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ARTICLE

# TRANS-REGIONAL COURTS IN CHINA: A STUDY OF ESTABLISHMENT MODELS AND JURISDICTIONAL RULES

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**Abstract** The trans-administrative regional (trans-regional) court was created as part of China's judicial reforms in 2014. Thus far, only two trans-regional courts have been established, namely the Shanghai No. 3 and Beijing No. 4 Intermediate People's Courts. An important reason for this slow pace is that the trans-regional court has transcended the current structural framework under the Organic Law of the People's Courts in that (1) it is neither a specialized court that hears certain types of cases, (2) nor a local court established completely in keeping with administrative divisions. Therefore, the legal nature and status can only be clarified and justified when there is a clear definition of this new court system in the Organic Law of the People's Courts. Several models, namely the independent set-up model, full reshuffling model and limited transformation model, have been proposed for the establishment of trans-regional courts. The most practical and efficient among these models is the limited transformation model, aiming to reconstruct the existing railway transportation courts. The trans-regional courts may have exclusive, alienage, or supplemental jurisdiction. Each form addresses particular types of special and major trans-regional cases, and other cases based on the theory of consolidation.

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

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## INTRODUCTION

In November 2013, the Central Committee of the Communist Party of China (CPC Central Committee) proposed to "explore the establishment of a judicial jurisdiction system appropriately separated from administrative divisions."[1] In October 2014, an additional proposal was made to "explore the establishment of people's courts and people's procuratorates across administrative divisions to handle trans-regional cases."[2] Under the guidance of such proposals, the Shanghai No. 3 and Beijing No. 4 Intermediate

[1] See 中共中央关于全面深化改革若干重大问题的决定 (*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 (last visited Sep. 27, 2020).

[2] See 中共中央关于全面推进依法治国若干重大问题的决定 (*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).

People's Courts were established as pilot initiatives of the trans-administrative-regional (trans-regional) courts at the end of 2014.

Owing to the status quo of judicial practice in China, where judicial impartiality and authority of courts were confronted with severe challenges, the abovementioned proposals were brought up by the CPC Central Committee. This culminated in a consensus that the tendency of courts' localization should be redressed. Generally, all courts, including the Supreme, high, intermediate, and basic people's courts are all set up strictly in line with the administrative divisions of the central, provincial, municipal, and district governments. The personnel and fiscal budget of all courts are subject to the local party committee, the people's congress, and governments, who may potentially exert undue influence, directly or indirectly, on the local courts and judges, especially while handling certain cases involving important areas of local interest. Non-local parties also tend to have a mentality that the court is biased in favor of local parties.

Enormous importance has been attached to the establishment of trans-regional courts in order to enhance the credibility of the judiciary. In 2014, a new round of judicial reforms unfolded, which made the topic of trans-regional courts so heated that there was an explosion of articles discussing trans-regional judicial mechanisms.[3] Some scholars discussed on the constitutionality of trans-regional courts from the perspective of constitutional law,[4] whereas others discussed the extraterritorial experience as a reference to the construction of China's trans-regional courts from the perspective of comparative law. The state of trans-regional courts and their operations have also been observed and analyzed from empirical perspectives.[5]

Although scholars have exhibited enthusiasm for trans-regional courts, no new trans-regional courts have been established since the pilot in 2014. The revision of the Organic Law of the People's Courts in 2018 did not specify the status and organizational form of trans-regional courts, reflecting that the pilot initiatives in Shanghai and Beijing are not mature yet and additional research and observation are necessary.

This article explores models and jurisdiction rules for trans-regional courts in detail. Although trans-regional courts can hear both civil and administrative cases, owing to the author's research interest, this paper focuses on the topic from the perspective of civil

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[3] By inserting "跨行政区划法院" (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, 法制现代化进程中的审判组织重构 (*Reconstruction of Trial Organization in the Process of Legal Modernization*), 5 法学研究 (Chinese Journal of Law), (2004). However, there were 36, 44, and 34 articles, respectively, in the following three years from 2015 to 2017.

[4] See DI Gaoyang, 目标、限度与进路: 跨行政区划司法管辖制度的宪法学思考 (*Objectives, Limitations and Approaches: A Constitutional Reflection on Judicial Jurisdiction Across Administrative Divisions*), 34(1) 法商研究 (Studies in Law and Business), (2017).

[5] See CHEN Weidong, 跨行政区划人民法院改革研究 (*Research on the Reform of Trans-Administrative-Regional People's Courts*), 6 财经法学 (Law and Economy), (2016).

procedure.

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

What is a trans-regional court? What are its characteristics? These issues that should be clarified before discussing the models and jurisdictional rules of trans-regional courts.

### *A. Connotations of Trans-Regional Courts*

A trans-regional court is a counterpart of the common people's court. In accordance with the Constitutional and Organic Law of the People's Courts, local people's courts at all levels are to report their work to the local people's congresses and standing committees of the people's congresses at each relevant level. To some extent, the people's courts at all levels are administrative-regional courts. All four levels of people's courts, from basic to the Supreme courts, are set up in correspondence to the administrative levels of governments, namely county-, prefectural-, provincial- and national-level governments. Township-level administrative regions are too small to set up corresponding courts, therefore relevant cases are assigned to the basic people's courts. This is also reflected in the names of people's courts at various levels, which is prescribed in Articles 20, 22, and 24 of the existing Organic Law of the People's Courts. Before examining the judicial reforms, it is important to note that the local party committee and government controls the arrangement of court personnel and their fiscal budgets.[6]

In contrast, the trans-regional court is a new concept that does not fall within the existing framework of the Organic Law of the People's Courts. It does not exactly correspond to a particular administrative level of government or geographical location and is completely different from the ordinary court system. Trans-regional courts are expected to gain more independence and are more suitable for cases that are more likely to be treated unfairly in ordinary courts.

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

Trans-regional courts enjoy greater independence, which is reflected in the fact that the jurisdiction of a trans-regional court is not in line with the division of administrative regions. Administrative districts refer to the division of territorial space by the state for the convenience of the central government in its administration of the entire country.[7] A judicial district, that is, a district under the jurisdiction of a court, is a jurisdiction where

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[6] See ZHANG Wusheng & WU Zeyong, 司法独立与法院组织机构的调整(上) (*Judicial Independence and Adjustments to the Organizational Structure of Courts I*), 2 中国法学 (China Legal Science), 64 (2000).

[7] See ZHU Jianhua, CHEN Tian & WANG Kaiyong et al., 改革开放以来中国行政区划格局演变与驱动力分析 (*Analysis of the Evolution and Driving Forces of the Administrative Regions' Pattern in China since the Reform and Opening-up*), 34(2) 地理研究 (Geographic Studies), 247 (2015).

the state divides its territory into different levels and sizes for the purpose of exercising judicial power in accordance with the law.[8] Administrative and judicial districts are the result of the exercise of state power and the territorial division of the country. It is necessary and reasonable to divide the jurisdiction of courts in keeping with the division of administrative districts, as it will help courts become more accessible to the people, facilitate the application of the law, maximize the use of local judicial personnel, and combine national and local regulations in the operation of the legal system.[9]

However, the dependence of courts on local governments gradually evolves into the excessive localization of courts, which harms the unification of judicial power in the country. One solution to ease the situation is to set up trans-regional courts, which are supposed to be more independent. Their independence is reflected in that (1) there is no counterpart government at the same level and (2) the jurisdiction of trans-regional courts cover a much larger geographical region and fewer types of cases than do ordinary courts. For example, although Beijing No. 2 Intermediate People's Court has no corresponding governmental authority and its jurisdiction actually covers several administrative districts in Beijing, its jurisdiction still depends on the administrative divisions in place and it does not share the essential characteristics of trans-regional courts. In contrast, although Beijing No. 4 Intermediate People's Court is located in Beijing, its jurisdiction is not restricted to specific administrative regions, but is rather specific to three types of cases: (1) financial loan contract, (2) insurance, and (3) commercial disputes involving foreign countries, China's Hong Kong SAR, China's Macao SAR, and China's Taiwan that satisfy the jurisdictional requirements of intermediate courts in Beijing. Theoretically, Beijing No. 4 Intermediate People's Court may have jurisdiction over major trans-regional cases within the scope of the North China area, such as the Beijing-Tianjin-Hebei region.

In short, although very few categories of cases fall within the jurisdiction of Beijing No. 4 Intermediate People's Court, the cases themselves extend far beyond those that appear before ordinary courts, such as the No. 2 Intermediate People's Court.

In addition, trans-regional courts only enjoy relative independence. Independence does not mean that the jurisdiction of trans-regional courts is entirely unrelated to administrative divisions. Geographically, decision-makers in both the CPC Central Committee and the Supreme People's Court believe that trans-regional courts do not have unified jurisdiction over particular types of cases throughout the country. To balance the caseload of courts and for the convenience of parties concerned, the jurisdiction of

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[8] See WU Zhigang, 我国司法区划调整问题研究——以跨行政区划设置法院为视角的分析 (*A Study of the Adjustment of Judicial Divisions—An Analysis of Setting up Courts Across Administrative Divisions*), 8(3) 北方法学 (Northern Legal Science), 121 (2014).

[9] See JIANG Huiling, 司法权力地方化之利弊与改革 (*The Advantages and Disadvantages of the Localization and Reform of Judicial Power*), 2 人民司法 (People's Judicature), 30 (1998).

trans-regional courts must be subject to some restrictions.[10] Otherwise, it can exert a great impact on the existing system and operation of the ordinary court system, which would result in the confusion of jurisdiction rules in China.

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

It is necessary to clarify the nature of trans-regional courts before discussing their set-up models. A clear understanding of the nature of trans-regional courts facilitates the delimitation of clear boundaries of specific models, in order to distinguish them from similar court systems, to expose legal obstacles that may be encountered while implementing reforms, and to identify pre-existing rules in need of further modification.

Article 12 of the Organic Law of the People's Courts identifies the following hierarchy: (1) the Supreme People's Court; (2) local people's courts at various levels; and (3) special people's courts. However, can trans-regional courts find a place within this categorization?

First, trans-regional courts are not the same as the Supreme People's Court prescribed in Item 1. From 2015 to 2016, the Supreme People's Court successively established six circuit courts and promulgated the Provisions of the Supreme People's Court on Several Issues Concerning the Hearing of Cases by Circuit Courts, specifying that circuit courts shall have jurisdiction over some cases within their respective circuits. These circuit courts cover multiple administrative regions geographically, but continue to remain the Supreme People's Court in nature and cannot be considered a representative or a type of trans-regional courts.

Second, the trans-regional court does not belong to the domain of local courts. Local courts at various levels are ordinary courts in charge of the trial and enforcement of general criminal, civil, and administrative cases. Local people's congresses control the selection of judges in local courts. Local courts are responsible to the local people's congresses. This relationship determines the local attribute of the administrative division of local courts. However, trans-regional courts should break these close links with administrative divisions in setting up courts and therefore are not local people's courts in the ordinary court system.

Third, the trans-regional court is not a specialized court. Logically, it may seem like trans-regional courts should belong to specialized courts as they perform functions that differ from those of ordinary courts.[11] However, Justice LI Shaoping, Vice President of

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[10] 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.

[11] See SU Zelin, 跨行政区划设立人民法院的法治意义 (*Significance of the Rule of Law in the Establishment of People's Courts across Administrative Divisions*), 人民法院报 (*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.[12]

On the one hand, the purpose of establishing trans-regional courts is quite different from that of specialized courts. A specialized court is expected to address a particular type of case,[13] which enhances judicial efficiency through the specialization of judicial personnel and procedures. The purpose of establishing trans-regional courts is to resolve various types of cases that may be affected by the so-called "host and guest problem" in China's judicial practice, which refers to the case where an intervention from local authorities in litigation takes place, where one party is like a host and the other is like a guest, and the court tends to treat the guest unfairly. A trans-regional court may enumerate some cases that are likely to be intervened into by local authorities, but it would fail in terms of classifying case types with uniform and clear standards. Therefore, trans-regional courts do not comply with the principle underlying the establishment of specialized courts and cannot improve trial efficiency by improving the professional skills of judges by hearing similar cases, which is the case in specialized courts.

In contrast, the model of trans-regional courts is obviously different from that of specialized courts. The existing series of specialized courts include military, maritime, intellectual property, Internet, oilfield, and forestry courts, etc. Except for the military court system,[14] all other specialized courts are supervised by the provincial high court or an intermediate court. Although specialized in their own "business lines," they are still unable to avoid interference from local administrative authorities under the current management model, which is inconsistent with the original intention of establishing trans-regional courts.

In sum, the trans-regional court is a brand-new type of court that does not belong to any category of courts prescribed under the current Organic Law of the People's Courts. It is necessary to amend the Organic Law of the People's Courts or for the National People's Congress to pass a decision in order to categorize and characterize trans-regional

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[12] See LI Shaoping, 为什么要设立跨行政区划人民法院？(*Why Should We Set up Trans-Administrative-Regional Courts?*), 14 求是 (Qiushi), 43 (2015).

[13] 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 labor protection within their respective jurisdictions," whereas other general civil and criminal cases should still be under the jurisdiction of ordinary courts.

[14] 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 中国人民解放军政治工作条例 (*Regulations on the Political Work of the Chinese People's Liberation Army*). See WAN E Xiang, 专门法院改革的路径与成效 (*The Path and Outcomes of Specialized Court Reform*), People's Court Press (Beijing), at 9–11 (2013).

courts accurately. The Supreme People's Court has realized that there are institutional obstacles in establishing trans-regional courts, and believes that the overhaul of the current laws is unavoidable in order to remove these obstacles and establish a new organizational system for trans-regional courts in keeping with the requirements of the ongoing judicial reforms.[15]

As the current rules leave no room for trans-regional courts, there is no need to be restrained by the framework of existing rules while constructing the model and jurisdiction rules of trans-regional courts.[16] However, certain special needs should be taken into account to coordinate with the purposes of establishing trans-regional courts.

## II. PURPOSES OF ESTABLISHING TRANS-REGIONAL COURTS

The presupposed function determines the structure while the goal determines the model. To clarify the model and structure of trans-regional courts, it is necessary to explore the purpose of establishing these courts first, in order to ensure that they can function well once established, and can fully realize the original intention of their creators.

The description of the establishment of trans-regional courts as stated in the Outline of the Fourth Five-Year Reform of the People's Court is as follows: "to explore the establishment of trans-regional courts under the principle of scientificity, streamlining, efficiency and benefiting the realization of judicial justice, and to build a litigation framework under which ordinary cases are heard by courts of administrative regions [i.e. ordinary courts] and special cases are heard by trans-regional courts."[17] Railway transportation courts will be transformed into trans-regional courts that mainly hear cases across administrative regions, major administrative cases, cases involving the protection of environmental resources, enterprise bankruptcy cases, food and drug safety cases, and other cases that are easily affected by local factors, cases brought up by

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[15] See The Office of the Judicial Reform Leading Group of the Supreme People's Court, 《最高人民法院关于全面深化人民法院改革的意见》读本 (*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).

[16] Influenced by legal dogmatism, there are some reflections on and criticisms of the legality and constitutionality of the trans-regional courts. See ZHAI Guoqiang, 跨行政区划人民法院如何设立?——一个宪法解释学的视角 (*How to Set up Trans-Administrative-Regional Courts? A Perspective from the Constitutional Hermeneutics*), 33(5) 法商研究 (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.

[17] See 最高人民法院关于全面深化人民法院改革的意见——人民法院第四个五年改革纲要(*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).

trans-administrative-regional people's procuratorates, and criminal and civil cases accepted by the original railway transportation courts.

The Supreme People's Court had several original intentions while establishing trans-regional courts. The following issues are expected to be resolved through the establishment of this new system.

### *A. Ensuring Fair Trial*

The primary purpose of establishing trans-regional courts is to resolve the abovementioned "host and guest problem." President XI Jinping pointed out: ("With the in-depth development of the socialist market economy and the emergence of administrative proceedings, there are more and more trans-administrative-regional and even trans-border cases, and the disputed amount in these cases is increasing. As a result, relevant local departments and leaders where courts are located pay more and more attention to the handling of such cases, and even intervene in the handling of cases by taking advantage of their powers and relationships, which causes the phenomenon of 'host and guest problem' in relevant proceedings and is not conducive to the equal protection of non-local parties' legitimate rights and interests, the independent trial of courts, the supervision of the administration by governments in accordance with the law and the maintenance of fair implementation of laws."[18]) This authoritative interpretation means that the primary goal of establishing trans-regional courts is to get rid of the intervention of local administrative departments in cases and ensure independent and fair trials by courts. The vice president of the Supreme People's Court, Justice LI Shaoping, also emphasized that the primary goal of trans-regional courts is to guarantee the fairness of trans-regional trials and avoid the occurrence of the "host and guest problem."[19]

Trans-regional people's courts should adhere to neutrality, which is conducive to fair trial. In theory, judicial power must be exercised under the principles of neutrality, impartiality, and independence. However, from an external and systemic point of view, judges may encounter various external interferences in their exercise of judicial power, resulting in the judges' impotence in maintaining impartiality while handling cases. In recent years, the local protectionism in judicial trial and enforcement has become increasingly fierce, and the issue of judicial localization[20] needs to be redressed urgently.

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[18] See XI Jinping, 关于《中共中央关于全面推进依法治国若干重大问题的决定》的说明 (*Explanation on the Decision of the Central Committee of the CPC on Several Major Issues Concerning the Comprehensive Advancement the Law-Based Governance of China*), available at http://www.xinhuanet.com//politics/2014-10/28/c_ 1113015372_3.htm (last visited Sep. 27, 2020).

[19] See LI, fn. 12 at 42.

[20] 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, 司法地方化的治理路径研究及创新——以文献分析为视角 (*Research and Innovation on the Governance Path of Judicial Localization—An Analysis Based on Literature*), 16(2) 西南交通大学学报 (Journal of Southwest Jiaotong University), 130 (2015).

This tendency can be counterbalanced by the strengthened independence of judicial power. Trans-regional courts do not rely on local authorities in terms of personnel and fiscal support, and are not so closely linked to local interests, which is conducive to maintaining a neutral and impartial position. Their appearance of upholding fairness also gains more trust from parties in litigation and therefore, enhances the public credibility of the judicial branch. The construction of trans-regional courts is conducive to containing judicial localization and promoting the independent exercise of judicial power by courts.

From an internal perspective, as the set-up of ordinary courts strictly corresponds with the administrative authorities, a leadership relationship exists, although not in an official manner.[21] Specifically, higher-level courts can obtain jurisdiction by issuing an order, or exert impacts on the merits of a case through guidance and intervention.

Therefore, trans-regional courts not only reduce the intervention of local governments in courts, but also (1) help maintain the relationship of supervision and guidance as defined under constitutional law, rather than a leadership relationship of an administrative nature, between higher and lower courts, and (2) enhance the independence of courts in handling cases.

### *B. Maintaining Judicial Unification*

The second aim of setting up trans-regional courts is to ensure a proper separation between the judicial and administrative districts, so that the operation of judicial power can have its own space and judicial unity can be ensured. If we only intend to avoid the "host and guest problem," there is no need for a special trans-regional court system. Procedural law has already provided appropriate mechanisms such as designated jurisdiction, the exercise of jurisdiction by higher courts, etc. The ongoing judicial reforms are also aimed at ensuring that local administrative authorities have no means to interfere with courts by reforming the unified management of personnel, finance, and property at the provincial level.

The proposed goal that ordinary types of cases are heard by the courts within administrative regions while special types of cases are heard by courts across administrative regions actually means that trans-regional courts shall try to establish a partially separate jurisdiction that is not in line with administrative regions, so that they can exercise competent judicial power over trans-regional cases.

The separation of the judicial district from a given administrative district is not only closely related to, but also different from, the first objective of avoiding the "host and guest problem." Such separation can effectively prevent local administrative authorities

[21] 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 intervening into the judicial process. However, the establishment of a judicial district has more far-reaching significance for the court system. This refers to the redistribution of judicial power in taking up cases. To some extent, this forms a structural reorganization that is different from the existing administrative relationship. The most profound significance of the reorganization of judicial power lies in the attainment of judicial unity.[22]

The circuit court systems in the UK and the US reflect the infiltration of national judicial power, an important component of a country's central power, into local regions and into the will of unity in law. English jurist Frederic Maitland once commented that circuit courts have succeeded in enabling the infiltration of central power into local regions at a low cost, thus effectively curbing the creation of local courts and new power centers, while avoiding the legal inconsistencies that result from conflicts between local and national laws.[23] The separation of powers is established between federal and state courts within the federal court system of the US, which also enables federal laws to cross the boundaries of states. Federal laws now have a great impact on the everyday lives of common citizens.

The uniform application of law is a fundamental component in ensuring a fair trial and is best understood from two perspectives. First, no institution other than the court has the authority to exercise judicial power. Second, the exercise of judicial power shall be based on uniform laws and rules. In theory, as applicable laws are the same, all courts in China would arrive at the same decision regardless of the location of courts, if facts of the cases are the same or similar. Different judgments in same or similar cases rendered by different courts would weaken the unification of judicial power and hurt the dignity of law.

The expectations of civil and commercial participants would also become stable if courts can arrive at the same results while dealing with the same legal issues within the country. This can enhance the stability of the trading environment and improve the certainty of economic decision-making, where the goals of reducing transaction costs of doing business, promoting communications among the economic entities nationwide together with the flow of economic factors, and improving the efficiency of resource allocation in addition to the development of the economy can all be attained.

Unifying the application of law can also accelerate national integration. China's regional integration is dominated by political force; that is, China relies on individual authority, administrative means, and strong force to maintain a civilized and orderly country, from which, however, inadequate protection of individual values can be derived,

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[22] See DI, fn. 4 at 27.

[23] See Frederic Maitland, 英格兰宪政史 (*The Constitutional History of England*), translated by LI Honghai, China University of Political Science and Law Press (Beijing), at 93 (2010).

doing no good to trans-regional trade and communications. The integration of the nation by unifying judicial rules and standards of civil and commercial activities through judicial trials can boost the value of freedom and advance equality and democracy with judicial rationality.[24] Trans-regional courts can unify the application of law in relevant fields and weaken the role of political integration by giving impetus to rational judicial integration, which is also in line with the ongoing administrative decentralization reforms.

### *C. Vitalizing Judicial Resources*

Two other practical purposes of the establishment of trans-regional courts are the transformation of railway transportation courts and the revitalization of existing judicial resources. In July 2009, the CPC Central Committee mandated that courts within the railway system, originally set up and managed by administrative authorities, should be integrated into the national judicial system and that their management should be transferred to appropriate provincial party committees and high people's courts. By the end of June 2012, all railway courts were integrated into the national judicial system. On July 2, 2012, the Supreme People's Court promulgated the Provisions of the Supreme People's Court on the Jurisdiction of Railway Transportation Courts over Cases based on these changes.

However, a major problem emerged after the integration. Railway transportation courts began to hear far fewer cases than other ordinary courts. They had no more work whereas judges in ordinary courts continued to face overloaded cases. Therefore, the establishment of trans-regional courts has another practical purpose: transforming railway transportation courts and increasing 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

[24] See LIU Xu, 设立跨行政区划法院研究 (*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.[25]

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 staggered operations in the exercise of jurisdiction, which is ideal according to some scholars.[26] 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."[27] 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.[28]

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 amount 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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[25] See ZHAO Xinghong & ZOU Bing, 关于中国司法区划分改革的思考 (*Reflections on the Reform of Judicial Divisions in China*), 2 云南社会科学 (Yunnan Social Sciences), 134–138 (2013).

[26] See CHEN, fn. 5 at 27.

[27] See MENG Jianzhu, 完善司法管理体制和司法权力运行体制 (*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).

[28] See CHEN, fn. 5 at 25–26.

Beijing and Shanghai to 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.[29]

### *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 low cost. The limited transformation model is actually 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

[29] There is no study on the proposed downsizing model, but relevant conceptual assumptions are not uncommon. See WU Zaicun & HUO Zhenyu, 跨行政区划法院设置与管辖制度研究 (*Studies on the Establishment and Jurisdiction of Trans-Administrative-Regional Courts*), 9 法律适用 (Journal of Law Application), 100–101 (2017).

result of local protectionism are 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.[30]

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 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 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

[30] 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 pertaining to 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.[31] 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 obviously 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

[31] See GUO Xiujiang, 行政诉讼集中管辖问题研究——《关于开展行政案件相对集中管辖试点工作的通知》的理解与实践 (*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 法律适用 (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 pertaining to 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 Republic of China,[32] 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.[33]

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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[32] See LIU Yuhua, 民国民事诉讼制度述论 (*On Civil Procedure System of the Republic of China*), China University of Political Science and Law Press (Beijing), at 194–195 (2015).

[33] See JIANG Wei, 民事诉讼法 (*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.[34]

China's current pilot judicial reforms show that there are provisions that can be considered in order 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 pertaining to financial loan contracts, insurance, and commercial cases involving foreign elements, including cases pertaining to 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 labor 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.[35]

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[34] See Richard D. Freer, 美国民事诉讼法(上)(*American Civil Procedure I*), 2nd ed., translated by ZHANG Limin, ZHAO Yanmin & SUN Guoping, The Commercial Press (Beijing), at 182 (2013).

[35] See DING Wei, 我国对涉外民商事案件实行集中管辖的利弊分析——评《最高人民法院关于涉外民商事诉讼管辖权若干问题的规定》(*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 法学 (Law Science), 118 (2003).

### *B. Alienage Jurisdiction*[36]

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.[37] 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[38] 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. Pursuant to 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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[36] 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.

[37] See ZHANG Weiping, 民事诉讼法 (*Civil Procedure Law*), 3rd ed., China Renmin University Press (Beijing), at 148 (2015).

[38] 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.[39]

Second, the amount in 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;[40] (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 action. The legal relationship itself is impermanent.[41] 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 involve 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 exists, 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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[39] See Freer, fn. 34 at 188–196.

[40] 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.

[41] See WANG Zejian, 民法总则 (*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 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 relate to the uniform application of 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 in 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 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.[42]

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

[42] See FU Yulin, 再论民事诉讼立案程序的功能与结构 (*The Function and Structure of the Case-Filing Procedure of Civil Proceedings: A Reconsideration*), 1 上海大学学报（社会科学版）(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 favor 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. In order to prevent undue delays in the proceedings, the law may clearly 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 arrive at an agreement through 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.[43] 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.[44]

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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[43] As mentioned in 最高人民法院关于全面加强长江流域生态文明建设与绿色发展司法保障的意见(法发〔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."

[44] See QI Shujie, 民事诉讼法 (*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 in nature, and natural persons in a specific area have an abstract or specific, direct or indirect interest brought about by environmental ecological risks[45] 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.[46]

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 law, but

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[45] See HUANG Zhongshun, 环境公益诉讼制度扩张解释论 (*Expanded Interpretation of Environmental Public Interest Litigation System*), 30(2) 中国人民大学学报 (Journal of Renmin University of China), 37 (2016).

[46] See ZHOU Lei, 消费公益诉讼中公共利益的界定 (*Definition of Public Interests in Consumer Public Interest Litigation*), 人民法院报 (*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, 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.[47] 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 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.[48]

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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[47] See ZHANG Jinhong, 民事诉讼合并管辖立法研究 (*Study on the Legislation of Consolidated Jurisdiction of Civil Actions*), 2 中国法学 (China Legal Science), 150 (2012).

[48] See YAN Renqun, 诉讼标的之本土路径 (*The Localization Pathway of the Object of Action*), 35(3) 法学研究 (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 same requests or requests with a causal relationship, and the unity of causes of action refers to the connected relationship between parties' attacks and defenses.[49]

There are many descriptions of the stereotypical actions pertaining to 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

[49] See LIAO Zhonghong, 反诉立法完善若干问题研究 (*A Study on Several Issues Regarding the Improvement of Counterclaim Legislation*), 6 西南政法大学学报 (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.[50] 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 a joint action.[51] 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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[50] See Freer, fn. 34 at 259.

[51] 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, 必要共同诉讼的理论误区与制度重构 (*Theoretical Misunderstanding and Institutional Reconstruction of Necessary Joint Actions*), 1 法律科学 (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, it is likely that no single lawsuit can 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 in a timely manner 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 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.[52]

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 pursuant to 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.

## 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

[52] See United Mine Workers v. Gibbs, 383 U.S. 715 (1966).

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 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 in order 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 is able to hear specific cases at a national scale.