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Foreign Practices of Integration of the Authorities of Pretrial Detention and Public Prosecution and Their Implication for China…… Sun Changyong

Abstract: Since the modern times, the system of “the integration of the authorities of pretrial detention and public prosecution" has mainly existed in the Soviet Union, which adopted the authoritarian system, and some countries that are deeply influenced by the Soviet system, but has been a rare phenomenon in western countries that adopt the parliamentary democracy and the market economy system based on rule of law. Since the end of the 1980s, the vast majority of countries that had adopted the system of “the integration of the authorities of pretrial detention and public prosecution" have abolished this system by amending their constitutions and laws. It has become a basic direction of the reform of political and legal systems in these countries to guarantee personal freedom of citizens through independent and impartial judicial organs that provide effective judicial relief for victims of human rights violations. The international community has also reached a consensus on the principle of due process of law in the deprivation of personal liberty in criminal proceedings. The core issue of “the integration of the authorities of pretrial detention and public prosecution" is that the public prosecutor who has the power to approve pre-trial detentions lacks the institutional independence and impartiality necessary to be compatible with the law of development of the criminal procedure system and relevant provisions of the International Covenant on Civil and Political Rights and other international and regional human rights conventions. The procuratorial organs in China should promptly terminate the so-called "reform" aimed at “the integration of the authorities of pretrial detention and public prosecution" and abolish the related systems, so as to remove the institutional obstacles to China’s ratification of the International Covenant on Civil and Political Rights.

A Perspective on "the Integration of Arrest Approval and Public Prosecution"

…… Wang Minyuan

Abstract: As a reform for the internal organs of the procuratorial system, the “Integration of Arrest Approval and Public Prosecution” has attracted wide attention from and caused controversies in the academic and practical circles. The in-depth discussion on this issue will help promote the coordination between the reform of procuratorial practice and the criminal justice reform and improve the quality of criminal justice in China. In studying the "Integration of Arrest Approval and Public Prosecution", we need to examine the disputes over the impact of the integration on the quality of arrest approval and public prosecution and on the right to defense,

analyze the causes of the relevant problems, explore the function of the integration and the major factors affecting the integration, such as the new criminal justice system and litigation system, and find proper solutions to the problems faced by the integration in procuratorial practice as well as the new problems faced by criminal defense.

The Practice of "Integration of Arrest Approval and Public Prosecution" and Its Development ····· Deng Siqing

Abstract: In the new round of judicial system reform, "integration of arrest approval and public prosecution", as an important supporting measure for the procuratorial organs to promote the reform of the judicial responsibility system, has experienced three stages of development: exploration, debate and formal establishment. Judging from its formal implementation, "integration of arrest approval and public prosecution" mainly embodies three practical values: first, it is conducive to implementing the policy of "less arrest and cautious arrest" and protecting human rights; second, it is conducive to solving the problem of heavy caseload and shortage of personnel in practice and improving judicial efficiency; third, it is conducive to enhancing prosecutors' sense of case-handling responsibility and improving their quality. In the procuratorial practice, the "integration of arrest approval and public prosecution" has also encountered three problems: first, how to implement it in the investigation of duty crimes; second, how to enable prosecutors to effectively supervise litigation activities, and third, how to strengthen the internal supervision over prosecutors' case-handling activities. In order to solve these problems, it is necessary to ensure the healthy development of "integration of arrest approval and public prosecution" and to give full play to its role by establishing and improving following mechanisms: first, the mechanism for "integration of arrest approval and public prosecution" under the guidance of procuratorial organs at higher levels in the handling of duty crime cases; second, the case-handling mechanism for litigation supervision; and third, an effective internal supervision and control mechanism of procuratorial organs.

Rethinking of the Definition of Juridical Acts as "Lawful Acts" ····· Yi Jun

Abstract: Compared with Article 54 of General Principles of the Civil Law, Article 133 of General Provisions of the Civil Law no longer explicitly defines juridical acts as "lawful" acts. This return to traditional civil law theory is rational and indicates the progress of Chinese civil legislation. Civil law theories of countries or regions of the

continental law system, however, frequently categorize juridical acts as “lawful acts” that are opposite to illegal acts when classifying “human acts”, which seems to contradict the above-mentioned provision. A few Chinese scholars have provided some brief explanations of this contradiction. A relatively original one is that, people tend to think of something according to its general condition. In other words, things, including laws and regulations, are portrayed on the basis of their general attributes. Juridical act is legal in its normal state and becomes illegal only in its abnormal state. Therefore, it is quite rational and persuasive to define juridical acts as lawful acts in theory, although not in legislation. Of course, it should also be noted that there is in fact limited value or explanatory power in defining juridical acts by the legal/illegal acts standard.

Difficulties in the Collection of Evidence of Electronic Data Algorithms in the Fight against Cyber Crimes and Their Solutions……He Bangwu

Abstract: Algorithmic forensics has become the only choice to collect network electronic data in the network era. Because of the particularity of network electronic data storage and presentation, algorithmic forensics faces the problems of how to define relevance, how to ensure reliability and how to protect legitimacy. At the same time, algorithmic forensics also encounters the restraint of the adverse effect caused by traditional criminal proof concept and mode. A feasible way to solve the above problems is to re-interpret the empirical rules in association rules, introduce the admissibility criteria of scientific and technological evidence, and establish the basic principles and corresponding rules of legality in algorithmic forensics by referring to the provisions of data rights in the EU General Data Protection Regulations, abandoning the idea and practice of corroboration, returning to modern doctrine of discretional evaluation of evidence, and reviewing the role and function of language in legal argumentation

User Profiling, Personalized Recommendation and Personal Information Protection …… Ding Xiaodong

Abstract: User profiling and personalized recommendation have become more and more common in the network society and posed challenge to the protection of personal information. An analysis shows that there are many irregularities in the collection of users’ anonymous behavior information. On the one hand, users' anonymous behavior information should be included in the scope of personal information to ensure users' right to know and their right to object profiling and

personalized recommendation. On the other hand, users' anonymous behavior information should be treated differently from identified personal information and be protected by a special mechanism. In the regulation of the collection and use of information in user profiling and personalized recommendation, enterprises should be required to assume more governance responsibilities to ensure the quality and security of users' information. At the stage of gathering the user anonymous behavior information, enterprises should be allowed to collect information with the explicit consent or reasonable expectation of users; at the stage of information aggregation and user profiling, they should be required to undertake corresponding data security obligations; and at the stage of information utilization and personalized recommendation, enterprises should be required to pay attention to relevant ethical norms and avoid using user sensitive information to facilitate personalized recommendation. Generally speaking, enterprises should adopt a risk regulation path based on standards, rather than rules, and avoid applying the general legal framework of personal information protection in the collection, aggregation and utilization of users' anonymous behavior information.

The Development of Theory of Distinction Between Real Right and Obligatory Right in Modern Chinese History: A Study Centered on Civil Judgments of the Supreme Court in the Early Period of the Republic of China…… Duan Xiaoyan

Abstract: The judicial practice of the Supreme Court in the early period of Republic of China was an important link in the enrichment and development of the theory of distinction between real right and obligatory right in modern China. The absoluteness of real right and the relativity of obligatory right, the dominance of real right and the request nature of obligatory right were clearly displayed in the judgments of the Supreme Court. The Supreme Court had also introduced the concepts of "real right contract" and "obligatory right contract" in the alteration of ownership and the theory of "non- causality of real right", which had exerted an important influence on the subsequent civil legislation and adjudication. The Supreme Court had, on the one hand, integrated the new jurisprudence of the distinction between real right and obligatory right into the interpretation of the traditional provisions of "current law" and, on the other hand, applied the Draft Civil Law of the Qing Dynasty as the source of "*Tiaoli* (jurisprudence)" law, thereby introducing and enriching the theory of distinction between real right and obligatory right. The Supreme Court's juridical practice of distinction between real right and obligatory right was not only the reception of legal method, but also the gradual process of transformation of legal

concepts and values, which was an accurate example and unique feature of the modernization process of China's civil law in the past 100 years.

The Ideological Origin and Normative Evolution of the Disharmony Between Human Rights of Civil Rights ····· Wang Jianxue

Abstract: The dichotomy between rights of the man and the rights of the citizen is of great significance to understanding the embryology of basic rights, but it has always been taken for granted and therefore not been properly expounded. The dichotomy was first brought forward by the French Declaration of 1789: on the one hand, the Declaration inherited Anglo-American liberalism, abstracted and generalized natural rights into rights of the man; on the other hand, it embodied French republicanism, especially Rousseau's social contract theory, through the conception of the citizen and rights of the citizen. Therefore, liberalism and republicanism jointly provided the ideological foundation for the dichotomy in the Declaration. Through the combination of natural rights, social contract, national sovereignty and, even to a certain extent, socialism, the Declaration effectively harmonized the status of the man and that of the citizen. Almost every contemporary bill of rights could trace its ideological source to this dichotomy, and the dichotomy, trichotomy and even quadrichotomy of rights in contemporary human rights documents have all benefited from it. The imbroglio between the man and the citizen and that between rights of the man and rights of the citizen exist also in the Chinese Constitution. The coordination between republicanism, socialism and individual liberty is possible only when the status of the man and that of the citizen could coexist.

Jurisprudential Basis and Operational Models of Asset Management: the US experience and Its Implications for China ····· Huang Hui

Abstract: The controversy over legal basis of the 2018 Guiding Opinions on Regulating the Asset Management Business of Financial Institutions reflects the differences of views on the jurisprudential basis and the operational mode of asset management. When drawing on relevant experiences from overseas, notably the US, China needs to focus more on substance than on form. The main vehicles for asset management in the US are investment companies, which can take many different organizational forms. Investment advisors not only provide investment advices, but more importantly, also manage assets for their clients. Investment advisors promote the establishment of mutual funds and then provide asset management services under the supervision of the board of directors and shareholders meeting of investment

companies. In contrast, the asset management in China mainly takes the form of trust, and seldom takes other forms, such as companies. The mutual fund in the US adopts 'investor-investment company-investment advisor' structure, whereas that in China is structured as 'investor-manager'. From a functional perspective, the US-style investment advisors are very different from those in China. It is suggested that China should allow asset management to take a diversity of business forms but adopt a consistent standard for regulating functionally similar business activities.

Protection of Outside Investors under Corporate Control Enhancing Mechanisms: Taking the Institutional Environment in US and China Concept Stock as Example……Wang Qingsong

Abstract: Tolerance and acceptance of control enhancing mechanisms has become a world trend. The corporate law system and listing rules in the US, which tolerate dual-class stock structure and other control enhancing mechanisms, make the NYSE and Nasdaq attractive IPO venues for innovative enterprises, and thus forming a unique China Concept Stock group, especially the China Concept Stock companies with various control enhancing mechanisms competing for listing in the United States. Control enhancing mechanisms clearly deviate from the traditional concept of equity equality and further weaken the participation rights and economic rights of outside investors in corporate governance. The systematic investor protection mechanism under the legal framework of the United States is of great enlightening significance to the improvement of China's outside investors protection system. When designing the relevant systems, China should take into full consideration the specific characteristics of the investor structure of its securities market, reconstruct the relevant rules of the company law and securities law, steadily expand the scope of application of control enhancing mechanisms, improve the disclosure of relevant information, give full play to the protection function of the independent director system for public investors, introduce category shareholder meeting system and use sunset clause flexibly to avoid the formation of perpetual control.

The Investor-State Dispute Settlement Mechanism under the United States-Mexico-Canada Agreement: Implications and Countermeasures

……Yin Min

Abstract: The Investor-State Dispute Settlement (ISDS) mechanism in the United States-Mexico-Canada Agreement applies only between the United States and Mexico because of Canada's reservation to the ISDS mechanism. The ISDS mechanism in the

United States-Mexico-Canada Agreement maps the value orientation of “US priority”, the recovery of Calvo Doctrine, the limited exhaustion of local remedies, and the negative impact on non-market economy countries and their investors. In the China-Japan and South Korea Investment Treaty negotiations, China should respect investors' choices of dispute settlement methods and arbitration institutions, at least set up the pre-procedure of consultations, and pay attention to the connection between the Treaty and the China-Japan and South Korea Free Trade Agreement (FTA). In future negotiations on FTA with the United States, Mexico and Canada, China may choose not to set up local relief clauses or to set up different local relief clauses regarding the ISDS mechanism. A six-month consultation process for investors and host countries should be set up before the ISDS mechanism is launched. In terms of content, disputes in certain special areas may be specified in the attachments of corresponding chapters. In addition, the relationship between the FTA and the ISDS mechanism in the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States must be addressed.

County Governance and the Organizational Form of Grassroots Courts

…… **Liu Lei**

Abstract: After several rounds of reform of the court system, the organizational form of courts in China has undergone significant changes, while at the same time maintaining a certain stability. As a result, it is necessary to use the overall standard paradigm as a guide to reveal the deep mechanism of the organizational form of grassroots courts in the county governance field. On the one hand, grassroots courts form a certain external acceptance mechanism to ensure the acceptance and integration of the governance requirements formed in and export from Party and government systems. In this regard, the president of the court and members of the party group play an important role. On the other hand, grassroots courts have also formed certain internal control mechanisms to ensure that external governance requirements can be smoothly transmitted and realized within the courts. In this respect, a hierarchical transmission mechanism and an executive-led response mechanism have been developed within the court. Such a mechanism shows a weak, rather than strong, characteristic of administerization. The "de-administration" of the organizational form of the court is not an isolated issue, but needs to be grasped in the overall view of the external relations of the court, so as to understand its deep mechanism and explore appropriate reform measures.