Internship report for the IASAJ Judge Exchange Programme:

Judge :

Name :Zang
First name :Zhen
Nationality :Chinese
Jurisdiction :Supreme People's Court of the People's Republic of China
Functions : Administrative Division
Length of service :7years

Exchange :

Hosting jurisdiction : Supreme Court of Spain
Country :Spain
City :Madrid
Dates of the exchange :October 13-26,2019

I. Introduction – Presentation of the jurisdiction and the progress of the internship:

From October 13 to 26, 2019, I visited Spain and successfully completed the exchange visit program. The main reception host in Spain is the Supreme Court of Spain. During the visit, I met with Mr. Sr. D. Angel Juanes Peces, Vice President of the Supreme Court of Spain, and Mr. D. Luis María Díez-Picazo Giménez, President of the Third Trial Chamber (Executive Chamber). The visited courts include the Supreme Court of Spain, the Spanish Constitutional Court, the Spanish National High Court, the Madrid District Court and other different levels of courts, as well as other government agencies such as the Spanish Judicial Council, the National Market and Competition Commission. During the visit I got the basic understanding of Spain, the composition and characteristics of the judicial system and related government agencies. In addition to visiting relevant institutions, I also sit in the public gallery on the trial in the National High Court of Spain, the training lectures given by the judges of the Supreme Court of Spain, and conducted in-depth exchanges with a number of judges, assistant judges and government officials. The entire project was rich in content, reasonable in settings, and fruitful.

II. Differences and similarities between the legal systems of the country of origin and the host country:

a. *Concerning the organization of the legal system:*

In China, the people's courts are divided into four levels, namely, the primary people's courts, the intermediate people's courts, the high people's courts, and the Supreme People's Court. Criminal divisions, civil and administrative divisions are generally established within courts at all levels, and criminal and civil issues are handled separately. Since the second half of 1986, some people's courts have begun to set up administrative divisions to specifically handle administrative litigation cases, and administrative trials have gradually developed in the direction of specialization and specialization. On October 11, 1986, the Minlu County People's Court of Hunan Province established the first administrative court of the national primary people's court; on October 6, 1986, the Wuhan Intermediate People's Court of Hubei Province established the first administrative department of the Intermediate People's Court. In January 1987, the Supreme People's Court issued a special notice on the establishment of an administrative court. In that year, nearly one thousand administrative courts were established across the country. In October 1988, the Administrative Division of the Supreme People's Court was formally established. At present, there are more than 8,800 judges engaged in administrative trials in China. In addition to cases heard at administrative court at all levels of courts across the country, environmental resources courts, intellectual property courts, and maritime courts also hear administrative cases in related fields.

The establishment of the Supreme People's Court Circuit Court is a major reform and deployment determined by the Fourth Plenary Session of the 18th CPC Central Committee. It is an important measure for comprehensively governing the country according to law and safeguarding judicial fairness. It is also an important part of the reform of the judicial system. At the beginning of 2015, the Supreme People's Court established the first and second circuit courts in Shenzhen and Shenyang. At the end of 2016, the third, fourth, fifth and sixth were established in Nanjing, Zhengzhou, Chongqing and Xi'an. The Circuit Court is a permanent judicial body sent by the Supreme People's Court. The trial of major administrative and civil and commercial cases across administrative regions through the Circuit Court is conducive to the localization of the judicial agencies, the resolution of disputes on the spot, and the facilitation of litigation. It is conducive to the concentration of the Supreme People's Court to formulate judicial policies and judicial interpretations, and to unify laws' application. The Supreme People's Court Circuit Court has become the main case-handling force of the Supreme Court. At present, it accounts for about 70% of the total number of cases concluded by the Supreme People's Court. Among them, half of the cases handled by the Circuit Courts are administrative retrial cases.

b. *Concerning the competence of administrative jurisdictions:*

(1) Safeguarding the legitimate rights and interests of the people

Over the years, people's courts at all levels and the majority of administrative judges have faithfully fulfilled the sacred duties entrusted by the Constitution and laws, strictly applied the "Administrative Procedure Law" and other laws and regulations, adhered to the principle of legality review, and tried various administrative cases in accordance with the law to protect the people. It has made positive contributions to legal rights and interests, resolve conflicts and disputes, and maintain social harmony and stability. From 1990 to 2018, the national courts accepted more than 3 million first-instance administrative cases. It is estimated that this year the national court will accept about 300,000 administrative first-instance cases. The people's courts by strict judicial review

have revoked, confirmed illegal or invalid, changed or re-executed administrative actions for administrative acts that are illegal or unfair. For administrative inaction, administrative agencies are judged to perform their statutory duties or confirm illegality. At present, the rate of finding against the administrative agencies in the first-instance administrative cases of Chinese courts is about 15%. In the first-instance administrative cases concluded by judgment, the rate of finding against the administrative agencies is about 30%. These data show that the people's courts play an important role in protecting the legitimate rights and interests of the people, supervising administration according to law, and promoting the construction of a government under the rule of law.

(2) Promoting the performance of administrative agencies in accordance with the law

While correcting the law according to law, the people's courts adhere to the working principle of "Judge one case, provide rules for all the similar", and dismissing the administrative counterpart's lawsuit for the lawful and procedural administrative actions, and supporting the administrative agencies to exert functions such as economic regulation and market supervision, public services, social management. Over the years, the people's courts at all levels have consciously combined the functions of administrative trials with the work of serving the party and the country. By reviewing administrative cases in accordance with the law, the courts have ensured the uniform implementation of constitutional laws and ensured the smooth flow of central government orders. It has exerted a strong judicial guarantee in regulating the market supervision pattern, strengthening environmental protection, standardizing administrative licensing and examination and approval, prompting administrative agencies to perform their duties according to law, and promoting the construction of transparent government.

c. *Concerning the functioning of administrative jurisdictions:*

(1) Filing registration

In China, citizens, legal persons or other organizations believe that the administrative actions of administrative and administrative staff infringe on their lawful rights and interests, have the right to file a lawsuit in the People's Court in accordance with the Administrative Procedure Law. According to the provisions of Article 51 of the Administrative Procedure Law of 2014, when receiving the complaint, the people's courts shall register and accept the case for the conditions of prosecution stipulated in the Administrative Procedure Law. If it is not possible to determine whether it meets the statutory conditions for prosecution on the spot, it shall accept the case, issue a written document indicating the date of receipt, and decide whether to accept the case within seven days. The registration of the case is a new system established to solve the chronic illness of "difficulties in filing a case", and its implementation effect is very significant. In the year when the registration system was established (2015), the national court accepted 220,398 administrative cases in the first instance, an increase of 55.34% over 2014 and a 17-fold increase over 1990. In the past four years, the number of administrative litigation cases has continuously increased, and the increase has not begun to slow down since 2018, indicating that the problem of administrative case filing difficulty be solved. On the other hand, the filing registration system is not to accept all the case brought to the court. Those who meet the conditions for prosecution shall

be registered and accepted; those who do not meet the conditions for prosecution shall not be accepted according to law. Therefore, the registration system does not allow "right abuse" and "prosecution disorders".

(2) Review leads to double defendants

The "Administrative Procedure Law" before the amendment in 2014 stipulates that if the review agency decides to maintain the original administrative act, the agency that made the original administrative act is the defendant; if the original administrative act is changed, the review agency is the defendant. In the process of implementing the Administrative Review Law, due to the relationship between the review agency and the original administrative agency, and the reluctance of the review agency to become the defendant, the maintenance rate of the administrative review is high, and the internal error correction function of the administrative review is insufficient. Compared administrative review and administrative litigation , the two have a significant contrast about the maintenance rate of administrative behavior. In order to change this situation, the Administrative Procedure Law of 2014 stipulates that if the review agency decides to maintain the original administrative act, the review agency and the agency that made the original administrative act are co-defendants; if the review agency changes the original administrative act, the review agency is the defendant. The purpose of this regulation is to solve the problem that the review maintenance rate of the review agency is too high, leading to vacuum review. The people's courts at all levels and the administrative agencies at all levels have conscientiously implemented the above-mentioned laws and regulations. In 2015, the proportion of maintenance decisions made by the national administrative Review agency was 54.59%, which was more than five percentage points lower than that of 2014. The proportion of maintenance decisions made in 2016 was 48.48%, which was more than six percentage points lower than that in 2015.

d. *Concerning applicable procedures and rules of law:*

(1) Principles of legality review

The people's courts hear administrative cases and review whether the administrative actions are lawful. In view of the relatively weak status of the administrative counterpart to the administrative agency, the Administrative Procedure Law stipulates that the defendant has the burden of proof for the administrative action made, and should provide evidence of the administrative act and the normative documents on which it is based. If the defendant did not provide or provide evidence without due reason, there shall be deemed no corresponding evidence. However, if the administrative action being sued involves the legal rights and interests of a third party, the third party providing evidence is the exception. In the course of litigation, the defendant and his agent shall not collect evidence from the plaintiff, third party and witness. The plaintiff can provide evidence proving that the administrative act is illegal. If the evidence provided by the plaintiff is not established, the defendant' s burden of proof shall not be waived. Of course, in the case of prosecuting the defendant for failure to perform his statutory duties, the plaintiff should provide evidence of his application to the defendant. Except for one of the following circumstances: (1) The defendant shall perform the statutory duties on his own initiative; (2) The plaintiff cannot provide evidence for legitimate reasons. In addition, in cases of administrative compensation and compensation, the plaintiff should provide evidence of damage caused by administrative actions.

If the plaintiff is unable to provide evidence due to the defendant's reasons, the defendant shall bear the burden of proof.

(2) The person in charge of the administrative agency shall appear in court
Article 3 of the Administrative Procedure Law of 2014 stipulates that the person in charge of the administrative agency should appear in court. It is a legal obligation. The person in charge of the administrative agency shall appear in court to respond to the lawsuit, which is conducive to enhancing the awareness of the administrative agency to act according to law, preventing and reducing the occurrence of administrative disputes from the source; facilitating the responsible person of the administrative agency to understand the current situation of law enforcement, promoting the effective implementation of the effective ruling; facilitating the display of the administrative agency a good image of courage to accept supervision and dare to take responsibility; help to ease the contradictions between the two sides and promote the substantive resolution of administrative disputes. In this regard, the Supreme People's Court strictly abides by the law, continuously strengthens communication and coordination with the former Legislative Affairs Office of the State Council, the Ministry of Justice and other relevant departments, and actively promotes the implementation of the system of respondents in the administrative agencies. The administrative agencies at all levels attach great importance to it and conscientiously implement the system in which the responsible persons of the administrative agencies shall appear in court. On June 27, 2016, with the active promotion and participation of the Supreme People's Court, the General Office of the State Council issued the "Opinions on Strengthening and Improving the Administrative Responsibility Work", requiring all levels of administrative agencies to support the people's courts to accept and hear administrative cases according to law. Perform duties in court according to law, actively implement the judgments of the people's courts, and strengthen the capacity of administrative responding on court. On July 28 of the same year, the Supreme People's Court issued the "Notice on Several Issues Concerning the Responding to Administrative Litigation", further clarifying the scope of the respondents of the administrative agencies appearing in court, and further proposing relevant requirements for promoting and supporting the administrative agencies to respond to the law. On April 11, 2016, Chen Mingming, deputy governor of Guizhou Province, on behalf of the Guizhou Provincial Government, went to the Guiyang Intermediate People's Court to appear in court to appeal to an ordinary land acquisition and demolition administrative case, becoming the first deputy ministerial officer to appear in court. On December 19, 2017, Huang Wei, the assistant to the chairman of the China Securities Regulatory Commission, on behalf of the China Securities Regulatory Commission, appeared in court during the public hearing of a second-instance administrative case in the Beijing Higher People's Court. At present, it is becoming more and more common for the heads of Chinese administrative agencies to appear in court. For example, in 2017, the heads of administrative agencies of the Heilongjiang Provincial Third Class Court appeared at the rate 97%, and the heads of administrative of the Wuhan Municipality of Hubei Province in 2017 responded to the court at the rate 85%.

(3) The normative documents are subject to review
The review of the normative document is another new system established by the Administrative Procedure Law of 2014. It aims to review and apply the

administrative normative documents that are the basis for administrative law enforcement. It is also a respond to a long-term call for integration of some abstract administrative actions into the judiciary review. Review the scope of the response. The normative documents formulated by the State Council department and the local people's government and its departments are not legal. When the lawsuit is filed against the administrative action, the normative documents on which it is based may be reviewed together. The people's courts conduct a legal review of the specific provisions applicable to administrative actions; the conclusions of the review only apply to the case. In the lawsuit, the administrative agency (the defendant and the enacting agency) has the right to make a statement and provide corresponding evidence to prove that the normative document is legal, but this right does not belong to the right in the litigation sense, that is, if the administrative agency does not state the opinion or Providing relevant certification materials, that does not affect the people's courts to review the normative documents. If the normative documents are found not legal, they are not to be used as a basis for determining the legality of administrative actions. At the same time, the people's court shall submit judicial proposals to the enacting agencies, and copy them to the government at the same level, the administrative agencies at the next higher level, the supervisory agencies and the filing agencies.

III. Aspects on which the host country's legal system can be a source of inspiration for the country of origin (« good practice »):

(1) Supreme Court Efficiency

Before this program, I have limited access to the workload of Judges in Spain . After visiting, I am surprised about the fact. The Spanish Supreme Court concluded 28,394 cases in 2018, only 3,000 fewer than the Chinese Supreme Court, but it has only 80 judges, the caseload per capita is 354. The first (civil) tribunal with the highest number of 5,261 cases, and there were only 9 judges, the caseload per capita is 584. How can the Spanish Supreme Court be so efficient in the trial of cases? What is the advantage of its trial mechanism?

There are several main reasons. First, the rate of closing the case in substantial is low. The Supreme Court of Spain has similarities with the US Supreme Court, and it is only for cases involving a large number of applications for refereeing. In the cases concluded by the Supreme Court, the vast majority were not made in the form of substantive judgments, that is, they were all rejected. The Spanish Supreme Court closed 4,320 cases in 2018, only 15% of all cases closed, and the lowest proportion is administrative cases which was 12%. It can be seen that the vast majority of cases, that is 85% of cases are rejected by non-substantive judgments, which is in line with the judicial rules of the case itself without substantive judgment, and can greatly improve judicial efficiency. Second, the trial mechanism operates efficiently. After the cases handled by the Supreme Court of Spain are assigned to the trial courts according to different areas of trial, the assistants of the judges are responsible for the preliminary review of all cases, suggesting whether to enter the substantive review and submit them to the judges. The opinion only needs to be signed, and the case in which an substantive judgment required is reviewed and written by the judge personally. Third, the trial organization is set up reasonably. The judge's assistant played an important role in handling the case of the rejected application. The Spanish Supreme Court has a total of 63 judge assistants, the first (civil) trial court has 20 assistants for 9 judges. The ratio of assistants to judges reached 1:2, so the judges had the highest trial efficiency.

The judges had 584 cases per person, and the judge assistants had 263 cases. These systems and practices are worth learning.

(2) Supreme Court administrative trials

(a) The performance of administrative trials is remarkable. The administrative trial of the Supreme Court of Spain has the following characteristics: First, the number of cases is large. In 2018, 13373 administrative cases were concluded, accounting for nearly half of the total cases, similar to the situation of the Supreme Court of China. Second, the number of judges was large. The administrative tribunal is the first large court, with 39 judges, accounting for half of the total number of judges, and basically the same as the ratio of cases. Third, the performance of handling cases is outstanding. In 2018, the Spanish Supreme Court received 9,957 new administrative cases and concluded 13,373 cases, which greatly exceeded the number of new cases. The total number of new cases received by the Supreme Court for this year was 28,053, and 28,394 cases were concluded. Except in the administrative courts, the number of cases concluded is less than the new cases, and the administrative court has made significant contributions to the overall trial performance of the Supreme Court. Fourth, the rate of the judgment method is relatively low. The rate of judgment in the administrative court closing method is 12%, which is lower than the rate of the court which is 15%, but it is still higher than the administrative lawsuit of China's Supreme Court or the re-review rate. This embodies the universal law of high rate of re-examination of administrative litigation cases and the rejection of the application. It also shows that the administrative role of the administrative courts of the Supreme Court of Spain is obvious.

(b) The simplified diversion mechanism plays an important role. The Administrative Court of the Supreme Court of Spain has fully played the role of a streamlined diversion mechanism in the establishment of internal judicial institutions. In 2015, Spain amended the procedural law to change the jurisdictional standards of the Supreme Court from the standard of litigation to the criterion of judgment, and the importance of the case and the social influence were the decisive standard. This led to a surge in the number of Supreme Court cases in recent years. In response to the surge in cases, the Supreme Court introduced internal institutional reforms in 2015.

At present, the Administrative Court has one president and 39 judges. There are five internal councils. The second to fifth chambers are set up in four areas of taxation, economics, state official disputes, urban planning and construction. The chamber has about eight judges. In addition, the first chamber is set up to be responsible for the case acceptance review. The leader of the chamber is concurrently chaired by the president. The members are composed of one judge from the second to fifth chambers. If a case is examined and the Supreme Court has made a similar judgment, the dismissal of the ruling only needs to specify the legal provisions involved in the case, the grounds for refusal, and the case number (both are template contents), and no further creative explanation is required.

(c) Inspiration. The institutional setting of the Administrative Court of the Supreme Court of Spain in terms of simplification and diversion has important reference significance for China. If it can be properly borrowed to establish a similar trial system, in other words, teams can be established within the administrative court to be responsible for the preview, it will greatly improve the efficiency of the dismissal case and create a better trial quality. On the other hand, the judges of the Supreme Court can be freed from the examination and

acceptance of a large number of simple, repetitive cases, and concentrate on the application of law, and concentrate on the difficult and complicated case review work, thereby it will further improve the quality and content of the Supreme Court's administrative trials, gradually raise the rate of review or re-examination, and further exert the functional role of the Supreme Court's administrative trials and supervision.

(3) Further expanding the scope of administrative litigation
The scope of administrative litigation in Spain is wider than in China, including all cases of public power, such as immigration, traffic violations, public service interruptions, public service characteristics business inspection, property transfer registration, environmental protection, suburban planning, and tax administration. Many areas are not covered by our administrative litigation. In the long run, we can learn from the similar system in Spain, incorporate the civil service occupational security disputes into the scope of administrative litigation, and improve the fairness and credibility of the civil service management and disciplinary system to a certain extent, so as to better protect the civil service group, especially the statutory rights of low-ranking civil servants to improve the stability of the civil service and the sense of respect for civil servants, thereby enhance the overall working capacity of governments and civil servants at all levels.

(4) Further improving the substantive nature of the trial
(a) Emphasis on the role of witnesses. In the four cases that I sit in, three witnesses appeared in court or witnessed by video. The judges or both lawyers cross-examined and played an important role in ascertaining the case. In contrast, in the first and second instance administrative proceedings in China, the plaintiff often submits the so-called handwritten evidence, which is difficult to determine regardless of its authenticity or proof. Advocating witnesses to testify in court is more conducive to the court to find out the facts of the case, and will further improve the quality and credibility of the administrative trial. It is suggested that China's administrative litigation system can further attach importance to the role of witnesses and make detailed provisions on witness testimony procedures. Where witnesses do not appear in court to testify in court, the credibility of testimony should be reduced.
(b) Improve the efficiency of trials. Through a court hearing, it was discovered that a judge could hear four cases in less than three hours. According to the talk with the judges, sometimes the trial is more efficient, and it is possible to hold six cases in half a day. The reason is attributed to its trials going straight to the subject, focusing on disputes, removing meaningless procedural links, and there is no debate. In contrast, some courts in China are inefficient, and in many cases there are no lawyers.

Signature:

Zang Zhen, Assist Judge, Administrative Division of the Supreme People's Court of the People's Republic of China:	*HE Xiaorong, Justice, Full-time Member of the Adjudication Committee, President of the 2nd Circuit Court of the Supreme People's Court of the People's Republic of China:*