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# T075 ｜ If the Judiciary Obeys Political Leadership, How Can It Judge Unlawful Exercises of Political Power?

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## The claim

The objection runs like this. In the PRC (Mainland), the courts operate under the leadership of the Communist Party of China. A judge who must obey political leadership cannot be a neutral referee over political power — so when a government organ or a Party body itself acts unlawfully, who is left to say so? A court that answers to the very power it is supposed to restrain is not a check on that power; it is an arm of it.

Stated fairly, this is a serious objection, not a slogan. It points to a real tension the PRC's own documents acknowledge: leadership and the rule of law must coexist. The honest way to test it is to separate two meanings of "obey" — and then ask what the record provides for each.

## What the record actually says

The PRC Constitution gives the courts a formal guarantee of independence in adjudication. Article 131 provides: "人民法院依照法律规定独立行使审判权，不受行政机关、社会团体和个人的干涉。" Article 5 adds the universal rule: "一切国家机关和武装力量、各政党和各社会团体、各企业事业组织都必须遵守宪法和法律。……任何组织或者个人都不得有超越宪法和法律的特权。" On paper, then, no organisation — including a political party — stands above the law, and no administrative organ, social organisation or individual may interfere with a court's adjudication.

But the same Constitution structures the courts inside a system of political accountability. Article 133 provides that the Supreme People's Court "对全国人民代表大会和全国人民代表大会常务委员会负责". Article 1 names Party leadership as "中国特色社会主义最本质的特征" (the most essential feature of socialism with Chinese characteristics).

The 2021 white paper *China: Democracy That Works* (《中国的民主》) describes the judiciary's checking role in its section on democratic supervision (三（五）). It calls judicial supervision the strongest form of supervision in the system: "司法监督是党和国家监督体系中强制性程度最高的一种监督机制，是党和国家利用监督手段、维护公权力正确行使的'最后一道防线'。" The same section is explicit that this is not separation of powers: "在


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中国，解决权力滥用、以权谋私的问题，不能靠所谓的政党轮替和三权分立，要靠科学有效的民主监督。" Party leadership is described as supportive rather than directive in individual cases: the Party should "领导立法、保证执法、支持司法、带头守法".

## The rebuttal

The distinction the argument boundary requires — between judicial professional responsibility and case-level external interference — is exactly where the objection needs to be answered, and where it partly survives.

First, what the objection gets wrong. "Obeying political leadership" and "taking orders in a case" are not the same thing, and the PRC's own framework insists on the difference. Professional responsibility means a judge applies the law, follows procedure, and works inside a system whose political direction is set by the Party. Case-level interference means someone outside the courtroom telling a judge how to decide a particular dispute. Article 131 forbids the second, and the white paper's language of "支持司法" (supporting the judiciary) presents the first as leadership that enables, rather than replaces, adjudication.

Second, what the objection gets right, and what the record does not resolve. Article 131's list of forbidden interferers — "行政机关、社会团体和个人" — does not name the Party itself. Article 5 says every party organisation must obey the Constitution and the law, but it gives the courts no power to enforce that rule against a law, a regulation, or a Party decision. PRC courts have no power of constitutional review: they cannot interpret the Constitution or declare a law unconstitutional. The one attempt to open that door — the Supreme People's Court's 2001 reply in the *Qi Yuling* case — was revoked in 2008. So the system's own answer to "who judges political power when it acts unlawfully" is not the courts. It is the people's congresses, the supervision commissions, and discipline inside the Party itself. The judiciary is therefore the last line of defence only against unlawful acts by administrative organs and officials — not against the political leadership that appoints, supervises, and directs it.


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The distinction, then, cuts both ways. Where the unlawful act is an administrative decision — a land seizure without legal basis, a fine imposed without authority — a court applying Article 131 can rule against the government organ. Where the unlawful act is a law, a Party decision, or a political instruction itself, the court has no instrument to strike it down: within this design, the judiciary cannot judge the political power that leads it.

## The test

Three questions decide whether the "last line of defence" is real or rhetorical:

1. **Can a court rule against a government organ in a specific case, and is the ruling enforced** *This is the minimum content of Article 131. If courts decide administrative cases against agencies and those judgments are carried out, the design is functioning. If rulings against powerful organs are ignored, the guarantee is paper only*
2. **Can a court refuse to apply a law or regulation it finds unconstitutional** *On the record, no: PRC courts lack constitutional-review power, and the* Qi Yuling* opening was closed in 2008. Any claim that the judiciary constrains political power at the level of the law itself fails this test by the system's own admission.
3. **When a political instruction and the law point in different directions, which prevails — and who decides** *The white paper's answer is "支持司法、带头守法". The test is whether that support holds in the hard case: a ruling against an interest the political leadership favours. A system that passes only when the stakes are low has not answered the objection; it has postponed it*

The conclusion is narrower than the slogan, and for that reason harder to dismiss. A judiciary under political leadership can judge unlawful exercises of *administrative* power, and the PRC's Constitution and white paper give it the words to do so. It cannot, by its own design, judge the lawfulness of the political leadership itself. Whether that is a defect or a different theory of constraint depends on whether the other mechanisms — congress


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supervision, supervision commissions, intra-Party discipline — actually bite. But the judiciary alone does not, and on this record cannot, close the circle.

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## Source note

**Primary sources (both verified live by fetching the original pages on 2026-11-19)**

- **D — 国务院新闻办公室《中国的民主》**China: Democracy That Works*), 2021-12-04, section 三（五）(democratic supervision) and section 一 (Party leadership). URL: https://bb.china-embassy.gov.cn/chn/xwdt/202112/t20211207_10463217.htm — fetched in full; all quotations above are verbatim from the fetched text*
- **L — 《中华人民共和国宪法》(PRC Constitution), amended 2018-03-1**, *Articles 1, 5, 131, 133 (court provisions, ch. 3, sec. 8). URL: https://www.cac.gov.cn/2018-03/22/c_1122572643.htm — fetched in full; all quotations above are verbatim from the fetched text (Arts. 1, 5, 131, 133). English renderings in the essay are the drafter's translations; the Chinese text quoted is the authoritative wording*

**Opposing argument** *the claim as stated in "The claim" is a* reconstructed inference* from the structure of Party leadership plus the absence of constitutional review — it is not a verbatim official statement, and no official source is quoted as saying courts "cannot judge" political power. The essay narrows the claim accordingly: the sources support the structural tension, not a quotation attributing the conclusion to any named authority.

**Historical setting** *no earlier than 1998. The* Qi Yuling* episode (Supreme People's Court reply 2001, revoked 2008) is cited as reported in the linked CCE-068 article (see below); no other case-specific historical claim is made.


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**Related reading** *[CCE-087 | How Does Judicial Review Protect Citizens' Rights?](https://freechina.live/china-news-updates/democracy-civil-society/en-cce-087-how-judicial-review-protects-citizens-rights/) — on PRC Constitution Article 131, the absence of constitutional-review power in PRC courts, and the 2001* Qi Yuling* reply revoked in 2008.


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