

# Research on the Allocation and Operation of the People's Courts' Judicial Power from the Perspective of Power Structure

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## Abstract

The structure of judicial power is an inevitable issue that a country's judicial system must face, with the allocation and operation of judicial power as the core. Under the vertical power structure, the allocation of judicial power in Chinese people's courts presents various forms, such as different subjects the power come from, different proportions of power, local decentralization characteristics, and overlapping distribution of judicial power between regions and administrative regions. The operation of judicial power needs to follow the leadership of the Party committee, accept supervision from higher-level courts, and follow the requirements of ethnic regions. Under the horizontal power structure, the allocation of judicial power is mainly carried out between trial organizations such as independent judge and collegial benches. However, due to the sharing of judicial power by other organizations outside the trial organization, the allocation of judicial power presents a hierarchical feature, and the operation of judicial power also has complex rules.

## Keywords

Power Structure, Judicial Power Allocation, Collegial Bench

## 1. Introduction

As the requirement and manifestation of economic marketization and political democratization in the judicial field, the court system in China has started the reform of trial mode since the end of the 1980s (Zuo et al., 1999). The reform goals shift from strengthening the responsibilities of the collegial bench and judges to reforming and improving the trial organization and trial structure, further optimizing the power allocation of the people's courts, and finally im-

plementing the trial responsibility system, allowing judges to make judgments and take responsibility, and building a socialist trial power operation system with Chinese characteristics centered on the judicial responsibility system. Obviously, the reform has always revolved around the organization and allocation of judicial power, as well as its operation. After five five-year reforms, the court system has made important achievements in deepening the comprehensive reform of the judicial system and fully implementing the judicial responsibility system. However, the disadvantages of judicial localization and judicial administration, which have long been criticized by academic circles, seem to have weakened, but they have not been eliminated. Issues such as collegial bench “meeting without deliberation” and jurors “accompanying without trial” are still hot topics in academic circles, and they are also the key issues in each round of reform. Especially in the process of the new revision of the Civil Procedure Law of the People’s Republic of China (hereinafter referred to as the Civil Procedure Law) in 2021, the expanded application of the sole responsibility system has set off a new round of discussion on the reform of court trial procedures in academic circles. During nearly forty years of reform, a broad consensus is gradually forming: if the reform wants to achieve substantive results, it must comprehensively transform and reform the existing court power structure. Among them, the core is the adjustment and optimization of the structure of judicial power. Therefore, at this moment, a systematic examination of the judicial power under both vertical and horizontal power structures plays an important role in discovering the current allocation and operation of judicial power in China and has important reference value for the next judicial reform.

## **2. Power Structure and Allocation and Operation of Judicial Power**

### **2.1. The Concept and Dimension of Power Structure**

What is the power structure? At present, there seems to be no authoritative theory. Domestic scholars mainly focus on the study of power structure in the field of political science, while there is relatively little research in the field of law, and there is currently no unified title. The related concepts involved include “power structure”, “judicial power structure”, etc.

In the book *Normative Power—A Legal Study of Power*, Zhou (2006) conducted detailed research on the concept of power, power structure patterns, power operation, and the practice of decentralization. He believes that power structure refers to the organizational system of power, the allocation of power, and the interrelationships between various powers.

Cui (1998)’s *Power Structure and Supervision* points out that power structure is an organic composition of different levels of power, different elements combined in different ways, each composed and operated according to certain laws, forming intricate and complex relationships with each other. The power structure holds a core position in a country’s political and economic system. The root

cause of many problems in political and economic life lies in the unreasonable power structure, among which the main problem is the excessive concentration of power.

In his co-authored article *On the Internal Power Structure of the Court* with other scholars, [Zuo et al. \(1999\)](#) focuses on the internal power network of the court. The power allocation and operation mechanism of the internal elements of the court are the product of the cross combination of customary and legal models. The internal power structure of the court is influenced by multiple factors such as social system, political system, traditional legal and cultural concepts, and the quality of judges. This power structure will inevitably conflict with the statutory trial procedure.

[Hu \(2003\)](#) in his book *Judicial Power: An Analysis of Its Nature and Composition*, focuses on the structure of judicial power when analyzing its legal principles. He believes that from an internal structure perspective, judicial power is composed of a series of sub powers, including the power to accept cases, the power to adjudicate, the power to manage judicial practice, the power to interpret justice, the power to formulate procedural rules, the power to review justice, and so on. The judicial power occupies a core position, and other powers are derived from the judicial power.

The article *On the Transformation of Power Structure: From Centralization to Restriction* by [Chen & Huang \(2011\)](#) discuss the two basic forms of power structure: centralized structure and restrictive structure. The transformation of power structure will lead to changes in the way power operates, while the modernization of market economy requires restrictive structure as the basic political power structure.

Based on the research project undertaken by the Shenzhen Intermediate People's Court, [Wan \(2018\)](#) and other authors write the book *Research on the Reform of the Operation Mechanism of Judicial Power—Theoretical Analysis and Institutional Construction with the Approach of Improving the Structure of Judicial Power*, clarifies the connotation of judicial power from the perspective of power structure theory, and creates a “one body, two wings” power structure theory, with judicial power as the core, judicial management power and judicial supervision power as the guarantee.

Power structure includes two dimensions, namely vertical power structure and horizontal power structure. In the vertical power structure, the core issue is the distribution of state power between the central and local governments and their relationship. Such as the typical unitary and federal state power structure. In addition, the vertical power structure also includes the distribution of power between the upper and lower levels of the same organization and their relationship. In the horizontal power structure, the core problem is the mutual restriction and influence between different powers. According to different operation modes and functions, power can be divided into legislative power, administrative power, and judicial power in the traditional sense. The horizontal power

structure mainly refers to the allocation of these three powers among different state organs and their relationship. For example, the typical separation of powers model represented by the United States, and the power structure model established by China's monism.

## **2.2. The Allocation and Operation of Judicial Power under the Power Structure**

Power is a widespread social phenomenon, an important tool to maintain social order, and an important topic that any country, organ, or organization must pay attention to. The establishment of any state institution always revolves around power. In a country's power structure, according to the direction and object of power exercise, there will be the division of power, which can also be called the allocation of power. Power allocation is the core issue of power structure. As a part of state power, judicial power is naturally faced with the problem of how to allocate it. Of course, the power allocation problem is only one aspect of the power structure problem. Who will run the power after the power allocation and what rules the power operation needs to follow are all issues to be discussed by the power structure. But if you look closely, although there are different powers, each power has a basic organization in operation. In other words, every power of a specific nature has a specific organization running. To ensure the legality, appropriateness, and effectiveness of power operation, there is also an organization in which power dominates the operation of power. Therefore, from this perspective, when we discuss the power structure, we are not only discussing a specific power itself but also including the organizational structure for running this power. The discussion of judicial power is no exception.

Article 131 of the Constitution of the People's Republic of China (hereinafter referred to as the Constitution) stipulates that the people's courts shall exercise judicial power independently following the law and shall not be interfered with by administrative organs, social organizations, or individuals. Article 128 stipulates that the People's Court of the People's Republic of China is the judicial organ of the state. The judicial power is the power given by the state to the judicial organ for a specific exercise, and this judicial organ also refers to the People's Court. Therefore, judicial power refers to the judicial organ's authority to handle and adjudicate social disputes that have come to court according to facts and laws by using the power entrusted by the state. From this point of view, in our country, the judicial power is given to the court organization. Of course, different countries may adopt different forms of empowerment. In civil law countries and common law countries, although the judicial power is nominally given to the judicial organization, it is given to the individual judge, so its judicial independence often refers to the independence of the judge. However, China's Constitution emphasizes that the people's courts exercise judicial power independently, and emphasizes the independence of judicial power, that is, the independence of judicial organs. Therefore, in this case, the independence of judicial organs means that judicial power only falls to the level of court organization. As

for how to allocate judicial power among the internal organizations of the people's courts, and according to what rules the internal organizations operate judicial power, the Constitution has not made clear provisions.

However, as mentioned above, since judicial power is a specific national power operated by a specific judicial organ, it is bound to face the problems of power allocation, power operation, the relationship between judicial power and other powers, and the relationship between judicial power structure and organizational structure. These problems are embodied in two aspects: first, under the vertical power structure, the allocation of judicial power between the central and local governments, that is, the allocation of judicial power in four-level courts. Second, under the horizontal power structure, the distribution and operation of judicial power among different judicial organizations, as well as the interweaving of judicial power and administrative power within judicial organs. Therefore, if we want to systematically and deeply discuss how the judicial power of the people's courts is configured and operated, we need to put the judicial power in the vertical power structure and the horizontal power structure to carry out a detailed analysis.

### **3. The Allocation and Operation of the People's Courts' Judicial Power under the Vertical Power Structure**

#### **3.1. The Configuration of Judicial Power under the Vertical Power Structure**

If we want to discuss the allocation of court jurisdiction under the vertical power structure, we need to discuss the People's Congress system in China first. The People's Congress system is the fundamental political system in China, and it is also the core device for the construction of the state power system and the specific allocation of power (Lin, 2018). Article 2 of the Constitution stipulates that all power in the People's Republic of China belongs to the people. The organs where the people exercise state power are the National People's Congress and local people's congresses at various levels. So, state power comes from the people, and the embodiment and implementation of state power are finally realized through the People's Congress system. This includes both the National People's Congress and local people's congresses at all levels. Moreover, from the perspective of jurisprudence and law, there is no relationship between the National People's Congress and local people's congresses (Ai, 2001). As a state power, judicial power naturally comes from the authorization of the People's Congress. It is precisely because of this special system that the allocation of judicial power between the central and local governments presents the following four characteristics:

- 1) The power comes from different subjects

According to the Constitution, the national judicial organs are produced by the People's Congresses, responsible for them, and supervised by them. The division of functions and powers between central and local state organs follows the

principle of giving full play to local initiative and enthusiasm under the unified leadership of the central authorities. That means the power of China's highest state judicial organs and local judicial organs at all levels are authorized by the National People's Congress and local people's congresses at all levels respectively. In other words, the jurisdiction of local judicial organs does not come from the authorization and regulations of the National People's Congress, but from local people's congresses at all levels. This can also be confirmed by other articles in the Constitution. For example, Article 62 of the Constitution stipulates that the National People's Congress may elect and dismiss the President of the Supreme People's Court. Article 67 stipulates that the National People's Congress Standing Committee has the right to appoint or remove the Vice President of the Supreme People's Court, judges, members of the judicial committee, and the president of the military court at the request of the President of the Supreme People's Court. Article 101 stipulates that local people's congresses at or above the county level shall elect and have the right to recall the president of the people's court at the corresponding level. Similarly, the different operating forms brought about by this different power source are also fully reflected in the Organic Law of the People's Courts of the People's Republic of China (hereinafter referred to as the Organic Law of the People's Courts). Articles 42 and 43 of the Organic Law of the People's Courts are both responses to the relevant provisions in the Constitution. In addition, Article 9 of the Organic Law of the People's Courts stipulates that the Supreme People's Court is responsible to the National People's Congress and its Standing Committee and reports on its work. Local people's courts at various levels are responsible to the people's congresses at the corresponding levels and their standing committees and report on their work. It also fully shows that the highest judicial organ and local judicial organs at all levels are only responsible to the people's congress that produced the organization. Moreover, according to the provisions of the Organic Law of the People's Courts, the Supreme People's Court only has the relationship between supervision and being supervised of local people's courts at all levels and special people's courts, and the higher people's courts also just have the relationship between supervision and being supervised to lower people's courts. Therefore, although the orderly distribution of judicial organs in the vertical direction forms the relationship between the higher and lower courts, this kind of higher and lower level only refers to the corresponding higher and lower levels of judicial supervision (He, 2021).

## 2) The power has different proportions

According to the Constitution and the Organic Law of the People's Courts, the courts in China are divided into the Supreme People's Court, the local people's courts at all levels, and the special people's courts. The local people's courts at various levels are divided into higher people's courts, intermediate people's courts, and basic people's courts. Therefore, China has set up four levels of courts. Although the sources of the judicial power of the four-level courts are

different, and the relationship between them is only supervision and being supervised, the allocation of judicial power will naturally be different because of the division of levels, which is mainly reflected in the different proportions of judicial power allocation. The difference in the proportion of judicial power allocation is highlighted in the scope of cases accepted by the fourth-level courts. According to the provisions of Articles 16, 21, 23, and 25 of the Organic Law of the People's Court, the functions of the four-level court and the scope of hearing cases are relatively clearly defined. This provision is relatively clear in the three major procedural laws. Of course, due to the different trial objects of the three major procedural laws, the expression of the jurisdiction of the four-level court will be slightly different. Taking the Civil Procedure Law as an example, Articles 18, 19, 20, and 21 of the Law respectively list the scope of cases under the jurisdiction from the grassroots people's courts to the Supreme People's Court. The division of the scope of jurisdiction is mainly reflected in the scope of influence of the case. Of course, in addition to considering the scope of the case, there is another important criterion in civil and commercial cases, that is, the amount of the subject matter of the case. To meet the needs of social and economic development and civil litigation, and to rationally position the civil and commercial trial functions of the four-level courts, the Supreme People's Court has repeatedly adjusted the standards of first-instance civil cases under the jurisdiction of the higher people's court and the intermediate people's court. Moreover, because of the different levels of economic development in different provinces, the amount of civil and commercial cases of first instance that can be accepted by the higher courts and the intermediate courts in different provinces is also different. In addition, there are other jurisdiction standards for cases involving intellectual property rights, maritime commercial cases, and foreign-related civil and commercial cases involving Hong Kong, Macao, and Taiwan region. Therefore, the judicial power has obvious proportion and distinction in the allocation of four-level courts.

### 3) The allocation of judicial power has local decentralization characteristics

From the foregoing discussion, we can see the allocation of judicial power presents different forms in the central and local governments. This different distribution pattern makes the judicial power show the characteristics of decentralization. First, from the legal perspective, judicial power is a power uniformly exercised by the national judicial organs, which seems to have independence and integrity. But, from the perspective of organizational structure, the process of concrete implementation of judicial power in courts at all levels is the process of decentralization. And this division of power is done at least in two ways. One is the decentralization of power by the National People's Congress by the Constitution, and the other is the decentralization of power by local people's congresses at various levels by the Organic Law of the People's Courts and the Judges Law of the People's Republic of China (hereinafter referred to as the Judge Law). Therefore, only from the legal perspective, the allocation of judicial

power between the central and local governments shows different characteristics. Secondly, because of the decentralization of power between the central and local governments, local courts should be guided (led) by the local party committees, the people's congresses, and superior courts in this system at the same time, forming a dual leadership model. In this mode, the judicial organs are often overloaded with roles. Local party committees and governments regard courts and procuratorates as local functional departments. Some judicial organs themselves agree with this role orientation and intervene in local social management and economic development with a positive attitude. Almost all presidents and procurators of judicial organs will report on serving local economic development and social management innovation as important tasks when reporting to the National People's Congress (Guo, 2019). Finally, according to the current law, the president of the local court must report to the local people's congress every year. In this case, to satisfy the local people's congress deputies, local courts must adopt local protectionism when the cases involve local interests. For the work report to be passed at one time, some measures may be deliberately taken to improve relations with the people's congress deputies (Zhang, 2002). Moreover, although the Constitution prohibits administrative organs and social organizations from interfering in the judicial process, it does not prohibit local people's congresses from interfering in the judicial process (Zhang, 2012). It is all these reasons that make the seemingly unified judicial power show a strong local color when it is configured in the local area. Of course, to change this situation, whether in the Outline of the Fourth Five-Year Reform or the Outline of the Fifth Five-Year Reform, the reform of people and property below the provincial level is regarded as an important task of judicial system reform. However, although this reform of provincial unified management can remove the localization color below the provincial level to a certain extent, it strengthens the localization color of judicial power at the provincial level.

4) The distribution areas of judicial power and administrative power are overlapping

According to the provisions of China's Constitution and the Organic Law of the People's Courts, local people's courts at all levels in China are divided into higher people's courts of provinces (municipalities directly under the Central Government and autonomous regions), intermediate people's courts of cities (autonomous prefectures and leagues) and basic people's courts of districts (counties, county-level cities, and banners) based on administrative divisions. Except for some cases with special jurisdiction and designated jurisdiction, courts at all levels handle disputes within their jurisdiction according to the law. There are almost no jurisdictions that are staggered from administrative divisions (He, 2021). Due to the large number of local people's courts at all levels, accounting for almost more than 98% of the total number of courts in China, this leads to an obvious overlap between judicial power and administrative power in the allocation of local three-level courts. This characteristic of the distribu-

tion of judicial power, although it helps judges to understand the local specific situation and determine the facts of the cases, it also intensifies the localization of the court, which is commonly known as judicial localization. In addition, the personnel and finances of local courts need the support of the local governments, so the opinions of local parties and government leaders must be considered when making judgments, which leads to some undesirable phenomena such as judicial local protectionism and undermines judicial justice and judicial authority. Especially in administrative cases where the local government is the defendant. Because the local government controls the personnel and finances of the court, the local court lacks its due independence and often shows favors to the local government. As a result, the judiciary was originally an important mechanism to prevent and control local protectionism, but the courts themselves were caught in the dilemma of judicial local protectionism (Zhang, 2012). Therefore, under the tide of judicial system reform, judicial localization is also a stubborn disease that must be eliminated. In the Outline of the Fourth Five-Year Reform, it is emphasized that the Circuit Court of the Supreme People's Court should be set up to try major civil commercial and administrative cases across administrative divisions. Exploring the establishment of cross-administrative courts, and building a litigation pattern in which ordinary cases are accepted in administrative courts and special cases are accepted in cross-administrative courts. In the Outline of the Fifth Five-Year Reform, it is further proposed to deepen the reform of the judicial system, separate from administrative divisions, and promote the formation of a new litigation pattern. However, after ten years of reform, although some achievements have been made, because of the limited number of circuit courts, specialized courts, and courts across administrative divisions, many cases are still carried out in the originally designated administrative areas under the jurisdiction of the courts. The problem of judicial localization derived from the overlapping distribution of judicial power and administrative power is still difficult to get rid of.

### **3.2. The Operational Rules of Judicial Power under the Vertical Power Structure**

After the allocation of judicial power between the central and local governments, the operation of judicial power has also formed some rules. These kinds of operating rules can be divided into general rules and special rules. The general rules for the operation of judicial power are mainly embodied in three aspects:

First, the judicial power should follow the system of people's congresses under the leadership of the Party. At the central level, the highest judicial organ is responsible to the National People's Congress, and the Supreme People's Court needs to accept the guidance of the Party and the Central People's Government; In local areas, judicial organs at all levels are responsible to local people's congresses at all levels, and local people's courts at all levels need to accept the guidance of local party committees and governments.

Second, the lower court needs to accept the supervision and guidance of the

higher court on the trial work. In the process of judging, it is necessary to avoid conflicts with the guiding cases that have been issued by higher courts. Decisions that are difficult to determine need to be reported to the higher court for instructions.

Thirdly, in the selection of judges, according to the provisions of Article 17 of the Judges Law, newly appointed judges generally serve in the basic people's courts. Judges of higher people's courts are generally selected step by step; Judges of the Supreme People's Court and the Higher People's Court may be selected from the two-levels-lower people's courts. A judge who participates in the selection of a higher people's court shall serve in a lower people's court for a certain number of years and have relevant work experience in selecting positions. So, we can conclude that the selection of judges in the Supreme People's Court at most from the intermediate people's court, and the selection of judges in the higher people's court may be from the basic people's court, fully shows that the selection of judges in local courts does not cross regions.

Of course, to ensure judicial justice and meet the needs of local development, there are also some special operating rules. First, the court's party and government leaders should follow the disqualification system. According to the newly revised "Regulations on the Selection and Appointment of Leaders of the Party and Government", leaders of local courts at or above the county level shall not be the main leading members in the county courts where they grew up, and generally shall not be the main leading members in the municipal courts where they grew up. Second, the main party and government leaders of the courts in ethnic autonomous areas should be ethnic members who practice regional autonomy. According to the third paragraph of Article 46 of the Law of the People's Republic of China on Regional National Autonomy, the leading members and staff of the people's courts and the people's procuratorates in ethnic autonomous areas should include people from ethnic groups exercising regional autonomy. Therefore, in the process of court operation, the presidents of courts in ethnic autonomous areas are always members of regional autonomous ethnic minorities.

## **4. The Allocation and Operation of the People's Courts' Judicial Power under the Horizontal Power Structure**

### **4.1. The Configuration of Judicial Power under the Horizontal Power Structure**

Since under the vertical power structure, the distribution of judicial power between the central and local governments has shown a non-uniform form, what kind of form will the allocation of judicial power show in each court? According to the law, China's judicial power is exercised by the judicial organs in a unified way, and specifically within the judicial organs, it is exercised by special judicial organizations. That is, the court is the main body of judicial power, but the exercise of judicial power is not taken by the court, but by the judicial organization

instead (Jiang, 2022). In other words, within the court, the judicial power is directly allocated to the judicial organization. According to the Organic Law of the People's Courts, the judicial organizations of Chinese courts are divided into four categories, namely, the sole court, the collegial bench, the judicial committee, and the compensation committee. However, the compensation committee is generally composed of more than three odd-numbered judges, who try state compensation cases according to the law, so it can also be regarded as one of the forms of the collegial bench. After merging similar items in this way, the judicial organizations of Chinese courts can be mainly summarized into three categories: the sole court, the collegial bench, and the judicial committee.

Since the judicial organization is the natural subject to exercise judicial power, the judicial power needs to play its role through the judicial organization, which will inevitably involve the allocation of judicial power among various judicial organizations, that is, the decentralization of judicial power within the judicial organization. But in fact, the organizations that exercise judicial power include not only judicial organizations but also organizations outside the court and other organizations inside the court except judicial organizations. According to the vertical configuration of judicial power, the peripheral organizations that exercise judicial power include guiding or leading organizations, such as party committees, people's congresses, governments at all levels, and other organizations such as discipline inspection commissions and supervisory committees. Within the court, in addition to the judicial organization, other internal organizations will affect the operation of judicial power. The key ones are the president or vice president, the professional judges' meeting, and other administrative organizations. At the same time, the president or vice president, as the internal administrative leader of the organization, holds administrative power, and are leader above the judicial organization. Moreover, during the trial of a case, because the judicial committee can discuss major, difficult, and complicated cases, the collegial bench should implement the judicial committee's decisions, and the members of the judicial committee must have administrative leaders such as the president, vice president, the president will, of course, become the presiding judge when they participate in the trial, so we can see the president naturally becomes the most authoritative existence. And the authority given by this administrative power is naturally brought into the judicial organization. Judges and administrators with different values, behaviors, and goals are in the same organization (Liang, 2007). The authority of leadership positions leads to the formation of an administrative management mode within the court. However, this long-term administrative management mode of the court can not disappear immediately, including the reasons why the court, as a unit, coordinates its work with other organs and units and participates in local economic and social development, as well as the factors that court leaders are unwilling and afraid to delegate power. With the deepening of judicial reform, the supervision of trial management within the court has also become the most favorable way for the president to exercise administrative power (Wang, 2020). In this case, the allocation

of judicial power within the court has formed an obvious four-level structure: the president (vice president), the Judicial Committee, the collegial bench, and the sole court. These hierarchical structures also correspond to different administrative organizations or judicial organizations, thus forming a hierarchical power allocation form in which judicial power and administrative power overlap.

#### **4.2. The Operating Rules of Judicial Power under the Horizontal Power Structure**

Since the allocation of judicial power within the court forms four levels and overlaps with the administrative power, how will the judicial organization and administrative organization exercise judicial power? According to the provisions of the current procedural law, the organizational forms of exercising judicial power are mainly the sole courts and the collegial benches. Therefore, this paper mainly focuses on these two basic judicial organizations.

##### 1) The sole court: can judges exercise judicial power independently?

The judicial organization in the form of a sole court consists of a judge, who is independently responsible for hearing and judging cases. According to Article 40 of the Organic Law of the People's Court, the judges are composed of the president, vice presidents, members of the judicial committee, and judges. Therefore, the main body exercising judicial power under the sole court includes the president, vice president, members of the judicial Committee, and normal judges. In the case where the sole judge system is applied, because only one sole judge participates in the trial on behalf of the court, the sole judge has an independent right to speak about the fact-finding and the application of the law, that is, the independent judge can exercise the judicial power independently. However, the independent exercise of judicial power does not mean that the result of the case is entirely decided by the judge. Before the "Outline of the Fourth Five-Year Plan", the judgment documents can only be issued after being examined by the president. After the reform, to fully implement the judicial responsibility system, the Supreme People's Court issued "Several Opinions of the Supreme People's Court on Improving the Judicial Accountability System of People's Courts" (hereinafter referred to as "Several Opinions"), which stipulated that the judgment documents formed by the single judge in hearing cases should be directly signed by the single judge. On the surface, the interference of the leaders of administrative organizations in the exercise of judicial power by single judges has been abolished. However, under the pressure of lifelong accountability for misjudged cases established by the judicial responsibility system, the sole judge changed the original passive audit into an active request for instructions, and then partially transferred his independent judicial power out of various considerations to enhance trial confidence, avoid misjudged cases and avoid the case being sent back for retrial. Therefore, under the organizational structure of a sole court, judges can exercise judicial power independently to a large extent. However, the exercise of this power may still be restricted by the administrative leadership under

the administrative organization structure.

2) The collegial bench: how do judges exercise judicial power?

According to the traditional theory, the collegial system has the function of “gathering wisdom”, and members make judgments through mutual consultation, which helps to ensure the quality of trials, and has natural advantages compared with the single judge. Therefore, the internal structure of the collegial bench is more complicated than the sole court. According to the categories of participants, the collegial bench can be divided into a collegial bench of judges, in which judges participate, and a collegial bench of jurors, in which judges and the people’s jurors participate together. Among them, the jury collegial bench can be subdivided into a three-person small jury collegial bench and a seven-person jury collegial bench. Taking civil litigation as an example, different trial procedures have different applications to the collegial bench. In ordinary civil cases of first instance, the collegial bench of judges or jury can be applied. In civil cases of second instance, the collegial bench of judges must be applied, that is, the collegial bench of jurors must be excluded. In addition, the people’s court that originally tried the case sent back for retrial shall form a collegial bench by the procedure of first instance. If a case is retried, a collegial bench will be formed according to the different trial levels. Therefore, according to the different types of cases and trial procedures, the collegial bench structure also has a certain degree of difference. Then, how does the judicial power work under this different trial organization structure? Let’s take the collegial bench in the procedure of the first instance of civil trial as an example.

First, let’s look at the collegial bench of judges. According to the requirements of the standardized operation of the collegial bench, under this organizational structure, three judges should jointly make a ruling on the facts of the case and the application of the law, that is, the three judges should jointly exercise judicial power. After full discussion, the three people adopted the principle of democratic centralism and finally formed a judgment according to the majority opinion when they could not reach an agreement. However, under this standardized operation rule, some system provisions in judicial practice make the collegial bench appear in some non-standardized operation situations when exercising judicial power.

The first situation is the case-handling judge system in the collegial bench organizational structure. The case-handling judge system is an unwritten system that determines a judge as the undertaker of a case and concentrates the responsibility, rights, and benefits of hearing the case. According to the requirements of Several Opinions, when the collegial bench hears a case, the case-handling judge shall perform a series of duties such as promoting the trial procedure. In this case, to promote the trial procedure, other judges may voluntarily surrender the judicial power of the collegial bench to the case-handling judge to reduce the trial burden and maintain a harmonious relationship among colleagues.

The second situation is the presiding judge system in the collegial bench orga-

nizational structure. The presiding judge is mainly responsible for arranging the trial of accused cases from the macro level, presiding over and directing the trial activities and the collegial bench's deliberation activities, and has the right to submit the cases handled by the collegial bench with great differences of opinion to the professional judges' meeting or the judicial committee for discussion and decision. When the presiding judge undertakes a case by himself, he shall also perform his duties as a case-handling judge. When the presiding judge is not the case-handling judge, the case-handling judge shall assist the presiding judge in carrying out court trial activities. When the president or the vice president participates in the trial of a case, the president or the vice president shall act as the presiding judge. In this case, there will be three different cases of exercising judicial power. First, the presiding judge and the case-handling judge are not the same. Currently, because the case-handling judge is responsible for the specific case, the presiding judge is responsible for the trial work, and the presiding judge has the attribute of administrative duties. If the two people have the same viewpoint, it is easy to reach a result. If the two people disagree with each other, the decision of the third judge of the collegial bench will play a key role. But usually, due to the administrative authority of the presiding judge, the presiding judge in the collegial bench has a greater right to speak, and the third judge may easily agree with him. Second, the presiding judge is also the case-handling judge. In this situation, the presiding judge is more likely to form a relatively dominant position and has a decisive role in the final exercise of judicial power. Third, when the president and the vice president participate in the trial of the case, they will of course become the presiding judge. The unequal status between administrative leaders and ordinary judges is also doomed and it is difficult for ordinary judges to master the right to speak. It seems that the judicial power exercised by the collegial bench is likely to be independently exercised by the president or the vice president.

Followed is the jury collegial bench. To realize judicial democracy, protect citizens' right to participate in trials, and introduce folk wisdom in the process of adjudication, China vigorously promotes the people's jury system. According to the Law of the People's Republic of China on People's Jurors, the people's jurors and judges form a collegial bench to try cases. The people's jurors participate in the trial of cases by a collegial bench of three people, can express their opinions independently on the fact-finding and the application of the law, and exercise their voting rights. The people's jurors participate in the trial of cases by a collegial bench of seven people, can express their opinions independently on the facts, and vote with the judges; can express their opinions on the application of the law, but can't participate in the voting. According to this, we can see that there will be two different situations in the operation of judicial power in the jury collegial bench.

The first situation is that within the collegial bench organization, there are two different subjects of power exercise: judges and the people's jurors. Moreover, the judge must be the presiding judge and dominate the whole trial process. In

addition, the judges are more professional and hold public power, which easily forms an unequal position with the people's jurors, which leads to the fact that although there are fewer judges in the jury collegial bench, they still have a strong right to speak and have a dominant position in the exercise of judicial power.

The second situation is that the jury collegial bench has two different organizational structures, namely, a three-person collegial bench and a seven-person collegial bench. In a three-person collegial bench, the judges and the people's jurors jointly express their opinions on fact-finding and application of law and participate in voting, thus jointly exercising judicial power. In a seven-person collegial bench, the people's jurors can only express their opinions and participate in the voting on the fact-finding, and can only express their opinions on the application of the law but can't participate in the voting. This has led to the inconsistency in the allocation of judicial power between the judges of the seven-person collegial bench and the people's jurors and led to the fact that the unified collegial bench is divided into fact-finding organizations and law application organizations. Some scholars believe that this institutional arrangement will cause serious power structure problems, that is, the judges and the people's jurors should have the same power under the same organizational structure, and only under different organizational structures can they have different powers (Zuo, 2019). Moreover, because the boundary between fact trial and legal trial is vague in judicial practice, it is difficult to distinguish them, which leads to the difficulty in forming unified rules in the operation of judicial power.

Of course, all above are based on the discussion of different situations under the internal organizational structure of the collegial bench. Outside the collegial bench, there are also organizational factors that affect the operation of judicial power.

The first is the administrative leader. According to Several Opinions, the president and vice-president have the right to ask the collegial bench to report the progress and appraisal results of cases involving group disputes, difficult and complicated cases with social and social impact, similar cases that may conflict with the court or the higher court, and cases in which the relevant units or individuals react that the judge has violated the law. If there are objections, the president or vice-president can't change the opinions of the collegial bench directly, but they can decide to submit the case to a professional judge meeting and a judicial committee for discussion. Therefore, in the process of exercising judicial power, the collegial bench may face regulatory pressure from the leaders of administrative organizations. Even in some major, difficult, and complicated cases, especially sensitive cases with high social concern, the collegial bench will take the initiative to ask for instructions and report to the leaders. In either case, it may eventually lead to the collegial bench transferring the judicial power, thus becoming only the nominal subject of judicial power.

The second is the Judicial Committee. According to the regulations of the Su-

preme People's Court, the judicial committee is the highest judicial organization within the court. There are two main situations in which the judicial committee discusses the case. One is that the president and the vice president think that the case should be submitted to the judicial committee for discussion, and the other is that the collegial bench takes the initiative to submit the case to the judicial committee for discussion. No matter what kind of start-up, the collegial bench shall implement the decision of the judicial committee. Therefore, the collegial bench is not the real subject of exercising judicial power in cases where the judicial committee participates in the discussion.

The third is the professional judges' meeting. According to Several Opinions, the court may establish professional judges' meetings in different trial fields to provide advice for the collegial bench to correctly understand and apply the law. When the collegial bench reconsiders the cases, they can reference these opinions and decide whether to adopt them or not. Therefore, the professional judges' meeting belongs to the advisory body set up in the court, and its binding force on the collegial bench is weaker than other administrative organizations. However, the members of the professional judges' meeting include court leaders and senior judges, and they are still in an authoritative position compared with ordinary judges. It is conceivable that the collegial bench will usually adopt its discussion opinions.

The final is the higher court. Sometimes, when the lower court can't determine how to adjudicate major, difficult, and complicated cases, group disputes, or new types of cases, and when there is a dispute over the application of the law, they will ask the higher court for instructions and get the support of the higher court actively. On the one hand, the risk of possible misjudgment can be shared by the higher court, on the other hand, the case can be prevented from being changed or sent back, which will affect the performance appraisal. In this case, the judgment made by the collegial bench of the lower court is the opinion of the higher court, so it is hard to say that the collegial bench exercised judicial power independently.

## 5. Conclusion

From the perspective of power structure, this paper analyzes the allocation and operation of judicial power under vertical and horizontal power structures, which can more clearly prove that judicial power forms judicial localization in the central and local governments and forms judicial administration in the courts, all lie in the inappropriate power structure. In the current process of comprehensively promoting the reform of the judicial system, it is necessary not only to solve the superficial dilemma but also to dig deep-seated reasons, to prescribe the right medicine, and to remove stubborn diseases. If the structure of judicial power is not fundamentally adjusted, the amount of reform and exploration will only scratch the surface. Of course, the formation of a judicial power structure has deep political, social, and historical factors. Reform was not

achieved in a day. After exploring the source of the problem, try to solve the problem as much as possible, to be as close to the purpose of reform as possible, and more likely to be close to judicial democracy and judicial justice.

### Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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