

# DIRITTI COMPARATI

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### THE PETITIONING SYSTEM IN CHINA

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The petitions in China (信访, *xinfang*, literally “letters and visits”) represent a traditional instrument for seeking justice from levels of the government superior to those who gave rise to grievances. As of today, the *xinfang* system is the primary tool for dispute resolution of the country.

More than a judicial instrument it can be considered a governance tool, rooted in ancient Chinese history and then re-elaborated by the Communist Party. It was used - yesterday by the emperor and today by the new ruling class - with the same fundamental purposes: facing the principal-agent problem and give a hope to people whose grievances were ignored by local governments. For a large part of the Chinese history it constituted the only channel of information to the central authorities about the real situation of the country.

To better understand the significance of the *xinfang* phenomenon, it is useful to look at its numbers. On July the 1st of the present year the State Bureau of Letters and Calls started an online petitioning service through its official website. Two hours later the opening of the service the website crashed due to the enormous number of contacts, someone wrote of forty-six million potential petitioners. In 2011 more than six and a half million new civil suits were filed. For the same year we have no official

records on the amount of the annual rate of petitions, but the average rate of 11.5 million registered in 2002 seems likely to be realistic also nine years after. In some courts the units of personnel devoted to responding to letters and visits far exceeds those involved with hearing civil cases. This trend of overwhelming preference for the use of xinfang instead of formal legal channels, has been constant during the last ten years.

But how does xinfang work? Xinfang regulations allow people to propose petition in theory on every sort of issue. As we saw in "The story of Qiujiu", 1992's movie directed by Zhang Yimou, aggrieved citizens, affected by unfavorable administrative acts or adverse courts decisions, file petitions at complaints office of local level, then moving on to the provincial level and possibly ending in Beijing if their grievances yet find no solution. The whole system works on common people's assumption that the government failed on the local level but that the higher levels still work in favor of the people.

Virtually there can be a complaint office in every single building belonging to the government. The relations between all these offices is often unclear and the xinfang regulations, also in their most recent version, do not shed many light on them. Complainants tend to bypass local offices of the xinfang bureau – controlled by the local government – to approach higher level offices. However bypassing local xinfang offices in favour of direct appeals to higher authorities is expressly forbidden by the Xinfang regulations, so often complainants are sent back to the same officials who gave origin to their grievances. Even in the remote case in which a petition receives a satisfactory answer from an higher authority, obtaining its effective implementation from local level governments could be extremely hard. It often gives origin to new petitions aimed at the enforcement of the results of the first complaint.

In recent years another noteworthy phenomenon arose: "collective petitioning". Several studies demonstrated that the whole xinfang system rewards larger and more organized groups of collective petitioners. As a result, people mastered the rules of the game lodging complaints through collective petitioning involving always more people. Consequently the

government, worried by the dimensions of the phenomenon, tried to clamp down on collective petition with a series of countermeasure. Firstly the 2005 regulations clearly stated that for every complaint personally presented, the number of the representatives shall not exceed five. Secondly the most controversial measure was certainly the imposition on local authorities to establish and improve a responsibility system at their level. The responsibility system rewards local cadres capable of meeting goals in a variety of sectors, and punishes those who fail to meet them affecting their career expectations. Among key sectors for the cadres performance review is social stability, and one of the most important element used to evaluate its fulfillment is the number of petitions received by the higher authorities. However, as some author wrote, "*xinfang* responsibility systems have a critical common thread: they discipline officials for the mere *occurrence* of mass petitions". Which means "strict liability on government officials for mass petitioning behavior of individuals under their jurisdiction, regardless of the precise nature of the petition" (Carl F. Minzner, "Xinfang: An Alternative to Formal Chinese Legal Institutions". This has provoked two main consequences: by one side local governments engaged into a series of violent practices to prevent petitioners from reaching the higher xinfang offices; by the other side petitioners took strength from these behaviors looking them as the symptom that cadres are scared by their petitions.

All above considered, why people still prefer the petitioning channels instead of relying on the judiciary?

We already underlined how, as a matter of fact, today the xinfang system is the primary system of dispute resolution in China. It's somehow ironic to notice that also the courts handle more petitions through their internal xinfang offices than lawsuits.

We also already mentioned that, one of the function of the petitioning system is handling individual grievances. This function in rule of law countries is generally assigned to the judicial system; but whereas the judicial system operates through rules directed at ensuring a fair trial and not an abstract concept of absolute justice, the xinfang operates through

an extremely opaque set of regulations and party guidelines, aimed at allowing higher cadres' intervention in cases likely to generate social instability. Even if aggrieved people is perfectly aware that the chances to obtain an answer to their petitions is small, there is still a possibility to obtain an effective response; this is perceived as much better than filing an expensive suit and obtaining a favorable response that cannot be enforced.

In fact, people avoid to bring lawsuits basically and fundamentally because courts lack the power and the will to challenge local and national government. In other words aggrieved citizens perfectly perceive who really has the power to change things and where does this power is located; in their perception this place is not the court.

Other important reasons why it is used far more often than the formal legal system is because it is easier to use, cheaper, more accessible, more participatory, less adversarial and more manipulable.

But keep focusing on the main reason of giving petitions preference over courts (which is the latter's powerlessness), this principally is the result of the lack of independence which affects the Chinese judiciary. Chinese judges are exposed to a wide spectrum of interference during trials, systemic or non-systemic (depending on whether the intervention has some sort of legal coverage or not). Although the current constitution provides that "the people's courts exercise judicial power independently, in accordance with the provisions of law, and not subject to interference by any administrative organ, public organization or individual", the lack of judicial independence, due to a variety of factors, is plain to see.

Despite of all its deficiencies Chinese people need to know that the petitioning system exists and that whenever they have grievances they can file a complaint. The widespread use of the petitions is a direct consequence of the persistent trust in the central government and a sign of distrust of courts. Its existence has so far acted as a safety valve for social stability, funneling people's outrage into manageable channels,

preventing them from snowballing into violent large scale demonstrations.

This is an extract from a paper presented by the author at the 8th Annual conference of the ECLS (European Chinese Law Studies Association), held in Oxford University from 18th to 20th September 2013. An extended version can be found on the personal blog of the author at <http://cinaediritto.blogspot.com> .