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### The power of the Supreme People's Court

*Reconceptualizing judicial power in contemporary China*

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# **CHAPTER 4**

## **THE NONJUDICIAL PRACTICE OF THE COURT**

### **4.1. Introduction**

WHILE CHAPTER 3 sheds light on the judicial power of the Supreme People's Court with a view to seeking rational understanding of its judicial practice, this chapter lifts the veil from a different perspective by investigating some of the most distinctive nonjudicial practices of the Court in its daily operation. The nonjudicial practice of the Court is at least as important as its judicial practice. As discussed in chapter 2, unlike most Western highest courts that have a rather limited workload outside the sphere of adjudication, courts in authoritarian states tend to have numerous profound nonjudicial functions to institutionalize authoritarian

rules and, especially, to serve the needs of the ruling authorities. Generally, the Court has engaged in a wide range of nonjudicial practices alongside its adjudication work since its establishment, including promoting the latest political ideologies for various periods, advancing administrative discipline in line with bureaucratic instructions, fighting corruption, and addressing legal grievances relating to petitions.

In line with the public administration theory Wilson developed in 1989, courts are viewed as state organs and judges as government administrators or bureaucrats.<sup>1</sup> A judiciary can serve different functions in accordance with the constitutional framework of the relevant system, and more importantly, in the context of the political and social settings in which the judiciary operates. Likewise, in the Chinese context, judges have more functions than simply those of adjudicators, and courts should not only be considered pure judicial organs but also crucial political actors. Nevertheless, what seems unique to China is that Chinese courts continue to be constrained by and embedded in the Party's oversight. Therefore, nonjudicial functions have been ascribed considerable weight within the judicial system, especially from top to bottom, with the Court taking the lead. In fact, the Court in many respects operates in a manner consistent with how the rest of the bureaucracy is managed, as is reflected in the forms the Court takes to supervise and evaluate the performance of the lower-level courts, the policies it implements to fight judicial corruption, and the methods it employs to address litigation-related petitions. These efforts appear to be highly consistent with the core political agenda of the state, with an emphasis on the defining role of the Party-state in directing and infiltrating the nonjudicial practice of the Court.

Since the Fourth Plenum of the 18th Party Congress in 2014, the ruling party has repeatedly stressed the deepening of legal reforms and law-centered governance as part of its effort to create a Chinese model of a

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<sup>1</sup> Wilson, *Bureaucracy*, 279–282.

“socialist rule of law” country. Because the concept as promoted by the Party is different from that Western societies commonly recognize,<sup>2</sup> this leads to a new set of questions: Does this trend suggest any meaningful changes regarding the nonjudicial functions of the Court? What is the nature of the Court’s relationship with its inferior courts concerning various nonjudicial practices? How does the Court implement its distinctly different powers and properly prioritize its judicial and nonjudicial functions?

Nonjudicial practice is a significant component contributing to the power of the Court, yet it has generated significantly less academic discussion than judicial practice. Thus, this chapter provides a comprehensive understanding of the struggles and compromises the Court faces regarding its nonjudicial practice. Furthermore, it addresses the thorny question of how the Court could strike a balance between its political and legal roles in the exercise of judicial and nonjudicial power.

## 4.2. Administrative Functions of the Court

The relationship between higher- and lower-level courts typically is a division of function to ensure that a case can be appealed and reviewed by a higher-level court in the sphere of adjudication. However, observers of Chinese courts have argued that higher-level courts in China are responsible for guiding and supervising lower-level courts both in and

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<sup>2</sup> President Xi Jinping made it clear that the judiciary remains accountable to the Party under the rule of law campaign. Given that the rule of law in China actually means ruling the country according to law while under the leadership of the Party, some Western observers argue that “rule by law” is a more accurate translation in the Chinese context, which emphasizes that the Party authorities use the law as it sees fit to govern and maintain its control. See Josh Chin, “‘Rule of Law’ or ‘Rule by Law’? In China, a Preposition Makes All the Difference,” *The Wall Street Journal*, October 20, 2014; Merriden Varral, “‘Rule by Law’? The Fourth Plenum of the 18th Party Congress,” *The Interpreter*, October 22, 2014, <https://www.lowyinstitute.org/the-interpreter/rule-law-fourth-plenum-18th-party-congress>.

outside the sphere of adjudication.<sup>3</sup> As the head of the judicial organs in China, the Court has been assigned with extensive supervisory power over its subordinate courts through various judicial and nonjudicial channels. Whereas the Constitution has granted the Court the right to supervise the judicial work of the lower courts at various levels (Article 127), it remains silent on the Court's role in terms of court administration within the judicial hierarchy. In practice, the ways in which the Court guides and supervises the lower courts goes further than ordinary adjudicatory supervision. Not only does its supervisory power cover the sphere of adjudication, including hearing appeals, conducting retrials, and reviewing death penalty cases, which have been specified in the relevant judicial documents,<sup>4</sup> but it also extends beyond legitimate means to the longstanding practice of promulgating judicial interpretations and judicial policies, promoting the use of guiding cases and model cases, organizing legal training, and directing administration-related matters of the lower courts.

Arguably, the supervisory power of the Court is unregulated and inconsistent in practice, as it may exert influence on lower-level courts in terms of trial work and court administrative matters, in both formal and informal forms, relating to issues of general application and to specific cases. As an essential component of the Court's power over local courts, diversified practice is likely to raise concerns about the essence of the Court's supervisory power, provoking inquiries into whether the relationship between higher- and lower-level courts differs significantly from the "leader-subordinate" relationship within Chinese bureaucratic administration. In this respect, the rest of this section reflects on the above concerns by investigating two distinct mechanisms of the Court—the

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<sup>3</sup> See Liebman, "China's Courts: Restricted Reform," 638; Peerenboom, *China's Long March*, 314.

<sup>4</sup> *Notice of the Supreme People's Court on Issuing the Several Opinions on Regulating the Trial Work Relations between the People's Courts at Different Levels*, art. 8, Fa Fa no. 61 (2010).

system of requests for instructions and court performance management—to see how the Court’s supervisory power has actually been carried out in practice.

### 4.2.1. Requests for Instructions

Generally, the system of “requests for instructions” (*qingshi yu pifu* 请示与批复) refers to a judicial mechanism whereby a lower-level court requests advice from its next-level superior court concerning difficult or complicated cases prior to deciding such cases. In response, its superior court may provide instructions, in either written or informal form, to the requested courts, with detailed opinions regarding specific issues or with general guidance on a set of similar issues (see Appendix IV for an example). Unlike the case approval system embedded within every court, which requires a collegial panel to submit controversial cases rank by rank to the adjudication committee of said court before reaching the verdict, the system of requests for instructions is a voluntarily consulting practice between lower- and higher-level courts. In some cases, lower-level courts request that higher-level courts provide guidance on a certain point of law, ambiguous legal procedures, or controversial legal issues regarding specific cases. In other circumstances, if the higher court finds that particular cases currently before its subordinate courts may have major social impact or touch upon important economic interests (e.g., environmental class-action cases with the potential for escalation), it is also allowed to take the initiative to direct the lower courts on how to deal with specific controversial or politically sensitive issues.<sup>5</sup>

The practice of requests for instructions has been prevalent within the court system for decades, where judges of lower-level courts frequently

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<sup>5</sup> Weifang He, "Two Crucial Issues Concerning the Judicial Administrative System in China (*zhongguo sifa guanli zhidu de liangge wenti*)," *Social Science in China* 6 (1997): 116-129.

resort to their superior courts for instructions prior to making their own rulings, especially when they cannot find readymade answers in existing law and regulations. One of the major contributors to this trend, as suggested by several judge interviewees, is that judges of lower courts rely heavily on “instructions from above” in the face of complicated and controversial cases, because these instructions have not only been proven to be a valuable source of reference but also insurance against future risks of decisiveness and accountability.<sup>6</sup>

From the practical point of view, the extensive use of requests for instructions is an inevitable consequence of the rigid bureaucratization prevailing within the judicial hierarchy. On the one hand, the risk of making decisions inconsistent with the approach of their superior courts and the consequences associated with wrongly handled cases make judges less likely to take responsibility on their own in deciding cases. This is especially true when it comes to compensation for housing demolition and relocation disputes, environmental torts, bankruptcy disputes, and cross-jurisdictional and foreign-related commercial disputes. On the other hand, instructions from the higher courts can also be used as a convenient excuse for lower courts to avoid direct conflicts with local protectionism in specific cases. As Minzner notes in his study on the judicial disciplinary system within Chinese courts, resorting to the higher courts' instructions before issuing their own decisions helps local courts to “pass the buck” in the face of external pressure, especially when pressure originates at the grassroots level.<sup>7</sup> Furthermore, because most lower-level courts heavily depend on local governments at the same levels for financial support, judges in local courts are reluctant to rule against local governments or influential local enterprises unless their decisions have been explicitly

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<sup>6</sup> Interviews SPC20140724, July 24, 2014; SPC20140813, August 13, 2014; and SPC20140829, August 29, 2014.

<sup>7</sup> Minzner, "Judicial Disciplinary System," 58.

endorsed by higher judicial authorities or put forward in the name of “instructions from above.”<sup>8</sup>

Despite the practical need and the possibly satisfying outcomes generated by the system of requests for instructions, the end does not always justify the means. Instead, the harm caused by arbitrary requests in practice has often led scholars to question the legitimacy of the mechanism. For them, whereas the mechanism was designed as an advisory means for lower courts to seek advice and for higher court to provide guidance regarding adjudicative activities, it has been implemented mainly through strict bureaucratic management within the judicial hierarchy.<sup>9</sup> The practice of requests for instructions has in many respects reinforced the judicial bureaucratization in a top-down direction and posed a real threat to the independent jurisdiction of the lower-level courts. First, the mechanism appears to create an alternative form of judicial decision-making, which makes lower-level courts increasingly rely on their superiors for solutions instead of making independent decisions while handling complicated and controversial cases. Consequently, higher-level courts have to spend considerable time and resources responding to each request, which in turn brings new burden and responsibility to them. Second, there is a considerable risk of a noticeable degradation in the quality of court decisions in the process of request submission rank by rank. Generally, a request submitted to the next-level higher court should be in written form and include contents of the basic facts of the case, the adjudication committee’s review opinions on controversial issues, reasons for the majority opinion if a difference of view existed, and so forth.<sup>10</sup> However, because the higher courts primarily rely on written reports submitted by the lower courts as the basis of their instructions, this seems to call into question whether the highly refined case summary the lower courts

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<sup>8</sup> Interview SPC20140724, July 24, 2014.

<sup>9</sup> Hu, “Functions of the Supreme People’s Court,” 141.

<sup>10</sup> *Notice on Strictly Implementing the System of Requests for instructions in Administrative Litigation*, Fa Xing no. 44 (2000).

submitted is as accurate as it seems, and more importantly, whether the higher courts can provide proper instructions to the lower courts without meaningful participation in the process of case hearing or evidence collection. Third, given that the system of requests for instructions is an internal process means that within the judiciary, the parties involved in specific cases are completely excluded from the procedure without their knowledge or approval of such acts. As a result, it is nearly impossible for the parties to a case to fulfill their right of appeal and achieve a reversal through the regular appellate procedure, as the final outcome of a lower court's case has actually been asserted by the higher court and the original judgment speaks for both courts.<sup>11</sup> In this respect, it seems that the practice of requests for instructions is in direct violation of litigants' right to fair trial, and even more alarmingly, it has become a serious obstacle to lower courts achieving independence and accountability.

In response to the deficiencies of the system of requests for instructions in practice, the Court has implemented significant reforms in recent years to standardize the request procedure and gradually limit the scope of cases that qualify for filing requests. For instance, in a 2010 judicial document, the Administrative Division of the Court required the lower courts to submit their requests concerning administrative cases to the next-level higher court in written form. With respect to requests submitted to the Court, the high people's courts should ensure that the cases concerned have been properly discussed by the adjudication committees of the said lower courts and that they have reasonable reason to believe that the administrative cases to be dealt with involve difficulties or provoke considerable legal controversy in the application of the law.<sup>12</sup> In another judicial document the Court issued in 2010, it stipulated that for cases of universal significance in the application of the law, local courts may

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<sup>11</sup> Li, *The Judicial System and Reform*, 27.

<sup>12</sup> *Notice of the Supreme People's Court on Strictly Implementing the System of Requests for Instructions in Administrative Litigation*, art. 2 and 3, Fa Xing no. 44 (2000).

request that next-level courts handle the cases directly instead of seeking written instructions from their superiors. When necessary, the higher-level courts may decide to raise the level of jurisdiction and hear the cases themselves as the court of the first instance.<sup>13</sup> Nevertheless, the ongoing reform has not yet touched upon the essence of the relationship between the higher- and lower-level courts, which suggests the need for the existence of requests for instructions as a bureaucratic rather than a judicial means for the Court to guide and supervise the adjudication work of lower courts.

#### **4.2.2. Court Performance Management**

As briefly discussed in chapter 2, the widespread use of judicial disciplinary measures regarding adjudication work and court administration has decreased the job satisfaction of judges and even driven them away from the judicial system.<sup>14</sup> Chinese courts have adopted a complex performance management system as a vital means of judicial administration to evaluate the performance of individual judges and monitor the daily operation of courts. Generally, the 1995 Judges Law, as amended in 2001, provides that each court shall employ a set of performance indicators to evaluate individual judges on various aspects ranging from their achievement in trial work, competence, and professional skills to their political integrity.<sup>15</sup> The results of the evaluation, according to the law, are commonly used as grounds for reward, sanctioning, training, removal from office and adjustments in ranks and salaries.<sup>16</sup> In line with the Court's guidance and reform targets

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<sup>13</sup> *Notice of the Supreme People's Court on Issuing the Several Opinions on Regulating the Trial Work Relations between the People's Courts at Different Levels*, art. 3 and 5, Fa Fa no. 61 (2010).

<sup>14</sup> For a detailed discussion on the career identity of supreme court judges, see chap. 3, sec. 2.3.

<sup>15</sup> Judges Law of 1995 (as amended in 2001), art. 19 and 21.

<sup>16</sup> *Ibid.*, art. 22.

set out in the *Second Five-Year Reform Outline for the People's Courts (2004–2008)*, the quality and efficiency of trial work have been repeatedly stressed as the main aspect of the performance management system, which allows better assessment of the work of the lower-level courts by their superiors, especially the Court, and provides an overall picture of the operation of courts at all levels.

Before 2008, the lack of uniform standards and procedures for evaluating court performance had allowed lower courts wide discretion in developing their own performance management systems. To cope with this discretionary practice, the Court established a systematic evaluation system in 2008,<sup>17</sup> the Case Quality Assessment System, to measure the quality and efficiency of cases in the trial work. A revised version of the evaluation system was launched in 2011 with the amendment of the relevant judicial document, after three years of pilot projects in eleven selected high people's courts.<sup>18</sup> According to the Case Quality Assessment System, the Court has adopted 33 performance indicators, which were reduced to thirty-one in the subsequent amendment, to evaluate the performance of both individual judges and court divisions in three key aspects: the fairness, efficiency, and effect of the trial (see Figure 5).

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<sup>17</sup> *The Notice of the Supreme People's Court on Issuing the Guiding Opinion on Carrying Out the Case Quality Assessment Work (For Trial Implementation)*, Fa Fa no. 6 (2008).

<sup>18</sup> Lin Wang, "Research on the Major Indicators of the Case Quality Assessment of the People's Courts (*renmin fayuan anjian zhiliang pinggu zhuyao zhibiao yanjiu*)," *China Court*, March 19, 2012, <http://gxfy.chinacourt.org/article/detail/2012/03/id/2449735.shtml>.

Fairness of the Trial	Efficiency of the Trial	Effect of the Trial
<ul style="list-style-type: none"> <li>•Modification rate of case filing</li> <li>•The participation rate of judicial assessors in first trials</li> <li>•Percentage of cases reversed or remanded on appeals</li> <li>•Retrial rates of appeal cases</li> <li>•Percentage of cases reversed or remanded on effective judgments</li> <li>•Retrial rates of legally effective judgments</li> <li>•Appellate rates</li> <li>•Percentage of cases that encounter suspension of execution of original judgments</li> <li>•Illegal trial rates</li> <li>•Illegal execution rates</li> <li>•Quality of judgments</li> </ul>	<ul style="list-style-type: none"> <li>•Case filing rates within the legitimate deadline</li> <li>•Percentage of cases in which summary procedures were applied in the first instance</li> <li>•Percentage of cases in which verdicts were directly reached in the court</li> <li>•Average case closure rates</li> <li>•Average trial duration per case</li> <li>•Average enforcement duration per case</li> <li>•Closing balance cases</li> <li>•Annual caseload of the court per person</li> <li>•Annual caseload per judge</li> </ul>	<ul style="list-style-type: none"> <li>•Degree of satisfaction regarding effective cases</li> <li>•Mediation rates</li> <li>•Case withdrawal rates</li> <li>•Case enforcement rates</li> <li>•Availability of the execution objects</li> <li>•Self-enforcing rates</li> <li>•Rate of mediation cases applying for enforcement</li> <li>•Rate of cases applying for retrial reviews</li> <li>•Rate of cases leading to petitions</li> <li>•Degree of public satisfaction</li> </ul>

**Figure 5: Performance Indicators of the Case Quality Assessment System**

The Court makes it clear that courts at various levels may add or remove the listed performance indicators in accordance with their practical needs, and make considerable adjustments to the weight of different performance indicators based on their work priorities.<sup>19</sup> Jiangsu High People's Court, for instance, adopted more than sixty performance indicators to evaluate the daily operation of courts within its jurisdiction, with thirty-six indicators related to case quality assessment,<sup>20</sup> while Guangxi High People's Court adopted only thirty indicators regarding case quality assessment.<sup>21</sup> Regardless of the Court's intensified efforts to make the

<sup>19</sup> Judges Law of 1995 (as amended in 2001), art. 7 and 13.

<sup>20</sup> Yinsheng Lou, "Concentration on Handling Cases without Interference (*meile jinguzhou, ban'an geng zhuanxin*)," *People's Court Daily*, March 21, 2015.

<sup>21</sup> Wang, "Research on the Major Indicators."

assessment methods more scientific and reliable, the number-oriented evaluations have inevitably put undue pressure on judges and courts through superfluous and unnecessary ranking competitions, the results of which are often used as the basis of the career advancement and sanctioning of individual judges. As a judge interviewee pointed out:

The superfluous performance indicators have forced court administrators to come up with even more complicated evaluation standards and ranking systems, which keep judges busy with statistics instead of law and facts while hearing cases at hand. Worse still, those unnecessary indicators and unreasonable targets have in many respects dampened judges' enthusiasm for seeking innovative and flexible approaches to dispute resolutions in the trial work.<sup>22</sup>

Indeed, the overreliance on quantity instead of quality to evaluate court performance seems to simplify what is a complex matter. Worse still, it overstates the importance of the results rather than judges' decision-making processes and methods. As Li points out in her study on China's court mediation,<sup>23</sup> the calculation of the mediation rate commonly adopts a "result-oriented" approach instead of a "means-oriented" approach in practice, which means that the calculation is based mainly on case conclusions rather than considering the substantive quality of the dispute resolution process. As one of the key indicators in evaluating the effect of the trial, the harmful effects of the result-oriented mediation rate cannot be overstated. Critics have noted that with the effort to pursue a high mediation rate, it has become a common practice for courts to encourage the parties to participate in court mediation even if their cases have little basis for mediation or do not apply to the mediation process. In these cases,

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<sup>22</sup> Interview SPC20140724, July 24, 2014.

<sup>23</sup> Yedan Li, Joris Kocken, and Benjamin Van Rooij, "Understanding China's Court Mediation Surge: Insights from a Local Court," *Law and Social Inquiry* 43, no. 1 (2016): 58–81.

as Cai argues, it would be a radical departure from the original design of court mediation.<sup>24</sup>

In essence, the system of court performance management is an administrative means of bureaucratic control that the Court adopts to regulate and supervise the adjudication work of lower courts. In line with Minzner's observation, performance indicators are widely used by governmental institutions in China as a tool to control and manage lower-level agencies. As part of the bureaucratic apparatus, the judiciary is no exception.<sup>25</sup> Given that higher courts are entitled to supervise the administration of justice of lower courts and keep judges in line, adopting easily quantifiable numerical measurements to evaluate the judicial work carried out by lower courts is administratively attractive to court administrators. Correspondingly, to reach the Court's top-down reform targets and to achieve satisfying evaluation results, lower courts are trained to respond to higher-level authorities' requirements and to focus on the primary concerns of court leadership. A telling example from the grassroots level shows that to achieve acceptable successful case closure rates, it is a common practice for local courts to reject cases filed at the end of the year or to seek rapid trials in accepted cases regardless of the degree of difficulty.<sup>26</sup> According to a local court judge, it was always a challenge to achieve or even exceed the case closure ratios set in the case quality assessment system. To this end, most judges, including him, would put off any other work that would undermine or compromise the assessment results.<sup>27</sup>

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<sup>24</sup> Yanmin Cai, "An Analysis of the Chinese Civil Case Management System (*zhongguo minshi sifa anjian guanli jizhi touxi*)," *China Legal Science* 1 (2013): 131–143.

<sup>25</sup> Minzner, "Judicial Disciplinary System," 58.

<sup>26</sup> Ge Yan, "A Vital Judicial Principle of Seeking Closing Balance in Court Cases (*junheng jie'an shi zhongyao de shenpan linian*)," *People's Court Daily*, January 17, 2012.

<sup>27</sup> Sheng Zhu, "The Inner Logic and Divergence of the Digital Survival of the People's Courts (*fayuan: shuzihua shengcun de luoji yu yihua*)," *South Reviews* no. 1 (2013): 26–28.

Apart from those unreasonable constraints or technological defects imposed by judicial disciplinary measures, whether these artificial performance indicators can actually reflect the overall performance of a judge, a division, a court, or the judiciary as a whole remains questionable. In practice, it is conceivable that under enormous pressure of assessments and rankings initiated by courts of different levels, judges become increasingly reliant on their supervisors' instructions in reaching verdicts and thus are being compelled to agree with their supervisors' opinions. Only in this way are judges less likely to bear the consequences of incorrectly handled cases or cases sent back for retrial, which are closely related to key performance indicators such as rates of appeal, the percentage of cases reversed or remanded on appeal, retrial rates of legally effective judgments, and so forth.<sup>28</sup> Nevertheless, superior ratios in the assessment results do not necessarily mean justice is served and due process is achieved in the best way. A supreme court judge criticized the system during an interview:

As a basic requirement for legal professions, judges shall strictly adhere to the most crucial legal values including fairness and justice while conducting adjudication work. Conversely, the call for 'improv[ing] judicial efficiency and conserv[ing] judicial resources' is problematic in the sense that these principles are not consistent with the fundamental legal values at all. Instead, they are generally recognized as key evaluation standards in terms of government management and economic development. In this respect, a considerable number of performance indicators in court performance assessment will not stand up to detailed criticism.<sup>29</sup>

Recognizing the existing problems and the need for further reform, the Court has made the reform of judicial disciplinary measures a key

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<sup>28</sup> Liang Quan, *Comparative Study on Judicial Disciplinary System (faguan chengjie zhidu bijiao yanjiu)* (Law Press China, 2011), 187–188.

<sup>29</sup> Interview SPC20140825, August 25, 2014.

component of its systematic reform plans<sup>30</sup> and incorporated it in several judicial regulations.<sup>31</sup> In 2014, the Court abolished the national performance ranking system and urged all high people's courts to put an end to various unhealthy competitions within their jurisdictions.<sup>32</sup> In the following year, in response to a call from the Central Committee of Political and Legislative Affairs to manage court performance in a more progressive and rational manner, the Court abolished several unreasonable performance indicators that affected the safeguarding of justice, including arrest rates, conviction rates, and the number of convicted criminals sentenced to detention.<sup>33</sup> The Court's intention behind these bold moves is to eliminate the mechanical assessment of judges and provide lower courts with a certain degree of autonomy under the supervision of higher-level courts. After all, judicial reforms should always give greater weight and more space to the role of courts as impartial adjudicators rather than as administrative agencies, ensuring that fairness and justice are served in every case. Nevertheless, although the Court made it clear that under the new rules, evaluation results can serve only as reference data for higher courts to establish coping strategies

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<sup>30</sup> See *The Second Five-Year Reform Outline for the People's Courts (2004–2008)*, *The Third Five-Year Reform Outline for the People's Courts (2009–2013)*, and *The Fourth Five-Year Reform Outline for the People's Courts (2014–2018)*.

<sup>31</sup> See *Notice of the Supreme People's Court on Issuing Several Opinions on Strengthening the Administration of Trials by the People's Court*, Fa Fa no. 2 (2011); *The Notice of the Supreme People's Court on Issuing Opinions on Strengthening the Closing balance of Court Cases*, Fa Fa no. 19 (2012).

<sup>32</sup> Weixin Hu, "Supreme People's Court's Decision on Canceling the Disciplinary and Ranking System among National High People's Courts (*zuigao renmin fayuan jue ding quxiao dui quanguo gaoji renmin fayuan kaohe paiming*)," *People's Court Daily*, December 27, 2014.

<sup>33</sup> Fei Chen and Wei Zou, "The Political and Legal Institutions Conduct A Full Liquidation of Judicial Performance Indicators This Year (*zhengfa jiguan jinnian quanmian qingli zhifa sifa kaohe zhibiao*)," *Xinhua Net*, January 21, 2015, [http://news.xinhuanet.com/legal/2015-01/21/c\\_1114079201.htm](http://news.xinhuanet.com/legal/2015-01/21/c_1114079201.htm).

regarding judicial operations,<sup>34</sup> to what extent lower courts can perform independently and without fear remains to be seen.

### 4.2.3. Adjudicative Guidance or Centralized Control?

In light of the two diverse forms of the Court's supervisory power discussed in this section, it is conceivable that the hierarchical control within the judiciary seriously affects the approaches the Court adopts to oversee the work of lower courts, which are not only restricted to normal channels of appeals and case reviews but extends to a broad scope of judicial and nonjudicial matters. In a highly centralized judicial system that has been managed as a part of state administration, it continues to be true that administrative ranking plays a role in the making of crucial decisions in and outside the courtroom. While the Court's exercise of supervisory power involves diverse practices, two general trends are most noteworthy. First, unlike courts in many other judicial systems, the role of the Court vis-à-vis lower courts is unique and multifarious, and the hierarchical control embedded in the judicial structure makes it more difficult to distinguish between adjudicatory supervision and administrative guidance. Second, it has been proven that there is not always a clear-cut distinction between adjudicatory supervision and administrative guidance.

As Hou observes, in practice, adjudicatory supervision could easily move beyond formal proceedings and result in undermining the independent exercise of judicial power of the lower courts.<sup>35</sup> In fact, the adoption of

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<sup>34</sup> Yanming Zhang, "The Optimization Strategies on the Allocation of the Trial Time and Resource to Ensure an Efficient Implementation of the Trial and Execution Work (*youhua peizhi shenpan ziyuan, heli fenpei shenpan shijian, quebao shenpan zhixing gongzuo heli gaoxiao yunxing*)," *People's Court Daily*, October 31, 2012.

<sup>35</sup> Meng Hou, "The Administrative Relationship between Superior and Subordinate People's Courts (*shangxiaqi fayuan zhijian de sifa xingzheng guanxi*)," *Legal Information* 5 (2009) 66-67.

mechanisms such as requests for instructions and court performance management can be regarded as essential bureaucratic means for the Court to strengthen control over local courts and keep judges in line in a more efficient way.<sup>36</sup> As Hu insightfully points out,

A fair amount of the non-judicial practice of the Court, including its supervision and guidance, instructions to requests, work deployment, etc., turns out to be promoted and implemented through the bureaucratized power of the Court instead of adhering to legal rules and their inherent value. In this respect, it is arguable that the realization of the centralized judicial authority is mainly achieved through non-judicial channels in accordance with strict hierarchical control.<sup>37</sup>

This argument addresses the previously identified concern that the supervisory relationship between higher- and lower-level courts is not fundamentally different from the leader-subordinate relationship within the administrative structure of other government institutions in China. Because the reliance on a top-down approach to administrative governance continues to be present in the system of a highly centralized judiciary, it in part explains why a wide range of nonlegal factors, such as political consciousness, social norms, and the pursuit of efficiency, still play a dominant role in influencing the decision-making processes of courts at various levels and in controlling their approaches. As for the Court, whether the attempts to strengthen centralized judicial authority through various judicial and nonjudicial mechanisms would harm its constitutionally endorsed supervisory power and strategies for ensuring a certain degree of institutional autonomy of the lower courts while using a number of judicial and nonjudicial mechanisms are worthy of further discussion.

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<sup>36</sup> Yu, "The Political Functions of the Supreme People's Court."

<sup>37</sup> Hu, "Functions of the Supreme People's Court," 142.

### 4.3. Political Functions of the Court

Apart from the administrative role the Court plays within the judicial hierarchy, its full involvement in various political functions comprises another key aspect of the Court's nonjudicial practice that observers cannot afford to overlook. As discussed in chapter 2, three major transformations of the Court's key functions have occurred since its establishment, from dealing with political struggles in the 1960s to promoting judicial professionalism and leading judicial reform in the twenty-first century.<sup>38</sup> As courts in authoritarian regimes have, by and large, to serve the needs of the single dominant party or the military to build consensus on its major initiatives under the dominant political force, it is conceivable that the Court has to assume certain nonjudicial functions to reflect and serve the nation's primary strategies in addition to its numerous judicial functions. For instance, since the late 1980s, tasks related to combating judicial corruption and attending to legal grievances relating to petitions have consistently been addressed in the Court's annual work reports submitted to the NPC.

Following the discussion in chapter 2, however, it would be an oversimplification to conclude that the Court merely serves as a governance tool and is doomed to make judicial processes subservient to bureaucratic control in response to political interests. Instead, recognizing that Chinese courts remain subject to the Party's ideological oversight and at times operate in the shadow of protest and violence<sup>39</sup> may lead to reconsidering the rationales behind the Court's political tasks instead of criticizing the legitimacy of its nonjudicial practice. Only in this way can we achieve a better understanding of why the Court attempts to be consistent with the ruling party's primary concerns and institutional aims,

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<sup>38</sup> For a detailed discussion on the relationship between the Court and the Party, see chap. 2, sec. 2.4.

<sup>39</sup> Benjamin Liebman, "Malpractice Mobs: Medical Dispute Resolution in China," *Columbia Law Review* 113, no. 1 (June 2013): 181–264.

what kind of struggles and compromises the Court faces in fulfilling its political roles, and to what extent the Court can achieve meaningful progress in the pursuit of its own version of legal development while adhering to the Party's overall ideological oversight.

Against this backdrop, this section examines these questions by investigating two notable political functions of the Court, the fight against judicial corruption and the redress of litigation-related petitions, with a focus on achieving a thorough mapping of the Court's political role in the exercise of nonjudicial power.

### **4.3.1. The Need to Combat Judicial Corruption**

In China, an authoritarian regime that experiences a high level of corruption, corruption involving judicial officials<sup>40</sup> is nothing new for the public and foreign observers of Chinese courts. Over the past several decades, numerous judicial corruption cases have been reported in the press and media, ranging from taking bribes to self-enrichment through excessive fees and charges. The most prominent judicial corruption cases include the downfall of Xi Xiaoming, the former vice president of the Court, in 2016;<sup>41</sup> Zhou Yongkang, the former chief of the Domestic Security Committee and the former general secretary of the Central Political-Legal Committee, in 2015;<sup>42</sup> and Huang Songyou, the former

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<sup>40</sup> For the purpose of this section, the term *judicial officials* generally refers to judges, administrative officers, and marshals working in the courts.

<sup>41</sup> Xi Xiaoming was one of the most senior judicial officials ousted by President Xi's anticorruption campaign that featured a sweeping crackdown on graft; see Reuters Staff, "China Jails Former Senior Judges for Life in Graft Case," Reuters, February 16, 2016, <https://www.reuters.com/article/us-china-corruption-court/china-jails-former-senior-judge-for-life-in-graft-case-idUSKBN15V10W>.

<sup>42</sup> Zhou Yongkang was one of the most senior judicial officials and Party cadres ever to have faced corruption charges. He was convicted of abuse of power, accepting bribes, and revealing state secrets, and given a life sentence for corruption in 2015. See Tom Phillips, "China's Former Security Chief Given Life Sentence for Corruption," *The Guardian*, June 11, 2015, <https://www.theguardian.com/world/2015/jun/11/chinas-former-security-chief-given-life-sentence-for-corruption>.

vice president of the Court, in 2008.<sup>43</sup> These have been the most senior judicial officials subject to criminal charges to date. In the Court's 1999 annual work report to the NPC, the then president of the court, Chief Justice Xiao Yang, listed five categories of conduct as the most conspicuous ones in terms of judicial corruption in China:

- (i) accepting or demanding bribes, especially in cases relating to interpersonal relations or monetary concerns;
- (ii) abusing judicial power in adjudication and enforcement, such as making judgments contradictory to law, distorting facts, or illegally seizing and distraining assets;
- (iii) applying local protectionism and issuing unfair judgments against nonlocal parties;
- (iv) violating judicial discipline and trading confidential judicial information to lawyers or litigants for private gain; and
- (v) embezzling court funding and extorting kickbacks or arbitrary charges from lawyers or litigants.<sup>44</sup>

Although the Court consistently releases statistics regarding corrupt judicial officials in its annual work reports to the NPC, judicial corruption seems to be more complicated than it appears, and it is difficult to capture the full spectrum of judicial corruption in light of its sensitive nature and the lack of transparency in official statistics. To understand what actually occurs in instances of judicial corruption and how serious the situation is, a recent report (the 2013 Report) identifies four distinct features of judicial corruption on the basis of a sample of two hundred corrupt judges identified between 1995 and 2013.<sup>45</sup> It appears that the high proportion of cases of collective corruption, the increasing involvement of high-ranking judicial officials, the vulnerability of judgment enforcement, and the

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<sup>43</sup> Huang's case is further discussed in this section.

<sup>44</sup> *The Work Report of the Supreme People's Court* (1999).

<sup>45</sup> Xiaolou Zheng, "Report on Judicial Corruption (*Faguan Fubai Baogao*)," *Caijing* 15 (2013).

interference of litigation brokers are among the primary concerns related to judicial corruption.

### *Collective corruption*

Numerous significant individual judicial corruption cases can serve to illustrate the rampant judicial corruption,<sup>46</sup> but the upsurge in collective judicial corruption in recent years deserves more prompt attention because it tends to be obscure, has occurred for a considerable time, and has severe consequences.<sup>47</sup> As discussed in previous chapters,<sup>48</sup> judicial decision-making in China generally takes the collegiate form, which means in principle, a case is heard by a collegial panel of three judges and may be subject to a further review conducted by the court adjudicative committee if such case is deemed challenging, significant, or controversial.<sup>49</sup> While the decentralization of decision-making power was designed to prevent the abuse of power or self-enrichment by individual judges, in practice, however, this arrangement has increased opportunities for collective corruption within the courts. As Li's empirical study on judicial corruption suggests, the division of labor between superior and subordinate judges in decision-making not only intensifies senior judges'

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<sup>46</sup> For instance, Guo Shenggui, the former President of Xicheng District People's Court (Beijing), was accused of accepting bribes of more than RMB 7.9 million (USD 1.21 million) from various construction units and manufacturers between 1998 and 2007, when he was in charge of a series of infrastructure projects of the court. In October 2008, Guo was charged with receiving bribes, embezzlement, and abuse of power, and sentenced to death with a two-year reprieve. See Jie Huang, "The Former President of Beijing Xicheng People's Court was Sentenced to Death with Two-year Reprieve (*xicheng fayuan yuan yuanchang guo guisheng beipan sihuan*)," *Beijing Evening Paper*, October 30, 2008.

<sup>47</sup> Li, *The Judicial System and Reform*, 79.

<sup>48</sup> For further discussion on court personnel and their roles, see chap. 2, sec. 2.2.

<sup>49</sup> The only exception is for cases that are subject to summary procedures, which applies to simple civil cases handled by basic courts involving clear facts, unambiguous rights and obligations, and minor disputes; these cases are tried by a sole judge. See Civil Procedure Law of 1991 (as amended in 2012), art. 157 and 160.

capability to engage in more corruption but also instigates front-line judges to incorporate their superiors into profit sharing.<sup>50</sup>

### *High-level corruption*

Because the system of profit-sharing is typical of collective corruption within the courts, collegial judicial decision-making makes the involvement of high-ranking judicial officials unavoidable or even necessary. A telling example is a collective judicial corruption case that occurred in Wuhan Intermediate People's Court in 2004, which brought down thirteen judges, including two vice presidents of the court and three deputy chiefs of two substantive divisions. These judges were accused of being members of a collusive network involved in adjudicative activities and accepting RMB 4 million (USD 612,200) in bribes between 1999 and 2003.<sup>51</sup> Another judicial corruption case exposed in 2014 was also related to a large network of corruption. In this case, ten judges of Qingyuan Basic People's Court—three vice presidents, one director of the enforcement bureau, five division chiefs, and one deputy chief—were arrested on criminal charges of accepting bribes, embezzlement, and abuse of power.<sup>52</sup> This corruption scandal was exposed because of intensifying power struggles between different interest groups over controversial profit sharing within the court.

According to the 2013 Report, eighty-four of two hundred corrupt judges (42%) included in the study were former presidents and vice presidents of courts at various levels, and seventy-two were chiefs and deputy chiefs of

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<sup>50</sup> Li, "The 'Production' of Corruption."

<sup>51</sup> China Newsweek, "The Alliance for Judicial Corruption (*faguan de fubai tongmeng*)," *China's Newsweek* 14 (2004), <http://www.chinanews.com/n/2004-04-19/26/427157.html>.

<sup>52</sup> Fang Huang, "The Investigation on A Collective Judicial Corruption Case involving 10 Judges of Qingyuan People's Court (*liaoning qingyuan fayuan 10 faguan wo'an diaocha*)," *The Paper*, August 12, 2014, [http://www.thepaper.cn/newsDetail\\_forward\\_126106](http://www.thepaper.cn/newsDetail_forward_126106).

substantive divisions of the courts (36%).<sup>53</sup> These statistics indicate that in an environment where the decision-making power is highly centralized in both adjudication and court administration, it allows corrupt judicial officials heading high-level offices enormous power to control the outcome of many cases and makes judges who handle specific cases submissively accommodate arbitrary instructions from above. With a shield of protection through the ranks, it is no surprise that the bribery of high-ranking judges became a widespread and typical reflection of ongoing judicial corruption.

### *Corruption in judicial enforcement*

The characteristics of judicial decision-making further open enforcement bureaus to corruption, and these divisions are the most affected by corruption. Driven by enormous economic benefit and significant leeway in making enforcement rulings, enforcement judges have been increasingly exposed in corruption scandals and charged with the crimes of accepting bribes and abuse of power in the process of allocating, estimating, and auctioning enforcement assets.<sup>54</sup> The 2013 Report indicates that of the two hundred corrupt judges involved in the survey, sixty-three were accused of the crimes of abusing power, accepting bribes, and using public money for private gain while making enforcement decisions.<sup>55</sup> In fact, the media exposed a number of high-ranking judges in enforcement bureaus as part of severe corruption scandals, which brought down judges such as Huang Songyou, the former vice president of the Court; Yang Xiancai, the former director of the Enforcement Bureau of Guangdong High People's Court; and Wu Xiaoqing, the former director of the Enforcement Bureau of Chongqing High People's Court. These senior judicial officials were accused of accepting bribes worth

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<sup>53</sup> Zheng, "Report on Judicial Corruption."

<sup>54</sup> Donald Clarke, "The Execution of Civil Judgments in China," *The China Quarterly* 141 (1995): 65–81.

<sup>55</sup> Zheng, "Report on Judicial Corruption."

several million RMB from parties to the cases they handled, and in return, they made unjust rulings in favor of particular parties or instructed judges who were in charge of specific cases to make favorable rulings on their behalf. It is ironic that these judicial officials used to be the most influential figures in their fields of expertise, but eventually, they were set as negative examples and known for their crimes.

### *Interference of litigation brokers*

Another emerging trend as reflected in judicial corruption cases is their inextricably and complex links with litigation brokers. Litigation brokers might be lawyers, former judges, or those close to high-ranking judicial officials (e.g., spouses, relatives, and college classmates) who exploit their personal or working connections with judges to obtain confidential judicial information and act as intermediaries between judges and litigants to trade inside information. Evidence suggests that to secure the benefits associated with corruption, it has become a common practice for corrupt judges to engage litigation brokers in their illegal business dealings and conduct criminal acts together.<sup>56</sup> The interference of litigation brokers not only drives the courts away from impartiality and integrity, but more seriously, makes the bribery of judges a much easier, less risky endeavor within the courtrooms. Judicial corruption is likely to create a vicious circle in the legal profession in China and eventually affect the regular relationship between judges of different levels and between judges and other legal professionals.

In a high-profile judicial corruption case, Huang Songyou, a senior judge of the Court, was convicted of accepting more than RMB 3.9 million (USD 597,000) in bribes from several lawyers in return for favorable enforcement rulings during his tenure as the vice president of the Court (2002–2008) and of embezzling RMB 1.2 million (USD 183,000) of

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<sup>56</sup> Ibid.

government funds in 1997 while serving as the president of Zhanjiang Intermediate People's Court, Guangdong Province.<sup>57</sup> Associated with Huang's case, the former director of the Enforcement Bureau of Guangdong High People's Court, Yang Xiancai, along with a number of his subordinate judicial officials and senior lawyers from Guangdong Province, was brought down in the same period for colluding with Huang's corrupt practice for years. According to media reports, Yang was convicted of receiving bribes of more than RMB 11.8 million (USD 1.81 million) from auctioning enforcement assets involving real estate properties, colluding with government officials and lawyers for private gain, and illegally extending benefits to his friends and relatives through enforcement activities between 1996 and 2008.<sup>58</sup> As one of the most notorious judicial corruption scandals since the establishment of the PRC, the downfalls of Huang and Yang have highlighted the severity of the aforementioned problems the judiciary has to face, and eventually urged the Court to devote itself to a strong wave of a nationwide anticorruption campaigns to fight judicial corruption.

Recognizing that the harm caused by judicial corruption reaches far beyond particular cases and results in distrust over the judiciary, the Court has, since the 1980s, intensified efforts to foster a clean judiciary and hold individual judges accountable for their misconduct. For instance, according to the Rules of Five Strict Prohibitions<sup>59</sup> the Court issued in 2009, the emphasis of five categories of the corrupt conduct of judicial officials demonstrated the Court's promise of zero tolerance of judicial corruption at all levels. Activities viewed as corrupt include

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<sup>57</sup> Guanquan Wang, "Chinese Supreme Court Judge Gets Life Term," *Xinhua Net*, accessed February 22, 2016, [http://news.xinhuanet.com/english2010/indepth/2010-01/20/c\\_13143957.htm](http://news.xinhuanet.com/english2010/indepth/2010-01/20/c_13143957.htm).

<sup>58</sup> Ivan Zhai, "Senior Guangdong Judge Gets Life Sentence for Corruption," updated June 3, 2010, <http://www.scmp.com/article/716050/senior-guangdong-judge-gets-life-sentence-corruption>.

<sup>59</sup> *Provisions of the Supreme People's Court on Five Prohibitions*, Fa Fa no. 2 (2009).

- (i) accepting gifts from parties to cases and other related parties;
- (ii) having an unlawful association with lawyers;
- (iii) interfering with or inquiring cases being handled by other fellow judges;
- (iv) participating in bribery and fraud during entrusted assessments, auctions and related activities; and
- (v) disclosing secret information involved in the trial work.

Then President of the Court Wang Shengjun stressed that these rules are applicable to judicial officials and other judicial personnel of courts at all levels. Those who break the rules will be subject to corresponding disciplinary liability or even criminal liability and will be removed from their positions immediately if they hold a post in adjudication or enforcement divisions.<sup>60</sup>

Similarly, in the newly revised Code of Professional Ethics for Judges, the Court reaffirmed the significance of judicial integrity by clarifying the duties and responsibilities of individual judges and establishing a set of guiding principles for impartial and clean judicial conduct. Misconduct of judges, such as engaging in profit-making business activities, offering off-the-books consultation and opinions to the parties to cases and other relative parties in the judicial proceedings, and seeking personal or family gain by taking advantage of the authority and status of judges are all strictly prohibited by the Code.<sup>61</sup> As President Xi Jinping took office in 2012, a new round of nationwide anticorruption campaigns was launched, following the lead of the 18th Party Central Committee. It has proven to be a sound and far-reaching campaign against corruption, as it brought down more than 120 high-profile Party, military, judicial, and government

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<sup>60</sup> Yonghui Chen, "The Supreme People's Court Released Rule of 'Five Strict Prohibitions' (*zuigao renmin fayuan gongbu 'wuge yanjin' guiding*)," *People's Court Daily*, January 8, 2009.

<sup>61</sup> *Code of Professional Ethics for Judges*, art. 15–18, Fa Fa no. 53 (2010).

officials within four years.<sup>62</sup> According to the latest annual work report of the Court released in 2017, 769 judicial officials were subject to disciplinary punishment, and eighty-six faced criminal charges in 2016.<sup>63</sup>

Regardless of the Court's significant efforts to promote its anticorruption campaign in the Xi era and its intensified crackdown on corrupt conduct, unlike the legislative design of enforcing judicial and disciplinary sanctions against corruption in many other systems, the Court is neither the exclusive judicial authority nor the primary actor in combating judicial corruption. In practice, the courts at various levels have all been assigned a role in containing corrupt conduct and bringing down judicial officials who engage in misconduct. Moreover, a form of extralegal detention, also known as *Shuanggui* (双规), has been widely adopted by the Party's disciplinary organ while investigating corruption cases involving Party members. By using a set of in-house disciplinary measures that are not necessarily regulated by law, the Party can decide whether a case of corruption can be dropped, whether the accused will be punished with Party disciplinary sanctions, or whether the case will be referred to the procuratorate for prosecution.<sup>64</sup> Empirical evidence also suggests that during the investigation of corruption involving senior Party officials at the provincial or ministerial levels, the approval of the Party Committee

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<sup>62</sup> Notable ousted leaders include Zhou Yongkang, former chief of the Central Political and Legal Commission; Ling Jihua, former deputy chief of the Central Political Consultative Conference; Lyu Xiwen, former deputy Party chief of Beijing; and Xu Caihou and Guo Boxiong, former deputy chiefs of the Central Military Commission. See Shannon Tiezzi, "Can China Finally Solve Its Corruption Problem?" *The Diplomat*, October 29, 2016, <http://thediplomat.com/2016/10/can-china-finally-solve-its-corruption-problem/>.

<sup>63</sup> *The Work Report of the Supreme People's Court* (2017).

<sup>64</sup> Given that the Party's disciplinary organs remain the only subjects that control the content of confessions and the evidence handed over to the judiciary in the later trials, it is a common practice for a corruption case that has garnered internal punishment to have no chance of reaching the judiciary for trial or being dropped by procuratorates for lack of evidence. For further discussion on the *Shuanggui* Mechanism, see Flora Sapio, "Shuanggui and Extralegal Detention in China," *China Information* 22 (2008): 7–37.

at the respective levels and endorsement by more than one central authority are required.<sup>65</sup> In a strict sense, most crucial decisions are made behind closed doors without referring to fundamental legal rights, including access to counsel, the presumption of innocence, right to defense, and open trials. Arguably, the structural dependence of the judiciary makes legal rights at times bend to political interests or social stability concerns, and this further weakens the judicial authority vis-à-vis Party organs and the role of the Court in anticorruption activities.

Nevertheless, because corrupt officials and abuses of power are rampant throughout the Chinese bureaucratic system, it would be unrealistic to assume that it is an isolated problem exclusive to the judiciary that can be easily overcome by the Court on its own without referring to the broad political and social context. In fact, as Ting notes, the battle against judicial corruption is an extension of the overall anticorruption campaign led by the Party, which is destined to be a highly politicized process and serves the governmental need of consolidating political power.<sup>66</sup> In recognizing that courts in China do not yet possess the power and authority to challenge Party authorities, it is conceivable that the judiciary would continue being subordinate to the party state's commands in carrying out political instructions instead of developing a sense of consciousness in fulfilling its political roles. As for the Court, regardless of its significant efforts to incorporate anticorruption measures into its legal framework,<sup>67</sup> containing judicial corruption will remain a difficult

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<sup>65</sup> Hualing Fu, "Wielding the Sword: President Xi's New Anti-Corruption Campaign," in *Greed, Corruption, and the Modern State*, eds. Susan Rose-Ackerman and Paul Lagunes (Cheltenham: Edward Elgar Publishing, 2015), 134.

<sup>66</sup> Ting Gong, "Dependent Judiciary and Unaccountable Judges: Judicial Corruption in Contemporary China," *China Review* 4 (2004): 33–54.

<sup>67</sup> For instance, in response to the Party's *Plan on Establishing and Improving the Work of Punishing and Preventing Corruption (2013–2017)*, the Court implemented a series of detailed anticorruption measures to carry out the Party's latest policies in 2014. See Shuzhen Luo, "The Supreme People's Court Issues Regulations on Carrying Out the Communist Party's *Plan on Establishing and Improving the Work of Punishing and Preventing Corruption (2013–2017)* (*zuigao renmin fayuan chutai wenjian luoshi*

battle without establishing a judicial system based upon meaningful independence and judicial autonomy.

### 4.3.2. The Need to Redress Litigation-Related Petitions

Unlike judicial corruption that can be recognized as a common failing of many other legal systems, the Court's participation in resolving extralegal conflicts and legal grievances appears to be unique in its kind. The Chinese petition system, also widely recognized as the "letters and visits" (*xinfang* 信访) system, is a dispute resolution mechanism established for hearing citizens' complaints and grievances. Technically, the petition system allows citizens to seek relief from injustice either through petitioning bureaus at various levels or through a variety of legal channels, including the judiciary, the procuracy, and public security organs.

In practice, as petitioners rely heavily on courts at various levels to redress their legal grievances, the judiciary plays an inevitable role in receiving and processing a large number of litigation-related petitions relating to effective court decisions every year. In fact, addressing the grievances raised by petitioners has become a vital component of the daily work of the case-filing divisions of most courts, which are responsible for receiving and filing an enormous volume of litigation-related petitions in addition to their basic tasks of receiving and accepting litigation claims. In 1987, the Court established a special Accusation and Petition Division and incorporated the petitioning practice as part of its job description.<sup>68</sup> In 2000, the petitioning work was taken over by the Case-filing Division of the Court, which experienced an expansion in 2009 and had been divided

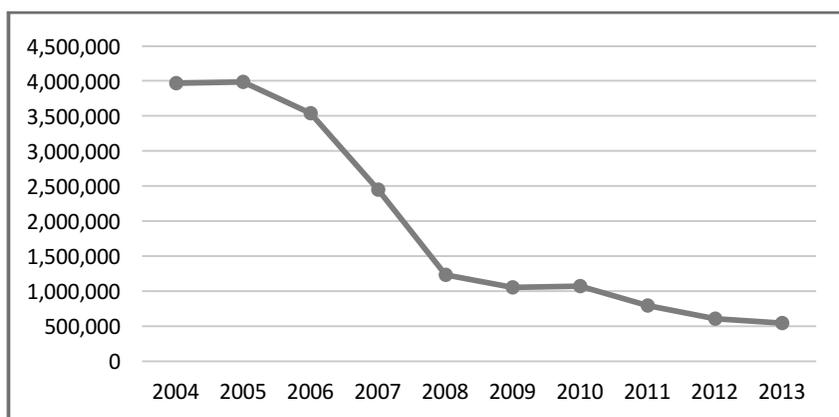
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*zhongyang chengfang fubai tixi 2013–2017 gongzuo jihua*," *People's Court Daily*, December 10, 2014.

<sup>68</sup> The Supreme People's Court of China, "A Brief History of the Supreme People's Court (*Zuigao Renmin Fayuan Jigou Shezhi Jianshi*)," *People's Court Daily*, November 23, 2014.

into two separate divisions to meet the practical need of tidal waves of petition cases.<sup>69</sup>

According to a series of annual work reports of the Court published between 2005 and 2014, although the significance of “handl[ing] petitioning issues in a proper manner” was repeatedly stressed in reports during the period surveyed, it is evident that the judiciary had faced a slightly reduced but still serious burden of litigation-related petitions in the last decade (see Figure 6).



**Figure 6: Number of Litigation-related Petitions of Courts at All Levels (2004–2013)**

Figure 6 shows a progressive decrease in litigation-related petitions in courts at all levels. Regardless of the overall decreasing tendency, judges and courts remain under enormous pressure handling petitioning, especially in the criminal, administrative, and enforcement fields.<sup>70</sup>

<sup>69</sup> According to reports, more than forty judges were employed to deal with litigation-related petitions. In 2014, the Case-filing Divisions of the Court were merged into one again. See Long Bai, "The Supreme People's Court Established A Second Case-filing Division," *People's Daily*, September 10, 2009; Long Bai, "Jiang Qibo: Appointed as the Division Chief of the Case-Filing Division of the Supreme People's Court (*jiang qibo ren zuigao renmin fayuan lianting tingzhang*)," *China Daily*, June 27, 2014.

<sup>70</sup> In line with Liebman's observation, criminal cases, especially death penalty cases, frequently result in complaints from both the families of defendants and victims.

Moreover, whether the disclosed declines illustrate the progress made by the judiciary or reflect the real situation in terms of petitioning is questionable. For instance, Hou's and Peng's empirical studies on the general trend of litigation-related petitions both suggest that while courts at all levels underwent a general decline in litigation-related petitions, the Court's number of petitions actually increased,<sup>71</sup> as shown in Table 3.

**Table 3: Comparison on Number of Litigation-related Petitions Accepted by the Courts at Various Levels and the Supreme People's Court (2003–2011)<sup>72</sup>**

	COURTS AT VARIOUS LEVELS	SUPREME PEOPLE'S COURT
2003	3,033,725	22,340
2004	3,290,513	40,927
2005	3,105,081	32,133
2006	2,801,644	24,144
2007	–	–
2008	–	–
2009	1,054,848	72,844
2010	821,516	73,500
2011	575,802	67,623

These seemingly conflicting findings—based on incomplete data—could be partly explained by the latest petitioning reform measures the Court promoted. In 2004, to share its daily petition processing load, the Court

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Similarly, court decisions that have not been enforced properly are also likely to result in petitions. See Benjamin Liebman, "A Populist Threat to China's Court?" in *Chinese Justice: Civil Dispute Resolution in Contemporary China*, eds. Margaret Woo and Mary Gallagher (Cambridge: Cambridge University Press 2011), 269–313.

<sup>71</sup> Meng Hou, "The Mentality and Expression of the Petitioners at the Supreme People's Court (*zuigao fayuan fangmin de xintai yu biaoda*)," *Peking University Law Journal* 3 (2011): 648–659; Xiaolong Peng, "The Legitimacy and Legalization of Regulating the Litigation-related Petitions: Study on the basis of Legal Practice between 1978 and 2015 (*shesu xinfang zhili de zhengdangxing yu fazhigua: 1978-2015 nian shijian tansuo de fenxi*)," *Chinese Journal of Law* 5 (2016): 86–107.

<sup>72</sup> Statistics cited in Peng's research based on the *Law Yearbooks of China* and the *Work Reports of the Supreme People's Court* between 2003 and 2011.

instituted temporary patrol groups to deflect a certain number of petition cases that fall within the jurisdiction of the local courts.<sup>73</sup> Between 2015 and 2016, the Court established six circuit tribunals to divert petitioners' from its Beijing headquarters and reduce the workload of the Court. According to the official statistics, two circuit tribunals of the Court dealt with 11,000 and 33,000 petitioners respectively in 2015, within the first year of establishment.<sup>74</sup>

Furthermore, because petitioning rate is a key performance indicator relating to the courts' work of resolving social conflicts, which directly affects the public faith in the judicial authority, the Court has been found secretly adjusting the counting methodologies of petition cases during past years. As noted by a senior judge in the Case-filing Division of the Court, to obtain "satisfying" data regarding litigation-related petitions, the lower-level courts were required to count group petitions as a single case and have applied stricter standards on calculating repeated petitions.<sup>75</sup> He's empirical study on the petition offices of Chinese courts also suggests that distinctions have been made between new petitioners and previous petitioners, between reasonable petitioners and unreasonable petitioners, single petitioners and group petitioners, with courts ascribing different priorities and weights to particular cases.<sup>76</sup> These efforts in many respects reflect the Court's strategies of providing different approaches to reducing litigation-related petitions and achieving attractive statistics and ratios on paper, although they may have limited effects on providing real

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<sup>73</sup> See the *Work Reports of the Supreme People's Court* in 2005, 2011, and 2016.

<sup>74</sup> Shiwei Xing, "The Circuit Tribunals of the Supreme People's Court Accepted more than Forty Thousand Litigation-related Petitioners within the First Year of Establishment (*zuigao fayuan xunhui fating yizhounian: jiedai shesu xinfang 4 wanyu Renci*)," *The Beijing News*, January 31, 2016.

<sup>75</sup> Interview SPC20140829, August 29, 2014.

<sup>76</sup> Xin He and Yuding Feng, "Mismatched Discourse in the Petition Offices of Chinese Courts," *Law and Social Inquiry* 41, no. 1 (Winter 2016): 212–241; Hou, "The Mentality and Expression of the Petitioners."

solutions to deep-rooted conflicts and preventing repeated petitions in practice.

Regardless of the method of calculation used, the statistics presented in Figure 6 seem convincing in suggesting that numerous petitioners continue flocking to courts to address their complaints every year. The main reasons behind the high number of petitions lodged can be categorized into three groups. First, it is difficult for a case, especially a politically sensitive case, to be accepted and processed through the normal legal channels.<sup>77</sup> The situation has, in turn, generated petitions and become a major incentive for petitioners. As discussed in chapter 2, politically sensitive cases may range from land, housing relocation, and compensation disputes to massive labor and environmental disputes. Because some disputes may partly reflect controversial social conflicts or involve broader public interests, courts are commonly reluctant and even incompetent in accepting and processing such disputes in a timely manner. For instance, in the process of conducting a comprehensive revision of the Administrative Litigation Law in 2013, judges and academics highlighted the existing problems in administrative litigation, noting that the generally low participation rate of administrative institutions appearing at trial and the reluctance of courts to accept administrative cases were two major contributors to the increased lodging of petitions rather than litigations in practice.<sup>78</sup> Consequently, “Believ[ing] in petitioning rather than litigations; believ[ing] in the high-level authorities rather than the low-level authorities” (*xinfang bu xinfafa, xinshang bu xinxia* 信访不信法, 信上不信下) has become a prevalent slogan among petitioners nationwide.

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<sup>77</sup> For a more detailed discussion on how the Court adopts different approaches to dealing with political, politically sensitive, and regular cases in adjudication work, see chap. 3, sec. 3.2.

<sup>78</sup> The National People’s Congress of the People’s Republic of China, “Instruction on Amending the Administrative Litigation Law (draft),” NPC, December 31, 2013, [http://www.npc.gov.cn/npc/lfzt/2014/2013-12/31/content\\_1822189.htm](http://www.npc.gov.cn/npc/lfzt/2014/2013-12/31/content_1822189.htm).

Second, the low success rate for plaintiffs in administrative cases<sup>79</sup> suggests that it would be extremely difficult for citizens to redress their grievances sufficiently and efficiently through legal channels on their own. Even if the plaintiff happens to win the case, there is a fair chance that he or she will encounter difficulties in the enforcement of judgment if such judgment needs to be enforced by one or multiple administrative institutions. Enforcing judgments in China has long been portrayed as “harder than reaching the sky,”<sup>80</sup> and it is more likely that the disadvantaged party in the case will resort to social media or petitioning channels as alternative means to seek remedies.

Finally, the general absence of finality in court decisions has led to a low level of trust in formal legal channels, which has generated extreme and repeated petitions because of the slight chance of having effective court decisions reopened and reheard by courts. As for petitioners, the fast and relatively lower cost of launching repetitive appeals and the strong possibility of resorting to higher-level authorities have become the major reasons that drive them toward petitioning channels rather than relying on legal ones to redress their legal grievances.

In the case of the Court, a relatively independent Visitor Reception Office and Appeal Registration Center (the petition office) was set up off-site in 2009,<sup>81</sup> equipped with sufficient judicial officials and marshals in

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<sup>79</sup> According to the vice chief of the Administrative Division of the Supreme People's Court, plaintiffs have won around 10% of administrative cases in recent years, compared to 30% a decade or so ago. See Zhang Yu, “Administrative Cases in China: Plaintiffs' Success Rate from 30% to 10% within 10 Years (*zhongguo mingaoguan an yuangao shengsulv*),” *Dahe Newspaper*, November 5, 2014.

<sup>80</sup> Clarke, “The Execution of Civil Judgments”; Xin Xu and Lu Tian, “The Violent Confrontation against Laws in Judgment Enforcement: 1983–2009 (*fayuan zhixing zhong de baoli kangfa: 1983–2009*),” *Law and Social Inquiry* 1 (2011): 3–28.

<sup>81</sup> The petition office is located on the southeast outskirts of Beijing, which is 20 kilometers away from the main office building of the Court. The site selection, according to judges and scholars, reflects the Court's deep concerns about radical petitioners and their illegal actions of assembling at the office buildings of state organs, encircling and attacking government officials, and obstructing traffic; in extreme cases,

response to the severe petitioning situation. The then chief of the First Case-filing Division of the Court, Justice Liu Xuewen, disclosed in a 2010 interview that the petition office dealt with approximately 350 petitioners a day on average, and on some peak days, more than two thousand petitioners approached the Court to file complaints in a single day.<sup>82</sup> Judicial officials in charge of petitioning were selected from judges of the Case-filing Divisions and other substantive divisions of the Court. In particular, the Court required the court leadership and high-ranking judges of seventeen substantive divisions of the Court to regularly take shifts meeting petitioners and hearing their complaints in person. According to an experienced supreme court judge who has worked in the Case-filing Division of the Court for more than nine years, petitioners approaching the Court have two notable characteristics: (i) more than 70% of petitioners come repeatedly and in groups, and (ii) 50% of petitioners resort to skip-level appeals and count on the Court to pay special attention to their disputes instead of seeking remedy at the grassroots level.<sup>83</sup> According to this interviewee,

It is a common practice for us (i.e., judicial officials in charge of petition cases) to deal primarily with new petition cases, with an effort to providing some solutions or explanations for petitioners after a careful examination of such cases. Conversely, it makes little sense for us to spend a lot of time and energy on repeated petitions. Considering that the outcomes of their previous petitioning processing are considerably clear through the ranks,

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petitioners would threaten to commit suicide in front of the office buildings of state organs. See Hou, "The Mentality and Expression of the Petitioners."

<sup>82</sup> Shuzhen Luo, "Unblocking the Petitioning Channels, Standardizing the Case Acceptance Procedures and Safeguarding the Citizens' Right of Action (*changtong shensu qudao, guifan anjian banli, baozhang gongmin suquan*)," *People's Court Daily*, November 19, 2010.

<sup>83</sup> Interview SPC20140829, August 29, 2014.

their blind adherence to repeated petitions would only increase our workload and waste our valuable time.<sup>84</sup>

Likewise, as He points out in his empirical study on the petition offices of the local courts, it is likely for petitioners, especially those who have persistently filed repeated complaints and have strived for their own rights for years, to be trapped in a vicious circle where they did not achieve satisfying outcomes of original disputes but generated new grievances toward the petition system and petition officials. Consequently, petitioners would “start calling their petitioning experience as injurious, blaming officials and making new claims.”<sup>85</sup>

The redress of particular grievances is but one part of the overall features of the petition system. In addition to that, as several scholars have noted, the petition system has assumed a crucial political role in the state's legitimacy maintenance and social control.<sup>86</sup> As one vital component of the ruling authority's larger efforts to maintain social stability, directions on reducing petitions usually flow down from the top of the judiciary. From the Court perspective, the pressing need of reducing the petitioning rate has become one of the most challenging tasks faced by the Chinese judiciary in recent years. Since Wang Shengjun's term as Court president (2008–2013), the increasing reference to the “mass-line” themes reflected a deep-rooted Party supremacism within the court system.<sup>87</sup> In response to

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<sup>84</sup> Ibid.

<sup>85</sup> He, “Mismatched Discourse.”

<sup>86</sup> Carl Minzner, “Xinfang: An Alternative to Formal Chinese Legal Institutions,” *Stanford Journal of International Law* 42, no. 1 (2006): 179; Yongshun Cai, “Managed Participation in China,” *Political Science Quarterly* 119, no. 3 (2004): 425–451.

<sup>87</sup> For instance, Wang's particular emphasis on the “supreme” aspects of people's rights and interests required the courts to “respond to the public concerns” (*huiying qunzhong guanqie* 回应群众关切) and to “serve the needs of the people” (*luoshi sifa weimin* 落实司法为民). Wang further illustrated that model people's judges must “drop the gavel, take off the gown, and go deep into the masses” (*fangxia fachui, tuoxia fapao, shenru qunzhong* 放下法槌, 脱下法袍, 深入群众). See Sida Liu, “Discussion on the ‘People’ in China's Judicial Practice (*lun zhongguo sifa shijianzhong de renmin*),” *Journal of Justice* (2010): 355–360.

Party's 2011 policy on controlling and clearing the contradictions reflected in petitioning, Wang stressed "four necessities"<sup>88</sup> within the judiciary and promulgated a series of crucial regulations governing litigation-related petitions. In 2014, the Court released another important judicial document, *Several Opinions on Further Promoting the Reform of the Working Mechanism of Litigation-related Petitions*, which has been regarded as a further step for the Court to win over the popular trust of the court system and further ease conflicts between courts and petitioners.<sup>89</sup> In this document, the Court's reform measures regarding petitioning take a three-pronged approach.

### *Separating petitions from litigation*

The total number of litigation-related petitions presented each year in front of Chinese judges suggests that petitioning has become an emerging trend that gradually encroached on formal legal channels. Despite that the increased use of petitions may reflect certain practical necessities, a common complaint among judges is that the excessive emphasis on petitions has largely distracted them from independently applying the law to cases that come before them.<sup>90</sup> As previously discussed, lengthy debate has surrounded the jurisdictional and functional overlaps between litigation-related petitions and the adjudication work of courts, and the harm caused by the conflict is something observers cannot afford to

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<sup>88</sup> Wang emphasized that (i) it was necessary to bolster the thoughts of the masses, (ii) address the root cause of the petitions, (iii) establish a long-term mechanism of dispute resolution, and (iv) shift the focus to grassroots level. See State Council Information Office of the People's Republic of China, "Supreme People's Court Spokesperson's Remark on Questions Concerning the Implementation of the 'Four Necessities' and 'Five Mechanisms,'" May 27, 2011, <http://www.scio.gov.cn/xwfbh/qyxwfbh/document/918094/918094.htm>.

<sup>89</sup> Jingyi Zhang, "In Further Promoting the Reform of Litigation-related Petitions: An Interview with the Head of the Petition Division of the Supreme People's Court (*yifa zhashi tuijin shesu xinfang gaige: zhuanfang zuigao fayuan shesu xinfang jigou fuzeren*)," *People's Court Daily*, March 20, 2014.

<sup>90</sup> Interview SPC20140724, July 24, 2014.

overlook.<sup>91</sup> In view of this, the Court has urged the reform of trial procedures to help the courts to distinguish adjudication work from petition filing.

For instance, changes made in revisions to the Civil Procedure Law in 2008 and 2012 were directed against the ill-defined retrial procedures, and they reassigned responsibilities between judicial and nonjudicial authorities regarding hearing litigation-related complaints. According to the new rules, reasonable constraints are placed on rehearing petitions, renewing standards regarding the initiation of rehearing petitions, limitation of action, number of applications for rehearing, and so forth.<sup>92</sup> Complaints that do not meet the criteria must be handed over to related government institutions or petitioning bureaus for further review.<sup>93</sup> In addition to these procedural reform measures, the Court also encourages the use of mediation rather than litigation in cases that are likely to result in petitions and instructs judges to provide sufficient explanations to parties after reaching verdicts.<sup>94</sup>

### *Resolving complaints at the grassroots level*

Another key strategy of the Court to streamline petition cases at various levels is to resolve the problem at the origin. As argued above, one distinctive feature of petitioning practice is “believ[ing] in the high-level authorities rather than the low-level authorities,” which suggests that petitioners increasingly resort to higher authorities when they have grievances related to court judgments or the enforcement of judgments. As Minzner points out, aggrieved people resorting to higher-ranking officials for justice is rooted in ancient Chinese statecraft, and thus it is

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<sup>91</sup> Minzner, "Xinfang."

<sup>92</sup> Civil Procedure Law of 1991 (as amended in 2012), art. 200, 201, 205, and 207.

<sup>93</sup> Zhang, "In Further Promoting the Reform."

<sup>94</sup> Interview SPC20140829, August 29, 2014.

nothing remarkable in contemporary judicial practice.<sup>95</sup> Nevertheless, the upswing in complaints that focus on the higher-level courts has generated growing tensions between the superior and the inferior courts, which eventually drove the Court to take necessary measures and urge the lower courts to resolve grievances at local levels.

In particular, the Court established two Circuit Supervision Branches (*xunhui dudao heyi ting* 巡回督导合议庭) in 2013 to ensure sufficient and effective communication between petitioners, the higher-level courts, and the lower-level courts in tailoring solutions to petitions,<sup>96</sup> and more importantly, for the Court to be fully aware of the situation at the grassroots courts.<sup>97</sup> In accordance with the Court's annual work report released in 2015, judges of the two Circuit Supervision Branches investigated 4,548 petitions with assistance from local courts in 2014, striving to address complex and crucial issues of concern. Moreover, the literature suggests that approaches to addressing petitions at grassroots level may also include regularly holding "court-president reception days" (*yuanzhang jiedai ri* 院长接待日) for higher court officials to personally receive petitions, accept and forward "letters to [the] court president" (*yuanzhang xin* 院长信) through specific internal channels, block and eliminate petitions that bypass the normal channels of petition-filing and directly petition the highest-level hierarchy, link judicial disciplinary measures to cases that result in repeated and extreme petitions, and so forth.<sup>98</sup>

Furthermore, the Court also has emphasized the need for courts at all levels to coordinate with local people's congress, government, and Party

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<sup>95</sup> Minzner, "Xinfang."

<sup>96</sup> These temporary agencies of the Court are the embryonic form of the permanent establishment of the circuit tribunals of the Court. See the *Work Reports of the Supreme People's Court* 2014, 2015, and 2017.

<sup>97</sup> Interview SPC20140829, August 29, 2014.

<sup>98</sup> Min Zhang, "Problems and Solutions: Research on Court-related Petitions in the Transformation Era (*kunhuo yu chulu: zhuanxingqi fayuan shesu xinfang zhidu de lixing tanjiu*)," *Journal of Law Application* 6 (2009): 71–74.

officials to head off social unrest, especially ensuring trial activities adhere to the Party-led construction of a “harmonious society.”<sup>99</sup> To provide proper solutions for petitioners, the courts may propose new agreements to relevant parties, advance enforcement methods, or even offer additional compensation outside legal remedies.<sup>100</sup> After all, because the general enforcement power of the courts remains weak and local courts occasionally have to turn to Party organs and local government for assistance regarding the enforcement of judgments,<sup>101</sup> it is rational and institutionally feasible for local courts to strengthen their coordination with local governments and institutions in response to the severe stress from petitioners.

### *Working to close cases and resolve petitions*

Commentators have argued that a fundamental change to litigation-related petitioning requires the introduction of de facto finality to the judicial system.<sup>102</sup> For decades, “to seek truth from facts, to rectify mistakes whenever discovered” (*shishi qiushi, youcuo bijiu* 实事求是, 有错必纠) has been regarded as the fundamental guiding principle in adjudicatory practice. Consistent with this principle, discontented parties are allowed and even encouraged to challenge effective decisions by applying for retrial reviews<sup>103</sup> and petitioning for initiating adjudication supervision. However, the overemphasis on error correction inevitably comes at the expense of due process, which in turn spurs the increase in retrials and petitioning applications. Figure 6 indicates that the total number of

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<sup>99</sup> Liebman, "A Populist Threat to China's Court?"

<sup>100</sup> Zhang, "Problems and Solutions."

<sup>101</sup> Xin He, "Formal Contract Enforcement and Economic Development in Urban and Rural China" (Law, Commerce, and Development, New York University, April 11–12, 2008).

<sup>102</sup> See Shiqiang He and Kai Zhang, "Discussion on the Judicial Closure of the Litigation-related Petitions (*lun shesu xinfang de sifa zhongjie*)," *Theory and Reform* 4 (2015): 137–140; Weidong Ji, "The Solutions of Petitions and the Finality of Judgments (*xinfang zhongjie zhi yu shenpan zhongjuxing*)," *Caijing* 21 (2009).

<sup>103</sup> For a detailed discussion on how the Court handle retrial cases, see chap. 3, sec. 3.2.

petitions presented to the court system was 539,000 in 2013, and among them, the courts at various levels concluded 116,000 petition requests and applications for retrial, retried 30,000 cases according to the law, and eventually changed 7,415 effective verdicts that were wrongly decided, accounting for only 0.01% of the total grievances.<sup>104</sup> Thus, an extremely small number of cases were found to contain factual or procedural errors and were ultimately corrected, so evidence suggests that judges have to devote significant energy and resources to resolving petitions and initiating retrials without serving the stated purpose of the processes and instead contributing to stress on the overburdened judicial system.

In 2015, in response to the pressure of reforming the petitioning system, the Court introduced a new set of standards regarding civil retrials,<sup>105</sup> with a view to adding further restrictions on the courts' discretion in initiating retrial procedures and placing certain closure on effective court judgments. Through strategic application of the law and gradually breaking down the current procedural barriers, it is evident that the Court has renewed its emphasis on procedural justice, at least in most cases, in resolving complaints relating to court cases, step-by-step moving closer to the ideal of closing cases and concluding petitions.

### **4.3.3. Is the Court a Rational Actor or Tool of Social Control?**

Recognizing that the Court operates as part of the bureaucratic apparatus in the state's governmental structure and remains subject to the ruling party's oversight, there seems to be limited room left for the Court to thrive while fulfilling its political functions. From what has been discussed in this section, the urgent need to fight judicial corruption and

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<sup>104</sup> See the *2014 Work Report of the Supreme People's Court*, sec. 3.

<sup>105</sup> *Provisions of the Supreme People's Court on Several Issues concerning Strictly Applying Ordered Retrial and Remanding of a Case for Retrial in the Civil Trial Supervision Procedures*, Fa Shi no. 7 (2015).

to reduce litigation-related petitions in many respects reflect the struggles and compromises the Court has made to fit into the core political agenda of the ruling authorities. Although evidence presented in the previous chapters suggests that the Court is moving toward becoming a more rational actor in the reform era and has begun to devote significant attention to a wide range of legal and nonlegal factors in making crucial decisions,<sup>106</sup> the discussion in this section so far highlighted two essential qualities that seem missing in the Court's fulfilling of its political tasks in practice: institutional independence and functional autonomy. The prevalence of petitioning reflects the continued emphasis on power rather than the law in the Chinese legal system, which has come at the expense of the judicial authority and the consistency of court outcomes. Moreover, the Court's efforts in fighting judicial corruption appear to be an extension of the overall anticorruption campaign led by the ruling authorities, which has been proven a highly politicized process concentrating on the contests of power and conflicts among different interest groups, yet without paying due attention to fundamental legal rights and principles.

In a sense, the overall lack of a sound judicial system and the rather limited judicial authority can help to explain the Court's prudent attitude toward its political role, and particular why the Court by and large performs a supporting role in fulfilling its political tasks and serving the needs of social and economic development, although such actions may at times conflict with legal norms or be exercised at the expense of substantive or procedural justice. As it stands, it would be too much to expect the Court to act as a rational actor that can to strike a meaningful balance between legal requirements and its bureaucratic compliance with the Party's primary concerns while fulfilling its political tasks. However, the practical compromises of the Court do not diminish its meaningful efforts in search of feasible solutions to separate the judicial and political functions of courts, apportion power and tasks between higher- and lower-level courts,

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<sup>106</sup> For instance, see chap. 2, sec. 2.3, and chap. 3, sec. 3.2.

renew focus on procedural justice and due process, and so forth. Although the Court tends to emphasize solving specific problems in practice rather than detecting and challenging the institutional defects within the current political and legal system, one cannot deny the genuine attempts of the Court to shake off political bounds within limits.

#### **4.4. Concluding Analysis**

In light of the wide range of nonjudicial practices of the Court discussed in this chapter, a crucial observation is that judges have served more functions than simply that of adjudicators, and the Court has been linked to broader roles than being the court of last resort. Evidence presented in this chapter suggests a contrast between the Court's nonjudicial and judicial practice. While some functions serve to strengthen the administrative management within the judicial hierarchy, others are emphasized as part of the political agenda of the ruling authorities. Despite that the Court has been increasingly characterized as a pragmatic actor with greater professionalization in the exercise of judicial power, its institutional independence and functional autonomy, as reflected in its nonjudicial practice, ultimately are rather limited. In fact, the institutional dependence of the judiciary has greatly increased the risk of the Court being beholden to the external political and economic pressures when confronted with conflicts between judicial and nonjudicial functions. Consequently, the administrativization and politicization of the judiciary have come as an inevitable result of the bureaucratic style of running judicial institutions and directing the courts' nonjudicial practice.

This chapter further highlights that the judicial and nonjudicial functions of the Court are not totally separate, standalone practices but rather intertwined with each other. For instance, the prevalence of requests for instructions among lower-level courts in judicial practice could be partly attributed to pressures the higher-level courts impose on them through

various performance evaluations and complex court ranking systems. Likewise, the flood of litigation-related petitions reaching courts every year illuminates crucial defects in the courts' adjudication work, including loopholes in retrial procedures, discretion to reopen effective judgments, and an overemphasis on error correction over due process. Unsurprisingly, the nonjudicial functions of the Court, as discussed in this chapter, have in many respects complicated and even refined the relationship between the higher- and lower-level courts in and outside the sphere of adjudication. Worse still, the call for an impartial and authoritative judiciary has continued to be placed in jeopardy with the weight of the Court's nonjudicial functions and their bureaucratic practice.

Despite that the Chinese judiciary has experienced a significant expansion of capacity and authority with President Xi's call for advancing adjudication reform "with the trial at the center,"<sup>107</sup> the emphasis on the judicial functions of courts has been accompanied by a clear sign of intensified political functions and stringent bureaucratic control. Confronted with severe political challenges and the urgent need to strike a balance between judicial and nonjudicial functions in practice, the Court is expected to create innovative solutions to balance legal requirements with its responsiveness to the Party's priority concerns, making its way out of the typical bureaucratic mode of rationalization and, eventually, achieving solid progress in pursuit of its own version of judicial empowerment while keeping in line with the Party's ideological oversight.

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<sup>107</sup> Zhou, "Advancing the Establishment."