

Has COVID-19 Turned “ODR” into the “Only Dispute Resolution” Available?

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ODR Now Implies “Only Dispute Resolution”

Just like the new strain of coronavirus has spread across the globe, ODR and its applications has become globally contagious. Speaking particularly of the Chinese courts, ODR does not only mean “Online Dispute Resolution” but also implies “Only Dispute Resolution” during the coronavirus pandemic.

“Online” refers to the “fourth party” of ODR; that is, the manifestation of technology (AI, cloud computing, big data, blockchain, VR, etc.) in China. The world famous ODR experts, such as Richard Susskind and Colin Rule, have witnessed the “fourth party” of ODR in the Chinese courts.

In July 2017, Richard Susskind visited the Hangzhou West Lake Court, one of the most technologically-sophisticated Chinese courts at that time. Susskind repeatedly asked me to translate the words “very impressive” into Chinese in an effort to express his immense admiration to the Chinese judges who were giving him a tour of the latest legal technological advances during his visit. Richard Susskind used China as a case study in his recently published book titled, “Online Courts and the Future of Justice”.



The online mediation room of the West Lake People’s Court. From right to left: Judge Lv Minshu of the Higher People’s Court of Zhejiang Province, Judge CHENG Jianfei-President of the West Lake Court, Richard Susskind, Judge CHEN Liaomin-Vice President of the West lake Court, Michael FANG.

On September 18, 2018, Colin Rule along with other American experts (deemed the “guests of honor”) visited the Hangzhou Internet Court to celebrate its successful one-month anniversary, observing the deep integration of internet technology and court trial. The Hangzhou Internet Court has now experienced deeper integration of both current internet technology and the unique facets of conducting an online court trial.



Visiting the Hangzhou Internet Court, from right to left: Colin Rule, Peter Phillips, Michael FANG, Janet Martinez and the local judge.

The Judicial Reform Office of the Supreme People’s Court introduced their contributions to ODR in a report titled “The Foreigner Experts’ Positive Evaluation of Internet Court Reforms in Developing Countries and its Important Enlightenment”. The Report was drafted during the coronavirus pandemic. On March 15th, Zhou Qiang, the President and Chief Justice of the Supreme People’s Court, gave these instructions: " It [the efforts] should be further strengthened." The Report was modified and published under the title “The Enlightenment and Prospect of the Reform of Chinese Internet Courts from a Global Perspective” in the People’s Court Daily on April 10th, 2020.

The word “only” in the phrase “Only Dispute Resolution” means that there is no choice. If the Chinese court trials did not go online that justice would be delayed. “Justice delayed is justice denied.”

Remote Trials for Preventing “Justice Delayed” Amid the COVID-19 Battle

Examples of potential “delayed justice” are as follows: The first example is from the news report: ”To isolate coronavirus infection instead of justice, Jinxi remote trial prevents

justice from being delayed”. At 10am on February 19th, a prosecutor appointed by the People's Procuratorate of Jinxi county in Jiangxi province appeared in court through remote trial to prosecute a criminal lawsuit involving an incidental civil action related to environmental pollution. To prevent people from gathering amid the coronavirus outbreak, the entire process was conducted through a remote court trial system, including announcing the indictment, producing evidence and conducting cross-examination. Throughout the trial, the video transmission signal was stable, the picture was clear, and the sound and picture were synchronized.



The defendants appeared in “court” in the detention center during the remote trial conducted by the People's Court of Jinxi county in Jiangxi Province

The second example is available on the online platform “China Open Trial Network” (tingshen.court.gov.cn), which shows livestream court hearings from Chinese courts.



A financial loan contract dispute involving a sum of more than 1.7 billion Chinese yuan are heard online in the Zhejiang Higher People's Court

On March 9, 2020, Zhu Shen Yuan, the executive vice president of the Zhejiang Higher Court, serving as the presiding judge, tried a case arising from a financial loan contract dispute involving more than 1.7 billion yuan. The agents of both parties were located in two different cities: Beijing and Shanghai. Meeting in a Hangzhou court during the epidemic proved difficult for the two parties, so the collegial panel decided to conduct a remote hearing after fully respecting the willingness of each party. In order to maximize the efficiency of online hearings, both parties' agents submitted relevant materials through the "Mobile Micro Court" before the start of the online court trial. The image transmission remained stable throughout the trial process; it was also broadcast live on the "China Open Trial Network".



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我的案件



诉讼交费



多元调解



手机阅读



计算工具



智能问答



法规查询



法院导航



跨域立案



地方特色



移动执行



The “Mobile Micro Court” of Zhejiang Province is available on Wechat social media, accessible by mobile phone, showing the following 12 modules: case-filing, my case, litigation fee , multi-mediation, reading documents, calculator, intelligent Q & A, law inquiry, court navigation, cross-regional case filing, local specialties, enforcement via mobile

The third and final case was reported by the Information Bureau of the Supreme People's Court on April 4th, 2020. The title of the report is “This case handling model allows Wuhan enterprises to speed up resumption of work and production”. On April 1st, the People's Court of Jiashan County, Zhejiang Province quickly resolved a private loan dispute involving two defendants in Wuhan, using paperless-case handling mode. The documents were issued online, (served on the Mobile Micro Court) and property preservation was cancelled online. The entire process lasted only half an hour, giving quick relief to the defending company in Wuhan; the expedited court decision allowed the company to resume its production practices without having to wait through usual lengthy court procedures. On January 3rd, 2020, the Jiashan Court began handling private loan disputes that involved a sum of more than three million yuan. On January 16th, a plaintiff filed an application for property preservation, requesting the seizure and holding of the corresponding property of the two defendants in the case. In mid-to-late January, the two defendants contacted the court to anxiously express their willingness to repay their debt, but hoped that the case could be postponed due to the epidemic. The judge instructed them to register in the Mobile Micro Court, and informed them that they could apply using paperless methods. The two defendants submitted an application for postponement of the trial through the Mobile Micro Court. The plaintiff also understood that the two defendants agreed that the financial institution should resume their normal business and then make the payment. On March 31st, the defendants were notified that they could resume work since the situation of epidemic prevention and control had obviously improved. On the same day, the two defendants in Wuhan immediately transferred the payment to the plaintiff and then asked the court to release the property as soon as possible due to the need for the enterprise to resume work and production. After confirming the receipt of the payment, the plaintiff used the Zhejiang Mobile Micro Court to immediately submitted the application for dismissing the case and the application for cancellation of the property preservation. The judge made an instant civil ruling and issued the document through a QR code, which was later handed over to the judge who implemented the property preservation. The judge then promptly released the property of the two defendants through the National Online Court System for Enforcement, Investigation and Control.



Online case handling model allows Wuhan enterprises to speed up resumption of work and production

Supreme People’s Court issued the Notice Regarding Online Litigation Amid the Coronavirus Battle

• On February 17, 2020, the Supreme People’s Court issued the Notice Regarding Strengthening and Regulating Online Litigation Work During the Period of Prevention and Control of Novel Coronavirus Pneumonia Epidemic (hereinafter the ‘ Notice ’). The summarized Notice includes the following 7 main points:

1. People's courts at all levels which handle cases online should ensure the authenticity of the identities of all parties participating in the litigation, completing identity verification online by means of document and certificate comparison, biometric identification, real-name mobile phone number correlation, etc., and providing each litigating party with a litigation platform account for consistently matching of the “person, the case and the account number” .

2. Where the parties and their litigation agents submit an application for case-filing online, the people's court shall conduct an examination within seven days after receiving the materials of the case -filing. If the application for case -filing meets the legal requirements for bringing a lawsuit, the people's court shall register the case for filing; if the submitted materials do not meet the requirements, the people's court shall promptly request correction through the online litigation platform. If it is really difficult for the parties and their litigation agents to submit the case-filing materials online, they may choose to submit the materials to the nearest court. Relevant people's courts should handle the case-filing procedures in a timely manner in accordance with the working mechanism and procedures of cross-regional case filing services.
3. People's courts at all levels should increase the degree of the resolution of contradiction 矛盾 (conflicts) and disputes during the period of epidemic prevention and control, rely on the online diversified mediation platform for conflicts and disputes, strengthen their coordination and cooperation with judicial administration departments, lawyers associations and other relevant organizations, and further integrate and converge the dispute resolution forces of people's mediation and administrative mediation , sector mediation[within industries or organizations], lawyer-supported mediation, etc. to resolve disputes, and therefore effectively promote the online resolution of conflicts and disputes. It is necessary to actively improve the mechanism of the interlink (对接机制) between litigation and mediation, and increase judicial protection for the diversified online resolution of disputes. If the parties' application for judicial confirmation of the mediation agreement reached online meets the legal regulations, the people's court shall confirm it in a timely manner in accordance with the law.
4. Where the litigation materials and evidence materials are submitted electronically by the parties and their litigation representatives, the paper copy of the original document may no longer be submitted after review and approval by the people's court. Where the parties and their litigation representatives submit the paper copy of the original document by mail, etc., the people's court should scan and put them in the case processing system in a timely manner. The original documents submitted should be archived in a timely manner. The people's court shall actively guide the parties and their litigation representatives to submit electronic materials, provide them with platform support and technical convenience.
5. The people's courts at all levels should actively promote and orderly regulate online trials, comprehensively taking into account technical conditions, case situation, the willingness of the parties concerned, and other factors to determine whether to adopt online trials. Civil, commercial and administrative cases can generally be heard online, however, the online trial shall not be applied in the circumstances where the parties do not agree to the online trial, where technical conditions are not suitable for the online trial or

where it is needed to identify the identity on the spot, verify the original documents or inspect the physical objects. Criminal cases can apply remote video to interrogate the defendant, announce judgment, try cases of commutation of sentence or parole, etc. As to simple criminal cases where simple and quick procedures are applied, criminal cases where leniency process is applicable to the defendants who plead guilty or confess their crimes, and criminal cases where defendants hinder the prevention and control of epidemics, remote video hearings can be applied after trying out.

6. Online trial activities should follow the relevant provisions of litigation law and judicial interpretation, and fully protect the parties' right to apply for recusal, production of evidence, cross-examination, statement, debate and other litigation rights. Online trials shall be conducted by online video and shall not be conducted in writing or by voice. The people's court shall generally conduct an online trial in a courtroom. Due to the need for epidemic prevention and control, the judge really needs to hold an online trial in another place, s/he shall report to the president of the court for the consent, and ensure that the place for trial is solemn, courtroom etiquette is normative. The people's court shall, in accordance with the relevant provisions of the Rules of the People's Court of the People's Republic of China, strengthen the guidance of the participants in the online trial, clarify the discipline of the online trial, and ensure that the trial process is safe, civilized and normative and orderly. •
7. People's courts at all levels should increase the application of electronic delivery and improve the quality and efficiency of delivery. Subject to the consent of the recipient of the service, the litigation documents and the evidence submitted by the parties may be served electronically through the China Mobile Micro Court, [the China Trial Process Information Open Network](#), the national unified delivery platform, fax, email, and instant messaging account, etc. However, written judgments, orders or mediation settlements shall not be delivered electronically in order to ensure that the electronic service of the people's courts is in compliance with the provisions of the litigation law and judicial interpretation.
8. People's courts at all levels must vigorously promote the construction of a one-stop diversified resolution mechanism and one-stop litigation service center, upgrade online litigation service platforms, expand online litigation service functions, and provide the parties and the public with a full range of online litigation services such as litigation consultation, payment/fee refunds, information inquiry, contact info. of judges, petition and xinfang (letters and visits), and complaint report in order to ensure that parties can obtain judicial information and handle litigation matters without leaving home, effectively reduce personnel travel and gathering, and serve for epidemic prevention and control.

9. The Internet courts in Hangzhou, Beijing, and Guangzhou must make full use of the advantages of first-mover and increase their exploration in the construction of case-handling platforms, online litigation processes, application of emerging technologies, and online litigation rules. On the basis of ensuring the full-scale online trial of Internet cases, it is necessary to accelerate the enhancement of the intelligentization level of trial and enforcement, strengthen the research and application of big data, cloud computing, artificial intelligence, 5G technology, etc., explore the formation of practical samples of artificially intelligent justice, and summarize advanced experiences that can be replicated and promoted. Based on the positioning of their own functions, they should actively explore the rules of electronic litigation in the Internet era, promote the improvement of the substantive rules of the Internet judicial governance, and effectively play a leading and an exemplary role of the internet courts in idea, technological and institutional innovation, and other aspects to effectively promote the legalization of cyberspace governance.

Following the Supreme People’s Court’s “Notice Regarding Strengthening and Regulating Online Litigation During the Period of Prevention and Control of Novel Coronavirus Pneumonia Outbreak”, the Beijing Internet Court promulgated the “Norms on Court Trial in Electronic Litigation of the Beijing Internet Court (for trial use)” on February 21st, 2020; this document gives instructions how to complete litigation processes online.

In summary, the Supreme People’s Court is not unrealistic in its issuing of the “Notice Regarding Online Litigation Amid the Coronavirus Battle”. The Supreme People’s Court understands the age-old mindset that “Rome was not built in a day.” The reality is that the Chinese courts have used information and communication technology (ICT) as the fourth party to resolve the disputes long before the recent coronavirus outbreak began in China. The spread of the coronavirus forced Chinese courts to take full advantage of ICT across the country; not only in the three internet courts (Hangzhou, Beijing and Guangzhou), but other Chinese courts as well. As mentioned in the previous examples, two people’s courts at the county level and one higher people’s courts at the provincial level conducted online, remote trials to prevent “delayed justice” amid the epidemic. As we know, face-to-face processes run the risk of spreading the coronavirus which would then violate the quarantine and isolation rule. Therefore, ODR becomes “Only Dispute Resolution” to avoid “delayed justice” in Chinese courts amid the COVID-19 battle. At the present moment, there is no other choice.