil and Commercial Cases between the Chinese Mainland and the Macao SAR (2020).

\textsuperscript{27} Currently, there’s only mutual arrangement separately between the two Special Administrative Regions and mainland, except for the Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards Between the Hong Kong SAR and the Macao SAR (2013).