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Research on the Judicial Accountability Subject Model in China

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Abstract
Judicial accountability is essentially a form of supervising judicial power, and the judicial accountability subjects can be divided into the internal accountability subject and the external accountability subject. The objects of judicial accountability in China include judges and prosecutors. After undergoing judicial system reform and legal changes, China has formed a diversified accountability mechanism consisting of the People's Congress and its Standing Committee, Oversight Commission, Judicial Organs, and Judicial Disciplinary Committee. China has achieved a transformation from traditionally focusing on the internal accountability to a coexistence model of the internal accountability and the external accountability. At the same time, it faces the problem of coordination among various accountability subjects for different accountability reasons, which needs to be further improved through reform.

Keywords
Judicial responsibility, Accountability subjects, Accountability model, Reasons for accountability

1.Introduction

Judicial power, as a form of state power, may be abused or even lead to judicial corruption, thereby jeopardizing judicial credibility. Judicial personnel, as the main implementers of judicial power, bear disciplinary, legal, and professional ethical responsibilities in judicial activities. The scope of Chinese judicial personnel includes judges and prosecutors. The judicial accountability system is one of the elements to control the abuse of judicial power by judicial personnel. A sound judicial accountability system is an effective way to eliminate illegal judicial behavior by judicial personnel, curb judicial corruption, and achieve independent judiciary and judicial fairness. The core content of the judicial accountability system includes several aspects such as the scope of judicial responsibility, the form of judicial responsibility, the subject of judicial accountability, and the procedure of judicial accountability. Among them, the subject of accountability and the specific procedure of accountability constitute the mechanism of judicial accountability procedure, which is the way and guarantee to implement the judicial responsibility of judicial personnel. Scientific and rational allocation of judicial accountability subjects is an important prerequisite for the implementation of the judicial accountability system, and it is also an inevitable requirement to follow judicial rules and achieve the rule of law in judicial accountability.

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2.Two categories related to the subject of judicial accountability

The purpose of establishing the subject of judicial accountability is to determine who is responsible for accountability of judicial personnel. Based on the particularity of judicial actions, judicial accountability should also reflect authority and seriousness. The allocation of judicial accountability subjects should comply with a country's national system and judicial principles.

2.1.Subject of judicial accountability and subject of judicial supervision

Judicial accountability and judicial supervision are two closely related concepts. Judicial accountability and judicial supervision are essentially the same, both of which are important supervisory forces for the judicial actions of judicial personnel. Judicial accountability and judicial supervision have the same purpose, both of which ensure the correct exercise of other state power, social power, and civil rights through the supervision of jurisdiction. Judicial responsibility is the institutional connection point between the supervision of individual judicial personnel and cases. Judicial responsibility determines the operational boundaries of jurisdiction, prevents the abuse and corruption of jurisdiction, and is also a benchmark for measuring the rationality and scientificity of the judicial supervision system. However, it should also be noted that judicial accountability is a form of judicial supervision, and it cannot be equated with judicial supervision. Therefore, it is necessary to clarify the relationship between the subject of judicial accountability and the subject of judicial supervision, and understand the particularity of the subject of judicial accountability. Firstly, the subject of judicial accountability has statutory supervisory power over the matters and objects of accountability. Judicial accountability is a professional judgment work that requires judging whether judicial personnel should bear judicial responsibility, how to bear judicial responsibility, and what kind of judicial responsibility they should bear. At the same time, it is also a judicial supervision and punishment activity. The judicial accountability power is essentially a form of legal supervision power. Therefore, the establishment of the judicial accountability subject must first obtain the statutory power to supervise judicial personnel, and the statutory supervision power constitutes the premise and foundation for the establishment of the judicial accountability subject. Secondly, the subject of judicial accountability has specificity. The supervision of judicial personnel in a country often manifests as a diversity rather than a singular system. Other power organs, officials, media, ordinary people, etc. can become the force of judicial supervision. Different supervisory subjects exercise supervisory power over the judicial behavior of judicial personnel and their professional related behaviors from different aspects. As one of the forms of legal supervision, judicial accountability focuses on the recognition and punishment of judicial responsibilities of judicial personnel. The determination of judicial responsibility has strong professionalism, and the initiation of the accountability process for judicial personnel requires special caution. Therefore, it requires that the subject of judicial accountability be clear and specific. Thirdly, the subject of judicial accountability has a certain legal evaluation ability in determining judicial responsibility. Judicial accountability involves making judgments on the nature of judicial actions by judicial personnel and whether they have violated discipline and laws. Judicial actions are highly professional activities, which requires judicial accountability subjects to have professional judgment ability on accountability matters and be able to make objective and fair judgments. This kind of ability is usually manifested in legal professional ability. Based on this, the general media and

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public opinion can constitute the power of judicial supervision and become the subjects of judicial supervision, but they are not suitable as the subjects of judicial accountability.

2.2.The internal accountability subject and the external accountability subject.

Judicial accountability is an important aspect of ensuring the identity of judicial personnel, which plays an important role in preventing judicial corruption and ensuring the relative independence of judicial organs and judicial personnel. On the one hand, judicial accountability should quickly and effectively deter and correct the abuse of judicial power by judicial personnel, ensuring the realization of judicial responsibility. On the other hand, it is necessary to prevent the abuse of judicial accountability to interfere with the legitimate exercise of judicial power by judicial personnel. Judicial accountability can be divided into the internal accountability subject and the external accountability subject based on whether the accountable subject and the accountable object belong to the same agency. The internal accountability means that the subject of accountability and the object of accountability are in the same institutional system, and judicial organs are responsible for holding judicial personnel accountable. The external accountability means that the subject of accountability and the object of accountability do not belong to the same institutional system, and independent institutions outside the judicial organs hold judicial personnel accountable. The internal accountability is the responsibility of judicial authorities to investigate the reasons for accountability, initiate accountability procedures, and make decisions on whether to hold their judicial personnel accountable. The external accountability is carried out by independent institutions outside the judicial organs to which the accountable judicial personnel belong, conducting investigations, initiating accountability procedures, and deciding on accountability matters. Both the internal accountability and the external accountability have their own advantages and disadvantages. The internal accountability can ensure the professionalism and efficiency of accountability, as well as the relative independence of the judiciary as a whole. It's defects usually manifest as insufficient neutrality, which affects the effectiveness of accountability. The external accountability can ensure external constraints on the judicial power of judicial personnel and the effectiveness of accountability. It's defects often manifest as a lack of professionalism, and may even lead to the use of accountability to influence independent justice. In legal practice, the common practice is to reasonably allocate two types of accountability models based on different reasons for accountability and measures taken. For example, for minor violations of discipline and law by judicial personnel, if a warning punishment is proposed, the internal accountability will be adopted. For serious violations of discipline and law by judicial personnel, if they plan to be punished by dismissal or other measures, the external accountability will be adopted.

3.The model of judicial accountability subjects establishing in China

When judicial personnel are suspected of committing disciplinary or illegal acts, who has the power to review the responsibilities of judicial personnel and who initiates the accountability process are the first issues that the accountability mechanism needs to solve. The accountability of judicial personnel is a system widely established in many countries to constrain and restrict the exercise of their powers. There is a common parliamentary accountability system for judges in foreign countries, such as the use of parliamentary impeachment for the recall of federal judges in the United States. The general punishment of judges in

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Germany is subject to the accountability system of judicial institutions, such as the president of the court to which the judge belongs and the functional court established within the court. France adopts a specialized institutional accountability system, the Supreme Judicial Council is responsible for appointing members of the judiciary, implementing judicial disciplinary procedures, and promoting members of the judiciary. A country usually sets up a diversified accountability model based on the degree of violation of discipline and law by judicial personnel.

During the period from 1949 to 1992, there was no unified system of accountability for judicial personnel in China. The content on judicial responsibilities undertaken by judicial personnel is scattered in laws and regulations such as Judges Law of the People's Republic of China and Public Procurators Law of the People's Republic of China, as well as relevant evaluation provisions for the work of judges and prosecutors. The accountability mechanism for judges and prosecutors' violations of discipline or law in China operates in accordance with the accountability mechanism for civil servants. In 1992, the Supreme People's Court first proposed the "accountability system for wrongful cases", which opened up an exploration of accountability for judges in handling cases. In 2015, China implemented a reform of the judicial responsibility system, which made clear provisions on the subject, content, and procedure of accountability for judges and prosecutors in handling cases. In 2018, China formulated Oversight Law of the People's Republic of China, establishing oversight commission as independent supervisory agency to fulfill its oversight responsibilities over state officials, resulting in significant changes in China's supervisory system. In 2019, China revised the Judges Law and the Public Procurators Law, clarifying and consolidating the achievements of the reform of the judicial responsibility system, and making more comprehensive provisions on the rights and obligations, responsibilities, selection, punishment, and professional security of judges and prosecutors. Judicial reform and revision of laws have led to new changes in China's judicial responsibility system, which include both the evolution of institutional content and the updating of underlying judicial concepts. A judicial accountability mechanism with Chinese characteristics has been formed.

According to the current judicial system, relevant legal provisions, and practices in China, there is a diversity of subjects with the right to hold judges and prosecutors accountable. Different accountability subjects exercise their accountability rights in accordance with different procedures for various disciplinary and illegal behaviors of judicial personnel.

（1）People's Congresses and their Standing Committees at all levels. The people's congresses and their standing committees at all levels are organs of state power. According to Chinese Constitution, people's courts and procuratorates at all levels are elected by the people's congresses at the same level, responsible to them, reporting their work to them, and subject to their supervision. According to Organic Law of the People's Courts of the People's Republic of China and Organic Law of the People's Procuratorates of the People's Republic of China, the leading members of people's courts and procuratorates at all levels, as well as judges and prosecutors, are elected or appointed by the people's congresses and their standing committees at the same level. The constitution and laws stipulate that people's congresses and their standing committees at all levels have the power to supervise judicial personnel, such as the power to revoke, question, investigate specific issues, recall, etc. The recall means the punishment of exempting judges and prosecu-

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tors from their status due to their violations of discipline or law.

（2）Oversight commissions. Based on the revised Constitution and formulated Oversight Law in 2018, China has established a new state organ - the Oversight Commission. The oversight commissions are national supervisory organs established under the people's congresses and their standing committees at all levels, which exercise unified powers of supervision, investigation, and disposal of illegal and criminal acts committed by public officials. Firstly, the status of the oversight commission is independent. According to article 4 of Oversight Law, oversight commissions shall independently exercise the power of oversight in accordance with the law, free from interference by any administrative organ, public organization or individual. Oversight commissions shall exercise comprehensive supervision over the disciplinary and illegal activities of judicial organs and judicial personnel, and may dispatch work agencies to the judicial organs to exercise specific supervisory powers. Secondly, the responsibilities of oversight commissions are specialized. Oversight commissions at all levels are the specialized organs responsible for exercising state oversight functions. They shall conduct oversight of public officials exercising public power, investigate duty-related violations and crimes, build integrity and carry out the anti-corruption work, and maintain the dignity of the constitution and the law. Oversight commissions are specialized agencies that exercise national supervisory functions. Thirdly, the power content of oversight commissions is complex. Oversight commission and the disciplinary inspection agency of the Communist Party of China jointly work together. As a national supervisory authority, the oversight commissions exercise the power of government supervision and criminal supervision over all public officials. Government supervision and criminal supervision constitute the main powers of the oversight commission. The former focuses on illegal acts committed by public officials while the latter involves criminal acts committed by public officials. In terms of exercising supervisory power, the oversight commission is responsible for supervision, investigation, and disposal. Jurisdiction has the attribute of national public power, and Chinese judges and prosecutors, as national judicial personnel, belong to the scope of supervision of the oversight commission.

（3）Judicial organs. Before Oversight Law was promulgated in 2018, China's court system and procuratorate system had supervision bodies. In the practice of judicial accountability, the people's courts and the people's procuratorates respectively shouldered the main responsibility of judicial accountability to their subordinate judges and procurators. After the reform of the oversight system in 2018, China's court system and procuratorate system still retained the supervision bodies, and adjusted the supervision responsibilities accordingly. The responsibility for holding judges and prosecutors accountable for violations of discipline or law has been transferred to oversight commissions at all levels. The courts and procuratorates have retained the responsibility for holding judges and prosecutors accountable for judicial cases. The court inspection department is responsible for undertaking the work related to the punishment of judges and imposing penalties on staff in accordance with legal provisions. The inspection department of the procuratorate is responsible for political inspection, law enforcement inspection, accountability and punishment, internal audits, and is responsible for researching and formulating relevant policies for procuratorial inspection work.

（4）Judicial disciplinary committees. In the process of China's judicial responsibility system reform, the judicial accountability mechanism has been further refined. For judicial personnel who intentionally

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violate laws and regulations in handling cases, as well as those who make erroneous judgments due to gross negligence and cause serious consequences, they shall be reviewed by specialized judge disciplinary committee and prosecutor disciplinary committee. According to Judges Law and Public Procurators Law, the Supreme People's Court and all provinces, autonomous regions, and municipalities directly under the Central Government shall establish the judge disciplinary action committees; The Supreme People's Procuratorate and all provinces, autonomous regions, and municipalities directly under the Central Government shall establish the public procurator disciplinary action committees. The judge disciplinary committee and the public procurator disciplinary action committee take charge of examining and determining whether judges or public procurators commit any acts against the trial duties or procuratorial duties, and propose examination opinions such as constituting the intentional breach of duties, having gross negligence, having ordinary negligence, or having no breach of duties. After the judicial disciplinary committee and the procurator disciplinary committee submit their review opinions, the court or the procuratorate shall make a decision on whether to impose punishment in accordance with relevant regulations and give corresponding treatment. The accountability content of the judge disciplinary committee and the public prosecutor disciplinary committee is the responsibility of judges and prosecutors for their judicial case handling behavior. Other disciplinary and illegal acts that are not related to specific judicial case handling activities of judges and prosecutors shall be handled by the national oversight commissions and internal institutions of courts and procuratorates.

4.Reform of the subject setting model for judicial accountability in China

Due to the different legal systems and the development process of the rule of law in countries around the world, there is no unified model for the subject and focus of accountability of judicial personnel. The establishment of the accountability subject for judicial personnel is one of the key links in the effective operation of the accountability procedure mechanism. Based on the particularity of judicial actions by judicial personnel, there should be a distinction between the accountability subject for judicial personnel and the administrative accountability subject for civil servants. The traditional mode of accountability for judicial personnel in China is mainly based on the internal accountability by judicial organs. Although there are other two different accountability models, namely the accountability of the people's congress and its standing committee and the accountability of the Communist Party of China's disciplinary inspection organs, in practice, most cases are initiated internally by the judicial organs. The accountability of the people's congress and its standing committee is mostly based on the internal accountability of the judicial organs. Therefore, internal accountability of the judicial organs had become the most important accountability mechanism. After the judicial reform, independent national oversight commissions were established, along with the establishment of the judge disciplinary committees and the public procurator disciplinary committees, forming a new form of accountability for judicial personnel. The establishment and composition of the national oversight commissions and the disciplinary committees reflect the characteristics of external accountability. The traditional Chinese accountability system which focuses on the internal accountability has undergone a change and form a new pattern of accountability for judicial personnel.

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The biggest problem with the traditional accountability model for judicial personnel in China is that the accountability of judge and procuratorate is mainly controlled by the court and the procuratorate themselves. This approach is difficult to exert a deterrent effect on the disciplinary and illegal behavior of judges and prosecutors. Therefore, an appropriate approach is to separate the accountability agency from the internal institutions of the judicial organs, place the accountability agency externally or elevate its status. So that its accountability power can to a considerable extent transcend the internal interests of the court and procuratorate, thus being more neutral and strict in law enforcement, and avoiding the strong administrative enforcement by administrative functional departments. The reform of the oversight system follows the principles of "integrated" and "external" supervision, eliminating the problems of weak internal supervision and the subject of supervision being constrained by the object of supervision.The external accountability system formed by the oversight commission and the disciplinary committee can overcome the drawbacks of internal homogeneity accountability within the judicial organs in the past. Compared with the accountability models of foreign parliaments and official courts, China's establishment of independent oversight commissions and professional judicial responsibility review institutions-the disciplinary committees, is a more realistic and rational choice that is more in line with China's national conditions. In the future development, the judicial accountability mechanism of Chinese judicial personnel needs to be incorporated into a new supervision pattern to achieve a balance between judicial independence and judicial supervision.

5.The relationship among multiple judicial accountability subjects

"Judges are deeply embedded in complex organizational and social networks, integrating multiple roles or identities into one entity. Judges are not only judges, but also civil servants, and may also be party members." The multiple identities of judicial personnel determine that they follow different behavioral norms and assume different responsibilities. China has established a diversified accountability mechanism for judicial personnel's violations of discipline or law, including the people's congresses and its standing committees, oversight commissions, judicial organs, and judicial disciplinary committees. Different accountability subjects, based on their respective legal authorities, apply various accountability procedures to hold judicial personnel accountable for different accountability matters. Judicial personnel may be suspected of multiple violations of discipline and law, or the same behavior may be suspected of violating discipline and law, as well as violating judicial case responsibilities. Therefore, it is necessary to clarify the authority of multiple judicial personnel accountability subjects and the coordination and connection among different accountability procedures.

The people's congresses and their standing committees at all levels in China are organs of state power, with the power to appoint and dismiss judges and prosecutors. Usually, the oversight commissions, judicial organs, and judicial disciplinary committees initiate investigations, reviews, and make decisions on disciplinary violations or judicial responsibilities by judges and prosecutors based on their respective authorities and procedures. If it is determined that a judge or prosecutor's behavior violates discipline or law or constitutes judicial responsibility for handling cases, and needs to be relieved of their duties, they are then requested to be dismissed by the people's congresses and their standing committees at all levels. The inves-

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tigation and handling procedures of the oversight commissions, judicial organs, and judicial disciplinary committees constitute the prerequisite procedures for the recall procedures of the people's congresses and its standing committees.

According to Oversight Law, oversight commissions at all levels are the specialized organs responsible for exercising state oversight functions. They shall conduct oversight of public officials exercising public power, investigate duty-related violations and crimes. As the disciplinary inspection agency of the Party, they exercise the responsibility of Party discipline supervision over public officials with Party member status. The oversight commissions' supervision of judges and prosecutors is comprehensive, and cases of judges and prosecutors violating discipline, violating their duties, and committing crimes related to their duties are all included in the scope of supervision. If there are clues that judges or prosecutors are suspected of violating discipline, violating their duties, or committing crimes, according to relevant laws and regulations, they should be investigated and dealt with by the oversight commissions. Judicial organs should promptly transfer relevant clues to the oversight commissions. The oversight commissions may dispatch disciplinary inspection and supervision institutions to the courts and the procuratorates. The dispatched supervisory agency shall supervise judges and prosecutors according to authorization, provide supervisory suggestions, and investigate and dispose of public officials in accordance with the law.

After the reform of the oversight system in 2018, unlike the administrative supervisory organs that were transferred to national oversight commissions, the supervisory organs of the judicial system were retained, which means that the supervision of judicial personnel by the oversight commissions and the supervision of judicial personnel by judicial organs coexist. The reform of the national supervision system has led to a dual track system of punishment for judicial personnel, which includes both administrative affairs penalties by the oversight commission and disciplinary action by the judicial organ. With the implementation of the judicial responsibility system in China, there are certain problems such as unclear nature, unclear jurisdiction, and weak constraints between the two organs, which require further reform and improvement. The allocation of supervisory powers of judicial organs and oversight commissions should follow the basic logic of division of responsibilities, coordination and cooperation. The judicial supervisory departments and the oversight commissions should distinguish and complement each other in terms of organizational positioning, supervisory objects, and supervisory functions.In the context of the dual reform of the oversight system and the judicial system, the reform of the accountability system for judicial personnel should not only achieve full coverage of national oversight, but also adhere to judicial rules. It is necessary to coordinate the relationship among oversight commissions, judicial organs, and judicial disciplinary committees. The oversight commissions have a wide range of monitoring objects and hold accountable common issues related to disciplinary and job-related crimes committed by public officials, including judicial personnel. The accountability targets of judicial organs are judicial personnel. It has distinct characteristics of the judicial profession, and is constrained around judicial professional behavior. When judicial personnel violate different regulations and face different responsibilities, they shall be handled by different authorities in accordance with their statutory powers and procedures. When judicial personnel violate the party discipline, government regulations, and judicial responsibility regulations for the same behavior, and there is a competition of responsibilities, different accountability subjects need to exercise their responsibilities according

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to their respective scope of authority and clarify which agency is responsible for handling it. The judicial punishment system and the oversight commission system for investigating violations of official duties have clear legal basis and are two parallel accountability systems. When carrying out judicial punishment work, judicial organs need to coordinate with oversight commissions.

The courts and the disciplinary committees for judges, the procuratorates and the disciplinary committees for prosecutors exercise the power to hold judges and prosecutors accountable for judicial cases. According to the Judges Law, the Public Prosecutors Law, and relevant provisions on punishment for judges and prosecutors, for judges and prosecutors who are suspected of intentionally violating laws and regulations in handling cases and causing serious consequences due to gross negligence resulting in incorrect judgment results, the department in charge of supervisory inspections of the court and the procuratorate shall be responsible for accepting clues for illegal case handling, investigating and verifying, submitting them to the disciplinary committee for deliberation, sending them to attend hearings organized by the disciplinary committee, providing evidence about judicial actions and fault of judges and prosecutors. At last, the court or the procuratorate make a decision on whether to impose punishment based on the review opinions of the disciplinary committee, and to give corresponding treatment.

The disciplinary committee for judges and the disciplinary committee for prosecutors are responsible for reviewing and determining whether judges and prosecutors have violated their judicial duties, and providing review opinions. The judicial organs and the judicial disciplinary committees adopt a division of responsibilities. This model not only takes into account the current judicial personnel management system and disciplinary inspection and supervision system in China, but also conforms to judicial rules, reflecting the professional, neutral, and democratic characteristics of judicial accountability. It is a judicial accountability mechanism with Chinese characteristics. In specific implementation, it is necessary to further improve the substantive and effective operation of the power of the judicial disciplinary committee.

6.Conclusion

Emphasizing the independent exercise of judicial power is not to negate the necessary supervision of judicial organs and judicial personnel. From the practice of various countries around the world, countries that implement independent judiciary not only have judicial supervision mechanisms, but the primary function of judicial supervision mechanisms is to maintain independent judiciary. The purpose of establishing a judicial accountability system is not to punish judicial personnel, but to regulate their judicial behavior and achieve the scientific operation of their judicial power. The basic aim of the judicial accountability system is to achieve judicial authority and enhance judicial credibility. As an important component of China's current judicial reform, the construction of the accountability system for judicial personnel is constantly improving, and it has gone through a development process from setting institutional goals to arranging institutional content. The establishment of oversight committees in China and the proposal to establish selection committees for judges and prosecutors, as well as the judicial disciplinary committees for judges and prosecutors, are undoubtedly manifestations of objective judicial rules and significant reform measures. However, careful consideration is still needed in specific institutional arrangements to avoid the absorption of reform

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efforts by the systematization of power under the influence of path dependence, and even turning them into a virtual strategic mechanism, or it may fall into a repetitious judicial accountability model caused by multiple accountability mechanisms. Judicial accountability has a significant impact on the career of judicial personnel and requires fair and just procedures to ensure the legitimacy of judicial accountability. The establishment of judicial accountability subjects is one of the key elements of the judicial accountability system, and its direction is towards reflecting judicial rules and achieving the legitimacy of judicial personnel's accountability. To achieve this, it is necessary to facilitate the transformation of judicial accountability procedures from judicial technology to legal systems.

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