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Old wine in new bottles? New strategies for judicial accountability in China

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A B S T R A C T

Life-long responsibility for handling cases marks a new page in Chinese judicial accountability. However, inadequate implementation of accountability mechanisms and ineffective remedies to mend the flaws of the justice system has frequently been criticized at home and abroad. The realization of judicial accountability actually remains very unsatisfactory. This article analyses why the current legal and institutional framework discourages the application of the judicial accountability and whether or not the new strategies that have been adopted could achieve their expected outcomes. It also examines the attempts made by the authorities over the recent decade and discusses their significance in holding those responsible accountable for wrongful convictions. Even so, only with substantive reforms to remove institutional obstacles can positive enforcers play an important and effective role in realizing the strict judicial accountability. To achieve accountability, a dual-track approach, involving both an independent judicial disciplinary committee and the current inspection departments inside the judiciary, is proposed.

1. Introduction

Like other countries, Chinese authorities have undertaken a series of reform measures to improve judicial accountability by diverse means. However, frequent failures in implementing the new measures, even following the judicial rectification of major wrongful convictions, invite skepticism regarding the effectiveness of existing judicial accountability measures. Based on deep lessons, Chinese authorities have adopted new strategies for judicial accountability, as a breakthrough to more effective remedies for wrongful convictions,¹ and “the key to deepening reforms on the justice system”.²

Life-long judicial responsibility intended to prevent and reduce wrongful convictions is strict enough to mark a new page in Chinese judicial accountability. The Political and Legal Committee (PLC) of the Chinese Communist Party Central Committee issued *Opinions on Establishing and Improving Working Mechanisms for Preventing Miscarriages of Justice* in 2013 to require that police, prosecutors and courts strictly implement the life-long accountability system. Accordingly, policemen, prosecutors and judges should take the strict responsibility for the quality of cases they handle. Also, the Central Leading Team of Fully Deepening Reforms (CDR)³ and top members of the judiciary have further specified judges' and prosecutors' life-long responsibility. Even though administrative features are inherent in the approaches to reform, the new measures are still generally expected to promote better justice.

The article will begin by examining new strategies in order to see what is novel about them and whether they are substantive.

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¹ See Illustration: *A New Round of Reforms on the Justice System, which You Will Immediately Understand*, XINHUA Agency [Xinhua she] (28 July 2015), http://news.xinhuanet.com/video/sjxw/2015-07/28/c_1116063939.htm.

² “Simple Expression” for the People: Xi Jinping Discussing Reforms on the Justice System, <http://news.qq.com/a/20170714/035420.htm>.

³ In 2013, the Central Political Bureau held a meeting to decide to set up a central comprehensive reform of the leading group, abbreviated as the CDR. Its team leader is President XI and its functions are to be responsible for the overall design reforms, coordination, advancement and supervision over the implementation.

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Next, it will use case studies to explain the effectiveness of implementing existing judicial accountability measures and the need to improve them. It will further address official expectations of the strategies and their major problems which remain to be solved. By comparing the reality of improving the measures with what is required to achieve, the article will conclude by suggesting how to remove institutional restraints hampering the full use of judicial accountability.

2. New strategies: new judicial accountability without substantive change

From 2014, in response to the revelation of several wrongful convictions, diverse top authorities issued policy papers on judicial accountability with new measures. In nature, such papers are not law with a universally binding force, but merely policy statements applicable to the respective organs led by the issuing authorities. In content, new measures on the life-long responsibility not only conflict with current laws, but also cannot change the custom of self-examination, self-correction, or the tradition of focusing on whether authorities have obtained the correct results more than whether they have followed correct procedures when holding those responsible to account. What judicial accountability do the new measures require? Is it possible for new judicial accountability to bring about substantive changes?

2.1. What do the new measures require regarding accountability?

New measures on accountability mainly include a responsibility system for justice officers' to handle a case by law and an accountability system under which they should suffer punitive consequences for misconduct that breaks laws or leads to wrongful decisions. In 2013, *Decision of the Central Committee of the Communist Party of China (CPC) on Some Major Issues Concerning Comprehensively Deepening the Reform* put forward the responsibility system for courts. It is designed to improve chief judges' or collegial benches' responsibility so as to ensure that judges can decide cases and that decision-makers take their responsibility for judgements.⁴

Further, the *Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law*,⁵ also issued in 2014, requires that various judicial officials participate in a system of life-long responsibility for handling cases. Unfortunately, neither of the *Decisions* specify the meaning or constituent elements of wrongful cases, which leaves much room for power abuses in the implementation of judicial accountability. Without a definition, a court can freely decide what wrongful cases are, whether to investigate them, whether to punish those responsible for them, and to what degree or in what form those responsible for wrongful cases should be held to account. Thus, it would be hard for courts to abandon their usual practice and properly use the life-long accountability system.

As a response to wrongful convictions, the CDR adopted the *Framework Opinions on the Major Issues of Fully Deepening Police Reforms* in 2015⁶ in order to promote justice in law enforcement. The *Opinions* are intended to improve police investigators' responsibility for error-correction and establish the system of life-long accountability for their misjudging cases. Also, the SPP and SPC respectively issued the *Opinions on Perfecting the System of Judicial Accountability in People's Procuratorates*⁷ and *Opinions on Perfecting the System of Judicial Accountability in People's Courts*⁸ in order to improve judicial officials' life-long accountability. Among them, the latter SPC's *Opinions* also require the establishment of a disciplinary committee of judges. The new committee, which is yet to be established, should involve a broad participation of the committee members and also "a transparent and impartial process" for investigating judges' misconducts or punishing them by law, regulation or disciplinary instructions.⁹

Both of the SPP's and SPC's *Opinions* clarify the applicable conditions in which authorities should be held accountable for wrongful cases and when they should be exempt. Accordingly, those who either intentionally violate laws, regulations and disciplines, or those whose gross negligence causes wrongful case decisions or other serious consequences, must be held accountable by law.¹⁰ Especially, justice officers responsible for any miscarriages of justice caused by torture, retaliation or favoritism, should be punished by law, regulation or discipline, as stated in the *Opinions*.

For example, the SPC's *Opinions* emphasize judges' life-long responsibility for the quality of cases they handle in and define the

⁴ See Decision of the CCCPC on Some Major Issues Concerning Comprehensively Deepening the Reform (Full-text)[zhonggongzhongyanguanyuanqian-shenhuagaigeruoganzhongdawenti de jue ding quan wen], CHINA (17 January 2014), available at http://www.china.org.cn/chinese/2014-01/17/content_31226494.htm.

⁵ See Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law [zhonggongzhongyanguanyuanqian-tui-jinyifazhiguoruoganzhongdawenti de jue ding quan wen], PKULAW [baidafabao] (October 23, 2014), available at: http://www.pkulaw.cn/fulltext_form.aspx?Gid=237344&is_inbook=1500773837392239.

⁶ See Both the Framework Opinions on the Major Issues of Fully Deepening Public Security Reform and the Relevant Reform Measures Have Been Adopted by the Central Committee [guanyuanqian-shenhuagaigeruoganzhongdawenti de kuangjiayijian ji xiangguangaigefang'anyijingzhongyangshenyitongguo], XINHUANET[Xinhua wang] (15 February 2015), available at http://news.xinhuanet.com/legal/2015-02/15/c_1114379121.htm.

⁷ See The SPP's Several Opinions on Perfecting the System of Judicial Accountability in People's Procuratorates [zuigaorenminfayuanguanyuwan-shanrenminjian-chayuan-sifazerenzhideruoganyijian], PEOPLE [renminwang] (28 September 2016), available at: <http://legal.people.com.cn/n/2015/0928/c188502-27642390.html>.

⁸ See The SPC's Several Opinions on Perfecting the System of Judicial Accountability in People's Courts [zuigaorenminfayuanguanyuwan-shanrenminfayuan-sifazerenzhideruoganyijian], CHINACOURT [renminfayuanwang] (21 September 2016), available at: <http://www.chinacourt.org/law/detail/2015/09/id/148462.shtml>.

⁹ See MA Xueling, The Police, Prosecutors and Courts Have Issued over 200 Reform Measures, All of Which are Designed to Prevent Wrongful Cases [gongjian fa yichutaierbaiyuxianggaigecuo-shijunliangjiangyuan'jiacuo'an], CHINANEWS [zhongguoxinwenwang] (27 February 2015), available at: <http://news.qq.com/a/20150227/000930.htm>.

¹⁰ See The National Conference on Reforming the Justice System: Rethinking Miscarriages of Justice from the Perspective of Institutions [quanguosifazhigaituijin hui zhidushangfan-siyuan'jiacuo'an], BEIJINGREVIEW [xinjing bao] (21 June 2016), available at: http://www.beijingreview.com.cn/shishi/201607/t20160721_800063064.html.

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