

4. The long march to professionalizing judicial discipline in China

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INTRODUCTION

In 2005, had the leadership of China's highest court, the Supreme People's Court (SPC), designated a different team that used more inclusive procedures to draft specialized judicial discipline rules, this chapter likely would have read differently. But the history of judicial discipline rules in China did not happen that way, and it is expected that in the period 2020–2022 the SPC will issue China's first set of judicial discipline rules. The 15-year delay is profoundly significant, because in the intervening period, the policy of the Chinese Communist Party (the Party) towards the civil service and Party cadres (officials), both of which include Chinese judges, has significantly changed since Xi Jinping became General Secretary of the Party in 2012. The content and procedures in forthcoming judicial disciplinary rules must incorporate and implement current Party policy. Although political sensitivities in 2020 do not permit surveys of attitudes towards judicial discipline standards and procedures held by the approximately 120 000 judges serving in the Chinese courts, those can be gauged through an SPC commissioned study and writings by judges in the media. Given related legislation and information released about the forthcoming judicial discipline rules, it appears that it will be a 'Long March' to China having a judicial discipline system that better meets the aspirations and expectations of Chinese judges.

The first section introduces the constitutional framework for judicial discipline prior to 2012, when Xi Jinping came to power. The second describes the policy and legal framework for judicial discipline in the pre-Xi Jinping

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era, giving more details on the missed opportunity and seeking to bring some clarity to a confusing institutional and regulatory structure. The third section describes and analyses the constitutional, legal and policy changes related to judicial discipline in the Xi Jinping era, current as of May 2020. The fourth section provides some statistics on judicial discipline and illustrates Xi Jinping era developments by examining several typical judicial discipline cases. That section also explores judicial attitudes towards judicial discipline reforms. The chapter concludes by speculating about the direction of judicial disciplinary reforms and the possible impact of the disciplinary framework on retaining highly qualified legal professionals within the Chinese court system and the longer-term future for judicial discipline.

I CONSTITUTIONAL FRAMEWORK FOR JUDICIAL DISCIPLINE PRE-XI JINPING

The Chinese Constitution is China's highest law, but it is not justiciable.² Prior to 2018, it provided little information concerning the framework for judicial discipline. Certain provisions of the 1982 Constitution, as amended, contemplate the appointment and removal of judges. Article 131 declares that the courts exercise judicial power independently in accordance with law, not subject to interference by any administrative organ, social group, or individual. Specifically, under article 63, the National People's Congress (NPC), the Chinese legislature, can remove the President of the SPC whom it has elected for a once renewable five-year term; under article 67, the NPC Standing Committee (a portion of NPC members, meeting every other month for about one week) can remove SPC judges, whom it has appointed; and correspondingly, under article 101, local people's congresses can remove local court presidents on the same level, and their standing committees can remove local judges, also appointed or elected by the same institution.³

² Thomas E Kellogg, 'Constitutionalism with Chinese Characteristics? Constitutional Development and Civil Litigation in China' (2009) 7 *Int'l J of Constitutional L* 215–246.

In general, scholars, both Chinese and Western, have linked the rhetorical nature of the Chinese Constitution to a lack of a meaningful—in most other countries, judicial—mechanism for the enforcement of key constitutional norms. ... the Chinese Constitution is not regarded, generally, as having direct legal application and is dependent on implementing legislation to give meaning to, and to provide for the judicial application of, its provisions ... (ibid 217)

³ Constitution of the People's Republic of China, 4 December 1982 (Full text after fourth amendment, 14 March 2014) <http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node_2825.htm> accessed 12 May 2020.

II CHINA'S JUDICIAL DISCIPLINARY SYSTEM BEFORE XI JINPING

This section provides an overview of policy, legal, and regulatory developments related to judicial discipline prior to Xi Jinping. During the period from the 1990s to the beginning of the Xi Jinping era, Party policy towards the civil service stressed professionalization, leading two informed Chinese academics to write in 2012, that 'the one-party system and its long-term focus on pragmatic goals have in effect depoliticized the bureaucracy'.⁴ The pre-Xi Jinping judicial discipline framework sketched out below needs to be understood in this policy context.

The status of judges as distinguished from other civil servants or Party officials evolved during this period. Until the 1995 Judges Law was promulgated, Chinese judges were treated as any other civil servant (cadre), and even today Chinese judges are incorporated into China's bureaucratic ranking system.⁵ Before the 2019 amendments (described in the following section), the Judges Law merely provided that a judge who had committed any of the violations listed should be given sanctions; if the case constituted a crime, the judge should be investigated for criminal responsibility in accordance with the law. However, the law did not specify how or by what entity those sanctions would be imposed.⁶

For judicial discipline during this period, this meant multiple types of standards enforced by multiple institutions, depending upon whether a judge was a Party member. Chinese judges before Xi Jinping (and after) could be sanctioned or disciplined under Party disciplinary rules issued by the Central Commission of Discipline and Inspection (CCDI), a permanent central-level Party institution that enforces Party rules and policies, with local counterparts and entities responsible for Party discipline within each government organ. The CCDI then (and now) has the authority to employ coercive investigative methods, including searching persons and property, seizing and confiscating

⁴ Yijia Jing and Qianwu Zhu, 'Civil Service Reform in China: An Unfinished Task of Value Balancing' (2012) 32 (2) *Rev of Pub Personnel Administration* 134–148.

⁵ Standing Committee of the National People's Congress, *Judges Law of the People's Republic of China* 28 February 1995 (revised and effective 1 January 2002) <<http://www.lawinfochina.com/display.aspx?lib=law&id=121&CGid=>> accessed 10 May 2020. For details, see Ray Worthy Campbell and Fu Yulin, 'Moving Target: The Regulation of Judges in Rapidly Changing China' in Richard Devlin and Adam Dodek (eds), *Regulation Judges: Beyond Independence and Accountability* (Edward Elgar 2016) 105–122, 109.

⁶ Organic Law of the People's Courts of the People's Republic of China, adopted 1 July 1979, as amended up to 31 October 2006 <http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/13/content_1384078.htm> accessed 20 April 2020.

property, restricting the freedom of travel of the suspect as well as detaining persons for long periods under non-transparent non-autonomous procedures.⁷ Then, and now, if the CCDI organization responsible determined that the matter was serious enough to merit criminal prosecution, a decision would be taken to expel the person from the Party and transfer the matter to the procuratorate, which is the institution responsible for criminal prosecution. In the late 1980s, the State Council established the Ministry of Supervision (again with local counterparts and counterpart entities) to set standards and supervise the conduct of civil servants, whether or not they were members of the Party. The SPC established its Supervision Bureau in 1989 (then called the Supervision Office), implementing CCDI and Ministry of Supervision requirements within the judiciary, under a shared offices arrangement characterized as ‘one office, two nameplates’.⁸ The head of the Supervision Office was also a member of the Party Group of the SPC.⁹ More generally, the functioning of the CCDI and Ministry of Supervision were effectively consolidated in 1993, although formally the Ministry of Supervision continued to exist until 2018.¹⁰

From 2001, calls came from within the Chinese judiciary to establish standards of ethics and behaviour that drew on those of other countries and a corresponding judicial disciplinary system.¹¹ This view was incorporated into the SPC’s Second Five-Year Judicial Reform Plan Outline (2004–2008), the long-term goal of which was to better professionalize the Chinese judiciary.¹² Five-Year Judicial Reform Plan Outlines are framework documents issued by the SPC (with senior SPC or political leadership approval) to implement

⁷ The relevant regulations at the time are described by Flora Sapio, ‘Shuanggui and Extralegal Detention in China’ (2008) 22 *China Information* 7–37.

⁸ Supreme People’s Court and State Organ Staffing Commission, ‘Notice on Establishing Supervision Institutions in All Levels of the People’s Courts, 28 July 1989’ in Party Discipline Group and Supervision Office (eds), *Handbook for Party Discipline and Supervision Work* (1991) 204–207.

⁹ Susan Finder, ‘The Supreme People’s Court of the People’s Republic of China’ (1993) 7 *Journal of Chinese Law* 145, 159.

¹⁰ Keith Zhai, ‘Huang Shuxian Named New Supervision Minister’ (*South China Morning Post*, 20 March 2013) <<https://www.scmp.com/news/china/article/1194986/huang-shuxian-named-new-supervision-minister>> accessed 12 May 2020.

¹¹ See Jiang Huiling, ‘Discussion of a Mechanism for the Implementation of Judicial Ethics’ (2001) 10 *National Judges College Law Journal* 7–9. The author transferred from the SPC in 2020 after 33 years of service to become the dean of the Tongji University School of Law.

¹² Zuigao Renmin Fayuan (Supreme People’s Court), ‘Renmin Fayuan Dier wunian gaige gangyao (2004–2008)’ [Supreme People’s Court, ‘The Outline of the Second Five Year Reform of the People’s Courts (2004–2008)’] *Fa Fa* (2005) No 18 (*law-lib.com*, 26 October 2005) <http://www.law-lib.com/law/law_view.asp?id=120832> accessed 8 March 2020.

judicial reforms, implying that the SPC planned to establish clearer rules, standards, and (perhaps) institutions for judicial discipline, which had not previously existed. It stated:

43. Establish a judicial disciplinary system that accords with the special characteristics of the judicial profession, establish procedural rules for judicial discipline, standardize the conditions for judicial discipline, paths for procedures for the hearing of cases and relief measures; protect the legitimate rights of the judge who is being complained against or being investigated.

It is clear that the intent of this provision was to provide the framework for a judicial disciplinary system that drew upon disciplinary models outside China, but which would conform to China's political and social environment. The SPC leadership tasked the Supervision Bureau with drafting such a framework.¹³ Given the background of the Supervision Bureau, they focused more on harmonizing judicial discipline rules with civil service and Party discipline rules than considering international models. The Supervision Bureau never solicited opinions on its draft from ordinary judges. As a result, during the Second Five-Year Judicial Reform Plan, the SPC issued two different types of regulations related to judicial discipline. Most of these regulations provided more detail to Party discipline and civil service type of sanctioning within the courts, while a few reflected international practices. Regulations in the first category are set out in Table 4.1.

These regulations include provisions related to judicial discipline offences, procedure, and monitoring of judicial behaviour. Under the above regulations, the acts for which a Chinese judge could be disciplined were not only those commonly sanctioned elsewhere in the world (such as corruption, illegal or unethical dealings with parties and lawyers, or inappropriate courtroom behaviour) but also included moral infractions and a range of violations connected to erroneous decisions. For example, the 2009 Court Punishment Regulations authorize the sanctioning of court staff (including judges) for keeping lovers, gambling during work hours, and failing to support spouses or other family members.¹⁴

The Court Supervision Work Regulations lack strong procedural protections. The supervision bureau or department of the relevant court undertakes a preliminary investigation of a case. If it finds evidence of a violation, it obtains approval from the court president to open a file, after which the supervision department designates an investigation team. If there is sufficient

¹³ Du Lei, *Study on the Disciplinary System for Judges from the Perspective of Judicial Reform* (1st edn, Chunzhong Chubanshe 2016) 130.

¹⁴ Court Punishment Regulations (Table 4.1 note a) arts 100 and 103.

Table 4.1 Party discipline-influenced regimes

Title	Date	Status in 2020	Content
Regulations on the Punishment of the Functionaries of People's Courts (Court Punishment Regulations) ^a	31 December 2009	Effective	Lists offences and types of punishments. Harmonized with the Civil Servants Law and Judges Law
People's Court Supervision Work Regulations (Court Supervision Work Regulations) ^b	5 June 2008, amended and reissued 31 January 2013	Effective	Sets out procedures for discipline cases
Interim Provisions on People's Court Judicial Inspection Work ^c	2008, amended and reissued in 2011	Further amended in Xi Jinping era but full text not available	Establishes judicial inspection offices and their functions to inspect leaders of lower courts
People's Courts Provisional Regulations on Trial Matters Supervision ^d	26 December 2011	Effective	Described as further implementing Supervision Work Regulations
Implementing Measures for Establishing Integrity Supervisors in the Trial and Enforcement Departments of Courts ^e	20 February 2009, replaced 28 June 2018	Newer ones effective	Described as further implementing the Supervision Work Regulations
Replaced by Temporary Measures of the Supreme People's Court on Institutional Full Time Party Cadres (Clean governance inspectors) ^f			

Notes:

^a Supreme People's Court, 'Regulation on Disciplinary Actions against Staff Members of the People's Courts, 31 December 2009' (No 61 (2009) of the SPC, 26 January 2010) <<http://en.pkulaw.cn/display.aspx?cgid=0a30fe3177d8483bbdfb&lib=law>> accessed 14 March 2020.

^b Supreme People's Court, 'Notice of the People's Court on Printing and Distributing the Regulations on the Supervision Work of the People's Court' (FaFa (2018) No 17, 5 June 2008) <<http://www.tjjw.gov.cn/html/jifaguangjiao/guojiafagui/2008/0601/301.html>> accessed 12 May 2020.

^c Supreme People's Court, Interim Provisions on People's Court Judicial Inspection Work, 15 November 2011 <http://www.gongshu.gov.cn/art/2011/11/15/art_1235142_2715698.html> accessed 14 June 2020.

^d Zhan Xianming, 'The Supreme People's Court introduced the system of trial supervision' (*People's Court News*, 20 December 2011) <<http://www.court.gov.cn/zixun-xiangqing-3526.html>> accessed 12 May 2020.

^e People's Court of Shahekou District, Interim Provisions on the Work of People's Courts, Law of 26 December 2011 (2011) No 346 <<http://dlshkfy.chinacourt.gov.cn/article/detail/2015/05/id/4332212.shtml>> accessed 12 May 2020.

^f Wang Wenbo, 'Supreme People's Court Establishes a Fulltime Party Cadre System: Xu Jiaxin and the Fulltime Party Cadres Have a Collective Discussion on Assuming their Duties' (*Chinacourt.org*, 7 July 2016) <<https://www.chinacourt.org/article/detail/2016/07/id/2013073.shtml>> accessed 15 June 2020.

evidence, the matter advances to a hearing procedure which may be either oral or paper based, handled by a separate team from the investigation team, but also within the supervision department. The accused judge has no right to be represented in the hearing, submit other evidence, or call witnesses. If the supervision department recommends giving a warning or another less serious disciplinary decision, this must be reported to the court president for approval before it is imposed. If the hearing team proposes to demote, cancel the administrative rank, or remove the judge from office, this must be approved by the office of the court president and issued in the name of the court. If it is proposed to remove or demote a judge, that internal court decision must be forwarded to the legislature for formal removal, with no further review mandated. Under article 11 of the Punishment Regulations, judges who make collective decisions that violate discipline or legislation can be punished jointly.

Several of the regulations mentioned above create a system for monitoring judicial behaviour that could lead to judges being sanctioned under procedures similar to other civil servants or Party members. The inspection mechanisms include judicial inspection, trial matters supervision, and integrity supervisors. Judicial inspection involves selected persons from higher courts inspecting the leaders of lower courts. It is related to Party inspection regulations.¹⁵ Trial matters supervision authorizes inspectors to review departments of their own court and lower courts. Integrity supervisors focus on anti-corruption and other disciplinary matters. These inspection and monitoring regulations have been strengthened in the Xi Jinping era.

The disciplinary system described above draws on practices in traditional Chinese law of fused administrative and judicial authority under which judges bore broad individual and collective (group) responsibility¹⁶ – strict liability for judicial error and collective responsibility for official mistakes.¹⁷

¹⁵ The Central Committee of the Communist Party of China issued the 'Regulations on Inspection Work of the Communist Party of China (Trial (Provisional))' (*Xinhua News Agency*, 13 July 2009) <http://www.gov.cn/jrzq/2009-07/13/content_1363678.htm> accessed 12 May 2020.

¹⁶ R W Campbell and F Yulin (n 5) 122.

¹⁷ Carl Minzner, 'Judicial Disciplinary Systems for Incorrectly Decided Cases: The Imperial Chinese Heritage Lives on' (2009) 39 *NML Rev* 63–87.

During this period, the SPC issued two regulations more consistent with judicial discipline elsewhere in the world: the 2005 Code of Conduct for Judges (reissued in 2010) and 2010 Basic Standards of Judicial Ethics (earlier version entitled Basic Standards on Professional Ethics of Judges was dated 2001).¹⁸

The fact that a more autonomous, procedure-based, and clear judicial disciplinary system was not established as planned has important implications for the development of judicial discipline in the Xi Jinping era.

III JUDICIAL DISCIPLINE DEVELOPMENTS IN THE XI JINPING ERA

Judicial disciplinary developments in the Xi Jinping era are part of a wider reorientation of Chinese governance, and in particular the management of government and Party officials, but also part of a larger package of judicial reforms. It has been noted that politicization is being institutionalized to such an extent as to fundamentally change the balance between political and professional values and to reconfigure the Party–government relationship, including the management of civil servants and the implementation of the Party disciplinary regime.¹⁹ As judges are considered a type of civil servant and most are Party members, these structural trends affect judicial discipline. However,

¹⁸ Code of Conduct for Judges, 6 December 2010, effective 6 December 2010 (Westlaw China); SPC, Basic Standards of Judicial Ethics of the People's Republic of China, 6 December 2010. Li Yuwen commented about the 2001 Code of Conduct that the general principles in the 2001 Code of Conduct were similar to those provided in the US Code. However, 'the detailed rules under each principle also reflect Chinese characteristics'. As for the 2010 version, she noted that 'resulting from the shift in judicial reform under the then president of the SPC, the new code included some more politically oriented principles', Yuwen Li, *The Judicial System and Reform in Post-Mao China: Stumbling Towards Justice* (Ashgate Publishing 2014) 66 [*Judicial System Reform Post-Mao*]. For more information about the earlier version, see Yuwen Li, 'Professional Ethics of Chinese Judges' (May–June 2003) 47 *China Perspectives* <<https://journals.openedition.org/chinaperspectives/274>> accessed 15 March 2020; Hualing Fu, 'Building Judicial Integrity in China' (2016) 39 *Hastings Int'l and Comp L Rev* 167–181.

¹⁹ Holly Snape, 'A Shifting Balance between Political and Professional Responsibility: Paradigmatic Change in China's Civil Servant and Cadres Management System' (2019) 3 *Mapping China Journal* <https://mappingchina.org/wp-content/uploads/2019/11/MCJ-2019_1_Holly-Snape.pdf> accessed 15 March 2020; Li Ling, 'Politics of Anticorruption in China: Paradigm Change of the Party's Disciplinary Regime 2012–2017' (2019) 28 (115) *Journal of Contemporary China* 47–63 <<https://www.tandfonline.com/doi/pdf/10.1080/10670564.2018.1497911?needAccess=true>> accessed 10 May 2020.

as we shall see, at the same time that political values have become increasingly important, one important aspect of ongoing policy and legal changes, including two Five-Year Judicial Reform Plan Outlines, is some visible steps towards greater professionalization of the judiciary.²⁰

The reorientation of governance in the Xi Jinping era related to judicial discipline has taken the legal forms of a constitutional amendment and reorganization of Party and government, as well as major legislative changes during the period 2018–2019. An additional legislative change is underway in 2020. These legislative developments crystallize Party policy and regulatory changes implemented since late 2014. They include: the establishment of the National Supervision Commission (NSC) and reconfiguring of the structure of the Chinese constitution to accommodate it; the related promulgation of the Supervision Law and the forthcoming Law on Governmental Sanctions for Public Employees; amendment of the Civil Servants Law with the linked merger of the Civil Servants Bureau into the Party's Organization Department; and the amendment of the Organic Law of the People's Courts and Judges Law.²¹ All of this legislation is linked. These legal developments and the most important policy changes are described below.

III.A Developments Related to the NSC

The most important legal change related to judicial discipline is the 2018 amendment of the Constitution.²² Some of those amendments involved incorporating the NSC as an additional institution. From the constitutional amendments it is clear that the NSC has a constitutional and bureaucratic status outranking the courts. The staff of the NSC and its local counterparts come from the CCDI, the Ministry of Supervision, and several departments of the procuratorate. Concurrently, the NPC passed the Supervision Law.²³

²⁰ Bjoern Ahl and Daniel Sprick, 'Towards Judicial Transparency in China: The New Public Access Database for Court Decisions' (2018) 32(1) *China Information* 3–22; Li Yuwen, *Judicial System Reform Post-Mao* (n 18) 65–86. Although policies stress political factors, in actual fact professional factors are very important, especially for ordinary judges.

²¹ See Supervision Law of the People's Republic of China, adopted and effective 20 March 2018 <<https://npcobserver.com/legislation/supervision-law/>> accessed 13 May 2020.

²² 'Annotated Translation: 2018 Amendment to the P.R.C. Constitution (Version 2.0)' <<https://npcobserver.com/2018/03/11/translation-2018-amendment-to-the-p-r-c-constitution/>> accessed 15 February 2020.

²³ Jamie P Horsley, 'What's So Controversial about China's New Anti-Corruption Body? Digging into the National Supervision Commission' (*The Diplomat*, 30 May

Although the Supervision Law is said to have put the operations of the CCDI under legal procedures, it is more accurate to say that the NSC is the ‘legal’ face of the CCDI. This chapter will use the term CCDI/NSC as it reflects official usage. The CCDI/NSC (and its local counterparts, the supervision authorities) can supervise the courts, the legislature, and other Party and government institutions and their personnel, whether or not they are party members, while the controls on its authority are weak. The due process requirements of China’s criminal justice and administrative law systems do not apply to the supervision authorities. They have broad investigatory, detention, sanctioning and confiscatory powers. The accused person has no right to remain silent. Persons may be detained by the supervision authorities during which time they have no access to counsel. The supervision authorities can impose a range of penalties, including a written warning, recommending demotion, dismissal, and confiscation of property related to the offence. In serious cases, a Party member who is punished will be expelled from the Party, and their case then transferred to the procuratorate for prosecution. This system currently applies to judges as well as other persons in the public service.²⁴ This means that judges who are investigated and whose cases are determined by the CCDI/NSC (or its local counterpart) have very few procedural protections. The related offences under Party disciplinary rules are summarized below.

Linked to the Supervision Law is the forthcoming Law on Governmental Sanctions for Public Employees. Drafted by the CCDI/NSC, it authorizes the supervision authorities to impose a variety of non-criminal sanctions on public employees (whether or not they are Party members), ranging from a warning to dismissal.²⁵ The draft lists political offences first, harmonized with the 2018 Party Discipline Regulations (discussed below). Article 30, for example, requires the dismissal of persons who publish articles, speeches, and so on, opposing China’s socialist system or the leadership of the Communist Party. The section on procedures authorizes investigators to obtain evidence and

2018) <<https://www.brookings.edu/opinions/whats-so-controversial-about-chinas-new-anti-corruption-body>> accessed 10 May 2020.

²⁴ Michael Laha, ‘The National Supervision Commission: From “Punishing the Few” toward “Managing the Many”’ (*Center for Advanced China Research*, 15 July 2019) <<https://www.ccpwatch.org/single-post/2019/07/15/The-National-Supervision-Commission-From-Punishing-the-Few-toward-Managing-the-Many>> accessed 13 May 2020; Li Li and Wang Peng, ‘From Institutional Interaction to Institutional Integration: The National Supervisory Commission and China’s New Anti-Corruption Model’ (2019) 240 *China Quarterly* 967–989.

²⁵ As of this writing, the draft is still under consideration. Relevant information, including the current draft, is available at ‘Law of the People’s Republic of China on Governmental Sanctions for Public Employees’ <<https://npcobserver.com/legislation/law-on-governmental-sanctions-for-public-employees/>> accessed 13 May 2020.

information from relevant individuals and entities. They are required to cooperate. Article 44 gives the accused person the right to learn of the facts ascertained in the investigation and the basis for the proposed sanctions, provide statements and explanations. The authorities must verify the facts, reasons, and evidence provided by the accused, which must be included in the person's file. If verification sustains what the accused person has said or provided, that view must be adopted. There is no obligation to make the sanctioning decision public. The draft only calls for the sanction to be announced within the related institution.

In late 2019 and early 2020, several prominent administrative law scholars published articles criticizing the draft for its vagueness and lack of protection of the rights of accused civil servants.²⁶ Professor Jiang Mingan of Peking University, for example, criticizes the offences of 'not taking responsibility, inaction, formalism and bureaucratism' (now in article 40 of the draft). He notes that these offences could be used by a local official who dislikes a subordinate criticizing a particular policy. Professor Jiang criticizes the draft for lacking judicial remedies, including state compensation for a person who was later found to be improperly punished. The draft anticipates harmonization with the Judges Law and Civil Servants Law.

III.B Civil Servants Law and Party Discipline Rules

In 2018, the Civil Servants Law, which applies to judges unless the Judges Law provides otherwise, was amended, stressing political responsibility, further strengthening political discipline and ideological conformity.²⁷ The penalties under the Civil Servants Law are harmonized with the Supervision Law and will be coordinated with the Law on Governmental Sanctions for Public Employees. These laws are linked to the Party's Disciplinary Rules, amended in 2018.

²⁶ Jiang Mingan, 'Suggestions for Four Amendments to the Law on Disciplinary Actions for Public Officials (Draft)' (2020) 1(170) *China Law Review*, published at <<https://mp.weixin.qq.com/s/R4gRmJl19GTTPIrHxI19GQ>> accessed 1 May 2020; Qin Qianhong et al, 'About People's Republic of China Law on Administrative Discipline of Public Officials (Draft): Research opinions' (12 October 2019) *China Law Review*, published at <<https://mp.weixin.qq.com/s/K8BqnvKQbmjDsyoGKXA7A>> accessed 1 May 2020.

²⁷ Standing Committee of the National People's Congress, Civil Servant Law of the People's Republic of China (2017 Amendment) (Revised), Order No 76 of the President, 1 September 2017, effective 1 January 2018 <<http://en.pkulaw.cn/display.aspx?id=23929&lib=law>> accessed 15 May 2020.

The 2018 amendments to the CCP Rules on Party Discipline (2018 Party Discipline Rules) illustrate the reorientation towards politicization.²⁸ They contain a special requirement to uphold the status of Xi Jinping as the core of the Party, establish stricter disciplinary standards than previously, and increase the sanctions for individuals (and groups) who violate them.²⁹ The standards in the 2018 Party Discipline Rules include ones relating to political discipline, organizational discipline, integrity discipline, discipline in relation to the public, work discipline, and lifestyle discipline.

Under political discipline,³⁰ persons may be disciplined for failure to conform to the Party on major matters of principle and speaking out or taking actions in furtherance of that; refusal by leaders to carry out Central Committee major policies; being two-faced or duplicitous with the Party; interfering with Party inspections or failing to comply with inspection group directives; or retaining a religious belief. Organizational discipline³¹ refers to compliance with democratic centralism and other principles by which the Party operates, with a new provision on leaders ignoring major decisions made collectively. New rules on work discipline³² require vigorous implementation of Central Party directives, while provisions on lifestyle discipline³³ impose strengthened moral requirements, particularly relating to extramarital affairs and failure of a Party member to control the actions of family members. These amendments put additional pressures on judges.

As to supervision and enforcement of Party discipline, the methods used and resources available for Party discipline have increased under Xi Jinping.³⁴ The focus in Party discipline is on persons in a leadership or supervisory position, which in a court would be the court president, vice presidents, and division heads. Some examples of judges disciplined under this system are set out later in this chapter.

²⁸ See more specifically Li Ling (n 19).

²⁹ Jeremy Daum, 'Comparative English 2018/2015 Party Discipline Rules' (*China Law Translate*, 30 August 2018) <<https://www.chinalawtranslate.com/en/comparative-english-2018-2015-party-discipline-rules/>> accessed 10 May 2020.

³⁰ Ibid arts 42–69.

³¹ Ibid arts 70–84.

³² Ibid arts 121–133.

³³ Ibid arts 134–138.

³⁴ See Li Ling (n 19).

III.C Organic Law of the People's Courts

In 2018, the NPC Standing Committee amended the Organic Law of the People's Courts (People's Courts Law),³⁵ incorporating, inter alia, new provisions on 'judicial responsibility'. The concept is that concurrent with giving judges greater autonomy to decide cases on their own, at the same time oversight is required to ensure that judges bear corresponding responsibility. These principles are linked to broader Party initiatives to expand the responsibility of Party and government cadres.³⁶ In particular, the provisions in the amended People's Courts Law cement into law policies requiring that judges bear lifetime responsibility for their cases. This had been first announced in an important late 2014 Party Plenum on the rule of law.³⁷ This 2014 Party Plenum identified several judicial responsibility principles: 'lifetime responsibility for case quality and a wrongful case responsibility system, ensuring that case dispositions withstand the tests of law and time ... Improve case handling responsibility systems for presiding judges, collegial panels ... [and] implement a system where the person handling the cases bears responsibility'.³⁸ Jeremy Daum of the Paul Tsai China Center has commented: the 'rhetoric of judicial accountability has been closely linked to that of preventing "wrongfully decided cases" with the promise that the judicial personnel responsible for such cases will remain liable for their entire lives, regardless of retirement or transfers'.³⁹

³⁵ NPCSC, People's Courts Organic Law of the People's Republic of China, adopted 1 July 1979, effective 1 January 1980, as amended and revised up to 26 October 2018, effective 1 January 2019 (via *NPC Observer*) <<https://npcobserver.com/legislation/peoples-courts-organic-law/>> accessed 13 May 2020.

³⁶ SPC, 'Opinions on Improving People's Courts' Judicial Responsibility System' (*China Law Translate*, 20 September 2015) <<https://www.chinalawtranslate.com/judicial-accountability/?lang=en>> accessed 20 May 2020. Information released at the SPC press conference announcing the 2015 judicial responsibility document reveals that major institutions, some judges and some scholars were consulted: 'The Supreme Court issued several opinions on improving the judicial responsibility system of the court' (*Supreme People's Court Network*, 21 September 2015) <<http://www.court.gov.cn/zixun-xiangqing-15585.html>> 20 May 2020.

³⁷ 'Chinese Communist Party Central Committee Decision Concerning Several Major Issues in Comprehensively Advancing Governance According to Law' promulgated by CCP Central Committee, 10 October 2014 (*China Law Translate*, 28 October 2014) <<http://www.chinalawtranslate.com/fourth-plenum-decision/?lang=en>> accessed 15 May 2020.

³⁸ Ibid.

³⁹ Jeremy Daum, 'Protections and Discipline of Judicial Personnel' (*China Law Translate*, 8 August 2016) <<https://www.chinalawtranslate.com/protections-and-discipline-of-judges/>> accessed 10 May 2020. More generally, see General Offices of

Several articles in the People's Courts Law relate to judicial responsibility. The first, article 8, states the policy but gives few details. It simply requires the people's courts to implement judicial responsibility and establish a mechanism that integrates judicial power and judicial responsibility. Article 33 gives additional details that apply to judges hearing cases. It provides that a judge sitting solely, or as a member of a collegial panel (generally of three or five judges) is responsible for determining the facts and applying the law in their cases. Under other articles, judges with management authority, such as court presidents, vice presidents, and members of a court's judicial committee (also translated as 'adjudication committee'), also bear responsibility. This is linked to earlier regulations on judicial responsibility, which require them to supervise the judges and other staff.⁴⁰ Under the 2019 regulations on judicial committees, the members are responsible for any comments they express and their votes.⁴¹

The SPC began its efforts to create a judicial responsibility regulatory system in 2015, as signalled in the 2015 Fourth Five-Year Judicial Reform Plan Outline.⁴² These efforts have continued under the 2019 Fifth Five-Year Judicial Reform Plan Outline.⁴³ In a document that it issued in April 2020,

the Party Central Committee and State Council, 'Provisions on the Protection of Judicial Personnel in the Lawful Performance of their Duties' issued 28 July 2016 (*China Law Translate*, 29 July 2016) <<https://www.chinalawtranslate.com/en/provisions-on-the-protection-of-judicial-personnel-in-the-lawful-performance-of-their-duties/>> accessed 15 May 2020.

⁴⁰ People's Courts Law (n 35), art 13. The Supreme People's Court, in 'The Supreme People's Court's Opinions on the Further Implementation of the Judicial Responsibility System' 4 December 2018, lists several concerns for which court presidents and vice presidents are responsible, including administrative, disciplinary, and substantive matters. These are further explained in an interview that the head of the Judicial Reform Office gave to the press: 'The Supreme Law Department reorganized to answer reporters' questions on the further implementation of the judicial responsibility system' (*The Paper*, 10 December 2018) <https://www.thepaper.cn/newsDetail_forward_2722905> accessed 5 May 2020.

⁴¹ Supreme People's Court, 'Provisions on Completing and Improving Work Mechanisms for the People's Courts' Adjudication Committees' 2 August 2019 (*China Law Translate*, 22 September 2019) <<https://www.chinalawtranslate.com/en/provisions-on-completing-and-improving-work-mechanisms-for-the-peoples-courts-adjudication-committees/>> accessed 5 May 2020.

⁴² 'Opinion of the Supreme People's Court on Deepening Reform of the People's Courts Comprehensively: Outline of the Fourth Five-Year Reform of the People's Courts (2014–2018)' (*China Law Translate*, 25 February 2015) <<https://www.chinalawtranslate.com/en/court-reform-plan/>> accessed 1 May 2020.

⁴³ 'Supreme People's Court Opinions on Deepening the Reform of the Judicial System with Comprehensive Integrated Reforms – Outline of the Fifth Five-Year Reform Programme of the People's Courts (2019–2023)' (*China Law Translate*, 27 February 2019) <<https://www.chinalawtranslate.com/en/supreme-peoples-court>>

implementing a late 2019 Party Plenum, the SPC announced that the judicial responsibility regulatory system would further evolve.⁴⁴ That means that judicial responsibility remains an important issue for the political leadership.

The articles on judicial responsibility also include reforms regarding greater autonomy of judges (the rights mentioned in article 8). The greater autonomy is said to be secured by prohibiting certain types of interference by senior court leaders and outside officials in the courts' work, and by requiring interventions by officials and others external to the court system and senior court officials uninvolved with a case decision to be documented. Before the 2015 court reforms, Chinese judges needed to obtain some level of approval for their decisions, which meant that senior persons within the court sometimes pressured judges hearing a case to decide a case in a particular way. A recent criminal court case, in which a court vice president was prosecuted for several offences, including pressuring the judges involved to change their decision in a civil case, indicates that this still occurs in practice.⁴⁵

The amendments to the People's Court Law also incorporate updated versions of the supervisory mechanisms described in the previous section, by requiring courts to strengthen internal supervision, conduct investigations promptly, verify possible legal violations and deal with them in light of the circumstances. During the Xi Jinping era, regulations on judicial inspection, trial matters supervision, and integrity supervisors have been harmonized with current policy. Additionally, Party inspection of the courts occurs more frequently. Unlike the pre-Xi Jinping period, Party Central Inspection Groups have scrutinized the leadership of the SPC, and counterpart investigations are conducted by provincial or municipal Party Inspection Groups of provincial or

-opinions-on-deepening-the-reform-of-the-judicial-system-with-comprehensive-integrated-reforms-outline-of-the-fifth-five-year-reform-program-of-the-peoples-courts-2019-2023/> accessed 8 May 2020.

⁴⁴ For a link to, and analysis of that document, see Susan Finder, 'Supreme People's Court's New Vision for the Chinese Courts' (*Supreme People's Court Monitor*, 4 May 2020) <<https://supremepeoplescourtmonitor.com/2020/05/04/supreme-peoples-courts-new-vision-for-the-chinese-courts/>> accessed 13 May 2020.

⁴⁵ See 'The responsible vice president of the court accepted a benefit, overturned the opinion of the collegiate panel, orally directed the opposite opinion, and was found guilty' (*China Judgments Online*, 12 May 2020) <https://mp.weixin.qq.com/s/_ieBzKM6w_ngxjX_DjhAVw> accessed May 13, 2020. At other times the offending senior judge is given a punishment under Party discipline rules.

municipal courts.⁴⁶ Moreover, as further discussed below, the CCDI/NSC has stationed an office at the SPC.⁴⁷

Published writings by judges reveal great concern about the broad scope of, and uncertain standards for, judicial responsibility. One article describes judicial responsibility as the ‘Sword of Damocles’ hanging over the head of judges.⁴⁸ A recent book by a scholar and former judge criticized the lack of clarity concerning judicial responsibility and the absence of provisions that would exempt judges from responsibility.⁴⁹ As explained in the following section, these concerns have been further documented in a report commissioned by the SPC’s Judicial Reform Office.

III.D Judges Law

In 2019 the NPC Standing Committee amended the Judges Law. It now codifies the new approach to judicial discipline in the Xi Jinping era. In particular, it incorporates relevant sections of the Fourth and Fifth Five-Year Judicial Reform Plans on judicial discipline, a related SPC and SPP document,⁵⁰ and other forms of monitoring judicial conduct as set out in SPC documents issued after the 2014 Fourth Party Plenum. It is also harmonized with the Civil Servants Law as well as the People’s Courts Law.

⁴⁶ See Li Ling (n 19); Susan Finder, ‘Central Inspection Group Gives Feedback to the Supreme People’s Court (2020 edition)’ (*Supreme People’s Court Monitor*, 12 January 2020) <<https://supremepeoplescourtmonitor.com/2020/01/12/central-inspection-group-gives-feedback-to-the-supreme-peoples-court-2020-edition/>> accessed 13 May 2020.

⁴⁷ See below (n 54).

⁴⁸ Xu Zhenhua and Wang Xingguang, ‘A Probe into the Progressive Model of Judges’ Responsibility for Handling Cases’ (2017) 7 *Journal of Law Application*, republished at <<https://mp.weixin.qq.com/s/5sBRftvfFPRvh-oH7HSVIA>> accessed 2 February 2020.

⁴⁹ The author, formerly a judge in Beijing, completed his postdoctoral work at the China Institute for Applied Jurisprudence (which is affiliated with the SPC). Hu Changming, *Research on Protections for Judicial Professionals* (China Social Sciences Press 2019) 222–224.

⁵⁰ Supreme People’s Court and Supreme People’s Procuratorate, ‘Opinions on the Establishment of a Disciplinary Punishment System for Judges and Procurators (for trial implementation)’ (*China Law Translate*, 7 November 2016) <<https://www.chinalawtranslate.com/en/opinions-on-the-establishment-of-a-disciplinary-punishment-system-for-judges-and-procurators-for-trial-implementation/>> accessed 17 May 2020. This was approved by the Party leadership before promulgation, and promulgated upon the consent of the leaders of the CPC Central Committee: see <<http://en.pkulaw.cn/display.aspx?cgid=30c268253911681dbdfb&lib=law>> accessed 15 June 2020.

Articles 46–51 of the Judges Law provide further details on the type of offences that can subject a judge to punishment, the types of punishments that can be imposed, and the institutions (judicial disciplinary commissions) to be established. These articles provide principles that will be further detailed by the SPC and relevant departments after the Law on Governmental Sanctions for Public Employees is promulgated.

In respect of the acts for which a judge may be punished, article 46 lists the following nine acts (plus a catch-all):

1. embezzling or taking bribes, practising favouritism, misusing the law to render judgments;
2. concealing, forging, altering, or intentionally destroying evidence or case materials;
3. leaking state secrets, confidential information related to judicial proceedings, trade secrets or personal privacy;
4. intentionally handling cases in violation of legislation;
5. committing gross negligence resulting in wrong judgments or rulings causing serious consequences;
6. intentionally delaying proceedings;
7. abusing authority to seek profit for oneself or others;
8. accepting gifts or favours from or meeting privately with litigants and their representatives;
9. engaging in or participating in for-profit activities in violation of relevant provisions, or concurrently holding positions in enterprises or other for-profit organizations; or
10. other violations of discipline and law.

Although none of these provisions is overtly related to political matters, the official explanation of the Judges Law, written by the drafters, states that since judges are a type of civil servant, article 59 of the Civil Servants Law should be read into the Judges Law.⁵¹ Article 59 prohibits a number of political acts, for example: spreading views impairing the authority of the Constitution or the reputation of the Communist Party of China and the country; and organizing or participating in activities aimed at opposing the Constitution, the leadership

⁵¹ 王爱立, 中华人民共和国法官法释义 (法律出版社 2019) 268 [Wang Aili, *Zhonghua Renmin Gongheguo fa guan fa shi yi ... Explanation of the Judges Law of the People's Republic of China* (Beijing Shi: Fa lü chu ban she [China Law Press, 2019])]. The editor and contributing author, Wang Aili, is the head of the Criminal Law Office of the National People's Congress Standing Committee of the Legislative Affairs Commission. The text is considered to be authoritative commentary on the law.

of the Communist Party of China and the country, such as assemblies, marches and demonstrations.

The Judges Law also sets out a framework for judicial discipline going forward. Article 46 provides that the punishment of judges shall be ‘handled in accordance with the relevant provisions’. According to the commentary by the drafters of the Judges Law, this is intended to coordinate with procedures in Party disciplinary rules (for Party members) and for supervision authority rules.⁵² Article 47 of the Judges Law authorizes judges to be suspended from their duties if a disciplinary case has been initiated against them.

Articles 48–51 relate to establishing and operating judicial discipline committees at the provincial level (or its equivalent), and at the level of the SPC. This is the first time that judicial disciplinary committees have been incorporated into Chinese law. Judicial discipline committees do not consider all types of violations. They are limited to considering whether a judge committed an act in violation of items 4 or 5 of article 46 of the Judges Law (that is, intentionally handling cases in violation of laws and regulations, and committing gross negligence resulting in wrong judgments or rulings with serious consequences). Article 48 provides that members of the judicial disciplinary committees shall be composed of judge representatives and other representatives engaged in legal professions and relevant professionals, of whom not less than half shall be from the judiciary. Article 49 gives judges the right to make statements, provide evidence and defend themselves in disciplinary proceedings, although it is unclear whether this would be in oral or written form. It remains to be seen whether the procedures the SPC is drafting will enable a judge to require witnesses, or those with relevant evidence, to make a statement or attend a disciplinary committee hearing. While the articles in the Judges Law provide important additional protections to judges by setting out principles by which specialized judicial disciplinary committees must operate, their scope is limited.

It is clear from the text of the Judges Law that a disciplinary committee will not itself impose a disciplinary penalty on a judge. The disciplinary committee provides an opinion concerning the violation to the court involved, which decides on sanctions in accordance with relevant provisions. It is unclear whether the court is bound by the opinion provided. If the court decides that dismissal is appropriate, that recommendation is made to the relevant legislature. The text of article 48 and related comments by the drafters clarify that the disciplining of judges will continue to be an internal matter of a court. However, it is unclear whether an accused judge will be able to request the recusal of those in the court making a decision on the allegations. It is also

⁵² Ibid.

unclear whether judicial disciplinary cases will be published. In sum, it can be seen that the Judges Law gives judges more procedural rights during the disciplinary process than other Party members or civil servants, but only for two types of offences.

The SPC mentioned some of its plans for judicial discipline in a notice published in late November 2019 on its website.⁵³ The notice signals that the SPC will harmonize the disciplinary process under the Judges Law with the Law on Governmental Sanctions for Public Employees. The SPC has stated that its Supervision (to be renamed the Investigation) Bureau will be in charge of judicial discipline matters. However, a more detailed document designates the Supervision Bureau and the Political Bureau (akin to the personnel office) as primarily responsible, with the Judicial Reform Office also involved. The author surmises that the drafters are likely to communicate with the CCDI/NSC office stationed at the SPC.⁵⁴ Again, this means that the Supervision Bureau will be taking the lead in constructing the judicial disciplinary framework, taking into account previous experience with provincial level judicial disciplinary commissions established in recent years, about which little had been made public.⁵⁵ It is unresolved whether the drafters of the disciplinary regulations will take into account views on judicial discipline expressed by rank and file judges, including the views revealed in a report commissioned by the SPC's Judicial Reform Office, described in the following section. SPC

⁵³ 'Reply to Recommendation No 7429 of the Second Session of the 13th NPC' (27 November 2019) <<http://gtpt.court.gov.cn/site/NPCSystem/jytabl/info/2019/2be81566-61f2-46ec-ba32-182c50428e5d.html>> accessed 17 May 2020. The SPC noted that it had cleared its response with the NPC's Legal Work Commission.

⁵⁴ This office was established to implement a CCDI/NSC document that has not been publicly released. The report, from December 2018, discusses the launching of the office: see National Discipline Inspection and Supervision Team of the Central Commission for Discipline Inspection, 'The Discipline Inspection and Supervision Group in the Supreme People's Court studied and promoted the deepening of the reform of the stationed institutions' <<http://www.court.gov.cn/zhongjiwei/xiangqing-151032.html>> accessed 10 May 2020. It has its own webpage: <<http://www.court.gov.cn/zhongjiwei.html>> which states via its 'Job profile' portal, that among other functions, it is responsible for supervising the SPC under the Party Constitution, Constitution and Supervision Law. See also Supreme People's Court, 'Notice of the General Office of the Supreme People's Court on Issuing the "Division of Work Plan for Implementing the Key Work Points of the Judicial Reform Leading Group of the Supreme People's Court in 2019"', Faban (2019) No 40, 21 February 2019 <http://pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=aba04c6c5c2fb53abdfb> accessed 10 May 2020; and its 2020 counterpart (on file with author).

⁵⁵ Ibid.

guidance does not require such regulations to be issued for public or internal consultation.⁵⁶

IV IMPLEMENTING JUDICIAL DISCIPLINE IN THE XI JINPING ERA

This section provides an overview of how judicial discipline has been implemented in the Xi Jinping era. Judicial discipline needs to be seen in the larger context of how it is understood in China, as one aspect of implementing Party and civil service (administrative) discipline in a specialized profession. Looking generally at CCDI enforcement in the Xi Jinping period, one of the leading scholars in English on CCDI enforcement, Li Ling, found a significant increase in the investigation of anti-corruption offences, political offences, and the spirit of what are known as the Eight Point Regulations or Rules.⁵⁷ These are austerity regulations issued by the highest political authority, the Political Bureau of the Party's Central Committee, to reduce bureaucracy, extravagance and undesirable work practices of Party members. Li Ling has also noted that the investigation of political offences is linked to anti-corruption, which has become a pronounced enforcement policy. The link between political offences and anti-corruption offences, including the minor matters covered by the Eight Point Regulations, can be seen in selected cases discussed below. Limited transparency means that it is difficult to have a detailed picture of judicial discipline enforcement in recent years.

IV.A Judicial Disciplinary Statistics

Comprehensive information concerning the number of Chinese judges disciplined each year is unavailable.⁵⁸ SPC President Zhou Qiang gives statistics in his annual report to the NPC on the number of judicial staff punished, but those do not distinguish between judges and other court staff. The language in his report is linked to violations of Party discipline. Those statistics are available

⁵⁶ SPC draft judicial interpretations may be issued for public comment, but only with senior leadership approval, and internal consultation is flexible. See Supreme People's Court, Provisions of the SPC on Judicial Interpretation [最高人民法院于《司法解释工作规定》] 9 March 2007, Fafa (2007) No 12, in force 1 April 2007 <http://www.law-lib.com/law/law_view.asp?id=194506> accessed 15 May 2020.

⁵⁷ Li Ling (n 19).

⁵⁸ Susan Finder, 'China's Translucent Judicial Transparency' in Fu Hualing, Michael Palmer and Zhang Xianchu (eds), *Transparency Challenges Facing China* (Wildy, Simmonds and Hill 2019) ch 7.

for the period 2013–2019, with gaps, and are set forth in Figures 4.1, 4.2 and 4.3.⁵⁹

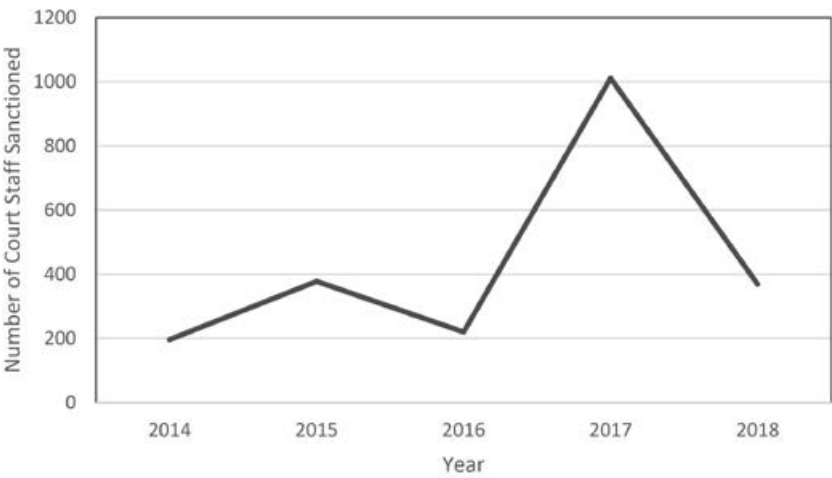


Figure 4.1 Court staff violating ‘eight-point’ anti-bureaucracy and formalism rules

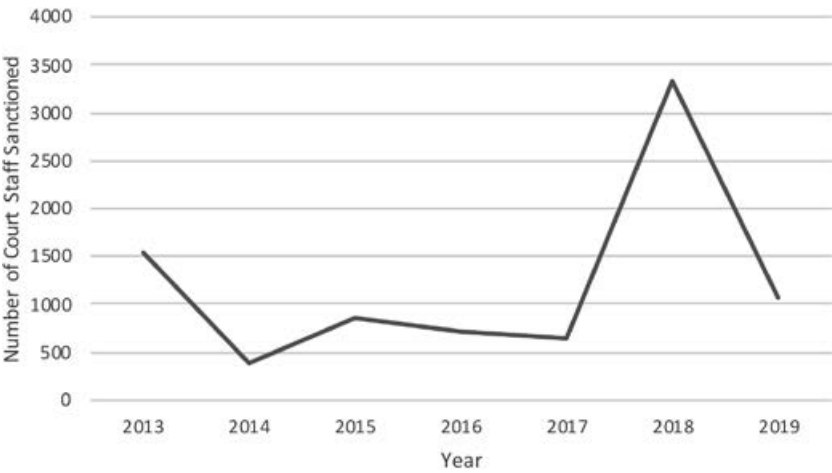


Figure 4.2 Court staff violating discipline or law through improperly exercising adjudication or enforcement power

⁵⁹ ‘(Lianghui Shouquan Fabu) Zuigao Renmin Fayuan Gongzuo Baogao’ [(The two committees are authorized to issue) Work Report of the Supreme People’s Court]

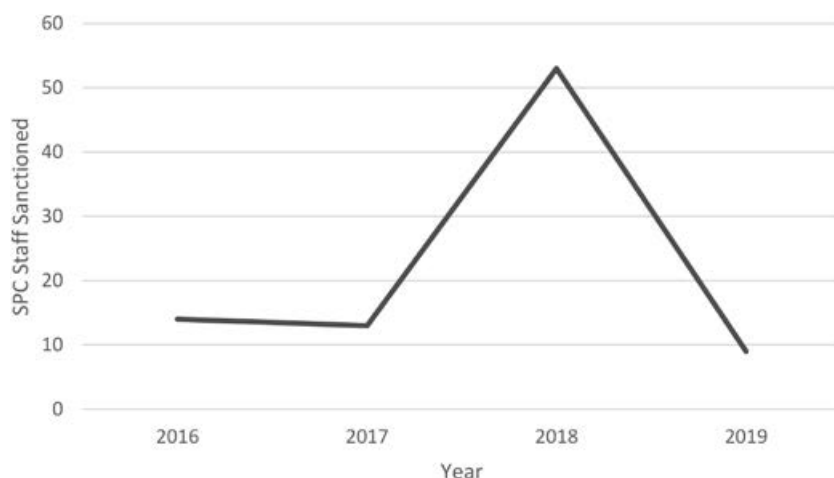


Figure 4.3 SPC staff violating discipline or law

In the 2014–2017 period, 1648 court officials were sanctioned for ‘violating the spirit’ of the Eight Point Regulations.⁶⁰ In 2018, 369 judicial staff were sanctioned for the same offence. 2019 statistics were not released.

For the more serious offence of using the trial and enforcement authority to engage in acts that violate Party discipline or law, during the 2013–2017 period, 5959 persons were sanctioned, of which 976 persons were referred to the criminal justice authorities. Li Ling attributes an increase of cases in 2017 to that year being the ‘triumphant end of the five-year anti-corruption campaign’.⁶¹ In 2019, 1374 persons were sanctioned, with 115 referred to the criminal justice authorities.

(Xinhua News Agency, 19 March 2019) <http://www.xinhuanet.com/politics/2019-03/19/c_1124253887.htm> accessed 20 April 2020; ‘(Lianghui Shouquan Fabu) Zuigao Renmin Fayuan Gongzuo Baogao’ [(The two committees are authorized to issue) Work Report of the Supreme People’s Court] (Xinhuanet, 25 March 25 2018) <http://www.xinhuanet.com/politics/2018lh/2018-03/25/c_1122587194.htm> accessed 20 April 2020.

⁶⁰ Statistics and charts from the SPC Work Reports, 2014–2019. Yuwen Li comments in her book that these statistics are likely an underreporting of the actual statistics: Yuwen Li, *Judicial System Reform Post-Mao* (n 18) 76–77.

⁶¹ Li Ling, ‘The “Organisational Weapon” of the Chinese Communist Party – China’s Disciplinary Regime from Mao to Xi Jinping’ in R Creemers and S Trevaskes (eds), *Law and the Party in China: Ideology and Organisation* (Cambridge University Press 2020) <https://www.academia.edu/38906181/The_Organisational_Weapon_of>

During 2015–2017, 80 persons at the SPC were sanctioned for violating Party discipline and law, with nine sanctioned in 2018 and 11 in 2019.

IV.A.a Judicial disciplinary cases: transparency and selected cases

No rules require public release of the text of penalty decisions regarding judges who have been disciplined and it is understood that there are restrictions on releasing judgments and information relating to criminal punishment and other sanctions imposed on judges and other officials.⁶² Transparency in judicial discipline cases occurs inconsistently, often with the CCDI/NSC or its local counterparts publishing cases relating to judges in leadership positions, or if a judge has been convicted and it is considered appropriate to make the case known. It is unclear whether judicial disciplinary reforms will mandate greater openness. Often there is a political purpose in the publicity, as with several of the cases described below, used as a ‘typical case’, to make an example of the person.

One example is a typical case publicized in 2016 by the Central Political Legal Commission, the Party Commission overseeing and coordinating the criminal justice institutions. It was one of seven ‘typical cases’ of leadership interference in the judicial process. Note that the Central Political Legal Commission publicized the case before the first instance court convicted the judge.

Judge Zuo Hong was a judge in the Trial Supervision Division of the SPC, which reviews cases to determine whether a case should be reopened. Judge Zuo was contacted by a Shanghai judge who happened to be a classmate of a deputy general manager of a construction company. The SPC had ruled on the retrial petition of a subsidiary of the construction company and remanded to the Shaanxi Higher People’s Court for further proceedings. Judge Zuo and the Shanghai judge involved themselves in the remand proceedings to seek to ensure that the result would favour the subsidiary.

Judge Zuo came to the attention of the Supervision Bureau of the SPC when its personnel were investigating other cases, and gifts she received caught someone’s eye. In April 2015, the SPC’s Supervision Bureau opened an investigation file in her case. Judge Zuo cooperated with the Supervision Bureau’s investigation and handed over the gifts to investigators. Her case was transferred to the procuratorate on 12 June 2015, when she was taken into custody. She was arrested at the end of that month. At the end of August 2015, Ms Zuo was formally removed from office. She was convicted in a Beijing

the_Chinese_Communist_Party_-_China_s_disciplinary_regime_from_Mao_to_Xi_Jinping> accessed 25 May 2020.

⁶² See Susan Finder (n 58).

district court a month after her case was announced in the press, and her conviction was upheld on appeal. Because the amounts involved were small (approximately RMB 70 000 or USD 10 000) her one-and-a-half year sentence was suspended for two years. Although she avoided a jail term, she will be unable to draw on her state pension and cannot be involved directly in the legal profession.

It appears from Judge Zuo's case that the Central Political-Legal Committee's need to issue a set of typical cases of leadership interference to scare judges and other members of the political-legal establishment into compliance trumped respect for the formalities of the operation of the criminal justice system.⁶³

Another typical example is a 2018 CCDI report on Zhou Neijin, former vice president of the Xiamen Maritime Court, expressed in Party jargon:

After investigation [it was revealed], Zhou Neijin violated political discipline, by resisting organizational investigation. [This likely means that he insisted that he was innocent.] He violated the spirit of the Eight Point Regulations by accepting shopping cards that could affect the justness of his implementation of his public duties. He violated organizational discipline by not truthfully reporting his individual matters. In written questionnaires from the [Party] organization, he did not provide truthful explanations. He violated work discipline by interfering with judicial activities in violation of regulations. He took advantage of his position to obtain benefits for others. He used the prestige of his position to obtain beneficial conditions for others; through the acts by other national staff, obtained improper benefits on behalf of others, illegally accepted money from others, which constitutes the crime of accepting bribes ... After consideration by the Standing Committee of the Provincial Party Discipline Commission and approval by the Provincial Party Committee, it has been decided to impose the sanction on Zhou Neijin of expelling him from the Party. The Provincial Supervision Commission shall impose the sanction of removing him from public office, gains in violation of discipline and the law shall be recovered, matters related to his violation of the criminal law shall be transferred to the procuratorate for review and prosecution according to law; property associated with the case shall be transferred as well.⁶⁴

⁶³ Susan Finder, 'Supreme People's Court judge convicted of taking bribes' (*Supreme People's Court Monitor*, 10 July 2016) <<https://supremepeoplescourtmirror.com/2016/07/10/supreme-peoples-court-judge-convicted-of-taking-bribes/>> accessed 5 May 2020.

⁶⁴ 'Zhou Neijin, former party group member and vice president of Xiamen Maritime Court, was expelled from the party and public office' (*Central Commission for Discipline Inspection and Supervision of the State Commission*, 22 October 2018) <http://www.ccdi.gov.cn/yaowen/201810/t20181022_181867.html> accessed 15 January 2020. The use of shopping cards for bribery purposes is discussed at Li Ling, 'Performing Bribery in China: Guanxi-Practice, Corruption with a Human Face' (2011) 20(68) *Journal of Contemporary China* 1–20.

As for what happened to this judge, Chinese press reports do not provide further information. No report of his conviction can be found in the national case database, but it seems likely that he has been convicted, as there is no press report of his being found innocent.

Zuo and Zhou's cases are typical of Party disciplinary cases under Xi Jinping. Three examples (of many) are illustrative:

1. The deputy head of the SPC's China Institute for Applied Jurisprudence (CIAJ) committed a minor infraction of reimbursement regulations in 2014, was shamed by having his infraction announced on the CCDI website in 2016,⁶⁵ and was again made an example of in 2018.⁶⁶
2. A senior judge in a Jiangsu court was given a Party warning and demoted for making a high interest loan and other offences, such as violating political discipline and resisting organizational investigation.⁶⁷
3. A judge in Yunnan was given a severe Party warning and removed from his position as deputy head of one of his court's divisions for insulting the Party Centre in a social media posting.⁶⁸

The press reports do not detail how violations are brought to the attention of the Party discipline/supervision authorities, with the exception of the Yunnan judge whose social media post attracted wide attention. The websites of courts generally contain an area in which reports can be made, but informal inquiries indicate that some cases arise internally because staff or others report superiors, colleagues, or other contacts. It appears that those reporting might have a variety of motivations for doing so.

⁶⁵ 'The Central Commission for Discipline Inspection publicly exposed five mental problems that violated the eight central regulations' (*Central Discipline Inspection Commission*, 29 January 2016) <http://www.ccdi.gov.cn/special/jdbg3/zyjw_bgt/fjbxgdwt_jdbg3/201601/t20160129_73659.html> accessed 15 February 2020.

⁶⁶ Zhai Yongguan and Xiang Dingjie, "'Punch" for assessment, holding a report and looking for examples ... Be wary of the formalism of grassroots research in some places' (*Xinhuanet*, 13 November 2018) <http://www.xinhuanet.com/politics/2018-11/13/c_1123704995.htm> accessed 13 February 2020.

⁶⁷ Jingjiang Municipal Commission for Discipline Inspection, 'Serious Warning! Notification on Shen Huawei's Discipline Violation Case' (25 January 2019) <https://mp.weixin.qq.com/s/j897rZ_CMdyeal6eNq6RbQ> accessed 15 February 2020.

⁶⁸ Ziyang Discipline Inspection, 'Yunnan judge Li Bingxiang was punished and dealt with' (*Cai Xiaoling*, 7 March 2017) <<https://mp.weixin.qq.com/s/kvMrjrtbq9j6eHlcXDEYng>> accessed 20 February 2020.

In addition to criminal offences found elsewhere in the world, such as accepting bribes, Chinese judges may also be prosecuted for two crimes that are generally considered problematic within the Chinese judicial community:⁶⁹

1. abuse of authority/power and neglect of duty (article 397 of the Criminal Law); and
2. judgments or rulings that twist the law (article 399 of the Criminal Law).

More specific regulations specify the standards for an offence being classified as a crime – generally relating to causing substantial economic losses; a party or relative of a party having committed suicide because of a judgment; social disturbances; or using fabricated evidence to convict.⁷⁰ Judges have been convicted of all such crimes but there are also press reports of cases where judges have been acquitted.

IV.B Views from Inside the Chinese Judiciary on Judicial Discipline

Survey data on the views of Chinese judges on judicial discipline are not available, likely because the topic is considered politically sensitive. However, in March 2020, the SPC Judicial Reform Office published a summary of an investigation report it had commissioned from the Henan Higher People's Court on judicial discipline.⁷¹ As a report issued by an office of the SPC, it is considered highly authoritative. The views expressed in the investigatory report give a national imprimatur to those expressed in articles published in recent years by lower court judges. The report identified major issues raised by judges concerning judicial discipline:

1. It is unclear which acts are considered to be 'legal violations' for the purpose of judicial discipline. The relevant rules are vague and precise

⁶⁹ 'The two levels of the procuratorate [that] accused [a] judge of [being] guilty of unlawful judgment were rejected by the court' (*China Judgment Document Network*, 28 June 2019) <https://mp.weixin.qq.com/s/a8edwAv_delXIVYFGXQYpg> accessed 28 May 2020. In a case mentioned above (n 45), a judge was convicted.

⁷⁰ For relevant rules and cases, see He Fan (ed), *Xingfa Zhushi Shu* [*Criminal Law Treatise*] (Democracy and Legal System Press 2019) 980–994.

⁷¹ Liu Zheng, Jin Xiaodan and Ma Xiao, 'Niandu Sifa Tizhi Zonghe Peitao Gaige Zhuanxiang Diaoyan Ketu Guandian Zongshu (2018–2019) [Summary of viewpoints on the special research project of the comprehensive supporting reform of the judicial system in 2018–2019]' (11 March 2020) *People's Justice No 7* <<https://mp.weixin.qq.com/s/ahLka3RVZry8YviPWsGy-A>> accessed 15 April 2020. The full report, '2018–2019, Judicial Reform Research Project Report – Research Concerning Ascertaining Responsibility for Illegal Judgments, Henan Higher People's Court', 30 June 2019, is on file with the author.

unified standards are lacking. It is ambiguous what type of cases remain in the judicial disciplinary system and which types are referred to the supervision commission and the standards for doing so.

2. Legislation relating to imposing liability on judges under the responsibility system is lacking and what exists is not authoritative (according to Chinese legislative rules). It is unclear who should be responsible and how responsibility should be allocated. Current rules are too vague and are slanted towards imposing responsibility on the judge in charge of the case, with less responsibility for the head of the division and judicial committee members, although sometimes senior court members use the excuse of 'supervision' to involve themselves in a case.
3. The standards for determining the liability of judges under judicial discipline rules are uncertain. The Code of Conduct and Ethical Standards are difficult to use in practice, as they are not well harmonized with legislation.
4. The existing judicial disciplinary commissions are being underutilized, as it is ambiguous as to which matters they should consider.

The research team compared Chinese standards with those in several other jurisdictions, including the United Kingdom, the United States, Germany and Japan. They suggested that China borrow some concepts from those jurisdictions, such as having clear standards, a judicialized procedure, autonomous (independent) institution, and protections for the judges. The report authors proposed a separate judicial discipline law. Some of these issues were raised by two researchers affiliated with the SPC, in a 2014 article:

It is not advisable to deal with complaints against judges in accordance with administrative procedures. Due to the different professional characteristics of judges and ordinary civil servants, most countries in the world have established quasi-judicial procedures for handling judges' disciplinary cases, even complete judicial procedures, such as Germany, Japan, the United Kingdom, and the United States. This aspect reflects the seriousness of the judge's disciplinary system and also gives the judge a fair hearing. At present, the degree of judicialization of the disciplinary procedures of judges in China is not high enough, and there is still much room for improvement.⁷²

Local judges, writing on their court websites or SPC affiliated journals have made similar points.

⁷² Jiang Huiling and Yang Yi, 'Sifa Minzhu de Jiexian he Jinji [The Limits and Taboos of Judicial Democracy]' (*People's Court News*, 19 September 2014) <www.aisixiang.com/data/78292.html> accessed 14 March 2020.

The report commissioned by the Judicial Reform Office (or its summary) is likely to be given to the drafters of the judicial discipline regulations. The drafting authority does not rest with the Judicial Reform Office, and the SPC leadership is more likely to be focused on measures that harmonize with the Law on Governmental Sanctions for Public Employees.

Based on the author's discussions with Chinese judges at various levels, they are aware of the 'existential threat' to their status posed by the current responsibility and disciplinary systems. There have been a series of cases over the last 20 years in which Chinese judges have been punished for their rulings or judgments, failure to meet performance standards,⁷³ or where a distraught party committed suicide.

As to whether concerns about judicial responsibility and discipline factor into decisions by Chinese judges to resign, two surveys from 2015 (no later surveys appear available) give some indication that it is an important factor. One survey found that almost half the judges surveyed felt that the responsibility system for mistaken cases was unfair.⁷⁴ A 2015 survey found that judicial reform, including the increased responsibility system, was a factor in the decision by judges to resign.⁷⁵

CONCLUSION

The political and regulatory trends in China since Xi Jinping became General Secretary of the CCP at the end of 2012 clearly evidence the expansion of Party control over government officials, with an emphasis on greater political discipline and ideological conformity. The Supervision Law, amended Civil Servants Law, the draft Law on Governmental Sanctions for Public Employees and the information released by the SPC concerning future judicial disciplinary reforms also manifest these trends. Had the SPC leadership designated a different team of people to draft judicial disciplinary regulations in the 2005–2009 period, it is likely that the judicial disciplinary system of China would have been different.

⁷³ Those performance standards are often a combination of factors such as a limited number of appeals, high number of cases concluded, small percentage of cases sent back for retrial, and so on. See Jonathan Kinkel and William Hurst, 'The Judicial Cadre Evaluation System in China: From Quantification to Intra-State Legibility' (2015) 224 *The China Quarterly* 933–954.

⁷⁴ Susan Finder, 'Why are Chinese judges so stressed?' (*Supreme People's Court Monitor*, 27 February 2018) <<https://supremepeoplescourtmonitor.com/2018/02/27/why-are-chinese-judges-so-stressed/>> accessed 30 March 2020.

⁷⁵ Susan Finder, 'Why are Chinese judges resigning?' (*Supreme People's Court Monitor*, 23 August 2016) <<https://supremepeoplescourtmonitor.com/2016/08/23/why-are-chinese-judges-resigning/>> accessed 30 March 2020.

However, there is another secondary trend, more difficult to assess. This is the desire of Chinese judges to be treated as professionals, as judges. This is evidenced by the recent report commissioned by the SPC's Judicial Reform Office and supports what local judges had signalled in their writings – that some proportion desire a disciplinary procedure that draws upon practices in other jurisdictions. This disciplinary procedure would be independently constituted, with procedural protections and transparent standards, so that Chinese judges are treated more like judges in the rest of the world. It is likely that they would also favour being able to express views on the framework for judicial responsibility and discipline before those are finalized. The framework set out in the newly amended Judges Law fails to meet the aspirations and expectations of those judges. After the Law on Governmental Sanctions for Public Employees is passed and the SPC harmonizes its procedures with its provisions (as is understood will be the procedure), it is likely that Chinese judges will be subject to sanctions for a broad range of political and other offences under procedures that are 'orderly linked' with Party disciplinary procedures, thereby resulting in an even more 'traditional' (that is, Party-dominated) disciplinary system than previously.

The provisions in the People's Courts Law, Judges Law and draft Law on Governmental Sanctions for Public Employees illustrate the gap between the slogan of 'treating judges more like judges' and the regulatory reality that Chinese judges face. Given that concerns about 'lifetime judicial responsibility' are high on the list of reasons that judges decide to leave, it is doubtful that this disciplinary system will be helpful in retaining the highly educated and experienced judges needed to decide the 28 million or more cases heard in the Chinese courts each year. It appears that in the longer term, when political conditions permit, Chinese judicial discipline may be better aligned with the rest of the world, but to get there is going to be a long march ahead.