

The Report on the Development of the Rule of Law in China
(Blue Book on the Rule of Law)

No.10 (2012)

Abstract

The Report on the Development of the Rule of Law in China (the Blue Book on the Rule of Law) No.10 (2012), analyzes various hot and key issues of the rule of law in the fields of legislation, human rights protection, military legal system, criminal legal system, and social legal system in China in the year 2011, including the construction of the market economic legal system during the ten years since China's accession to the WTO, the safeguarding of the rights of people with disabilities, review of China's crime situation, the revisions of the Criminal Procedure Law and the Civil Procedure Law, the reform of the real estate tax, the Judicial Interpretation No. 3 of the Marriage Law, the safety of China's overseas investments, legal regulation of private loans , and the enforcement of the anti-monopoly law, etc.

The 2012 Blue Book on the Rule of Law continues to feature a series of investigation reports on the national conditions of the rule of law, including investigation and evaluation, based on the information available at government websites, of the disclosure of government information by 59 government departments under the State Council, 26 provincial-level governments, and 43 governments of larger cities; investigation and evaluation, based on information available on the websites of people's courts, of disclosure of judicial information by the higher people's courts of 26 provinces and municipalities directly under the Central Government and intermediate people's courts of 43 larger cities; summarization and analysis of practices and experience of Hainan Province in the reform of the administrative approval system; exploration of the progresses made and experiences accumulated by Guangdong Province in ruling the province by law and by Chongqing Municipality in the construction of socialist democracy and the rule of law, investigation and analysis of issues relating to the mechanism for the supervision over and regulation of the so-called "naked government officials" (those whose family members have all gone abroad) and suggestions on the improvement of such mechanism; and exploration of new developments in the mode of reformation of criminals in China by introducing as an example the mode of reformation of criminals developed by Lunan Prison in Shandong Province, etc.

In the part on 'local practices of rule of law', the Blue Book summarizes the practice and achievements made by Jiangxi Province in innovative policing, reviews the progresses made by Dongguan City of Guangdong Province in reforming the medical security system, analyze issues relating to the safeguarding of the cultural rights of new generation of peasant migrant workers in cities based on the

investigation of the spiritual and cultural demands and rights of new generation of peasant migrant workers in cities in Shaanxi Province, and analyzes the development of the rule-of-law index of Yuhang District of Hangzhou City.

Development of Rule of Law in China: a Review of the Situation in 2011 a Forecast of the Situation in 2012

Research Group on the National Conditions of the Rule of Law, CASS Law Institute

Abstract: This article summarizes the progresses made and analyzes the problems existing in various fields of rule of law, including law-making, administration by law, prevention and punishment of corruption, judicial reform, and construction of the criminal legal system, of the market legal system and of the legal system relating to people's livelihood, in China in the year 2011, and explores the trend of development of rule of law and issues that need to be dealt with in promoting the rule of law in 2012.

Key words: 2011, China, development of the rule of law, forecast

Construction of a Market Economic Legal System in China during the Ten Years since the Accession to the WTO

Chen Su, Xi Yuemin, Guan Yuying, and Liu Jingdong

Abstract: China has made great achievements in the construction of a market economic legal system since its accession to the WTO: it has established a scientific enterprise legal system and a unified tax system applicable to both Chinese and foreign enterprises, systematically improved the IPR legal protection system, consolidated the separated financial regulatory system and, in the process of further improving the competition legislation and the foreign trade legislation, gradually developed an omni-bearing, wide-ranging, and multi-level opening-up pattern. In the future construction of the market economic legal system, China needs to pay attention to four transformations and further strengthen the communication, exchange and cooperation with other WTO members.

Key words: ten years since the accession to the WTO, economic legal system, enterprise law, tax law, financial law, intellectual property law, competition law, foreign trade law

Report on Legislation in China in 2011

Kong Hao

Abstract: The year 2011 was the first year since the formation of the socialist legal system with Chinese characteristics. The legislative work in this year was characterized by partial adjustments within the overall structure and continuous development and improvement of the legal system in the process of responding to the

actual needs of social life. By focusing on promoting administration by law, safeguarding people's livelihood, ensuring fair distribution of tax burden, improving the criminal legal system, innovating social administration, and encouraging cultural development, such legislative work was of great significance to promoting the construction of law-based government administration, enhancing human rights protection, implementing the people-first principle, promoting social development, and increasing the soft strength of the country. In the future, China should continue to improve the legislative work and further strengthen the implementation of law.

Key words: socialist system of law, formation of a socialist legal system according to the schedule, partial adjustment

Analysis of the Jurisdiction of the Court of Final Appeal of Hong Kong Special Administrative Region over Cases Involving the Power of the Central Government

Chen Xinxin

Abstract: Through the examination of the Decision made by the Court of Final Appeal of Hong Kong Special Administrative Region in the "Congo (DRC) Case" to request the Standing Committee of the National People's Congress to interpret Article 158 (3) of the Basic Law of Hong Kong Special Administrative Region, this article analyzes the jurisdiction of courts of special administrative regions over cases involving the function and power of the Central Government. It points out that the Standing Committee of the NPC has made the optimal choice by resolving the dispute through interpretation of the Law before the final judgment was delivered by Hong Kong Court of Final Appeal and the interpretation solved the legal question raised by the Court.

Key words: Hong Kong Special Administrative Region, Basic Law, "Congo (DRC) Case"

China's Military Legislation in 2011

Chen Chuangdong

Abstract: This article reviews the basic situation of military legislation in China during the year 2011, analyzes the characteristics of Chinese military legal system, points out the significance of the adoption and revision of the relevant laws to improving the military legal system, and forecasts the trend of development of Chinese military legislation in the year 2012.

Key words: military legislation, legal safeguards, forecast

Analysis of the Crime Situation in China in 2011 and Forecast for 2012

Jin Gaofeng

Abstract: In 2011, the crime situation in China had been stable and public sense of security continued to rise. In 2012, the crime situation in the country as a whole will continue to be stable, there will be no dramatic changes in the total number of criminal cases, but there will probably high incidence of crimes against property, crimes of disrupting the order of social administration, and economic crimes involving a large number of people.

Key words: 2011, crimes in China, criminal policy, forecast for the year 2012

The Dilemma of Legal Instrumentalism: Commentary on the Draft Amendment to the Civil Procedure Law

Xu Hui

Abstract: Taking the Draft Amendment to the Civil Procedure Law of the People's Republic of China, which was submitted in October 2011 to the 23rd meeting of the Standing Committee of the Eleventh National People's Congress for deliberation, as the main text, this article carries out a comprehensive review and analysis of the background and thinking of and existing problems and disputed issues in the revision of the Civil Procedure Law. Through analysis, the author points out that this revision still shows a strong tendency of legal instrumentalism. In the future, the revision will be faced with a major change of direction—from the current result-oriented mode to a process-oriented mode—so as to make the revision of the civil procedure law a process of realization of the subjectivity of parties to civil litigation.

Key words: revision of the Criminal Procedure Law, legal instrumentalism, the subjectivity of parties to civil litigation

New Developments in Criminal Procedure Law System

Wang Minyuan, Liu Chenqi and Wang Junwei

Abstract: The (Draft) Amendment to the Criminal Procedure Law touches upon the basic system of criminal procedure law and almost all criminal procedures. This article introduces the revisions to the defense system, the system of compulsory measures, the evidence system and the criminal investigation procedure as well as the supplementation of special procedures made by the Draft Amendment to the Criminal Procedure Law and, while confirming the overall progresses made by the Draft Amendment in promoting the development of the criminal procedure law system, in safeguarding rights, and in regulating functions and powers, points out and analyzes the existing problems in the Draft Amendment on which further reflections are needed, with a view to enabling people to have a comprehensive understanding of the Amendment to the Criminal Procedure Law.

Key words: Amendment to the Criminal Procedure Law, basic systems of criminal procedures such as the defense system, special procedure

Safeguarding the Rights of People with Disabilities in China in 2011

Zhao Jianwen

Abstract: In 2011, the system of laws and regulations on safeguarding the rights of people with disabilities in China has basically taken form and been integrated into the international human rights protection mechanism: the Twelfth Five-Year Plan for the Development of Undertakings for the Benefit of People with Disabilities and the national standards on the classification and grading of people with disabilities have been promulgated and implemented; gratifying progresses have been made in the construction of a 'barrier free environment' for people with disabilities, and the legislation on safeguarding the rights of people with disabilities has evolved from the prohibition of discrimination against people with disabilities to the prohibition of discrimination based on disability. However, to realize the equal enjoyment of rights by the disabled people, China still needs to further improve the system of relevant laws and regulations and strengthen their implementation, promote the transition of the safeguarding mode from that of safeguarding through welfare to that of safeguarding through rights, and enable the civil society and the disabled people themselves to play a greater role in the promotion of the cause of safeguarding the rights and interests of people with disabilities.

Key words: human rights, Law on the Protection of People with Disabilities, Convention on the Rights of Persons with Disabilities

Chinese Legislation on Nuclear Safety against the Background of Energy Safety

Liu Hongyan

Abstract: Compared with ordinary energy, nuclear energy has the advantage of high concentration and being clean and economic. However, people have always been worried about its safety: human negligence and irresistible nature forces can trigger nuclear leakage, causing huge damage to the environment and the people. Compared with other major nuclear powers, China is faced with many problems in the legislation on nuclear safety, including the lack of a basic law on nuclear safety, ineffective regulation of and supervision over nuclear facilities, and the lack of standard on the handling of nuclear materials and substances. Therefore, it is imperative for China to learn from the experience of other countries, strengthen the legislation on nuclear safety, and ensure the safe utilization of nuclear energy.

Key words: nuclear safety, utilization of nuclear energy, energy crisis, law on nuclear safety

What Kind of Legal System Is Required by Micro-blogs?

Wu Jun

Abstract: Micro-blogs (Twitter), with its unique structure and strong disseminating power, have drastically changed the ways in which information is disseminated and exchanged, given fresh impetus the development of the Internet and telecommunications industries while, at the same time, also brought some negative impacts on the society. The question of whether it is necessary to regulate and how to regulate micro-blogs has triggered heated debate in the society. The author of this article believes that the government can regulate micro-blogs by adjusting and improving the existing systems and regulatory framework, and there is no need to adopt special legislation on micro-blogs.

Key words: micro-blogs, regulation, influence of the media

Enforcement of Anti-Monopoly Law in China in 2011

Huang Jin

Abstract: This article summarizes the anti-monopoly law enforcement and cooperation carried out by the anti-monopoly law enforcement agencies during the past three years since the implementation of the Anti-Monopoly Law, especially in the year 2011, including the prohibition of price-fixing, monopoly agreements other than price-fixing, abuse of market dominance position, excluding and limiting competition by abusing administrative power, and concentration of business operators. The author points out the shortcomings and forecasts future development in the enforcement of anti-monopoly law in China.

Key words: anti-monopoly law, law enforcement, price-fixing, monopoly agreement, abuse of market dominant position, concentration of business operators

The Safety of China's Overseas Investments

Liu Jingdong

Abstract: While making great progress in implementing the strategy of 'going global', China is faced with serious challenges to the security of its overseas assets and the protection of Chinese personnel and assets overseas has become a major issue urgently to be dealt with by the Chinese government. Therefore, China should, in light of the continuous evolving international situation, abandon the traditional conservative mode of thinking, fully utilize the various rights a sovereign state enjoys under contemporary rules of international law, and take all necessary measures permitted by international law to strengthen the protection of overseas Chinese personnel and assets.

Key words: overseas personnel and assets, protection, major challenge

Financial Impetus for and Rule-of Law Restrictions on Housing Property Tax

Reform

Xiong Wei

Abstract: The financial impetus for the reform of housing property tax is not to regulate the real estate market, but to increase the financial revenue for local governments and to establish the main category of local tax. However, under the current financial and economic situation, local financial difficulties should be resolved by improving the tax distribution system, rather than by establishing new taxes and increasing macro tax burden. In the future, the housing property tax may adopt the mode of separation of housing property tax from land holding tax. The two taxes are not mutually exclusive to each other. However, in the setting of the housing property tax consideration should be given to replacement cost price, while land holding tax can continue to be charged at a fixed rate because of the existence of land-transferring fees. Even if the government wants to carry out housing property tax reform now, it must abide by the basic principles of the rule of law, and may not violate the due process of law and carry out the reform in an unlawful way.

Key words: housing property tax, reform experimentation, financial impetus, rule-of-law restriction

The Promulgation of and Controversies over Judicial Interpretation No. 3 of the Marriage Law

Jiang Shigong

Abstract: This article systematically reviews the evolution of the marriage and family systems in China and the three judicial interpretations of the 2001 Marriage Law and the background of the promulgation of Judicial Interpretation No.3 of the Marriage Law, carries out in-depth analysis of the controversies over Judicial Interpretation No.3, and points out that the purpose of the Interpretation is to provide a formalized rule of adjudication for marriage disputes under the conditions of real estate economy. In reality, however, it overthrows the traditional system of ‘sharing property by family members who live together’ and undermines the foundation of the stability of the family.

Key words: marriage law, judicial interpretation, the system of ‘sharing property by family members who live together’

Legal Regulation of Private Loans in China

Xi Yuemin

Abstract: The credit crisis in private loans that occurred in 2011 showed that it is of great urgency to strengthen the legal regulation of private loans. This article, on the basis of summarization and analysis of the condition of development and prominent characteristics of current private loan market in China, analyzes the main problems

faced by the legal regulation of private loans and puts forward targeted legislation proposals.

Key words: private loan, usury, market regulation, legal regulation, lending regulations

Annual Report on the Transparency of the Chinese Government (2011): from the Perspective of Disclosure of Information through Government Websites

Lu Yanbin

Abstract: This report investigates and evaluates the implementation of the Regulations on the Disclosure of Government Information by 59 departments under the State Council, 26 provincial level governments, and 43 governments of larger cities. By focusing on the implementation of different systems, such as the catalogue of government information subject to disclosure, guideline on the disclosure of government information, disclosure upon application, and annual report on the disclosure of government information, and on the disclosure of various kinds of government information, such as information about normative documents issued by various departments under the State Council, information about environmental protection held by provincial-level governments, and information about regulation of food safety and administrative approval held by larger cities, the article analyzes the progresses made and problems existing in the current implementation of the system of disclosure of government and puts forward suggestion on the future improvement of the system.

Key words: disclosure of government information, transparency, government website

Annual Report on Judicial Transparency in China (2011): From the Perspective of Disclosure of Information through the Websites of Courts

Tian He, Lu Yanbin and Wang Xiaomei

Abstract: This article investigates and evaluates the current situation of implementation of judicial transparency through websites by higher people's courts of 26 provinces and municipalities directly under the Central Government and intermediate people's courts of 43 larger cities. It examines the level of judicial transparency of courts by focusing on the following five aspects: information about the work of the court, litigation guide, information about the trial of cases, information about the execution of judgments, and judicial statistics, summarizes and analyses the progresses made and problems existing in the implementation of judicial transparency by people's courts, and puts forward suggestions on further improving the system of judicial transparency.

Key words: judicial openness, transparency, websites of courts

Investigation Report on the Supervision over and Control of “Naked Government Officials”

Investigation Group on the National Conditions of the Rule of Law, CASS Law Institute

Abstract: This report reviews the current Chinese laws and regulations on supervising and controlling so-called “naked government officials” (those whose family members have all gone abroad), points out the existing problems in the supervision and control mechanism, analyzes, on the basis of the result of a questionnaire investigation, the understandings and attitudes of different groups among civil servants and the general public towards the supervision over and control of “naked government officials”, and emphasizes that the issue of “naked government officials” is related to the issue of the loyalty of public officials towards the state, that supervising and controlling such officials is an important aspect of the construction of a clean government, and that efforts therefore must be made to strengthen the relevant legislation, raise the relevant consciousness and truly implement various supervisory and regulatory measures.

Key words: “naked government officials”, supervision and control, anti-corruption

Reform of the Administrative Approval System—a Breakthrough Point for the Reform of the System of Administrative Approval: Analysis of the Experience of Hainan Province in Reforming the Administrative Approval System

Investigation Group on the National Conditions of the Rule of Law, CASS Law Institute

Abstract: Based on an investigation on the reform of the administrative approval system carried out by the Governmental Affairs Service Center of the People’s Government of Hainan Province, this article analyzes the experience of the Center in raising the quality of administrative approval service by concentrating the power, items and personnel of administrative approval, strengthening the supervision over the power of administrative approval, and optimizing the procedure of administrative approval, and points out that reforming the administrative approval management system is the key to the reform of administrative approval system, which is, in turn, the breakthrough point for the reform of the administrative system.

Key words: Hainan Province, Governmental Affairs Service Center, reform of the administrative approval system, concentrating the power, items and personnel of administrative approval

Investigation Report on the Spiritual and Cultural Demands and Rights of New Generation of Rural Migrant Workers in Cities in Shaanxi Province

Chu Chengge, Cui Mengshe and Hao Pengtao

Abstract: This report, based on the investigation through over 1,000 questionnaires, carries out research on the characteristics of, needs and demands for, and rights to cultural and spiritual life of rural migrant workers in cities in Shaanxi Province, and puts forward suggestions and countermeasures from the perspectives of institutional safeguards by the government, urban community culture, and social atmosphere.

Key words: new generation of migrant peasant workers in cities, spiritual and cultural life, cultural needs, cultural rights

Investigation Report on Innovative Policing in Jiangxi Province

Jiang Xihui, Wu Qiumei, Mao Ruiming and Wang Zhanjun

Abstract: Innovative social administration by public security organs is an important component part of overall innovative social administration. Public security organs in Jiangxi Province, by continuously promoting innovative social administration in light of the actual conditions of their respective districts, have accumulated many useful experiences and successful practices in constructing the social administration mode of “participation by the whole people in the maintenance of public security”, innovating the policing mechanism guided by public opinion, integrating humane caring into standardized law enforcement, informatizing public security, and integrating social resources, thereby contributing to the construction of a peaceful and harmonious Jiangxi Province and creating a model for the reform and innovation of local police work.

Key words: Jiangxi Province, Innovative policing, participation by the whole people in the maintenance of public security, policing guided by public opinion, standardization of law enforcement, informatization of public security

‘Lunan Experience’ in Transforming the Mode of Reforming Criminals

Investigation and Research Group on the National Conditions of the Rule of Law, CASS Law Institute

Abstract: The social transition in China has created new demands for the transformation of the mode of reformation of criminals. Lunan Prison of Shandong Province, based on the reflections on the traditional mode of reformation of criminals, has developed through practice a system of humane reformation of criminals that includes character-oriented education, legal education, moral education, art education, and mental health education, thereby forming the so-called ‘Lunan Experience’ in the transformation of the mode of reformation of criminals.

Key words: reformation of criminals, mode transformation, ‘Lunan Experience’

Reform of the Medical Security System in Dongguan City, Guangdong Province:

Achievements, Problems and Countermeasures

Zhang Yalin, Ye Chunling and Yang Xiaodong

Abstract: This article, by analyzing the background and process of the reform of the medical Security system in Dongguan City, Guangzhou Province, summarizes the achievements made by China in the construction of an integrated urban and rural basic medical security system and, in light of the current problems of unbalanced development of medical services and unreasonable distribution of medical resources between urban and rural areas, and impediments posed by the current laws and policies on the development of medical security system, puts forward suggestions on the fair distribution and rational use of medical resources in China.

Key words: medical security, medical service, integration of urban and rural areas, distribution of resources

Report on the Yuhang Index of the Rule of Law

Research Group on Yuhang Index of the Rule of Law

Abstract: In 2011, the Evaluation Group on Yuhang Index of the Rule of Law evaluated and issued the Index of the Rule of Law of Yuhang District of Hangzhou City, Zhejiang Province in the Year 2010. The Report reflects the basic situation of the Yuhang index of the rule of law, provides comparative analysis on the changes of the index and various index scores during the four years between 2007 and 2010, thereby showing the trends and patterns of development of the Yuhang index and providing reference and guidance for the development of local rule of law in China.

Key words: assessment of the rule of law, index of the rule of law, rule of law in Yuhang District of Hangzhou City

Promoting Reform and Opening-up within the Orbit of Democracy and the Rule of Law: Achievements Made and Challenges Faced by Guangdong Province in the Construction of the Rule of Law

CASS Investigation Group on the Conditions of the Rule of Law in Guangdong Province

Abstract: For over 30 years since the implementation of the policy of Reform and Opening-up, Guangdong Province has always played the role of the experimenter and pioneer in the reform and opening up, exploring new roads of development not only for itself, but also for other provinces. Under the correct leadership of successive provincial Party committees, with the concerted efforts of government officials and the general public in the whole province, and through the establishment and improvement of various systems and mechanisms, it has established a “Guangdong mode” of administration of the province by law, which is under the unified leadership

of the Provincial Party Committee, coordinated and guided by the Provincial People's Congress, implemented by the Provincial People's Government, the Provincial People's Court and the Provincial People's Procuratorate, democratically supervised by the Provincial Committee of Chinese People's Political Consultative Conference, and orderly participated by the broad masses of the people. The Guangdong Experience shows that only by implementing the policy of Reform and Opening-up within the orbit of democracy and the rule of law, properly handling and resolving various conflicts, and having the courage to explore and experiment, can the government truly make the broad masses of people the biggest beneficiaries of reform and opening-up.

Key words: democracy and the rule of law, Reform and Opening-up, pioneer and experimenter

**Promoting Common Prosperity through Democracy and the Rule of Law:
Investigation Report on the Development of Democracy and the Rule of Law in
Chongqing Municipality**

*CASS Investigation Group on the Conditions of Democracy and the Rule of Law in
Chongqing Municipality*

Abstract: Through practice, Chongqing Municipality has given positive answers to both the question of “whether an inland region can create a road of reform and opening up with its own characteristics” and the question of “whether common prosperity is feasible”. The important values of “Chongqing Practice” include adhering to the scientific outlook of development and the principle of promoting reform and opening up through measures suited to local conditions, attaching importance to the development of democracy and the rule of law, emphasizing the simultaneous development of democracy, the rule of law, the economy and the society, promoting common prosperity by relaying on democracy and the rule of law, and thereby exploring a road of reform and opening up for the inland regions with their own characteristics.

Key words: Chongqing experience, socialist democracy and rule of law, common prosperity