The judicial system is a necessary component of the State machinery for governing the country. It can be defined as an “entire network of courts in a particular jurisdiction”.¹ The word “judiciary” may have a broader meaning when it is used in conjunction with the term “judicial system”; it refers to the branch of government vested with the judicial power to interpret, construe and apply the law.² There are two different views in China about the definition of “judicial system”: one defines it as the system of organising the people’s court, people’s procuratorate, the public security organ and judicial administrative organ and their function of judicial enforcement;³ and the other narrows it to include only the organisation and activities of the court and the procuratorate.⁴ The scope of this chapter is limited to the judicial reform relating to the court and the procuratorate. However, such limitation does not mean that this author endorses the narrower definition of the judicial system. Rather, based on the practice in China’s legal system, the definition should be broader.

After the founding of the People’s Republic of China (PRC) in 1949, communist China began to establish its own judicial system based on communist

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² Ibid.
ideology and the Soviet model. Unlike the political structure of separation of powers (in which the judicial system is mainly the system of adjudication), China’s existing judicial system broadly comprises the People’s Court, the People’s Procuratorate, the department of Public Security and the department of Justice and other governmental departments having the function of judicial administration, such as the Ministry of State Security and the Notaries. Such broad composition may cause confusion, but it is a reality in China. Some departments, such as the department of Public Security, have more judicial power than the court and the procuratorate, though the department of Public Security is under the State Council.\(^5\)

Both the People’s Court and the People’s Procuratorate are founded in accordance with the Chinese Constitution.\(^6\) The Court, as mandated by the Constitution, is the judicial organ of the State, and includes the Supreme Court, courts at various local levels, military courts, and other special courts such as maritime courts and railway transport courts. It has four levels: the Supreme Court, the higher courts at the provincial level (a total of 31), intermediate courts at the prefectural level (389), and primary courts at the county level (3,067). The Supreme Court,\(^7\) which is the highest judicial organ, supervises the administration of justice by local and special courts. Courts at a higher level supervise those at a lower level. A two-level trial system is applied in Chinese courts, whereby a case is finally decided after two trials, first by a lower court, then by a higher court if there is an appeal. In criminal cases, the procuratorate may present a protest to the higher court when it is dissatisfied with the decision made by the lower court.

The internal organisation of the Court is governed by the Organic Law of the People’s Courts.\(^8\) Within each court, there are usually several divisions, such as

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5 There is a saying in China that “big public security, small court, and optional procuratorate” (da gongan, xiao fayuan, keyou kewu jianchayuan): see Cui Shixing, “Make firm the basis of just law enforcement”, People’s Daily, 28 March 2001, at 10 (in Chinese).


7 The People’s Supreme Court was established in October 1949 just after the founding of the PRC: see He Lanjian and Lu Mingjian (eds.), Judicial Work of Contemporary China, Vol. 1 (Beijing: Contemporary China Publisher, 1993), 23-24.