

## RESEARCH ON CHINA REGISTRATION SYSTEM REFORM OF THE CIVIL PROCEDURE

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### ABSTRACT

*Although it is only one part of the huge judicial system, the case filing system is one of the key links, which people can use to successfully enter the judicial channels to advocate and maintain rights. Therefore, in order to improve the fairness and justice in each case, China shall start from the existing national conditions and base on the current judicial practice to find out a proper case filing system, which has also become an inevitable proposition of judicial reform at present. However, it must be seen that the registration system is not only a simple problem regarding petition registration, but also a fundamental procedural problem based on the viewpoints on the relationship between "suit" and "case". Since the relevant judicial procedure and system has not yet been transformed in this respect, the existing legislation and judicial interpretation and registration system are not completely matched with each other. It's important to discuss the possible further improvement of the registration system.*

**Keywords:** case filing system; examination system; registration system

### INTRODUCTION

With the successively promulgation and implementation of "Interpretation of the Supreme People's Court on the application of the Civil Procedure Law of the People's Republic of China", "Opinions on the implementation of registration system reform in the people's courts of China" and "Provisions on Several Issues Concerning Registration of people's courts of China", China's civil case filing system has turned comprehensively from examination system to registration system.

#### **Analysis of the examination system and registration system**

Generally speaking, case filing refers to the procedure that the court officially acknowledges a suit from the plaintiff as a case belongs to certain court. The external symbol of the official acknowledgement is to offer a reference number for the case, which means the court actually accept the suit and will conduct legal process according to civil procedural law. So as a research subject, filing system should not be superficialized as the procedure of obtaining a reference number, it contains a series of questions about the process and especially the preconditions on how a suit accepted as a triable case. From another point of view, as the formal destination of filing, a reference number serves not only as the identity card of the case, but also the procedural sign for the distinguish between "case" and "suit". That is to say, if the litigant's "suit" can not get the reference number of the court, then it can only stay at the level of "litigation", rather than the formal case of the court. If the case is likened to the door of the court, then the reference number is the permission to enter the door.

Different gate settings, door conditions and processing methods after entering the door are certainly the reflection of the relationship between the right of action and the jurisdiction, but more important, they are a reflection of the relationship between the judiciary and society.

In general, the modern filing system can be divided into filing review system and filing registration system: the filing review system requires examination of substantial elements in the filing stage, mainly including the suit-case mode and triable-case mode, whereas the registration system embodies the complaint mode.

### ***Two modes of filing examination system***

The filing examination system generally includes suit-case mode and trial-case mode. In the suit-case mode, party's suit itself is the critical factor for case filing. If there is a suit, then there should be a corresponding reference number, turning the suit into a case. Although the suit-case mode asks party to submit a petition to court, the court shall also review party's suit besides the petition. Therefore, "what the suit should be" becomes the key link in case filing. In the field of jurisprudence, the concept of suit gives rise to lots of discussions and controversies. Surround the meaning of suit, many theories like "compliant theory", "system theory", "means theory", "behavior theory", "statement theory" have emerged. While with the respect of the component of suit, there are "two factors theory", "three factors theory" and "four factors theory".<sup>1</sup> The comprehensions of the legal regulation about case filing are also uncertain. Mainly because the different interpretations of the four conditions of case filing that regulated by the Article 119 of "The Civil Procedure Law of the People's Republic of China". Due to the uncertainty of the suit, the party's suit in the suit-case mode only can initiate the court's review and cognizance, party can't finish case filing independently. On the one hand, court's review may intervenes party's right of suit. But on the other hand, the possible intervention is necessary and legitimate due to the uncertainty of the concept.

The context of the so-called triable-case mode is the complexity and diversity of social disputes. Some of them may have legal significance and the value to trial and moreover, they can be actually solved by litigation, whereas others are not. Therefore, the transformation from the social dispute to the trial case is not that simple. From a substantive standpoint, it also relates to whether the two different types of social field can be connected and matched. Although it is said that the legal action always derived from some kinds of disputation, and resorting to court means that people consider litigation as an appropriate and effective way to resolve the disputes. However, whether the civil litigation is suitable for the dispute resolution, needs to be evaluated independently. After all, the "suit" from Plaintiff obviously should not be a single converter of dispute transferring into case. So here arise the difference between suit-case mode and trial-case mode.

From another perspective, because of the social conditions and their own limitations, the court's jurisdiction has its inherent limits and scope, which prevent it to have the capacity for dealing with all kinds of social problems. Even during some specific time period of our country, which our law assigns tasks that the court unable to handle at all, and it inevitably lead to formalized trial after the court was forced to do so. Taking all these objective circumstances into consideration, some countries adopt the triable-case mode. That is, the court only accepted the case which court have the condition and ability to hear, therefore, the court ought to review the "suit" and meanwhile weigh its trial ability combine with the "suit" at hand. Triable-case mode is the typical pattern of authority doctrine, although from a

<sup>1</sup> Tang Weijian (2014), *Civil procedure law (the second edition)*, Peking University press, 42.

practical perspective, it has some positive significance, but also broke the balance between the right of legal action and the jurisdiction of the litigation right, which make the right of legal action significantly subject to jurisdiction. In summary, the triable-case mode becomes a controversial issue because of its contradiction to the modern judicial idea.

### ***The mode of registration system***

The registration system adopts complaint mode. It refers to the case that the court submits the case as long as the party submits the complaint to the court. This form of filing is mainly by registering the complaint in the registration book and obtaining the reference number so as to become turn into the case of the court.

The complaint mode puts forward some formal requirements for filing cases, but there are two different views on whether the formal requirements affect the court's giving reference number to form a case: one view is that if the complaint does not conform to the requirements prescribed by law, the court shall dismiss the complaint as well as the reference number of registration. Only in line with the statutory requirements of the complaint, can the court give the reference number to make the case registered. Another point of view is that, whether the litigant's complaint meets the legal requirements, the court should register the reference number, even though the court may reject or decide not to accept the complaint afterwards. But the rejection of a complaint is made on the condition that the suit is a case belongs to the court, which, in return, means it should have a reference number. If the court does not register the complaint just because it does not meet the requirements, then the court also need to set another case-number-system separately while rejecting or deciding not to accept the case. Obviously, it is less convenient and feasible than registration at the first place.

### ***Summary***

Registration mode is not merely a theoretical concept, but a summary of judicial reality, each of which has its social background and institutional significance. The suit-case mode and triable-case mode and complaint mode are called different patterns, not because some lacks the content of another pattern, but because the content of the procedure is different before the case is obtained. Regarding the time of getting the reference number as the dividing line, the content required before filing shows different forms, but as far as the proceedings are concerned, there is no substantive difference. Any trial of a case must go through the submission of the complaint, the court's review of the suit, the review of whether the trial can be done, and so on. At this point, there is no difference between the three modes. In other words, the basic content of the whole proceedings is the same, but because of the different time point of observation, the content of filing procedure is also different. This is also the manifestation of the transformation from the case filing examination system to the filing registration system in China's civil procedure.

It is because of the lack of substantial difference on the content of the program between the different legal modes, the significance and value of model is mainly reflected in the program and form. If we try to solve the substantive problem of judicial procedure with this, we still need to pay more attention outside the procedure of filing a case; conversely, in reality, different filing modes may cause substantive differences in litigation procedures and the protection of the rights of parties. This difference is not simply from the so-called registration model, but from the relevant provisions of the mode. Therefore, the change of the filing mode is manifested in the form of procedural changes in a large extent, and its meaning and value should be combined with the relevant supporting system, which should also be a theoretical basis and logical starting point for discussing the registration system.

## **The Rational evaluation of the significance of the registration system**

The main reason for our national system is to strengthen the procedural safeguard function of the case, and to solve the problem of the so-called "difficulties in case filing." That's why our country tends to change the review system for case filing into the registration system for case filing. But it should be realized that the root causes of our problems that exist in the registration process are intricate and complex. It comes from not only the filing link, but also from other factors. We need rational thinking, if we want to reform the registration system and solve the problem that impede upon its theoretic value.

### ***The debate on the review system for case filing***

The long-term application of the review system in China has been criticized, and is also considered to be the main cause of the "difficulties in case filing." But it should be realized that the resisting problem of "difficulties in case filing" in China, in most of the cases, is not the simple legal and procedural issues, but the natural response of social problem in civil procedures. Under the special social situation in our country, many disputes need to be solved. The public and academic are looking forward to court to take the responsibility, but unfortunately, because of the subjection to the authority and ability, the court is unable to undertake this task. In this way, long-term adherence to the "reviewed" case mode and substantial review of cases could be a rational and pragmatic choice. Even so, in judicial practice, it is not the common phenomenon in the case of ordinary cases, but the special phenomenon in the case of special cases. The key problem of those "difficulties in case filing," in most of the cases, happens out of the court. It is a tacit knowledge that both the parties and the court know the fact and even some of the arguments that encourage courts to rule out interference. On this occasion, it is "a specific case" that is the reason why a particular case has "difficulties in case filing". If a particular case cannot be eliminated from the level of society, it brings up series of following problems on trial, even though the review of case filing is forcibly denied and the registration of complaints is carried out.

To carry out the complaint, the complaint shall be received and a case shall be registered and docketed. If a new problem of "difficulties in trial" or "no trial" is to be resolved after the resolution of problems of "difficulties in case filing," the significance of the registering system shall be greatly reduced.

Therefore, whether the case has been reviewed or not is not the root cause of the problem of "difficulties in case filing." In any system for case filing, a review for the case filing is necessarily required. Under the registration system for case filing, there is no substantial review before the registration, and the content of the review is not reduced after the registration. The review itself is not in conflict with case filing. Although the registration system for case filing can solve the problem of particular cases formally, there is also much more work to be done in order to resolve the entity disputes involved in particular cases through legal procedures.

### ***The registration system for case filing and the procedural safeguard***

Under the review system for case filing, after receiving the complaint, the court shall firstly review the case before filing it. The day of case filing is the end of the filing procedure. The whole review happens before the case, so it is a typical case of external procedure, which lacks of openness, standardization and procedural guarantee. In the registration system for case filing, the registration of complaint means that you get the reference number and are able to docket the case. If it is just a cut-off point for getting a reference number and docketing, then the content of the review was more heavy and complicated in the review system

compared to the registration system, which has almost no substantial examination content. But if we put perspective on the whole civil procedure, there is no difference between both. After the complaint was registered, the subsequent work is to carry out the relevant instituting condition and trial condition, etc. In this perspective, the difference between the review system for case filing and the registration system for case filing is not review itself or the content of review, but the time period of the review -- one is the review before the case, and the other is during the case. In the system of review and filing of cases, the review occurs before the court docket the case. Logically speaking, there is no case before case-filing. The existence of the review beforehand is formally denied by the formal procedure and makes itself a prior procedure. And in this way, its legitimacy or justice is easily overlooked as a "grey area" or "grey program".<sup>ii</sup> Review before case filing becomes the domain of the court's self-talk for its unrecognized nature. For the parties, the review system for case filing seems so secretive that they cannot participate in and get the procedural guarantees. When the court does not docket cases immediately, the parties could get into a misunderstanding, and the court does not give them the chance to express their views which brings about the problem of "difficulties in case filing" in concept.

However, the registration system for case filing is quite different. The registration of complaint represents for the filing of the case and all of the review tasks are carried out after the procedure of case filing with no more prior procedures. At this time, the parties involved in the dispute get the nature of procedural participation, and have been converted into the parties of the procedure. The relevant review tasks must be run in accordance with the principles and rules of the procedure as it is incorporated into the formal procedures. In this way, the procedural guarantee can be highlighted. Certainly, what should also be emphasized is that, it could not be realized naturally during the changing process from the review system for case filing to the registration system for case filing. The function of the procedure guarantee needs relevant supporting measures. If relevant supporting measures are lacking, such as the hearing of the review, the registration system for case filing can only be of formal significance which just changes the time period of the examination. In addition to the doctrinal concepts such as procedural jurisprudence, the real value is questionable. In fact, in the legislation of countries and regions implementing the registration system, there are relevant provisions for the case examination except that the examination is combined with the procedural safeguards of the parties concerned. In some areas of elementary court, for example, in the small claims court, youth, some cases involving in interpersonal relations, with a case of hearings, examine the reasonability of the lawsuit reason, then decide whether to accept the complaint. Hearings could sometimes be informal talking and sometimes be court trial of legal procedure.<sup>iii</sup>

### ***The court and the registration system for case filing***

Generally speaking, civil procedures can be divided into two parts, namely, filing process and trial. Corresponding to this, the court sets up a case filing chamber and a tribunal chamber in the agency system. Although the division of labor in the two chambers cannot be easily divided into the above functions, it basically seems that the case filing chamber is responsible for accepting an action and the substantial trial business is held by the tribunal chamber. However, in the review of the procedure for case filing, some procedural tasks are also included, such as the supervisor's jurisdiction and the eligibility of the parties. Therefore, there is a view that this practice doesn't conform to the true separation of case filing and trial.

<sup>ii</sup> Zhang Weiping (2004), *The important elements of prosecution and substantive decision*, law research, No. 6.

<sup>iii</sup> Sally Ingres, Merry (2007): *The lawsuit words -- The legal consciousness of life in the bottom of the people in the United States*, Guo Xinhua, Wang Xiaobei, Wang Ping, Peking University press, 43.

The function of the case filing chamber and the procedure for case filing is to register the instituting after formal examination and then transfer the case to the tribunal chamber. And then, to realize separating the formal items of registration issues from the judgement items of procedural and substantial issues.

The real separation of case filing and trial should be the instituting of the case after the formal examination and transfer the full judicial power to the tribunal chamber.<sup>iv</sup>

We can't agree with this point that the main function of case filing chamber is to help distinguish cases which are suitable to be heard by the tribunal chamber. That is to say, after the case coming to trial, the tribunal chamber will only have to hear the entity dispute. It needn't to be considered whether the case is proper in procedure, and it is also a good idea to avoid the waste and the reply of the procedure. For example, after the jurisdiction has been established, the phenomenon of jurisdiction transfer will disappear due to the error of the jurisdiction. That is to say, the division of the case filing chamber and the tribunal chamber is between the procedure trial and the entity judgement, not between the examination and the trial. That is why we called the institution of case filing "the case filing chamber" rather than "the case filing bureau" during the reform. From another perspective, the trial of procedures is the inherent content of the civil procedures, which essentially differs from the trial of entity dispute. On the one hand, it is beneficial to form the professionalization of the trial of procedure, and on the other hand, it is also beneficial to the court to focus on the entity judgement. At the same time, possible conflict of judgement made by different tribunal chambers can be eliminated if the case filing chamber takes responsible for the trial of procedure. At this point, it is a truth that the case filing chamber is responsible for procedural matters, and the civil trial is divided into different business chambers according to different fields. Moreover, it is formal judicial personnel who work in both case filing chamber and the tribunal chamber, even the personnel of the case filing chamber only work in the registration, then, there is no substantial difference for the existing redundant personnel of case filing chamber between working in the case filing chamber and transferring to the tribunal chamber. Therefore, the registration system for case filing only functions in the part of simplifying the heavy case work into a single complaint registration. In terms of the overall content of the docketing of cases, there is no substantial difference between the registration system and the review system for case filing. There are still a lot of procedural tasks after the registration with reference numbers to turn the suit into a case.

In a word, the review and trial work of case filing chamber will not be reduced after the practice of the registration system for case filing, on the contrary, the task will be more heavy with the reduction of the threshold for case filing and the reinforcement of the procedure guarantee. The opinion doesn't see the constant inevitability of the content for the procedure of case filing in any modes that case filing chamber only takes responsibility of the so-called registration procedures the after filing registration system reform.

#### **“A complaint must be docketed”: The core of the registration system for case filing**

The currently "difficulties in case filing" occur, when the plaintiff can not get the suit registered after submitting the complain. The most prominent phenomenon is the court sometimes refuses to receive materials, to reply, or to offer any interpretation through legal documents. This phenomenon stimulates the implementation of the registration system in China. In fact, “Interpretation of the Supreme People's Court on the application of the Civil Procedure Law of the People's Republic of China”, “Opinions on the implementation of

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<sup>iv</sup> Fu Yulin (2011): *The function and structure of civil procedure in China*, The Jurist, No.1.

registration system reform in the people's courts of China” and “Provisions on Several Issues Concerning Registration of people's courts of China” emphasize the principle together, namely, the court must accept the material and register the case as soon as their receive the complain, so that there is no room left for the court to remain silence and refuse to give any respond like before.

### ***The reference number is a sign of registration***

Although the registration system will link the register and on file together, there is no natural relationship between registration and docketing. From the formal point of view, the registration is the court to accept the party's complaint, and to register it on the registry. If the registration can not enable the “suit” to obtain a reference number, so the registration has only a documented function in the proceedings, rather than procedural meaning. And the "suit" that has not been registered as a case is still wandering outside of the court procedures, and has not been turned into a procedural "case". In this sense, the registration of the complaint is quite different from the court filing. But obviously, this is a misleading perspective that we should avoid in understanding or carrying out the registration system for case filing. Otherwise, the registration system for case filing would be dissimilated to the registration system that has no function for the transmission from “suit” to “case”. This misunderstanding will impair the system’s value and also leads to the risk of returning to the old path.

As said before, the basic and ultimate point of the registration system for case filing is to docketing the cases. As an abstract phase in the proceedings process, the filing of cases must be externalized into concrete measures to play a practical role. Specifically, the behavior of the registration count as the specific process measures in registration system for case filing. And if we want to make the registration have the expected effect of docketing, the court should give reference number when accepting the complaint, which could make the "suits" become the "cases". Furthermore, on the litigation procedure, we should achieve the nature integration of function of the registration and docketing. Only in this way, the registration system for case filing can be separated from the review system for case filing and become a powerful tool to protect the right of appeal.

### ***Complaint failing to meet the formal conditions should be rejected after registered***

In the registration system for case filing, if the complaint meets the formal conditions, the court shall register it as a case. However, if the complaint fails to meet the formal conditions, the party should provide supplements and corrections according to relevant stipulation. In our view, regardless of whether the complaint meets the conditions or has been provided supplements and corrections, it has no influence on the registration process. In the circumstance that the court rejects a complaint, it still need to offer a reference number in order to issue official documents. And only when the complaint was registered, a reference number can be assigned. If not, a new reference number is still in need afterwards. In this way, whether the complaint meets the formal conditions or not, assigning a reference number at the beginning is much more efficient.

But shall the court register the complaint and docket a case on the spot, if it is difficult to determine whether the complaint complies with the law or not? All the new regulations have referred to this problem. For example, according to the “Opinions on the implementation of registration system reform in the people's courts of China”, the court shall decide within certain time limit as prescribed in the law. In fact, with the implementation of the registration system for case filing, the threshold of registration and case filing will be observably lowered. And it is generally easy for common litigation to meet the conditions of case filing. In this

association, substantive examination is not necessary, while formal examination also limited to the surface features of the complaint. Therefore, it won't be common that the court face the difficulty to determine whether the complaint complies with the law or not. But when this extreme condition occurs, the registration system for case filing should be conscientiously implemented, and the court shall register the complaint and docket a case without substantive examination. Otherwise, the court will violate the judicial nature of the registration system for case filing. As mentioned before, when the court issues an interrelated legal instrument, a new reference number should be established in any case. Therefore, it is much more efficient to assign a reference number to the complaint at the beginning.

***Another register book: Negative list and evidently inappropriate complaints***

Currently regulations enumerate a negative list of cases that are improper to be registered. If the substantial content of the complaint relates to such matters, the court shall reject to register the complaint. However, the specific procedures are so far not clear. And it is not clarified whether an interrelated legal instrument is supposed to be issued.

With this respect, two methods may be taken into consideration: One is that complaints dealt with the negative list are not supposed to be registered, while the interrelated legal instruments should not be issued. In this view, registration and legal instrument numbers is avoided, which means the cases won't be formed. But some problems may arise instead. This handling is not in conformity with the principles of registration system for case filing. While the registration system is being boosted at present, it is inappropriate for the court to ignore the complaints lodged by the parties. The other path requires that general legal instruments, like notice, need to be issued, while formal legal instruments should not. Although these registrations and legal instruments numbers should be assigned, they are just numbers that handles transactional work, whose functions are very different from those of reference numbers.

In our perspective, if the court is able to determine whether the complaint comes within the negative list or not, the complaint should be written on the other register rather than be registered, and the court inform the parties of handling opinions in writing. If not, the court shall register the complaint and docket a case. After this, the court can only choice to dismiss the action if it finds the complaint comes within the negative list.

Moreover, although the regulations prescribe a negative list of cases improper to be registered and docketed, but did not consider how to handle those evidently inappropriate complaints. The so-called evidently inappropriate complaints are those complaints, like suing aliens, which are effortless for sane persons to determine at first sight without deep thought. If the courts are required to issue legal instruments to this kind of complaints, judicial resources will be absolutely wasted, which is of no necessity. However, if the courts give no response, this treatment may violate the requirement of the registration system for case filing. What needs emphasis is that, with the developing of the society, existential space for negative list, which exists a product of certain historical conditions, will be gradually limited and even eliminated. But those evidently inappropriate complaints will always be there. The purpose of the trial is to protect the right of the parties and the proper development of the judicial proceedings. With the level of rule of law improved, it will be a normal condition that the court ignores those evidently inappropriate and nonsensical complaints.

## **Advices concerning specific rules**

### ***Complaint procedure***

The registration system for case filing is mainly manifested as the registration system of the complaint. Only those complaints meeting legal requirements, not all complaints, can be registered. Therefore, it's unquestionable that the society should be told the legal complaint procedure, under which the parties' complaints would be registered. Otherwise, the court and the parties will get tangled up in the registration process, influencing the implementation of the registration system for case filing. The so-called complaint procedure refers to the written form of the complaint and work process of the court. Complaint procedure shall be clearly provided by legislation, judicial interpretation and model instrument or litigation process guidance of the Supreme People's Court. And complaint procedure shall be formatted, standardized and explicit so that any normal person is able to determine whether the complaint meets legal requirements by comparing it with the complaint procedure. Only in this way can superficial examination by the court be of feasibility. Certainly, if the conditions permit, the court may also make a unified form of the complaint, while the parties are only required to fill out the form. For oral prosecution, the court's litigation service center should assist the parties in writing complaints meeting the legal requirements.

### ***Registration on the spot***

In the review system for case filing, after accepting a party's complaint, the court will go through certain procedures for acceptance or registration, showing that it has accepted the complaint. Then the court starts reviewing the complaint and determines whether it should docket a case. From accepting the complaint to docketing a case, a certain time lag is set apart for the court to review the complaint, which is inevitable requirement and essential condition of the review system for case filing. Otherwise, even though a review to the complaint is required by law, the time for the court to do a review is still not enough. In the process of changing the review system for case filing into the registration system for case filing, some courts have some practices that do not meet the requirements of registration system, partly because of the long-term thinking inertia before. But one reason must be underlined is that above-mentioned time lag set apart objectively provides procedural space for the court to review the complaint. In the real registration system for case filing, the acceptance of a complaint and the registration of a case are usually two aspects of one thing. That is, the registration is just the form of the acceptance of a complaint, while getting a reference number and docketing a case are just natural result of the registration of a case. Procedural space doesn't, and is not necessary to, exist between the acceptance of a complaint and the registration of a case.

To completely carry out the registration system and leave no procedural space for reviewing, registering and docketing a case on the spot is required in the registration and docket procedure. The so-called "on the spot" has both the time requirement and the space requirement. Temporally, the courts is required to accept the complaint, examine it simply and superficially, register the case, and assign the reference number, which is a centralized and coherent procedure process. Spatially, the acceptance of the complaint and case-filing register should be conducted in the reception office of the court publicly. All the procedural matters concerning file registration system should be accomplished in the front of the party and on the spot, for fear of leaving the time and space for substantial examination and improper interference, much less for finding reasons of rejecting the complaint.

Simultaneously, it should be aware of that the most obvious procedural difference, between the review system for case filing and the registration system for case filing, is whether the court can directly docket a case after the party files a complaint. If the court shall make a

decision after a certain time lag rather than directly docket a case, the boundary between the registration system and the review system will be difficult for the parties to distinguish in the appearance of the filing procedure, even though the substantive examination is not required. The social effects of registration system for case filing will be greatly reduced in this way. If the court takes a superficial examination and finish a series of registration work in front of the parties, they won't feel the problem of "difficulties in case filing", the time spent on registration stretched though. In this significance, registration on the spot also has the special effect of strengthening the difference between the registration system and the review system, which makes the effect of registration system in judicial practice more prominent.

### ***The procedure after registration***

In the registration system for case filing, a complaint will quickly and simply enter into judicial proceedings, while the details examined out of procedure in the review system for case filing will be incorporated into judicial proceedings. And this is exactly the essence of the registration system. Consequently, case registration and docket only means that the court has finished the surficial review, while further examination is needed to determine whether the case complies with the requirements of litigation and then becomes a case for trial.

Generally, requirements of litigation refer to three aspects. The first aspect refers to the jurisdiction and qualification of the court. The second aspect refers to capacity of party, capacity to action and the right to conduct litigation, mainly dealing with whether the parties can participate in the litigation. The third aspect refers to litigation object, dealing with the justiciability, legality of lawsuit, litigation dependency, res judicata and right protection demand of the right claimed. When the case is incorporated into judicial proceedings, the court needs to conduct a substantive review over the right of the party. In this period, the court should ensure that both parties participate in the proceedings, make necessary statements and debates on the qualification of the case. To acquire lawsuit material, Germany law combines adversary system with exofficio system. According to Germany law, for one thing, if the court is unable to determine whether the case complies with the requirements of litigation, interpretation power can be exercised to urge the parties to submit relevant materials, but the court shouldn't collect materials by itself on authority. For another, the judgment of the court is not subject to self-admission, nor does it impede the authority of the court to identify the facts different from self-admission by evidence investigation. Connecting with the reality of China, if the court reviews the case registered and docketed and determines that the case doesn't meet the requirements of litigation, a hearing shall be hold so that the party can make necessary statements and debates on the qualification of the case. If the court determines that the case doesn't meet the requirements of litigation indeed, the case should be dismissed in the form of a ruling. If the party refuses to accept the decision, he has the right to appeal.

### ***Refusing to accept an action and dismissing an action***

"The Civil Procedure Law of the People's Republic of China" prescribes two methods of ruling, refusing to accept an action and dismissing an action, aimed at complaints which do not conform to the constitutive requirement. Within the case-filing register system, the court's refusing to accept an action could just be applied preceding the registration of complaints because the registration implies acceptance. But as mentioned above, there are just two kinds of circumstances of complaint, to register or not, so actually the ruling that refusing to accept an action doesn't had space to apply. If the court finds out that the completed registration of compliance was improper which was not supposed to register and put on record, it can just dismiss the action. "The Civil Procedure Law of the People's Republic of China" prescribe

that the dismissing could be appealed, but within the case-filing register system, under circumstances that complains are dismissed because of impropriety in form simply or lacking of required revision, parties only need to revise complaints formally in conformity with requirements instead of appealing where legislative text are supposed to revise.

## REFERENCES

- [1] Merry, S. I. (2007). *The lawsuit words -- The legal consciousness of life in the bottom of the people in the United States*. Guo Xinhua: Wang Xiaobei, Wang Ping, Peking University press.
- [2] Tang, W. (2014). *Civil procedure law (the second edition)*. Beijing: Peking University press.
- [3] Yulin, F. (2011). The function and structure of civil procedure in China. *The Jurist*, 1.
- [4] Zhang, W. (2004). The important elements of prosecution and substantive decision. *Law Research*, 6.