
ARTICLE

LAY JUDGES IN CHINA UNDER THE NEW PEOPLE'S ASSESSORS LAW: THE SHAPING OF A LEGAL INSTITUTION

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Abstract

In April 2018, China enacted a new law on the participation of citizens in court proceedings. The law is related to attempts that have been ongoing since 2015 to reform the institution of lay judges. The introduction of non-professional judges in China, referred to as people's assessors, is intended to create greater transparency and thereby combat corruption and improve the quality of the decision-making process. Additional objectives include educating citizens about the law and creating greater trust in the judiciary and the legal system. With the aim of achieving these goals, the law for the first time prescribes in detail the qualifications required of people's assessors and establishes an appointment process aiming to ensure that these lay judges better reflect the overall population. Another important element of the new law concerns the composition of judicial panels, which in the future will consist of either three or seven members. As to the larger panels (composed of seven members), the law provides that lay judges have an actual vote in determining factual questions but that they are limited to expressing their opinions on legal questions. By differentiating the role of lay judges based on the size of the panel, the question of whether a particular case is to be heard by a small or large panel takes on considerably greater significance. The criteria used in making this determination, however, remain uncertain in several respects.

I. INTRODUCTION

On April 27, 2018, the Standing Committee of the National People's Congress adopted the People's Assessors' Law,¹ which was promulgated by President Xi Jinping on the same day and thereby entered into force. The law is related to trial reforms of the people's assessor system, which the Standing Committee initiated in 2015.² Shortly before the adoption of the People's

¹ Renmin Peishenyuan Fa (人民陪审员法) [People's Assessors Law] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 27, 2018, effective Apr. 27, 2018) 2018(3) STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 378.

² Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Shouquan Zai Bufen Diqu Kaizhan Renmin Peishenyuan Zhidu Gaige Shidian Gongzuo de Jueding (全国人民代表大会常务委员会关于授权在部分地区开展人民陪审员制度改革试点工作的决定) [Decision of the Committee of the National People's Congress on Authorizing the Implementation of the Pilot Programme on the Reform of the System of People's Assessors in Certain Areas] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 24,

Assessors Law, the Supreme People's Court presented a report to the Standing Committee on the results of these trial reforms.³

Internationally, laypeople take part in the administration of justice both in Anglo-American (and, as of late, Japanese⁴) procedural law — in the form of juries, and in the legal systems of German-speaking countries — in the form of, for example, *Geschworenengerichte* (juries) or *Schöffengerichte* (mixed courts).⁵ However, in Europe lay participation is predominantly limited to criminal proceedings,⁶ whereas no “genuine lay judges” take part in private law,⁷ but rather expertise is to be provided by honorary judges in commercial courts, who occupy a middle position between professional judges with legal education and randomly selected lay judges.⁸ In formerly socialist states, the first-instance decision in all civil matters and less serious criminal offences is made by a panel of judges, which includes lay judges as observers.⁹

Lay participation reflects different legislative goals in different political systems: it is regarded in Germany as a guarantee of transparency and credibility in jurisprudence, was meant in France (following the French Revolution) to reduce state influence on the judiciary and take account of the idea of democracy and liberalism, and was strengthened in the German Nazi era out of a sense of commitment to the principles of the political judiciary of the people (“*Volksgeist*”) rather than those of the rule of law.¹⁰ The institution of lay judges is criticized on the grounds that their participation in the increasingly complex legal systems with increasingly sophisticated

2015) 2015(3) STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 654. Dated the same day is a Renmin Peishenyuan Zhidu Gaige Shidian Fang'an (人民陪审员制度改革试点方案) [Pilot Program on the Reform of the System of People's Assessors], which the Supreme People's Court issued together with the Ministry of Justice [hereinafter Reform Plan].

³ Zuigao Renmin Fayuan Guanyu Renmin Peishenyuan Zhidu Gaige Shidian Qingkuang de Baogao (最高人民法院关于人民陪审员制度改革试点情况的报告) [Report of the Supreme People's Court on the Circumstances of the Trial Reform of the System of People's Assessors] (promulgated by Sup. People's Ct. 25 April 2018) [hereinafter SPC Reform Report].

⁴ See MATTHEW J. WILSON, HIROSHI FUKURAI & TAKASHI MARUTA, JAPAN AND CIVIL JURY TRIALS (1st ed. 2015).

⁵ For a historical perspective on lay participation, see JOHN P. DAWSON, A HISTORY OF LAY JUDGES (1966) and Markus Dubber & Heikki Pihlajamäki, *Lay Participation in Modern Law: A Comparative Historical Analysis*, 3 COMP. LEGAL HIST. 224 (2015). For a comparative perspective on the scope of lay participation, see Peter Mankowski, *Rechtskultur*, LEGAL CULTURE, 314 (2016).

⁶ See, e.g., on the current discussion of the lay judiciary in Switzerland, which is widespread at the level of courts of first instance: Valerie Zaslowski, Andrea Kucera, Erich Aschwanden & Peter Jankovsky, *Wer Gehört auf den Richterstuhl?* [Who Deserves to Become a Judge?], NEUE ZÜRCHER ZEITUNG [NEW ZURICH NEWSPAPER], May 24, 2016, <https://perma.cc/2LKT-9XF8> (Switz.).

⁷ However, volunteer judges are involved in the German labor courts, see ARBEITSGERICHTSGESETZ [LABOR COURTS ACT], July 2, 1979, BGBL I at 853, § 16. (Ger.).

⁸ Mankowski, *supra* note 5, at 319.

⁹ KONRAD ZWEIGERT & HEIN KÖTZ, AN INTRODUCTION TO COMPARATIVE LAW (Vol. 1) 322 (1st ed. 1977).

¹⁰ Dubber & Pihlajamäki, *supra* note 5, at 225, 227; Dorothee Weckerling-Wilhelm, *Das Schöffensystem in Deutschland – Hintergründe und aktuelle Lage* [Lay Participation in Germany – Background and Current Situation], in LAIENRICHTER IN JAPAN, DEUTSCHLAND UND EUROPA 21 (Hans-Peter Marutschke ed., 2006).

assessments is no longer in keeping with the times.¹¹ It is also argued that there is a danger of laypeople who are not familiar with the law being more susceptible to the inappropriate exertion of influence than professional judges in whom objectivity is instilled through their education and long-term experience.¹²

In China, the idea of lay judges dates back to the late Qing dynasty. It was incorporated into China in the early twentieth century, and was finally realized under the influence of the socialist law of the former Soviet Union.¹³ In the People's Republic, the strengthening of the institution of people's assessors, which has been observed since 2004,¹⁴ is expected to combat corruption (through transparency) and improve the quality of decision-making processes.¹⁵ Further stated goals (very much in the socialist tradition) are educating the public about law and establishing trust in the judiciary and the legal system.¹⁶ These goals also arise from Article 1 of the People's Assessors Law, according to which the law is intended to ensure citizens' participation in trial activities, foster equity of justice, and increase public trust in the judiciary.

The shaping of the legal institution of lay judges in the People's Republic of China through an independent People's Assessors Law, which applies to all judicial proceedings, can be attributed to the fact that there are no separate civil, criminal and administrative courts in China. Rather, the people's courts are responsible for administering justice in civil and criminal matters as well — since the Administrative Procedure Law¹⁷ came into force on October 1, 1990¹⁸ — in public law disputes.¹⁹ Within the system of people's courts

¹¹ Mankowski, *supra* note 5, at 317.

¹² Weckerling-Wilhelm, *supra* note 10, at 23.

¹³ A brief historical overview is offered in Stephen Landsman & Zhang Jing, *A Tale of Two Juries: Lay Participation Comes to Japanese and Chinese Courts*, 25 UCLA PAC. BASIN L.J. 179, 197–227 (2008).

¹⁴ More information for the development of the assessor system after the founding of the People's Republic of China is offered in Qiu Qunran & Yan Chen, *The People's Assessors in China's Legal System: Current Legal Structure for Their Duty and Its Justification*, 12 TSINGHUA CHINA L. REV. 171, 172–83 (2019).

¹⁵ He Xin, *Double Whammy: Lay Assessors as Lackeys in Chinese Courts*, 50 L. & SOC'Y REV. 733, 734 (2016); Landsman & Zhang, *supra* note 13, at 206.

¹⁶ *Id.*, at 734.

¹⁷ Xingzheng Susong Fa (行政诉讼法) [The Administrative Procedure Law] (promulgated by the Nat'l People's Cong., Apr. 4, 1989, revised by the Standing Comm. Nat'l People's Cong., June 27, 2017, effective July 1, 2017).

¹⁸ Before the Administrative Procedure Law came into force, public law disputes were subject to the Minshi Susong Fa (Shixing) (民事诉讼法(试行)) [Civil Procedure Law (For Trial Implementation)] (promulgated by Nat'l People's Cong. Mar. 8, 1982, effective Oct. 1, 1982) (German: RabelsZ 1982, 94 et seq.); these were only permissible on the basis of special statutory authorization; *see* note 1 on the translation of the Administrative Procedure Law 4.4.89/1, CHINAS RECHT [LAW IN CHINA], available at <https://www.chinas-recht.de>.

¹⁹ However, the people's courts can only grant legal protection under administrative law in certain disputes (enumeration principle); *see* Article 12 Administrative Procedure Law. There is no guarantee of legal redress. The list of acts of the administration against which an administrative claim is permissible has been expanded considerably with the revision of the law. *See* Daniel Sprick, *Rechtsstaatsentwicklung durch*

(basic-level people's courts, intermediate people's courts and high people's courts²⁰) and the Supreme People's Court, however, divisions²¹ have been established²² in accordance with the recently amended Organic Law of the People's Courts of the People's Republic of China²³ — for example, a division for case filing and several divisions for the administration of justice in criminal matters, civil matters and administrative matters — for example, an enforcement office, a supervision office, and a research bureau.

Collegial panels,²⁴ which are comprised of judges²⁵ and people's assessors²⁶, and in certain proceedings (especially in the second instance²⁷) only of judges, are generally responsible for decision-making within the divisions. The allocation of cases to individual panels proceeds not according to an allocation plan, but rather at the discretion of the head judge of the division.²⁸ The principle of the “lawfully designated judge” (*gesetzlicher Richter*) thus does not apply in China.

Other than what was contained in the Organic Law of the People's Courts and the corresponding procedural laws, for a long time there was no legal regulation on people's assessors until the 2004 “Decision of the Standing Committee of the National People's Congress on Improving the System of

Gesetzgebung? – Das neue Verwaltungsprozessgesetz der Volksrepublik China [Rule of Law Development Through Legislation? – The New Administrative Procedure Law of the People's Republic of China], 22 ZCHNR 349, 360 (2015).

²⁰ On the four-level court system and the stages of appeal, see SHIZHOU WANG, CIVIL PROCEDURE IN CHINA 33 et seq. (2014); Nils Pelzer, *Zuständigkeitsordnung [Jurisdiction]*, in HANDBUCH DES CHINESISCHEN ZIVILPROZESSRECHTS [HANDBOOK OF CHINESE CIVIL PROCEDURE LAW] 49, 49–50 (Knut Benjamin Pibler ed., 2018).

²¹ “审判庭.” See Renmin Fayuan Zuzhi Fa (人民法院组织法) [Organic Law of the People's Courts] art. 27 (promulgated by the Standing Comm. Nat'l People's Cong., July 1, 1979, amended Oct. 26, 2018, effective Jan. 1, 2019), which now differentiates “specialized division” [专业审判庭] and “comprehensive divisions” [综合审判庭]. Intermediate people's courts and basic people's courts “with a small number of judges” are allowed to establish “comprehensive divisions” or to not establish divisions at all.

²² See e.g. the organisational structure of the SPC, *Jigou Shezhi (机构设置) [Organization Structure]*, Zhonghua Renmin Gongheguo Zuigao Renmin Fayuan (中华人民共和国最高人民法院) [THE SUPREME PEOPLE'S COURT OF PEOPLE'S REPUBLIC OF CHINA], <http://www.court.gov.cn/jigou.html> (last visited June 15, 2020). For more detail on the internal organisation of the people's courts, see BJÖRN AHL, JUSTIZREFORM IN CHINA [JUDICIAL REFORM IN CHINA], 131 et seq. (2014).

²³ Renmin Fayuan Zuzhi Fa (人民法院组织法) [Organic Law of the People's Court] (promulgated by the Standing Comm. Nat'l People's Cong., July 1, 1979, amended October 26, 2018, effective January 1, 2019) (Chinalawinfo).

²⁴ Chinese: “合议庭”.

²⁵ Chinese: “审判员”.

²⁶ Chinese: “人民陪审员”. Alternatively, this term could be translated as “people's observer.”

²⁷ Minshi Susong Fa (民事诉讼法) [Civil Procedure Law] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 9, 1991, amended June 27, 2017, effective July 1, 2017) art. 40, para. 1, sentence 1 (Chinalawinfo); Xingshi Susong Fa (刑事诉讼法) [Criminal Procedure Law] promulgated by the Standing Comm. Nat'l People's Cong., July 1, 1979, amended March 14, 2012, art. 178 (4) (Chinalawinfo).

²⁸ See KNUT BENJAMIN PIBLER, *Einleitung* [Introduction], *supra* note 20, at 1, 17.

People’s Assessors” (People’s Assessors Decision),²⁹ which was repealed with the entry into force of the People’s Assessors Law.³⁰ In 2010, the Supreme People’s Court also issued two judicial interpretations, namely “Several Provisions of the Court concerning Further strengthening the Functions of Collegial Panels”³¹ (SPC Collegial Panel Provisions) and the “Provisions on Several Issues Relating to the Participation of People’s Assessors in Adjudication Activities”³² (SPC People’s Assessors Provisions). While the SPC People’s Assessors Provisions were revoked in 2019 by the “Interpretation of the SPC on Several Issues concerning the Application of the Law of the People’s Republic of China on People’s Assessors”³³ (SPC Assessors Interpretation),³⁴ the SPC Collegial Panel Provisions have remained in force.

In the following section, the main provisions in the People’s Assessors Law and the SPC Assessors Interpretation are presented and compared with the previous legal situation (II), which is followed by a conclusion (III).

II. THE CHINESE ASSESSOR SYSTEM UNDER THE PEOPLE’S ASSESSORS LAW AND THE SPC ASSESSORS INTERPRETATION

At a length of 32 paragraphs, the People’s Assessors Law is considerably longer than the People’s Assessors Decision, which comprised 20 paragraphs.³⁵ The law regulates the qualification of people’s assessors (see Section A below) and the procedure for their appointment (see Section B below). In addition, the composition of panels that include the participation of

²⁹ Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Wanshan Renmin Peishenyuan Zhidu de Jueding (全国人民代表大会常务委员会关于完善人民陪审员制度的决定) [Decision of the Standing Committee of the National People’s Congress on Improving the People’s Jury System] (promulgated by the Standing Comm. Nat’l People’s Cong. August 28, 2004, effective May 1, 2005), 2004(31) STANDING COMM. NAT’L PEOPLE’S CONG. GAZ. 28.

³⁰ People’s Assessors Law, art.32, sentence 2. For a more extensive description of the People’s Assessors Decision and an English translation of it, see Landsman & Zhang, *supra* note 13, at 206–07 and 223–24.

³¹ Guanyu Jinyibu Jiaqiang Heyiting Zhize De Ruogan Guiding (关于进一步加强合议庭职责的若干规定) [Several Provisions of the Supreme People’s Court on Further Strengthening the Duties of the Collegiate Bench] (promulgated by the Judicial Committee of the Sup. People’s Ct., Jan. 11, 2010, effective Feb. 1, 2010) (Chinalawinfo).

³² Zuigao Renmin Fayuan Guanyu Renmin Peishenyuan Canjia Shenpan Huodong Ruogan Wenti de Guiding (最高人民法院关于人民陪审员参加审判活动若干问题的规定) [Provisions on Several Issues Relating to the Participation of People’s Assessors in Adjudication Activities] (promulgated by Sup. People’s Ct, Jan. 12, 2010, effective Jan. 14, 2010).

³³ Zuigao Renmin Fayuan Guanyu Shiyong “Zhonghua Renmin Gonghe Guo Renmin Peishenyuan Fa” Ruogan Wenti de Jieshi (最高人民法院关于适用《中华人民共和国民事诉讼法》若干问题的解释) [Interpretation of the Supreme People’s Court on Several Issues Concerning the Application of the “People’s Jury Law of the People’s Republic of China”] (promulgated by Sup. People’s Ct. & Sup. People’s Proc., Apr. 24, 2019, effective May 1, 2019) (Chinalawinfo).

³⁴ See SPC Assessors Interpretation, art. 19, para. 2.

³⁵ The SPC’s judicial interpretations of 2010 are likewise relatively brief at a length of twelve (SPC Collegial Panel Provisions) and ten (SPC People’s Assessor Provisions) paragraphs. The latest SPC Assessors Interpretation of 2019 has nineteen paragraphs.

people's assessors is specified for the first time (see Section C below). The People's Assessors Law also contains important innovations concerning the working methods of panels and particularly the voting rights of people's assessors (see Section D below). Finally, it contains provisions about the disqualification and dismissal of people's assessors (see Section E below) as well as about their remuneration (see Section F below).

A. *The Qualification of People's Assessors*

To date, the requirements for the qualification of lay assessors have been regulated in the 2006 version of the Organic Law of the People's Courts³⁶ and in the People's Assessors Decision. The People's Assessors Law now lays down more concrete legal requirements and transfers the responsibility for the administration of people's assessors to the basic-level people's courts and the judicial administration authorities.³⁷

The first general requirement is that citizens who become people's assessors must stand up for the Constitution of the People's Republic of China, be disciplined, abide by the law, behave well, and be fair and honest.³⁸ They must also fulfill the physical requirements for the proper performance of their official duties.³⁹

The minimum age for people's assessors has been raised from 23 to 28.⁴⁰ The requirements for their level of education, on the other hand, have been lowered: where the People's Assessors Decision required at least a university degree⁴¹, the People's Assessors Law now only requires the completion of upper secondary school.⁴² Apart from the state university entrance exam⁴³ in China, this qualification is comparable to the higher education entrance qualification in other countries such as Germany.

The grounds for disqualifying a person from the office of people's assessor are specified in Article 7 of the People's Assessors Law. To date, under the 2006 version of the Organic Law of the People's Courts, only citizens who had been deprived of their political rights were disqualified from

³⁶ See *Renmin Fayuan Zuzhi Fa* (人民法院组织法) [Organic Law of the People's Court] (promulgated by the Standing Comm. Nat'l People's Cong., July 1, 1979, amended October 26, 2018, effective Jan. 1, 2019) (Chinalawinfo).

³⁷ People's Assessors Law, art. 25. According to this, the administrative tasks encompass, for example, training, reviews, rewards and punishments for people's assessors.

³⁸ People's Assessors Law, art. 5, para. 1 (1) and (3). *Cf.* People's Assessors Decision, art. 4, para. 1 (1) and (3), which only called for acting on behalf of the Constitution, good behaviour, fairness and honesty.

³⁹ People's Assessors Law, art. 5, para. 1 (4). *Cf.* People's Assessors Decision, art. 4, para. 1 (4), in which only general "physical health" was set forth as a requirement.

⁴⁰ People's Assessors Law, art. 5, para. 1 (2). Previously: Article 37 of the 2006 version of the Organic Law of the People's Courts and art. 4 para. 1 (2) of the People's Assessors Decision.

⁴¹ People's Assessors Decision, art. 4, para. 2.

⁴² People's Assessors Law, art. 5, para. 2.

⁴³ Known under the Chinese abbreviation "gao kao" (高考).

the office of people's assessor.⁴⁴ However, two additional grounds for exclusion were specified in Article 6 of the People's Assessors Decision: conviction for a criminal offence and dismissal from a public office.

Both of these grounds for disqualification have been incorporated into the People's Assessors Law.⁴⁵ In addition, those whose licenses to practice as a lawyer or notary have been revoked and those who have been removed from the office of people's assessor for disciplinary reasons are now also disqualified from serving as people's assessors.⁴⁶ Citizens whose names appear on the list of dishonest judgment debtors⁴⁷, which has been maintained by the SPC since 2009 and can be viewed online⁴⁸, are also disqualified. What is also new is an indeterminate exclusion under which citizens may not serve as people's assessors if they have committed other acts which seriously violate laws or infringe upon discipline, insofar as these acts could affect judicial credibility.⁴⁹

Finally, certain offices, professions and activities are defined as incompatible with the office of people's assessor. As was already the case under the People's Assessors Decision⁵⁰, members of the Standing Committees of the People's Congresses as well as staff members of the people's courts, the people's procuratorates, the public security bureaus, and the judicial administration authorities are not permitted to exercise the office of people's assessor under the People's Assessors Law. Employees of the National Supervisory Commission⁵¹, which was introduced into the Chinese state organization through the latest constitutional amendment⁵², are not permitted to exercise the office of people's assessor under the People's Assessors Law either⁵³. The incompatibility of the office of people's assessor with the legal profession in general⁵⁴ and with the profession of notary has

⁴⁴ The 2018 version of the Organic Law of the People's Courts no longer contains any requirements regarding the qualification of people's assessors.

⁴⁵ People's Assessors Law, art. 7 (1) and (2).

⁴⁶ People's Assessors Law, art. 7 (3) and (5).

⁴⁷ People's Assessors Law, art. 7 (4).

⁴⁸ See Tian Mei, *Neue Maßnahmen im Chinesischen Zwangsvollstreckungsrecht: Einschränkungen im privaten und wirtschaftlichen Leben der Vollstreckungsschuldner* [New Measures in Chinese Enforcement Law: Restrictions on the Private and Economic Life of Executing Debtors], 20 ZCHINR 343 (2013). The relevant SPC website can be viewed at [http:// http://zxgk.court.gov.cn/](http://http://zxgk.court.gov.cn/). However, there are also other websites that seem to have an interface for the same database as well, see for example QUANGUO FAYUAN QIESHI JIEJUE ZHIXINGNAN XINXIWANG (全国法院切实解决执行难信息网) [WEBSITE FOR PRACTICALLY SOLVING THE DIFFICULTY OF ENFORCEMENT IN COURTS NATIONWIDE], <http://jszx.court.gov.cn/front/zxxx.jspx> (last visited June 21, 2020).

⁴⁹ People's Assessors Law, art. 7 (6).

⁵⁰ People's Assessors Decision, art. 5.

⁵¹ Chinese: “国家监察委员会”.

⁵² See also Jiancha Fa (监察法) [Supervision Law] (promulgated by Nat'l People's Cong., Mar.20, 2018) 2018(2) STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 147.

⁵³ People's Assessors Law, art. 6 (1).

⁵⁴ People's Assessors Decision, art. 5, however, already included incompatibility with “practicing attorneys” [执业律师].

been expanded, as has its incompatibility with activity as an arbitrator and with activity as an employee in a basic legal services institution (that is, a public institution providing legal advice⁵⁵).⁵⁶

Beyond this, regarding incompatibility, the legislature has also included an indeterminate definition concerning incompatibility, under which no person may serve as a people's assessor who is unsuited for the office for other reasons related to the duties of this office.⁵⁷

B. Appointment of Assessors

Previously, the process of appointing assessors was regulated only to a very limited extent in the People's Assessors Decision. Now Articles 8 to 13 of the People's Assessors Law contain some detailed regulations. Beyond this, the Ministry of Justice, the SPC and the Ministry of Public Security issued the "Measures for the Selection and Appointment of People's Assessors"⁵⁸ (Appointment Measures) on August 22, 2018, which remain valid.

As was already the case under the People's Assessors Decision, the quota of the people's assessors to be appointed is determined at the same administrative level by the Standing Committee of the People's Congress at the request of the basic-level people's court; the people's court applies for a quota, which is oriented to its case load, among other things.⁵⁹ What is new is that the legislature sets forth a minimum quota in the People's Assessors Law, according to which the number of assessors cannot be fewer than three times the number of judges at this basic-level people's court.⁶⁰

The process of appointing assessors now differs depending on whether the selection of candidates is initiated through an application from or a recommendation of a candidate or – and this process is new⁶¹ – is carried out exclusively by the state through a lottery among the entire population. No more than a fifth of the quota may be allotted to people's assessors who apply

⁵⁵ On these institutions, see Fu Yulin, *Dispute Resolution and China's Grassroots Legal Services*, in CHINESE JUSTICE: CIVIL DISPUTE RESOLUTION IN CONTEMPORARY CHINA 314 (Margaret Y.K. Woo & Mary E. Gallagher eds., 2011).

⁵⁶ People's Assessors Law, art. 6 (2).

⁵⁷ People's Assessors Law, art. 6 (3).

⁵⁸ Renmin Peishenyuan Xuanren Banfa (人民陪审员选任办法) [Measures for the Selection and Appointment of People's Assessors] (promulgated by Ministry of Justice, Sup. People's Ct., Ministry of Pub. Security, Aug. 22, 2018).

⁵⁹ People's Assessors Law, art. 8, para. 1. Previously: People's Assessors Decision, art. 7. Appointment Measures names additional factors, art. 5. Under Appointment Measures, art. 6, the quota must first be confirmed by the people's court at the next higher level and filed to the high people's court. In this process, the basic-level people's court's quota can be "appropriately adjusted" [适当调整].

⁶⁰ People's Assessors Law, art. 8, para. 2.

⁶¹ Cf. People's Assessors Decision, art. 8, under which the initiation of an appointment process always required an application by the candidate or a recommendation from a particular institution. See *infra* note 74.

for the position or are recommended for it.⁶² This limitation is evidently intended to represent the overall population to a greater extent with people's assessors who applied for the position or were recommended for it. However, over the course of the trial reforms since 2015 it has become clear that candidates who have been selected or recommended without applying have demonstrated a low level of willingness to serve as people's assessors.⁶³

An announcement on the selection and appointment procedure must be published for a period of thirty days by the judicial administration authorities together with the basic-level people's courts and the public security authorities; this announcement must include the quota, the conditions for appointment and, if applicable, the number of people's assessors who may apply for the office or be appointed at the recommendation of others.⁶⁴

If the selection is carried out exclusively by the state, the judicial administration authorities will, working together with the basic-level people's courts and the public security authorities, select people (who have reached the age of 28⁶⁵) from the list of local permanent residents of the administrative district in question.⁶⁶ The selection takes place on a random basis⁶⁷ and the number of people selected needs to total at least five times the number of assessors to be appointed.⁶⁸ The qualification of the selected candidates is then examined and the candidates are invited to comment on their candidacy.⁶⁹ Those candidates who are deemed qualified are included in a list of people's assessor candidates from which the judicial administration authorities and the basic-level people's court together select proposed people's assessors at random.⁷⁰ The president of the basic-level people's court then ultimately presents the list of these proposed people's assessors, which must be made public for a period of no less than five working days,⁷¹ to the Standing Committee of the People's Congress at the same level for appointment.⁷²

⁶² People's Assessors Law, art. 11, para. 2. *See also* Appointment Measures, art. 8. The number of people's assessors who are appointed through their own applications or through recommendations and the number of people's assessors chosen by lottery are determined by the basic-level people's courts and the judicial administration authorities in accordance with Appointment Measures, art. 9 sentence 2.

⁶³ *See* §2 (2) SPC Reform Report, *supra* note 4.

⁶⁴ Appointment Measures, art. 10. The Appointment Measures clearly assume that in the future, the appointment of people's assessors through their own application or through recommendations will be the exception.

⁶⁵ Appointment Measures, art. 11.

⁶⁶ People's Assessors Law, art. 9.

⁶⁷ The matter of how this random selection (随机抽选) is to be conducted by the three participating state bodies is not regulated.

⁶⁸ People's Assessors Law, art. 9.

⁶⁹ People's Assessors Law, art. 9; Appointment Measures regulate this examination process in greater detail, art. 12–14.

⁷⁰ People's Assessors Law, art. 10; Appointment Measures, art. 15.

⁷¹ Appointment Measures, art. 19.

⁷² People's Assessors Law, art. 10.

Candidates may continue to be nominated based on their own application⁷³ or at the recommendation of certain institutions, and the number of institutions entitled to make such nominations has been increased.⁷⁴ Not only are these candidates subject to the aforementioned one-fifth quota, but there must also be a corresponding need on the part of the court.⁷⁵ The three state bodies in turn review these candidates' qualifications and create proposals for people's assessor appointments (according to the principles of universality and representativeness⁷⁶), which the president of the court submits to the Standing Committee for appointment.⁷⁷ If there are too many qualified candidates who have applied or been recommended, the people's assessors to be appointed will be randomly selected among the qualified ones.⁷⁸

It has been reported that in practice to date, many people's assessors have been appointed based on a "relationship" to the court.⁷⁹

After their appointment by the Standing Committee, the people's assessors are ceremonially sworn into office by the people's court together with the judicial administration authorities.⁸⁰ This swearing-in ceremony for people's assessors, which has been introduced through the People's Assessors Law,⁸¹ is to be carried out by the basic-level people's court together with the judicial administration authorities.⁸²

The appointed (and sworn-in) people's assessors are added to a list of people's assessors⁸³, which is maintained by the basic-level people's courts.⁸⁴ The list of people's assessors must also be made public.⁸⁵

⁷³ Such applications occur, according to He, *supra* note 15, at 743, because the office of people's assessor is prestigious and offers opportunities to establish social relations.

⁷⁴ People's Assessors Law, art. 11, names the candidates' employers and the basic-level self-governing mass organizations [基层群众性自治组织] and people's organizations [人民团体] at the candidates' places of registered permanent residence or habitual residence. Under art. 8 People's Assessors Decision, only the candidate's employer and the basic-level organization [基层组织] at the place of registered permanent residence had the right to make recommendations.

⁷⁵ People's Assessors Law, art. 11. This need is likely to be understood in such a way that not enough people's assessors are available from the pool of candidates selected by lottery from the general population to exceed the quota of one fifth.

⁷⁶ Appointment Measures, art. 18, para. 2.

⁷⁷ People's Assessors Law, art. 11.

⁷⁸ Appointment Measures, art. 18, para. 1, sentence 2.

⁷⁹ He, *supra* note 15, at 742. He adds: "Of course, the court also respected the recommendations of neighborhood committees and other government branches due to a close working relationship between the court and these organizations."

⁸⁰ People's Assessors Law, art. 12, sentence 1.

⁸¹ In the course of the trial reforms since 2015 (see above under I), the SPC has already issued trial regulations on oath-taking by people's assessors, see Renmin Peishenyuan Xuanshi Guiding (Shixing) (人民陪审员宣誓规定(试行)) [Provisions on the Oath Taking of People's Assessors (for Trial Implementation)] (promulgated by Sup. People's Ct., May 20, 2015).

⁸² People's Assessors Law, art. 12, sentence 2.

⁸³ Chinese: "人民陪审员名单。"

⁸⁴ This is not regulated, but follows from the process of composing panels. See also under II 3.

⁸⁵ Appointment Measures, art. 21.

The term of office of people's assessors is five years, generally cannot be extended, and may under no circumstances be extended to exceed a total period of two terms in office.⁸⁶ People's assessors are not permitted to concurrently serve at multiple basic-level people's courts.⁸⁷

C. Composition of Panels

The composition of the panels has so far been regulated only in such a way as to stipulate that the collegial panels are chaired by a judge and are composed of an odd number of members.⁸⁸ In particular, the precise number of judges and people's assessors on a collegial panel is set forth only for criminal proceedings: in such cases, collegial panels are in the first instance composed of three members at the basic-level and intermediate people's courts, and three to seven members at the high people's courts and the SPC.⁸⁹ Otherwise, panels with three to nine members appear to be common in practice⁹⁰, with the composition and size of panels seeming to be guided by expedience thus far.⁹¹

Articles 14 to 17 of the People's Assessors Law now contain more detailed provisions for proceedings in the first instance.⁹²

These provisions differentiate between three-member panels composed of people's assessors and judges and large panels with seven members; the large panels are (always) made up of three judges and four people's assessors.⁹³ The composition of the three-member collegial panels is not explicitly defined; it thus seems conceivable that such a panel could be made up not only of one judge and two people's assessors, but also of two judges and one people's assessor.⁹⁴

⁸⁶ People's Assessors Law, art. 13; Appointment Measures, art. 24, sentence 2; People's Assessors Decision, *cf.* art. 9, which did not make any statement regarding an additional term of office.

⁸⁷ Appointment Measures, art. 25.

⁸⁸ Organic Law of the People's Courts, art. 30, para. 2; Criminal Procedure Law, art. 178, para. 5 & 6; Administrative Procedure Law, art. 68; Civil Procedure Law, art. 39, para. 1, 41.

⁸⁹ Criminal Procedure Law, art. 178, para. 1 & 2.

⁹⁰ See SPC Reform Report, *supra* note 4, section 2, (2), para. 2.

⁹¹ See He, *supra* note 15, at 749. He reports that to date, panels of one judge and four people's assessors have been formed in some cases in order to avoid in certain cases (liability for medical malpractice, maintenance disputes) the impression of partisanship on the part of professional judges (with the treating hospital) or in order to morally influence one of the parties (the plaintiff seeking maintenance) to persuade this party to withdraw the claim. He concludes: "Clearly the courts retained the final say on which cases would have assessor participation, and how many and which assessors to invite."

⁹² No participation by people's assessors is envisaged for proceedings in the second instance, see above under I.

⁹³ People's Assessors Law, art. 14.

⁹⁴ This is confirmed by Yao Baohua (姚宝华) in ZHONGHUA RENMIN GONGHEGUO RENMIN PEISHENYUAN FA TIAOWEN LIJIE YU SHIYONG (《中华人民共和国人民陪审员法》条文理解与适用) [COMMENTARY ON THE ARTICLES AND UNDERSTANDING OF THE "LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON PEOPLE'S ASSESSORS"] 166 (Political Dep. of the Sup. People's Ct. ed., 2018). Yao explains that there is no necessity for people's assessors to have the majority in a three-member panel, because such a panel does not differentiate between ascertaining the facts of the case and applying the law (see below under II 4). However, this explanation is rather obscure.

The People's Assessors Law answers the question of under what circumstances a panel is composed of judges and people's assessors (rather than only judges) with a list of examples, which are subject to the proviso that other laws do not provide for a case to be decided either by a single judge or by a panel composed exclusively of judges.⁹⁵ The SPC Assessors Interpretation excludes the participation of assessors from some certain proceedings⁹⁶ and from cases where "a court session is not required" (不需要开庭审理).⁹⁷

According to the People's Assessors Law, people's assessors are involved in cases that concern the interests of a group of people or the public interest⁹⁸, as well as cases that are of broad interest to the general public or that have a comparably major influence on society.⁹⁹ Finally, people's assessors are to be included in panels where the circumstances of the case are complicated or there are other circumstances which require the participation of people's assessors to be adjudicated;¹⁰⁰ in the latter case, the participation of people's assessors is left entirely to the discretion of the courts (subject to other laws).

A large panel composed of three judges and four people's assessors is always formed when a case has a serious impact on society.¹⁰¹ Such an impact is presumed in criminal proceedings if a sentence of more than ten years' imprisonment, life imprisonment or the death penalty is a possible outcome.¹⁰² In civil and administrative proceedings, a large panel is to be formed for cases that are brought in the public interest.¹⁰³ A large panel is also

⁹⁵ People's Assessors Law, art.15, para. 2. A similar provision was already stipulated in SPC People's Assessors Provisions, art. 10.

⁹⁶ SPC Assessors Interpretation, art. 5. These special proceedings are (1) civil trials under special procedures (according to chapter 15 of the Civil Procedure Law), court collection proceedings, and public notice procedures (2) applications for recognition of a divorce judgment made by a foreign court and (3) cases that are rejected based on a ruling (e.g. according to Article 154 para. 1 No. 1 Civil Procedure Law).

⁹⁷ SPC Assessors Interpretation, art. 5, (2) and (3). Alternative SPC Assessors Interpretation. It remains unclear who decides on the criteria for determining whether a court session is "not required". Article 133 (4) of Civil Procedure Law leaves it to the discretion of the court to decide on this question "according to different circumstances" [分别情形].

⁹⁸ People's Assessors Law, art. 15, para. 1 (1). It is unclear when the interests of a group of people [群体利益] are affected. It is conceivable that this refers, for example, to (civil) cases that involve multiple plaintiffs or multiple defendants.

⁹⁹ People's Assessors Law, art. 15, para. 1 (2). Cf. Article 2 (1) of People's Assessors Decision, which provided for the participation of people's assessors in cases with a comparatively major impact on society.

¹⁰⁰ People's Assessors Law, art. 15, para. 1 (3).

¹⁰¹ People's Assessors Law, art. 16 (4).

¹⁰² People's Assessors Law, art. 16 (1). Another feature of the provision is that the cases in question would have a serious impact on society. The catch-all provision in Article 16 (4) People's Assessors Law, however, suggests that this characteristic is to be regarded as fulfilled because of the severity of the expected punishment.

¹⁰³ People's Assessors Law, art. 16 (2). Public-interest lawsuits were only introduced for the first time with the recent revisions of the Administrative Procedure Law and Civil Procedure Law. On public-interest lawsuits in the field of environmental protection, see Sophie Zander, *How Effective a Weapon Is the New EPL in China's "War Against Pollution"? The Past Triumphs and Future Challenges of Environmental Public Interest Litigation*, 50 N. Y. UNIV. J. INT'L L. & POL. 605 (2018). On these suits in civil proceedings, see Mario Feuerstein, *Klagen im öffentlichen Interesse [Public Interest Litigation]*, in HANDBUCH DES

to be formed for cases concerning land requisition, building demolition, environmental protection or food and pharmaceutical safety.¹⁰⁴

Finally, defendants in criminal proceedings, plaintiffs in administrative proceedings and parties to civil disputes may request that their cases be conducted with the participation of people's assessors in the first instance.¹⁰⁵ According to the SPC Assessors Interpretation the court has to inform the respective parties of such a right to request the participation of assessors.¹⁰⁶ The criteria according to which the court decides whether to accept or reject such a request, however, have not been specified.¹⁰⁷

One question that remains unregulated and thus inconsistent in practice is whether the panels are permanent fixtures of the people's courts or are formed anew for each legal dispute. Generally speaking, it is to be assumed that the composition of the panel is not fixed and is often decided only shortly before the oral proceedings¹⁰⁸; if panels are "rather fixed"¹⁰⁹, a periodic change of members take place.¹¹⁰

If people's assessors are members of a panel, they must be chosen from the list of people's assessors "through a random drawing"¹¹¹. This drawing from the basic-level people's court's list of people's assessors also takes place if people's assessors are to be chosen for panels at the intermediate or high people's courts.¹¹² Parties have to be informed by the court about the determination of the people's assessors seven days before the opening of the court session.¹¹³

CHINESECHEN ZIVILESSRECHTS [HANDBOOK OF CHINESE CIVIL PROCEDURAL LAW] 273 (Knut Benjamin Pißler ed., 2018).

¹⁰⁴ People's Assessors Law, art. 16 (3); *see supra* note 103 (like in art. 16 (1), the further characteristic that the cases concerned have a serious social impact is provided for).

¹⁰⁵ SPC Assessors Interpretation, art. 2 (Chinainfo) and Guanyu Wanshan Renmin Peishenyuan Zhidu de Jueding (关于完善人民陪审员制度的决定) [Decision on Improving the System of People's Assessors] (promulgated by St. Council, Aug. 28, 2004, effective May 1, 2005, repealed Apr. 27, 2018) art. 2, para 2 (Chinalawinfo) (which provided for such a request for the participation of people's assessors).

¹⁰⁶ SPC Assessors Interpretation, art. 2.

¹⁰⁷ Yao Baohua, *supra* note 95, at 208 (is quite clearly suggesting that courts decide against such a request, writing that the court shall take into consideration factors like the extension of adjudication time and the increase of costs associated with the involvement of people's assessors).

¹⁰⁸ Nils Klages, *Gewöhnliches Verfahren im ersten Rechtszug* [The General Proceeding at First Instance], in HANDBUCH DES CHINESISCHEN ZIVILPROZESSRECHTS [HANDBOOK OF CHINESE CIVIL PROCEDURE LAW] 85, 92 (Knut Benjamin Pißler ed., 2018). *See also* SPC Collegial Panel Provisions, art. 2, sentence 1, which specifies that the panels are to be "randomly composed" [随机组成] of either judges alone or both judges and people's assessors, and SPC People's Assessors Provisions art. 4, under which people's assessors were to be selected at least seven days before the start of oral proceedings.

¹⁰⁹ Chinese: "相对固定."

¹¹⁰ Zuigao Renmin Fayuan Guanyu Jinyibu Jiaqiang Heyiting Zhize de Ruogan Guiding(最高人民法院关于进一步加强合议庭职责的若干规定) [Several Provisions of the Supreme People's Court concerning Further Strengthening the Functions of Collegial Panels] (promulgated by Sup. People's Ct. Jan. 11, 2010, effective Feb. 1, 2010) art. 2 (Chinainfo). The periodic change of members is to be carried out once every two years according to most local regulations, but at least once every five years.

¹¹¹ Chinese: "随机抽选." SPC Assessors Interpretation, art. 14.

¹¹² People's Assessors Law, art. 19, para. 2.

¹¹³ SPC Assessors Interpretation, art. 3.

The regulations leave open the question of who decides on the composition of the panel (with or without people's assessors)¹¹⁴ and who carries out the random drawing from the list of people's assessors if it takes place.¹¹⁵ It is reported that in practice, judges have in the past selected people's assessors from the list according to certain criteria (availability and "cooperativeness") to participate in specific proceedings.¹¹⁶ The SPC Assessors Interpretation allows people's courts to randomly select people's assessors from a list of people's assessors with the relevant expertise¹¹⁷ for those cases in which it is necessary that people's assessors possess a particular form of expertise to take part in the proceedings.¹¹⁸ It also permits the random selection of a certain number of alternate people's assessors and a determination of the order of candidates to fill a vacancy.¹¹⁹

What is also new is that the people's courts must limit the number of cases per year that a people's assessor can participate in deciding; this upper case limit per people's assessor must be announced publicly.¹²⁰ The SPC Assessors Interpretation sets the maximum limit at 30 cases per year.¹²¹ This limitation serves to distribute the participation of all people's assessors from the list in decision-making by panels more evenly in order to counter the phenomenon of "professional people's assessors."¹²² At the same time, this measure is intended to counteract the practice of hiring staff that the court

¹¹⁴ The literature presumes that the task of composing the panel falls to the head judge of the division. See BJÖRN AHL, *supra* note 22, at 132; see also Jörg Binding, *Das Gerichtssystem der VR China*, 109 ZEITSCHRIFT FÜR VERGLEICHENDE RECHTSWISSENSCHAFTEN [GERMAN JOURNAL OF COMPARATIVE LAW] 153, 177 (2010).

¹¹⁵ Zuigao Renmin Fayuan Guanyu Renmin Peishenyuan Canjia Shenpan Huodong Ruogan Wenti de Guiding (最高人民法院关于人民陪审员参加审判活动若干问题的规定) [Provisions on Several Issues Relating to the Participation of People's Assessors in Adjudication Activities] (promulgated by Sup. People's Ct, Jan. 12, 2010, effective Jan. 14, 2010) art. 14 (Chinalawinfo), selection from the list of people's assessors is done by the people's court "for example though a computer-generated method" [采取电脑生成等方式].

¹¹⁶ He, *supra* note 15, at 744 (He reports that "some judges even made explicit which assessors should be called in for a specific case, since working with them seemed pleasant and efficient"). According to Jörg Binding, *supra* note 114, at 199 n. 238, the selection takes place basically at random, with judges increasingly calling in people's assessors on the basis of their professional qualifications.

¹¹⁷ It is unclear whether this requires the compilation of a special list of assessors with the relevant expertise (with the subsequent question being procedure for the appointment of such assessors) or whether the (general) list of assessors should be supplemented with information about the expertise of assessors.

¹¹⁸ SPC Assessors Interpretation, art.3, para.3. See also SPC People's Assessors Provisions, art.5, where such a random selection is allowed from the pool of people's assessors with the relevant expertise (without explicitly requiring that these assessors be selected from a list of assessors).

¹¹⁹ SPC Assessors Interpretation, art.3, para. 2.

¹²⁰ People's Assessors Law, art.24. This regulation, under which the upper limit of cases per people's assessor must be determined "rationally" [合理], apparently applies to every people's court at the different levels.

¹²¹ SPC Assessors Interpretation, art.17. The provision, which is directed to intermediate and basic people's courts only, also requires reporting the upper limit of cases determined "rationally" by the individual courts "in light of actual circumstances of the court" to the high people's courts.

¹²² Chinese: "陪审专业户." See He, *supra* note 15, at 743. The SPC Reform Report, *supra* note 3, there section 2 (2), para. 3, speaks of "people's assessors stationed in the courtroom" [驻庭陪审员].

needs, but for whom there are no permanent posts available, as people's assessors.¹²³

D. Working Methods of Panels

To date, the 2006 version of the Organic Law of the People's Courts has presumed (in keeping with the Soviet system of people's assessors) that judges and people's assessors have equal rights.¹²⁴ In practice, however, such a state of equality can scarcely be realised, as judges typically have better knowledge of the law and can also better inform themselves about the facts of the dispute through their access to files.¹²⁵

Like judges, people's assessors are (to date) responsible for ascertaining the facts of the case and applying the law.¹²⁶ Trial reforms since 2015 have, however, allowed for deviation from this formal equality between lay judges and professional judges.¹²⁷ Article 2 Paragraph 2 of the People's Assessors Law now permits such a deviation to the extent that it is established by law.¹²⁸

The presiding judge of the panel occupies a special position.¹²⁹ He has duties to instruct and inform the people's assessors,¹³⁰ but must not hinder the

¹²³ Nils Pelzer, who shadowed the work of a Chinese court in 2014, reported to the author on this practice.

¹²⁴ Article 37 para. 2 of the 2006 version of the Organic Law of the People's Courts; *see also* Civil Procedure Law, art.39, para. 3.

¹²⁵ *See He, supra* note 15, at 741 ("While the law states that lay assessors are vested with the same rights as judges, it was clear that they did not have access to the case dossiers. Often they had not been able to learn enough about the cases, and consequently had to figure out elements while simultaneously listening to the testimony and dialogues during the trial.")

¹²⁶ People's Assessors Decision, art.11, para. 1; SPC Collegial Panel Provisions, art.1; SPC People's Assessors Provisions, art. 7.

¹²⁷ According to Qiu Qunran & Yan Chen, *supra* note 14, at 176–83, the trial reforms endeavoured to limit the people's assessors to fact-finding. In Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Shouquan Zai Bufen Diqu Kaizhan Renmin Peishenyuan Zhidu Gaige Shidian Gongzuo de Jueding (全国人民代表大会常务委员会关于授权在部分地区开展人民陪审员制度改革试点工作的决定) [Decision of the Committee of the National People's Congress on Authorizing the Implementation of the Pilot Programme on the Reform of the System of People's Assessors in Certain Areas] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 24, 2015) 2015(3) STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 654, the Standing Committee authorised the SPC to seek reform and specified that article 37 of the 2006 version of the Organic Law of the People's Courts, Civil Procedure Law, art. 39 para. 3 and People's Assessors Decision, art. 11 para. 2 *inter alia* are "applicable in provisionally modified form" [暂时调整适用] in the people's courts of ten provinces and municipalities directly under the Central Government.

¹²⁸ Article 34 of the 2018 version of the Organic Law of the People's Courts just stipulates that people's assessors participate in the collegial bench to try cases "according to the law". *Cf.* People's Assessors Decision art.1, which provided for an exception to the equal status of judges and people's assessors only in the case of the presiding judge.

¹²⁹ The presiding judges [审判长] are determined by the court president [院长] or the head judge of the division [庭长]. On the functions of the court president and the head judge of the division, *see* Jörg Binding, *supra* note 115, at 170–71

¹³⁰ More specifically, SPC Assessors Interpretation, art. 4 stipulates that, after people's assessors are determined, the people's court shall inform the people's assessors participating in the trial and the alternate people's assessors of the "cause of the case" [案件案由], the name or title of the party, the place and time of court session and other matters.

people's assessors' independent evaluation of the case.¹³¹ He must explain to the people's assessors the factual and legal problems involved in the panel's deliberation of the case.¹³² Courts also have the obligation "to provide conveniences" for their consultation of case files.¹³³

The decision is made by majority vote.¹³⁴ Any minority opinion must be recorded in the minutes of the deliberations.¹³⁵ Furthermore, in the event of "serious disagreement"¹³⁶ among the members of the panel, a people's assessor (or a judge¹³⁷) may request the court president to decide whether the case is to be referred to the judicial committee for a decision.¹³⁸

The People's Assessors Law, however, limits people's assessors' voting rights in decisions concerning the application of the law: Whereas people's assessors on three-person panels (made up of one judge and two people's assessors or two judges and one people's assessor) have the right to vote both on factual and legal questions,¹³⁹ people's assessors on seven-person panels (of three judges and four people's assessors) only have the right to vote on factual questions; on legal questions, they are only permitted to express their opinions¹⁴⁰

The SPC Assessors Interpretation elaborates further on the working method of the seven-person panel: it stipulates the obligation of such a panel to produce a list of fact-finding issues prior to the court session, whereby the issues on the determination of facts and the issues on the application of law are differentiated according to the specific case circumstances.¹⁴¹ The interpretation also provides for a rule to resolve cases of doubt: if factual and

¹³¹ People's Assessors Law, art. 20, para. 1.

¹³² People's Assessors Law, art. 20, para. 2 and SPC Assessors Interpretation, art. 12–13. *See also* SPC People's Assessors Provisions, art. 8, in which a corresponding obligation for the "reporting judge" [承办法官] was standardized.

¹³³ SPC Assessors Interpretation, art. 8. Further procedural rights of the assessors are stipulated in Articles 10 and 11 SPC Assessors Interpretation: the right to participate in investigation and mediation of the case and the right to question participants in legal proceedings.

¹³⁴ People's Assessors Law, art. 23, para. 1, sentence 1; People's Assessors Decision, art. 11, para. 2, sentence 1.

¹³⁵ People's Assessors Law, art. 23, para. 1, sentence 2; People's Assessors Decision, art. 11, para. 2, sentence 2. On the minutes, *see also* SPC People's Assessors Provisions, art. 10.

¹³⁶ Chinese: "重大分歧."

¹³⁷ This is new under the People's Assessors Law. Previously, according to the wording of People's Assessors Decision, art. 11, para. 2, sentence 2, clause 2, only people's assessors could make such a request. *But see* SPC Collegial Panel Provisions, art. 7 para. 1 sentence 2, which provides for such a request from the presiding judge.

¹³⁸ People's Assessors Law, art. 23, para. 2. This was already similar under SPC People's Assessors Provisions, art.9.

¹³⁹ People's Assessors Law, art. 21.

¹⁴⁰ People's Assessors Law, art. 22 and SPC Assessors Interpretation, art. 13, para. 2.

¹⁴¹ SPC Assessors Interpretation, art. 9, sentence 1. The facts at issue must be enumerated on the list item-by-item for the reference of people's assessors in a court trial. Article 13 SPC Assessors Interpretation indicates that the obligation to produce the list rests with the presiding judge.

legal questions cannot be readily differentiated, the question is deemed an issue on the determination of facts.¹⁴²

E. Disqualification and Removal from Office of People's Assessors

Regarding the disqualification of people's assessors, the People's Assessors Law refers to the regulations on the withdrawal of judges and people's assessors in other laws.¹⁴³ A special situation for the disqualification of assessors is regulated in the SPC Assessors Interpretation: it prohibits people's assessors to participate in the trial of a case in which they previously served as a people's mediator.¹⁴⁴

The dismissal of a people's assessor before the end of the term in office is permitted under certain conditions.¹⁴⁵ The basic-level people's court that is responsible for the people's assessor is first to examine, together with the judicial administration authorities, whether the requirements for removal from office have been fulfilled; the court president then submits the matter to the Standing Committee of the People's Congress at the same administrative level for a decision.¹⁴⁶

The requirements for removal from office have been met, first, if the people's assessor has submitted a duly justified request to leave the office.¹⁴⁷ People's assessors can also be removed from office if there is an incompatibility with other offices (according to Article 6 of the People's Assessors Law) or if one of the negative requirements for serving as a people's assessor has been fulfilled (according to Article 7 of the People's Assessors Law).¹⁴⁸ A people's assessor's refusal to participate in judicial activities without sufficient cause also leads to removal from office if this refusal affects the proper completion of judicial work.¹⁴⁹ Finally, a people's

¹⁴² SPC Assessors Interpretation, art. 9, sentence 2.

¹⁴³ People's Assessors Law, art.18. *See also* SPC Assessors Interpretation, art. 7. On the exclusion of judges, assessors and defence counsels in general, *see* Sven-Erik Green, *Aufklärungspflichten und Auffangtatbestände – die neue justizielle Interpretation des OVG zu den Befangenheitsregeln für Richter, Schöffen und Verteidiger in China* [On the Duty to Inform and Catch-all Clauses: The New Judicial Interpretation of the SPC on the Disqualification of Judges, Assessors and Defence Counsels], 19 ZCHINR 217 (2012).

¹⁴⁴ SPC Assessors Interpretation, art. 6.

¹⁴⁵ In addition to removal from office, in certain cases disciplinary measures can be taken under People's Assessors Law, art. 27, para. 2.

¹⁴⁶ People's Assessors Law, art. 27, para. 1.

¹⁴⁷ *Id.* para. 1 (1). *Cf.* Guanyu Wanshan Renmin Peishenyuan Zhidu de Jueding (关于完善人民陪审员制度的决定) [Decision on Improving the System of People's Assessors] (promulgated by St. Council, Aug. 28, 2004, effective May 1, 2005, repealed Apr. 27, 2018) art. 17 (Chinalawinfo) (a justified reason was not required from the people's assessor).

¹⁴⁸ People's Assessors Law, art. 27, para. 1, 3. *See also* Guanyu Wanshan Renmin Peishenyuan Zhidu de Jueding (关于完善人民陪审员制度的决定) [Decision on Improving the System of People's Assessors] (promulgated by St. Council, Aug. 28, 2004, effective May 1, 2005, repealed Apr. 27, 2018) art. 17, para. 3 (Chinalawinfo).

¹⁴⁹ People's Assessors Law, art. 27, para. 1(3). *See also* Guanyu Wanshan Renmin Peishenyuan Zhidu de Jueding (关于完善人民陪审员制度的决定) [Decision on Improving the System of People's Assessors]

assessor is removed from office if he violates provisions concerning judicial work or acts unethically for his own benefit if he thereby causes erroneous decisions or other serious consequences.¹⁵⁰

F. Remuneration of People's Assessors

Under the 2006 version of the Organic Law of the People's Courts, people's assessors continue to receive remuneration from their original employer for the performance of their duties.¹⁵¹ Similarly, the People's Assessors Law stipulates that employers may not withhold from people's assessors salaries, bonuses or other social benefits during the period in which people's assessors participate in judicial activities.¹⁵² The relevant people's court must report violations of this rule to the (higher) supervisory body responsible for the employer if the employer does not remedy the situation.¹⁵³

Only for people's assessors who have no wage income were people's courts previously obligated to pay appropriate compensation for the actual number of working days on the basis of the average wage in the administrative district in question.¹⁵⁴ The People's Assessors Law now provides for subsidies to be paid by the people's courts for the actual number of working days regardless of whether people's assessors have another source of income.¹⁵⁵ It is reported that in practice, people's courts already paid people's assessors a lump sum for participation in proceedings.¹⁵⁶

In addition, people's assessors are entitled to reimbursement of expenses that arise from their activities as people's assessors, such as travel and food.¹⁵⁷

Expenditures for people's assessors are financed through the budget of the people's courts and the judicial administration authorities, which is allocated to them by the tax authorities.¹⁵⁸

(promulgated by St. Council, Aug. 28, 2004, effective May 1, 2005, repealed Apr. 27, 2018) art. 17, para. 2 (Chinalawinfo).

¹⁵⁰ People's Assessors Law, art. 27, para. 1(4). *See also* Guanyu Wanshan Renmin Peishenyuan Zhidu de Jueding (关于完善人民陪审员制度的决定) [Decision on Improving the System of People's Assessors] (promulgated by St. Council, Aug. 28, 2004, effective May 1, 2005, repealed Apr. 27, 2018) art. 17, para. 4 (Chinalawinfo).

¹⁵¹ Organic Law of the People's Courts, art. 38.

¹⁵² People's Assessors Law, art. 29, para. 1, 3. *See also* Guanyu Wanshan Renmin Peishenyuan Zhidu de Jueding (关于完善人民陪审员制度的决定) [Decision on Improving the System of People's Assessors] (promulgated by St. Council, Aug. 28, 2004, effective May 1, 2005, repealed Apr. 27, 2018) art. 18, para. 2 (Chinalawinfo).

¹⁵³ People's Assessors Law, art. 29, para. 2.

¹⁵⁴ Organic Law of the People's Courts, art. 18, para. 3.

¹⁵⁵ People's Assessors Law, art. 30, para. 1 (This provision also refers to the "relevant provisions"; it is currently unclear what provisions this refers to).

¹⁵⁶ He, *supra* note 15, at 742.

¹⁵⁷ People's Assessors Law, art. 30, para. 2; *see also* art. 18, para. 1.

¹⁵⁸ People's Assessors Law, art. 31; *see also* Guanyu Wanshan Renmin Peishenyuan Zhidu de Jueding (关于完善人民陪审员制度的决定) [Decision on Improving the System of People's Assessors] (promulgated by St. Council, Aug. 28, 2004, effective May 1, 2005, repealed Apr. 27, 2018) art. 19 (Chinalawinfo) (Art. 31 sentence 2 of People's Assessors Law offers the prospect that the SPC and the

III. CONCLUSION

Through the People's Assessors Law, the Chinese legislature is pursuing the goal of bolstering the legitimacy and acceptance of court decisions in the eyes of the public through people's assessors' participation in deciding cases as lay judges. This is demonstrated not only in the regulatory purpose explicitly stated in the People's Assessors Law, but also in the groups of cases for which the participation of people's assessors is required: these are not cases that require expertise on the part of the people's assessors, but rather cases that can be expected to have a major or serious impact on society.¹⁵⁹ However, by introducing a list of people's assessors with relevant expertise the SPC unmistakably endeavors to give Chinese assessors a role more comparable to honorary judges in commercial courts in Europe. The notion of legal education of the public is evidently not of concern to the legislature either¹⁶⁰, but such an approach appears to be more realistic given the total proportion of people's assessors in the general population.

With regard to qualifications, the law seeks to expand the circle of candidates for the office of people's assessor by reducing the educational requirements from a university degree to a higher education entrance qualification. At the same time, however, the minimum age of lay assessors has been raised, so that they can be expected to have at least a certain amount of life experience.¹⁶¹

This approach is also pursued in the appointment procedure, which is no longer dependent on the candidate's own application or their recommendation, thereby expanding the number of candidates. It should not be overlooked that the legislature is at the same time also making an effort to foster trust in the justice system in that people's assessors are now supposed to be more reflective of the public than was previously the case: now only 20% of people's assessors may be chosen through their own applications or a recommendation, with the other 80% selected from the general population at random.¹⁶² In light of the problems that have already been identified in the phase of trial reforms since 2015, it will be interesting to observe whether a sufficient number of randomly selected people will be available for the office of people's assessor. This could be positively influenced by the fact that the people's courts now have to pay an allowance regardless of what other income people's assessors have, and that the tax authorities have to allocate

judicial administration department of the State Council will decide on a concrete procedure together with the finance department of the State Council. At least until the adoption of such a procedure, it remains open whether the costs of people's assessors are to be borne by the courts or the judicial administration authorities).

¹⁵⁹ People's Assessors Law, art. 31, para. 2(3).

¹⁶⁰ See *supra* Section I.

¹⁶¹ See *supra* Section II.A.

¹⁶² See *supra* Section II.B.

budgetary funds to the courts for this.¹⁶³ For lay assessors with a regular income, however, the problem remains that not every employer will like having to keep paying their employee (as a people's assessor) while the employee is not at work.

Similarly, it is probably with an eye to trust in the judiciary that people who commit violations of discipline or whose names appear on the list of dishonest judgment debtors have now been excluded from serving as people's assessors.¹⁶⁴

The composition of panels for civil and administrative proceedings is regulated for the first time in the People's Assessors Law.¹⁶⁵ However, some issues remain unresolved. For example, the wording of the law leaves open whether collegial panels with five, nine or more members will be permissible in the future, for the People's Assessors Law only regulates that panels including people's assessors must be composed of either three or seven members. Of course, the People's Assessors Law cannot make any statement about panels made up exclusively of judges. However, because no other regulations of civil and administrative proceedings exist, it is conceivable that five- or nine-person panels will continue to decide cases if these panels are made up only of professional judges.

What also remains unanswered is the question of who within the courts is to decide on the size of the panels and decide whether people's assessors are to be included in it in accordance with the provisions of the People's Assessors Law. If, however, one follows the literature¹⁶⁶ in assuming that the judge who heads the division is responsible for this, a further question arises as to how he will be able to delimit the appointment of three- or seven-person panels according to the People's Assessors Law criterion of whether it is a case with a "comparatively major" or "serious" social impact. In many cases, he will have to draw up a prognosis for the future if not provided with additional criteria for delimitation (for example, in a further judicial interpretation). In a certain sense, requiring these proceedings to include people's assessors stands in contradiction to limiting the number of cases that a people's assessor is permitted to take part in per year¹⁶⁷: the legislature cannot actually seriously assume that once the annual case limit (i.e. up to 30 cases at intermediate and basic people's courts) has been reached, no additional cases with a major social impact will take place that year.

The decision on the size of the collegial panel is significant for the working methods of panels composed of judges and people's assessors: in the large panel, people's assessors are entitled to vote only on questions of fact,

¹⁶³ See *supra* Section II.F.

¹⁶⁴ See *supra* Section II.A.

¹⁶⁵ See *supra* Section II.C.

¹⁶⁶ See *supra* note 114.

¹⁶⁷ See *supra* Section II.C.

not on questions of law.¹⁶⁸ For future research, this raises the compelling question of whether there are models in other countries for such a differentiated participation of lay judges in judgments.¹⁶⁹

In any event, no ground for this differentiation can be found in the legislative material available. The Standing Committee's 2015 reform plan envisaged that cases should increasingly be decided by panels with at least three people's assessors, as this held out the promise of more active participation of people's assessors in judgments.¹⁷⁰ It was apparently expected that people's assessors would be more likely to comment on cases if they outnumbered the judges on the panel.¹⁷¹ At the same time, the reform plan states that there should be a gradual shift away from having people's assessors judge legal issues and towards having them only judge factual issues.¹⁷² The grounding of this shift employs somewhat euphemistic language when it states that the advantage of people's assessors' wealth of knowledge about the perceptions and views of society should be harnessed to increase the public's acceptance of court decisions.¹⁷³ What can be read between the lines, however, is that people's assessors are (in many cases, probably rightfully) not trusted to judge legal questions.¹⁷⁴

In its 2018 report on the results of trial reforms, the SPC proposed the regulation that has now become the law.¹⁷⁵ However, the report does not address why the reform plan to limit the voting rights of people's assessors is not to be implemented for "small" bodies. Apparently, the SPC assumes that people's assessors in a three-member panel would tend not to actively take part in decision-making; this applies all the more so given that the wording of the regulation makes it seem entirely permissible to appoint two judges and one people's assessor to such a panel. In this regard, the People's Assessors Law is a further example of an approach that is frequently observed in China:

¹⁶⁸ Whether it will always be possible in practice in these large panels to distinguish between questions of fact and questions of law remains to be seen. Qiu & Yan, *supra* note 14, at 177–83, which recognizes this difficult delimitation in the Chinese legal system. It will also be interesting to observe the effects of the rule on resolving cases of doubt introduced recently by the SPC Assessors Interpretation.

¹⁶⁹ For a concise comparison with the jury system under (US) common law, see Qiu & Yan, *supra* note 14, at 180–83.

¹⁷⁰ See Reform Plan, *supra* note 2, section 2 (4), para. 2.

¹⁷¹ The SPC reaches this conclusion in its Reform Report. See SPC Reform Report, *supra* note 4, section 2 (2), para. 2.

¹⁷² See Reform Plan, *supra* note 2, section 2 (5).

¹⁷³ See Reform Plan, *supra* note 2, section 2 (5).

¹⁷⁴ Qiu & Yan, *supra* note 14, at 181, explain that due to the "traditional belief in authority" in China "[w]ith thousands of years passed, a sudden *de facto* judgement from lay assessors would shake the foundation of the community's long-lasting reliance on the national judicial system [. . .]". However, this explanation does not take into consideration that the concept of judges and people's assessors having equal rights (and the assessors' participation in court decisions by voting on questions of law and not only on questions of fact) was introduced already in 1954, when the first version of the Organic Law of the People's Courts was promulgated. They can also not explain, why assessors are allowed to vote on questions of law in three-person panels, but not in seven-person panels.

¹⁷⁵ See SPC Reform Report, *supra* note 3, section 2 (2), para. 2.

the legislature wishes to strengthen a legal institution because this could lead to a result that is desired by the state (legitimacy and acceptance of the administration of justice), but fears making this institution too powerful due to a lack of trust in it. It is thus to be feared that people's assessors in China will continue to have to resign themselves to a role of mere window-dressing.¹⁷⁶

¹⁷⁶ He, *supra* note 15, at 760, reaches this conclusion before the entry into force of the People's Assessors Law, as does the self-assessment of a people's assessor in Landsman & Zhang, *supra* note 13, at 209.