

An Analysis of Institutionalizing Petition System in China

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Abstract

The petition system in China is heading toward institutionalization, the core of which is to solve the petition problem within the framework of law so as to make the petition processing further standardized and predictable. Currently, there is no guiding law in the field of petition in China, which is why the petition system is not unified in different systems and regions across the country; nondisclosure and informality make petition into a vicious circle, which destroyed the consistency of law. The above problems need to be solved through the institutionalization of the petition system, which can break through the predicaments in petition, and provide a good opportunity to change the "one project one discussion" mode.

Key words: Petition; Institutionalization; The optimization of public policy

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INTRODUCTION

The petition is a highly concerned topic of government, academia and community in recent years. The existing petition situation of the country, the problems and causes of petition, and the solution of petition question have already been discussed by academic circles who raise a Babel of criticism of high perspicacity frequently, but their views differ greatly. In practice, to cope with and resolve the petition problem troubles the minds from the central to local governments at all levels, all of whom attach great importance to the petition problem. Countless response tactics and solutions have been adopted overtly and covertly, a lot of manpower, material and financial resources have been consumed, whereas the effect is not very satisfactory. So far, the petition is still an unsolved problem. There have been heated debates over the issue of petition among the government, academia and the civil society, but no consensus seems to have been reached yet. The author thinks that the petition will always be a difficult problem which China has to face during the transition period. The solutions can only alleviate the pressure, but they can not solve all problems. Besides, even if they can alleviate the pressure we cannot rely on the petition system itself. The overall advancement of the entire social system and concept is needed. Of course, this does not mean that the reform or consummation of the petition system is meaningless. On the contrary, setting a clear direction for the development of the petition system and making effort toward it is still the problem which government, academia and the civil society must face. The author takes the liberty of stating the humble opinion on this problem.

1. THE DEVELOPMENT DIRECTION OF THE PETITION SYSTEM IS THE INSTITUTION

People are encouraged to think about the functional positioning and development direction of the petition problem in China. On this issue, there are many viewpoints in the academic field, but the author sums up mainly two kinds of typical viewpoints. One is that the current petition system should be abolished since it has strong "rule of man", which strays from the modern "rule of law"; the other is that the current petition system should not be abolished since it has played a "bottom relief" function at present, but it should be reformed toward institutionalization. If we analyze these two views in depth, we will find that they have two points in common: first, both of the two views believe that the current status of the petition system should not be maintained, it needs to be changed; secondly, both views think or at least don't deny that the current petition system lacks institutionalization. It will be in accordance with both views if the rule of law of petition system can be realized by reforming or system replacement.

Seeing from the practice of the petition system, the main problem it faces is that it is difficult for it to play the "pressure relief valve" effect in social contradiction due to the practice of "rule of man", which makes it carry too much function and cause indigestion or even obstruction. If it is not interfered, the petition system will collapse because of the overwhelming force; if it is canceled, then the function of the current petition system will be presented in another form, and practical problems can not be solved. Moreover, people choose a petition and the emergence of the tide of petitions show that other relief and expression channels have been blocked or people believe that other channels have been blocked. Although there is a little chance that the final solution can be achieved through petition from the actual effect, the petition can solve some problems after all, at least it can give people hope to solve the problem. This is why people trust petition rather than law and their petition continually. Presently, the petition has its rationality of existence as a kind of system resources which can be used to solve social problems. It will also be indispensable in the future when other channels of law are kept open. This can be proved from the western countries where law developed but "petition" system existed universally in practice just as China (Li, 2004, pp.27-41). Therefore, the petition system can not be canceled, but should be reformed. The current way of dealing with petitions should be improved and other ways of solving social conflicts should be promoted to solve contradictions based on existing function so as to realize the function of natural split and get rid of the predicament of "petition is a basket in which any conflicts are loaded". Petition can make up for the existing defects of social dispute settlement mechanism, but only toward institutionalization can this function continue and make further development, otherwise it will be a dead end. Therefore, the only direction of the petition system reform is toward the institutionalization.

The key of institutionalizing petition system is to solve the problems of petition in the legal thinking, which makes the petition processing further standardized and predictable so as to desalinate or get rid of "the rule of man". In a deep sense, institutionalizing petition system is to resolve the functioning and positioning conflicts between the central and local, superior and subordinate,

petition agencies and authorities, the petitioners and state organs. The central and higher authorities make clear position of the petition that it is a way of listening to some opinions and suggestions raised by the masses, whose natural function is to overcome local or subordinate bureaucracy that prevent the transmission of views from lower levels to the high-ups, and strengthen supervision and control of the local and subordinate in this way. From this point of view, to solve the problem or to provide relief directly to the petitioner was not the direct target of central or higher authorities, otherwise it is easy to damage the division of responsibility between the central and the local authorities, the higher and lower levels and bring more pressure. Of course, in order to maintain the central or superior authority and enhance the people's trust, central or higher authorities should take measures to solve part of problems or to provide relief for some individual petitioners which can not only embody the people first but also maintain the smoothness of the pipeline of petition. Therefore, the central or higher authorities want to keep the lines of petition open, but they don't want to bring greater pressure to themselves. If the pressure is heavier, which will bring about social problems, the central and superior authorities have to take measures to put pressure on local and lower authorities that they should settle the stability problem. And the local and the lower have consistent opinion on processing the petition problem. Under the pressure of the central and superior authority they will have to take measures to quell the petition. On the one hand, the local and the lower authorities often solve some petition problems within its capabilities, so the petitioners no longer petition; on the other hand, if some petition problems can't be solved or the authorities are unwilling to solve the problems for some reasons they will find a variety of ways to "balance" the petitioner to stop petitioning. Therefore, stopping petitioning is the main target of local and subordinate organs. Reporting to the higher authorities or central to solve the problems or to obtain relief is the main purpose of the petitioners, and they generally don't give up. But putting forward proposals or opinions to the central or higher is not the main purpose. For petition organs, they need not only to implement the central and higher authority's instructions, but to urge the relevant authorities to coordinate to solve the problem and stop the petitioner's petition. However, the goal of the main body of the petition involved is not the same, which resulted in the petition organs being stuck in the middle of the central or superior, the competent authority and the petitioners, struggling to achieve a balance. Institutionalization of petition provides a standardized, stable and predictable system to solve the inconsistent target problem. This system can maintain central and higher authority, relieve the pressure of local and the lower bodies, and solve the petition problem to the greatest extent.

2. THE EXISTING PROBLEMS IN THE CURRENT PETITION SYSTEM NEED TO BE SOLVED BY INSTITUTIONALIZING

"National Petition Laws and Regulations Assembly" was compiled by the State Bureau of petition in 2007, in which 309 regulations, rules and other normative documents on petition promulgated by the central state organs and the local organs (province and large city) were included, concerning the aspects of the basic provisions, the letter management, reception, petitions for and supervision, "three suggestions" duties, the maintenance of the order, the petition responsibility and accountability system, hearing, lawyers involved in the petition and so on. So we can see that the petition system is enormous. However, it is not equal to the institutionalization. These systems are full of problems, such as the existence of "rule of man" color, constitutional deficiency, all of which need to be solved by institutionalizing urgently.

2.1 The Petition System Is Not Unified in Different Systems and Different Regions Due to the Lack of a Guiding Law in the Field of Petition

There's no unified "petition law", and many kinds of petition systems such as the Administrative Petition, the People's Congress Petition, the Justice Petition, the Party Petition and so on exist at the same time. At present, there is no basic law in the field of petition in China. The highest level of the petition system is the "Regulations on Petitions in the Form of Letters and Visits" promulgated by the State Council which mainly unified regulations of the administrative system petition. In addition to administrative petition, there are the National People's Congress petition, the judicial system petition, political party petition, CPPCC petition, forces petition, social organizations petition, enterprises and institutions petition and so on in China. The petition can refer to "Regulations on Petitions in the Form of Letters and Visits" in the field of social organizations, enterprises and institutions, but the system of petition in other fields is in parallel with the field of administration. Each has a set of petition system. The parallel system of petition is not unified in the central level of the petition system. The system of petition is established in different places according to their own actual conditions, and the content and the specific practice are also different, so provisions in the local system are different from the central one and even contradict and conflict with them. To strengthen the unified leadership of the petition work, the CPC Central Committee and the State Council jointly issued a document— "on the further strengthening of the petition work in the new period" on March 10, 2007 (No. [2007]5), which made a unified plan of the national petition work in order to correct petition system which was not uniform or standardized. However, due to the programmatic and principled nature of the document, its directive meaning is greater than the normative role; inconsistency of the petition system has not been changed fundamentally. The inconsistency of the petition system will bring the conflict and internal friction within a system, which can influence the effectiveness of a system. Therefore, it is the best way to solve the problem by institutionalizing.

There are a great many of petition agencies in China at present, which the establishment is huge and dispersed. "Regulations on Petitions in the Form of Letters and Visits" stipulates that the people's government at or above the county level shall set up a petition agency; departments of people's governments at or above the county level and township, the town people's Government shall determine the agency that is responsible for the petition in accordance with the principle of beneficial work and facilitating petitioner. In addition, the Party organs, organs of the People's Congress and the CPPCC, the People's Court, the People's Procurator ate, social organizations, enterprises and institutions are provided with the petition agency in practice. Thus, the petition agency is established in almost all state organs, their working departments and social organizations except foreign-funded enterprises and private enterprises. The petition agencies are large and scattered, which give people pluralistic opportunities to express their opinion on the surface. It's not only convenient for the petitioner but it can help the authorities to have access to the public opinion more conveniently. But from the actual effect, the petition agencies, which are various and inconsistent, bring about repeated treatment which is not conducive to improve the efficiency, resulting in the shirking of responsibilities, the conflict of the result and the unnecessary internal exhaustion. In addition, the large and decentralized petition agencies make the petition work understaffed. Some staffs are not qualified and professional enough to handle petition matters in a specialized way. They also lack the macroscopic control and insight into the overall situation of the disputes. The defects caused strange phenomenon: the more petition agencies, the more petitions. Therefore, what we need to do is to integrate the existing petition agencies.

Localization and function of petition are not unified leading to the overcapacity of it in practice. There isn't unified provisions of position and function of petition in the existing legal norms. The position and function also can not be explicitly derived from existing regulations. Therefore, the position and function of petition are only interpreted by the policy. However, this interpretation can be influenced mostly by human factors because of the change of social situation and the actual situation of the different systems and regions. This uncertainty leads to inconsistent understanding of the position and the function of petition among the central and local government. In practice, the central government will usually position the petition to be an important channel to strengthen the relationship between the party, the government and the people. They hope that the petition can play the

function of communication, democracy and supervision, especially the supervision of the local government. The local government has a more complex understanding of the positioning and function of petition. As for the higher authorities, they hope that the petition not only play the functions of communication, democracy, supervision and relief, but also play the functions of maintaining regional stability, which is the core function; to organs at lower levels, "stability" is the most important function. Each system not only hopes that petition can play the functions of communication, democracy, supervision and relief, but also hopes that the contradiction can be transferred to other systems or petition agencies through petition. This inconsistent understanding leads to too much actual functions for petition to carry, the fuzzy positioning and even the function alienation (Yu, 2009, pp.30-31). It does not play the original ideal function as it should do. Dislocation of the petition, coupled with the reality of heavy responsibility but light power in the petition agency often makes the petition staff be at a loss in dealing with specific petitions in practice (Wang, 2012, pp.331-332). The petitioner's legitimate rights and interests are neglected in this kind of internal exhaustion, thus not only is the real problem not solved but the new conflicts may arise. As the result, more and more petitions emerge, falling into a vicious circle. Therefore, the urgent need is to determine the function of the petition by law.

2.2 Non Publicity and Non Normative of Petition Processing Make It Fall Into a Vicious Spiral, Which Destroys the Consistency of Law and the Function of Education and Prevention of It

At present, different approaches are adopted in the processing of petitions, such as turn to do, supervised or assigned by the leadership and instructions, all of which face problems of non publicity or absence of publicity except for a handful of hearing. After the petitioner reflects the issues of the petition agencies or put forward the relevant appeal, the petition issues are basically circulated internally in the system. The petitioner can not know the whole process of how the matters will be handled except where necessary to investigate the situation or verify the relevant facts and listen to the opinion of petitioner or the interested person outside. The petitioners get treatment results after a long period of waiting, but sometimes they can not get results at all. On one hand, the petitioner will not be fully expressed because of non publicity or absence of publicity in petition process, on the other hand, the relevant authorities cannot fully show their efforts and real desire for dealing with petitions to the petitioner and the interested parties, so it is difficult to increase mutual trust and understanding between the two parties.

Some petitioners will believe that the petition is unjust when they do not reach or fully achieve the purpose, and even make the contradictions to the petition agency. Openness is the basic guarantee that the matters can be dealt with fairly in the petition process, and openness can also prevent the "black box" operation and guarantee the applicable consistency of law. Dealing with petitions openly and transparently can enhance people impartiality expectation of petition processing; it can also play education and prevention functions of the law, which make the petitioner treat their own demands rationally and legitimately. The public petition must be guaranteed by the rule of law. Therefore, achieving the openness in the petition process is an important content of promoting the institutionalization of petition.

The procedures of petition are not standardized and highly maneuverable, which lead to the larger contingency of the processing results and reduce people's predictability and dependability of petition.

Although "Regulations on Petitions in the Form of Letters and Visits" provides the basic procedures of petition, and different systems and local governments also have further detailed provisions of the petition procedure through legislative and normative documents, but overall, problems still exist that the procedures of petition are not standardized and operable. The main reason is that it is difficult for the procedural provisions to achieve the purpose of standardizing the behavior or solving the matters of petitions in practice. The petition agency usually has no independent jurisdiction to solve problems of petition, the substantive issues and some procedural issues are required to ask for the chief administrative officer whose work is always very busy, so it is difficult for them to instruct one by one. Even if the instructions are made or some petition matters are solved by personal reception or contract, this solution may make a larger contingency of the processing results and are not normative. This is due to the fact that the petition processing procedures are not standardized. Some procedures are not very maneuverable. For example, the regulation requires that the petition is ended after the review, but it is difficult to execute in practice. As long as the petitioner's requirement has not been met, they will petition once again. There are no specific procedural provisions to some problems often encountered in practice. For example, as to the provision for a "territorial management", it is not clearly pointed out that whether the petition issues should be classified according to the petitioner's territoriality or petition issue's territoriality. Some authorities who received the issues assigned or transferred by others often don't agree on these issues in practice, so they shirk these issues.

These problem which procedures is not standardized and maneuverable have not only caused great trouble to the petitioner and the petition agencies, but also made the processing result influenced by the accidental factors, thus increased the uncertainty of the petition process, reduced people's predictability and dependability of petition ultimately, and strengthened "gamble" mentality which lead to repetition and leapfrog petition. Therefore, the petition procedure must be institutionalized so that people depend on procedure to solve petition issues.

The relations between the petition and public policy are increasingly close in the new period (Wang, 2012, pp.234-236), so the reoccurrence and the centralization of the petition matters are partly due to the problems of public policy. Although the petition agency put forward relevant proposals for handling matters of public policy problems reflected in the institution itself, yet these proposals tend to be ignored due to the status of the agency. The joint meeting of the petition with the corresponding actual authority should play a more important role in the public policy optimization, but the joint meeting of petition is not standardized, largely arbitrary. The content of the meeting is uncertain, and whether it can discuss the problem of public policy is unknown. Even if the joint meeting of the petition discusses public policy issues. so it is very difficult to reflect will of the petitioners and the interested parties because the meeting is not held in public, especially it does not open to the petitioners and does not allow the petitioners and the interested parties to participate either. Unfortunately, the joint meeting of the petition failed to provide such a platform in the public policy optimization and did not play its due role. Therefore, when promoting the institutional petition, we should make full use of this platform of petition joint meeting, making it realize the optimization of public policy by standardized openness and participation mechanism so as to solve the problems of repeated occurrence and centralization effectively.

3. SIGNIFICANCE OF PROMOTING THE INSTITUTIONAL PETITION

3.1 Institutional Petition Can Help Breakthrough the Predicament of the Petition Work

Unified petition system can solve the internal conflicts in various systems and the local governments.

By enacting a guiding law in petition field, the unity of legal system can be realized so that the inner contradiction and conflict in the system can be avoided. A unified "petition law" is formulated by the National People's Congress, which all state organs come into its adjustment range, so that the parallel petition system can be unified. At the same time, the enactment of the law must absorb mature experience and effective practices of the local government, so as to face the unified regulations of petition system in national level, avoid the fragment of local government and maintain the unity of the legal system. Unified "petition law" must make provisions of the fundamental problem of the petition work of state organs such as basic principle, organization, responsibility, legal status, petition scope, procedures, rights and obligations of petitioner's, the state authorities legal responsibility when accepting the petition. These provisions can dispel the existing conflict and contradiction in petition system currently so as to make the departmental and local petition activities coordinated. Even if the department and local government can refine the regulations according to the actual situation, these detailed provisions can not conflict with the "petition law". The establishment of the "petition law" is not the only content of institutionalization of the petition, yet it is the most important step in process. It can not only to regulate the work of petition strictly, but also make the activities of state organs toward institutionalization.

"Petition law" must integrate the large and scattered petition agencies at present, specifying responsibilities, so as to solve the problems of multiple and repetitive treatment. The integration not only involves the integration of petition agency inside every system, but also the unified and coordinated treatment of petition issues between systems, so that the problem of buckpassing among systems can be avoided. The current implementation of the joint meeting of the petition can be regarded as an integrated and coordinated manner, which can be incorporated into the "petition law" after summarizing the experience.

The integration of petition agency can not only concentrate resources and eliminate the internal exhaustion basically, but also really find the basic reason of petition issues through the unified and coordinated treatment between the petition systems, thus to solve the problem completely or to ease the contradiction maximally between them through public policy optimization and other ways. Of course, integrating petition agencies is more complex, "petition law" may not be able to solve the problem completely, but the establishment of the principle and the basic framework of it are the basis and guarantee of the latter reform.

If the "petition law" brings forward an overall design of the petition system, it must define its position and function. The emphasis is the basic position of the petition under the framework of law. The current petition systems absorb a large number of social contradictions and aggregate too many social problems, which are far more than their carrying capacity. To define the position and function of petition is to find the "exit" mechanism for these contradictions and problems and to alleviate the pressure of petition. In fact, the ideal position and function of petition is to naturally stream out the absorbed social contradictions and problems after "decompressing" them, and make problems solved or contradiction alleviated. The petition itself can not solve the problem directly, but it can't simply stream it out either. It should be a platform for analyzing problem and seeking solutions, which have the problem solved in a conventional way finally. The platform requires certain rules which play a guiding and educational role, so that petition capacity can be naturally reduced. "Petition law" determines the rules for the

construction of this platform, and then defines the position and function of petition.

"Petition law" guarantees the citizen's right of petition. Its purpose is to prevent the other public power agency from violating fundamental rights of citizen's by legislation or rule-making. The petition right is equally important to citizens' basic rights such as personal right. How to exercise the basic rights of citizens? What restrictions should be followed when exercising this right? These elements must be defined by the NPC and its Standing Committee through the formulation of laws. Especially the restrictions of petition right must be stipulated by laws. Regulations, rules and other normative documents are not allowed to stipulate before laws. "Petition law" can implement the principle of "legal reservation", which can greatly reduce the violations of petition right publicly in practice. Therefore, the "petition law" is the law to restrict public power; what's more, it is the law to guarantee human rights effectively.

The institutionalized petition enhanced people's reasonable expectation to resolve disputes so that they can treat petition rationally. The main goal of the institutionalized petition is to make petition processing procedures more standardized, open and operable. Standard procedure can avoid the arbitrariness of public authority and its staff in dealing with petitions, so that petitioners can express their demands through the operational procedures, and seek a solution to the entity problem at the range of established procedure, which reduce the interference of accidental factor to the petition issue processing, and enhance the reasonable expectation of the dispute resolution. The open and transparent petition process is convenient for the petitioner and the general public to supervise the petition process, so as to understand the merits and complexity of petition issue itself. They can also understand more clearly the petition agencies and authorities' efforts of solving petition issues, which increase mutual trust and understanding, thus can treat the petition rationally.

Operational procedures can provide clear guidelines for petition agencies and departments, avoid buck-passing and confusion, which reduces the internal exhaustion and provides clear expectations for petitioner. Hence the institutionalization can make the petition more rational, peaceful and controllable gradually.

The petition joint meeting becomes a kind of trustworthy mechanism of interest expression in the public policy optimization by guaranteeing the involvement of the interested parties and holding the meeting publicly. One of the most important measures of institutionalizing petition is to make full use of the joint meeting as expression of interest platform to realize the optimization of public policy. The petition joint meeting should not become the platform on which the public authorities discuss collectively how to deal with petitioners; it should not just be a petition case settlement mechanism either. The petition joint meeting should be held publicly under the safeguard of law in accordance with established rules so that the various parties involved in petition and interested people are able to participate actively, and fully express their views on this platform. In this way, the problems can be found in the process of the formulation and implementation of public policy, especially the interests of minorities neglected. The petition joint meeting gives suggestions on the optimization of the public policy according to opinions proposed by various sides. These proposals which are based on the full participation of the interested parties and openness of procedure, coupled with the authority of the joint meeting itself and the influence of advanced television and the network media, often cause great pressure to the main body of public policy formulation and implementation, and promote them to solve the problems in the public policy. At the same time, the mechanism of full participation and openness not only eases the grievances and resentment of the petitioner and interested parties, but also play the function of education on legal system and policy so that the relevant parties understand the boundary of exercising the right and the possible degree of realization, and eliminate the excessive and unrealistic expectations, which reduce the " irrational visit " maximally. Thus, the petition joint meeting becomes a kind of trustworthy mechanism of interest expression under the protection of legislation.

3.2 The Institutional Petition Is an Opportunity to Change the Working Mode of "One Project One Discussion", So That the Petition Can Adapt to the Environment of Market Economy

The key of institutional petition is to transform petition work mode from "one project one discussion" to the public decision-making pattern. If the institutional petition is still designed by the traditional pattern which regard "one project one discussion" as the center, it will not only impact the conventional way of social dispute settlement and even make it a mere figurehead or let it lie idle, but also cause or make a greater petition bearing capacity (people only trust the relief way), or let this "institutional petition" lie idle (people think the "institutional petition" cannot solve practical problems), and make the disputes flocking to the way of other similar petition "variants". Whatever happens, the "institutional petition" model that focuses on "one project one discussion" will turn ugly or fail. Because parties of multi interest have been formed under the condition of market economy, it is difficult for the model of solving case to balance complex interests, which cause more contradictions. Therefore, the institutionalization of petition must take a step forward which transform from the model of solving case to public decision-making pattern, and take this mode at the center to realize the institutionalization of petition, so that petition can become the platform of public decisionmaking. This platform can fully listen to the advice of various sides, especially the advice of minorities. Through the confrontation and the just game of opinions, an ultimate solution that balances the interests of various sides is formed.

The institutional petition does not exclude the model of solving case. The petition issues which are isolated from public policy or difficult to reveal in a short period time, still need to be solved with "one project one discussion" mode, but they have to be solved in the legal framework and follow legal procedures. When petition issues with the same or similar nature happen frequently, or have already shown signs of happening in a large scale, the optimization mechanism of public policy must be started through legal procedures, so as to solve such matters collectively. Of course, it involves many important issues, such as who has the right to start the mechanism? How to start? How to run it after the start? What's the scope of the main body that has the right to participate in and who should enjoy the rights? How is the effect of the mechanism? All these need to be protected by law. If lack of the legal guarantees, the mechanism of starting and running will have higher contingency and randomness, which may return to the traditional model of solving the case due to the resistances. Then the mechanism can't play its role. Therefore, the institutional petition not only promotes the formation of the public decision-making mode but also ensure it to operate effectively.

The legislation petition guarantees the petition joint meeting to play its role. In the petition system, citizens can also influence optimization of public policy by reflecting problems to the National People's Congress, offering advice to the mailbox of leader's in each department, but the unidirectional expression of interests without direct feedback is difficult to play a role, even if it can have function, it will be a long process, full of contingency. The petition joint meeting provides an effective platform for multiple expression of interests, it will be started according to the will of minorities and will collect disperse and one-way expression of interests together. It can affect the optimization of public policy substantially. To avoid the petition joint meeting merely become a supplementary case solving model, and even become the coordinating meeting of various organs to discuss collectively how to deal with the petitioners, rules must be Specified for petition joint meeting, such as legal status, the composition, the applicable scope and the specific operation procedure etc..

CONCLUSION

In a sense, institutional petition which makes petition joint meeting become the platform of optimization of public policy is to institutionalize the petition joint meeting itself. The institutionalization of petition joint meeting can ensure it to form an effective interest's expression mechanism, and strengthen the people's trust through its function, which make each organ and petitioner maintains the mechanism, thus treat petition rationally.

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