

Foreword

Qing-Yun Jiang was born in Fujian, China. He studied International Business Administration at the Shanghai Institute of Foreign Trade in Shanghai, where he graduated with a Bachelor of Economics. In 1997, he started studying at the University of Hamburg. After his Master study and his successful completion of the necessary law examinations, he was admitted as a doctoral student in the law faculty in 2001. In addition to his study of German civil, criminal and administrative laws, Jiang demonstrated an increasing interest in law and economics, especially in the relationship between law and economic development.

It is now a well-established fact that the rule of law, the protection of property rights and a swift and timely resolution to conflicts are corner stones of economic development and long-term economic growth. In many developing countries court delays are a major shortcoming of the legal system. This is true for countries in Latin America and in many Asian countries. Empirical findings show a 15 year length of civil procedure from the first filing of the case to the Supreme Court decision. This leads to court crises in the sense that private disputes are not brought to the court. Private parties attempt to circumvent the official legal system all together. When making contracts they resort to self enforcing contracts, to self help and, if available, to private alternative dispute settlement. In his thesis, Jiang presents an empirical study of court delays in China. He collected around 600 court files from various courts and sources in China on the district level, the provincial level and the high court level. It is an encouraging sign that Jiang could collect this data for scientific purposes and for the purpose of completing his dissertation thesis. Not long ago this would probably have been very difficult, if not impossible.

The most interesting finding in his thesis is that court delays are not a prime factor for the problems of the legal system in China. Due to the time bound program of the courts at the district level, more than ninety percent of the cases in the sample are discharged within half a year. The Supreme Court decision seldom takes more than five years from the date of the first

filing. These figures are roughly equivalent to those in Western countries, such as Germany. Therefore, court delays in China seem not to be the main problem unlike in a large number of other developing countries. One weakness of the Chinese legal system is the low level of training received by lower courts judges. Some years ago less than sixty percent of all judges had a bachelor's degree in law and less than one percent had a master degree. This has led to a very high quota of appeals. According to opinion polls, judges have admitted that they are not independent – even in their own view. They are often subject to interference, especially from the local political parties and other state organizations. These weaknesses, along with the problem of corruption, are now widely discussed within China. Another weakness of the legal system, which Jiang describes in his thesis, is sluggish enforcement of court decisions. Again, it seems that quite often court decisions are not properly enforced because of local partisan interference.

However, unlike in many Latin American countries, private demand for court services in civil law has grown rapidly in China. The number of civil cases filed has more than tripled over the last 13 years, with more than four million cases filed per year. This shows that private individuals in China have an increasing demand for court services. This is an encouraging sign for the development of the Chinese market economy.

Jiang's dissertation is a very valuable contribution toward the understanding of the civil law system in China, particularly of its strengths and weaknesses. It is a scholarly work, which substantially adds to the discussion about the development of the legal system in China. Moreover, it is a contribution to the overall legal and economic debates on the interrelationship between the economic system and the rule of law. This book can be readily recommended to everyone interested in the development of the legal system in China and to scholars who are interested in the more general consequences of the law in developing countries.

Prof. Dr. Hans-Bernd Schäfer