

# Research on the Current Operation Situation of the Chief Prosecutor System

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**Keywords:** Chief prosecutor system, Current situation, Empirical research

**Abstract:** As an important prosecution system, the chief prosecutor system has been put into practice for more than one year, and its characteristics and effects have showed gradually. As a result, the approval procedures for examination and prosecution have been simplified and efficiency has been improved. But there are also some prominent problems - unclear division of power between the chief prosecutor and the prosecutor in charge and the new administrative problems. In order to solve the problems, the reform plan should be specified, and measures such as separating judicial power and administrative power should be taken so that the chief prosecutor system can function well as expected.

## 1. Prospects of the Operation of the Chief Prosecutor System

The chief prosecutor system is very important in China's procuratorial system. Its main content is to divide prosecutors into chief prosecutors with direct power to handle litigation and assistant prosecutors and prosecutor's assistants who can only assist the chief prosecutors to handle litigation. Since the introduction of this system, it has been highly anticipated. The Supreme People's Procuratorate said that this system embodies "substantial changes and far-reaching impacts", it will help solve the problem of judicial administration and promote the professionalization of the prosecutor team. Since its official implementation in 2018, the chief prosecutor system has been in operation for a period of time and has accumulated a certain amount of original material. Unfortunately, the academia knows very little about the relevant information and the current operation situation of the system, let alone learning from the experience. So, in this article, the author adopts empirical research to restore the operating picture of the chief prosecutor system, discover existing problems, and put forward specific suggestions to improve the chief prosecutor system.

### 1.1. Basic Situation of the Operation of the Chief Prosecutor System

The author chose city C of province S as the observation object of empirical research. As the first few institutes to adopt the chief prosecutor system, it is highly representative and typical of city C to be the observation object. At present, the reform of the chief prosecutor system of the Procuratorate of City C in Province S is mainly implemented by the public prosecution department. Take its second Public Prosecution Office as an example: in terms of personnel, there are 18 prosecutors in total, including a director and three deputy directors. After the pilot work of the chief prosecutor reform, the personnel changed for: five chief prosecutors (the director, deputy director and one of the most senior prosecutors), eight assistant prosecutors (proficient but junior prosecutors) and five prosecutor's assistants (least qualified and newly inducted prosecutors), and these prosecutors are divided into four groups: duty crime, economic crime, smuggling crime and trial supervision according to the characteristics of the self-investigation cases and economic cases handled by the second Public Prosecution Office. The teams are led by four chief prosecutors respectively (except the director prosecutors), and each group or each chief prosecutor has three assistant prosecutors and assistants. Finally, a chief prosecutor (director) will take charge of the overall situation. In terms of powers and responsibilities, the four chief prosecutors as heads of the case handling teams are responsible for handling cases at the operational level, that is, all cases are handled in the name of

the chief prosecutors, and the chief prosecutors take charge of all the process of case examination and prosecution and appear in court in response to the complaint. While the assistant prosecutors and the prosecutor's assistants only focus on the specific matters of the cases under the leadership of the chief prosecutors, they are not responsible for the overall situation. In terms of management, the four chief prosecutors are like "parents" of the case-handling team, they are responsible for all administrative tasks of the team members except Party construction and salary management, such as assessment, discipline, and training. Whether from the judicial or administrative level, the chief prosecutors are functioning under the principle of "partial behavior, full responsibility" - generally speaking, as long as there is a problem with his case handling team, the chief director must be the primary responsible person. With regard to the case handling procedures, the case handling procedures under the chief prosecutor system have not changed much compared to the previous ones, only with some links simplified. For example, in the past, all the prosecutors of the second Public Prosecution Office discussed the cases and subscribed them to the director for final decision, now the case will be discussed by the chief prosecutor team to form a preliminary plan and then the director will make final decision. The overall procedures did not change much.

## 1.2. Effect of the Implementation of the Chief Prosecutor System

At present, it is hard to evaluate the overall effect of the implementation of the chief prosecutor system, because the system is still in its infancy, and there may be deeper reforms later. So it's still too early to make a conclusion about its overall effect. However, the outcome of its implementation at this stage can be observed. Since 2018, the chief prosecutor system has been implemented in the Procuratorate of city C for more than one year, and the results can already be seen. So, it is proper to make periodic evaluation on the effect of the implementation of the chief prosecutor system. Under this background, based on the subjective evaluation of prosecutors and judges who are closely related to the chief prosecutor system, the author investigated the implementation effect of the chief prosecutor system.

### 1.2.1. Prosecutor's Self-evaluation

Through interviews with fifteen prosecutors from the second Public Prosecution Office of pilot units of the chief prosecutor system, the author found the following facts:

Table1 the Prosecutor's Self-evaluation of the Pilot Work of the Chief Prosecutor System in the Procuratorate of City C (unit: person)

	good	normal	bad	not clear
chief prosecutor	1	2	1	0
assistant prosecutor	0	5	2	0
prosecutor's assistant	0	4	0	0

Table2 Prosecutor's Evaluation on Whether the Current Chief Prosecutor System is Meaningful in Judicial Practice and Judicial Reform (unit: person)

	very meaningful	meaningful but not significantly	meaningless	not clear
chief prosecutor	1	1	2	0
assistant prosecutor	0	1	6	0
prosecutor's assistant	0	2	2	0

It can be seen that, at least in the eyes of most prosecutors in the second Public Prosecution Office of Procuratorate of city C, the current implementation of the chief prosecutor system is very unsatisfactory. Some prosecutors even directly declare: "This time, they just build the platform (establish the framework and structural system of the chief prosecutor system), but it only leads to the greater power of leaders, other things will stay the same as before." As mentioned above, the changes of the case handling process after the reform of the chief prosecutor system in the second Public Prosecution Office are quite limited, and the chief prosecutors are also the leaders of the

department, so it seems like nothing has changed, the fact betrayed the expectations of “substantial changes and far-reaching impacts”.

### 1.2.2. Evaluation from the Judge

As an important part of the legal professional community, the judges’ attitudes cannot be ignored, not to mention that the reform of the chief prosecutor system is also closely related to the ongoing reform of the judicial accountability system of the courts. Under this background, the author interviewed 12 judges from the Second Criminal Court of the intermediate people’s court of city C, which has the closest relationship with the second Public Prosecution Office of the city C’s Procuratorate. The results are as follows:

Table3 Judge’s Evaluation of the Pilot Work of Chief Prosecutor System in the Procuratorate of City C (Unit: person)

judge’s evaluation (unit: person)	good	normal	bad	not clear
presiding judge and deputy presiding judge	3	0	0	0
judicial officer	7	1	0	1

Table4 Judge’s Evaluation on Whether the Current Chief Prosecutor System is Meaningful in Judicial Practice and Judicial Reform (unit: person)

	very meaningful	a little meaningful	meaningless	not clear
presiding judge and deputy presiding judge	3	0	0	0
judicial officer	6	2	0	1

As the result shows, in contrast to the negative attitudes held by most prosecutors, most judges hold positive attitudes towards the chief prosecutor system. It is indeed surprising. However, the authors learnt through interviews that the main reason for the judge’s positive attitudes is that “the chief prosecutor system is conducive to improving the performance of prosecutors, thereby improving the quality of the entire trial.” It can be seen that the judges don’t focus on the chief prosecutor system itself and the problems that can be solved, they just enjoy the “by-products” it brings. In other words, during the implementation of the chief prosecutor system, the interests of judges and prosecutors are actually different, and it is normal that they show different attitudes on this system.

## 2. Existing Problems of the Chief Prosecutor System

Through empirical research on the operation of the chief prosecutor system, the author found that there are two major problems: one is the intensified administration, and the other is the degree of approval of the chief prosecutor system.

### 2.1. The problem of the Intensified Administration

The first is the problem of intensified administration. The Supreme People’s Procuratorate originally intended to solve the administration in prosecution agencies by adopting the chief prosecutor system. However, the fact is, the chief prosecutor system fails to help the prosecution agencies back to their initial judicial track, instead, it has aggravated administration. Objectively speaking, the emergence of this problem is not accidental: for a long time, the prosecution agencies affiliated with the judicial system have taken the path of administration, and followed the principle of procuratorial integration. The various institutes within the Procuratorate are also constructed and operated according to the classic hierarchical structure of the administrative agencies. Under this circumstance, the selection of the heads of various

departments also follows the general civil servant's "promotion based on seniority" model. Therefore, in the Procuratorate, almost all the most senior, experienced and proficient prosecutors are department leaders - especially in departments that dealing with cases. After the pilot reform of the chief prosecutor system, according to the guidelines of the chief prosecutor system, a chief prosecutor must be the most capable and convincing prosecutor, it indicates that most prosecutors must be department leaders. And as heads of the department, the directors already have considerable administrative power. So even if the title of the chief prosecutor is of no administrative significance at all, there will also exist some inevitable administrative problems in the chief prosecutor system. Or else, the concentration of power on the chief prosecutor has intensified the administration in the procuratorial agencies. In the past, the decision-making power of the case was in the hands of the department leaders, this is an unwritten rule. Now the department leaders and the chief prosecutors are the same person, it means that there are written rules for department leaders to make final decision on the cases. This may not be the original intention of the Supreme People's Procuratorate, but it is the fact. Policy makers hope to weaken the disputes between administrative power and judicial power in the Procuratorate through the concentration of administrative power and judicial power, but they ignore the fact that the administrative power of our country is greater than the judicial power and that the executive leaders of the Procuratorate already have judicial power. Judicial power and administrative power should not be excessively concentrated. If they are both concentrated in the hands of an agency or even a person, then administrative interference in the judiciary is inevitable, and judicial independence will never be possible - this is the current situation of the chief prosecutor system. As the Director of the second Public Prosecution Office of city C Procuratorate said: "It is okay to regard the chief prosecutor as a new administrative agency. Although it only has certain (administrative) power on the cases, with the fact that most chief prosecutors are now department directors and deputy directors, administrative management problems will inevitably be involved."

## **2.2. The Recognition of the Chief Prosecutor System**

The second problem is the recognition of the chief prosecutor system. As mentioned above, the author found in the investigation that most prosecutors believe that the current chief prosecutor system is meaningless in judicial practice and judicial reform, and a few prosecutors think that they are meaningful but not very significantly - It shows that at least a considerable part of prosecutors are pessimistic or conservative about the pilot work on reform. Regarding this situation, the author believes that, instead of a real institutional problem, it is rather a psychological problem: although this problem is closed linked to the intensification of administration, it actually results from the gap between expectations and reality. Before the implementation of the chief prosecutor system, the Supreme People's Procuratorate made great efforts in propaganda - not only through the mainstream media to publicize this reform, but also held several thematic conferences in succession and conveyed the spirit of the conferences to each unit. Under the influence of this atmosphere, there has also been vigorous publicity and praise for the chief prosecutor system in academia. For example, some scholars believe that: "The chief prosecutor system will eliminate the administration in the process of case handling, reflect the judicial attributes of prosecution work and help establish professional prosecutor team." [1] So the judicial departments believe that the introduction of the chief prosecutor system will involve with the largest amount of work, the largest number of personnel, and will have the deepest impact on the development of China's procuratorial system [2]. However, after the system was actually implemented, the prosecutors found that this system was not as good as the Supreme People's Procuratorate and academia described, and there was even a big difference. Therefore, it is understandable that prosecutors have negative opinion towards this system. However, this psychological problem seems to have the tendency to turn into a real problem - under the influence of intensification of administration and other factors, the gap between the reform of chief prosecutor system and the expectations of policy makers is widening. Besides, the recent "job hopping" due to wage and benefit issues caused the outflow of a large number of capable and experienced personnel, which made the reform of the chief prosecutor system even

harder. However, it is interesting that some units are trying to solve this problem by reforming the chief prosecutor system: For example, under the framework of the judicial post system, the Procuratorate in city C plans to give posts to more assistant prosecutors who handle cases on the front line for a long period of time, and apart from their inherent power, these prosecutors will also be given similar power as the chief prosecutors. At the same time, the substantial increase in salary after enrollment also helps to retain the cadremen and enhance the cohesion and confidence of the entire prosecutor group. This may not be expected by the policy makers and legislators at the beginning, but it also coincided with the theory of “unintended consequences”.

### **3. Suggestions for the Improvement of Chief Prosecutor System**

As stated before, the current chief prosecutor system has problems like the intensification of administration and low level of recognition. In the author’s opinion, these two problems are actually highly unified. The huge difference between the “high profile propaganda” before the implementation and the “no significant change” after the implementation is the source of these two problems. To solve these two problems, we must also start with the reform objectives of “weakening the administration” and “promoting the professionalization of the prosecutor team.” in implementing the chief prosecutors system. Considering these problems, the author makes the following suggestions:

First, change the selection method of the chief prosecutors, so that the department leaders won’t serve as the chief prosecutors. As mentioned before, due to the long-term administrative management and procuratorial integration, the administrative power of China’s procuratorial agencies has long been entangled with the judicial power. In this case, if the chief prosecutor becomes a fixed position, it will be more difficult to eliminate the influence of administration and achieve independence of procuratorial work, and there will be more administrative interference on judicial power, besides, the bureaucratic case handling process within the Procuratorate will be more typical. Therefore, only by actively separating the judicial power from the administrative power, the problem of intensified administration can be solved, and the purpose of judicialization of the Procuratorate can be achieved. So the author recommends that the chief prosecutor should no longer be set as a fixed position, it should be dynamically managed - for cases that can be handled separately, whoever undertakes the case should be the chief prosecutor, for cases that require a few prosecutors to work together, then the Attorney General or the deputy Attorney General can appoint a prosecutor as the chief prosecutor. Specifically, for general cases, the full judicial power is directly handed over to the prosecutor who undertakes the case, which better avoids the intervention of the administrative leaders. It can promote procuratorial independence, and also clarify the subject of responsibility. For complicated cases that need to be handled by more than one prosecutor, one of them can be the chief prosecutor (the most capable and experienced prosecutor, or more specifically, the department leader. and in the past or at present, the department leaders will take charge of the complicated cases), which not only ensures the case handling efficiency, but also properly gives full play of the department leaders’ competence.

Second, further change the case handling process in procuratorial agencies and give more power to the chief prosecutors. Although under the chief prosecutor system, the case handling process in procuratorial agencies has been simplified, changes are limited. The key links remain the same, such as the final decisions are still made by the department leaders. These problems have made the chief prosecutor system seems like old wine in a new bottle, which also exacerbates the psychological imbalance of prosecutors and causes low recognition of the chief prosecutor system. On these problems, the author believes that on the basis of changing the election method of the chief prosecutors, the case handling process in the Procuratorate should be further reformed. The author suggests changing the previous mode in which the department leaders have the final say of the cases and hand over the relevant power to the chief prosecutors. In this way, the original multi-level decision-making process can be improved, and the case handling process will be simplified. At the same time, it will also help solve the administrative leaders’ intervention in judicial activities and promote the professionalization of the prosecutor team. However, it should be

noted that the above procedure changes need to be carried out simultaneously with the change of the selection mode of the chief prosecutors, otherwise, the deputy chief prosecutors and deputy directors will still make final decision of the cases and administrative leaders will be more powerful. That is totally contrary to the initial objectives.

Third, fully understand that the implementation and improvement of the chief prosecutor system need long-term and arduous efforts. As stated above, the huge gap between the “high profile propaganda” before the implementation and the “no significant change” after the implementation is the source of these problems. However, the author believes that for a system that has only been implemented for one year, it is difficult to achieve the goal of “substantial changes and far-reaching impacts” within a short period of time only with the instructions of the Supreme People’s Procuratorate. The author believes that although the current implementation of the system is not satisfactory, it does not mean that this system will eventually fail. On the contrary, there is still room for further reform and improvement of the chief prosecutor system. The implementation should be given full confidence, and we should be prepared for long-term and diversified reforms. In fact, in the process of reform, the system should not be simply regarded as a top-level, rational product. With reference to the origin and evolution of the Anglo-American adversary system, most of them are driven by practical operators in a long historical process, based on different purposes and interests and their own different roles. [3] At present, the development and improvement of chief prosecutor system cannot only be relied on the legislators and decision-makers, and the goal of this reform cannot be achieved in a short period of time. After all, Rome cannot be built in one day, or by one single person. The reform of the chief prosecutor system in China also requires the long-term participation and promotion of local Procuratorate and front-line prosecutors. In fact, some pilot units have created their own models, such as the “allocation of decision-making authority based on risk level of cases” model in Minhang District of Shanghai [4] and the “fixed responsible prosecutor law enforcement and case handling team + temporary law enforcement and case handling team + temporary case assigning model [5] are both worth our attention.

#### **4. Conclusion**

In general, although the current implementation of the chief prosecutor system is not satisfactory, it is undeniable that there is still room for improvement. In fact, not only has the Supreme People’s Procuratorate planned to make further reform on the chief prosecutor system, some regions also have begun the readjustment of the chief prosecutor system. The author believes that with the joint efforts of academia and practice circles, the chief prosecutor system will have a bright future.

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