



How Chinese courts respond to
COVID-19: Consistency and
regionalism in criminal sentencing


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Presentation outline

- 01** **Research backgrounds**
 - 02** **Research questions and methodology**
 - 03** **Findings: Consistency and regionalism**
 - 04** **Conclusion: Farewell to strike-hard campaigns?**
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Research Backgrounds

- **Supreme People's Court (SPC) Guiding Cases**

- **Legal Grounds:**

Article 18 of the Organisation Law of People's Courts (2006)

- **Socio-Political Context:**

- ✓ Chinese judiciary's struggle for legal professionalism and judicial independence (Ahl, 2013)
- ✓ The Party's pursuit of a more functional legal system (Chen, 2018)

- **Legal Effect:**

Not binding precedents, but judges of the lower courts should 'consider' them in similar cases (Jia, 2016)

- **Sources of cases:**

Cases heard by the SPC itself; Cases heard by the lower courts in China

- **Section criteria**

Media coverage and public concern; containing typical legal questions; reflecting newly emerged socio-legal problems, involving complicated circumstances; other guiding effect

- **First Guiding Case for Criminal Sentencing:**

2011, Murder, death penalty converted into 25 years' imprisonment

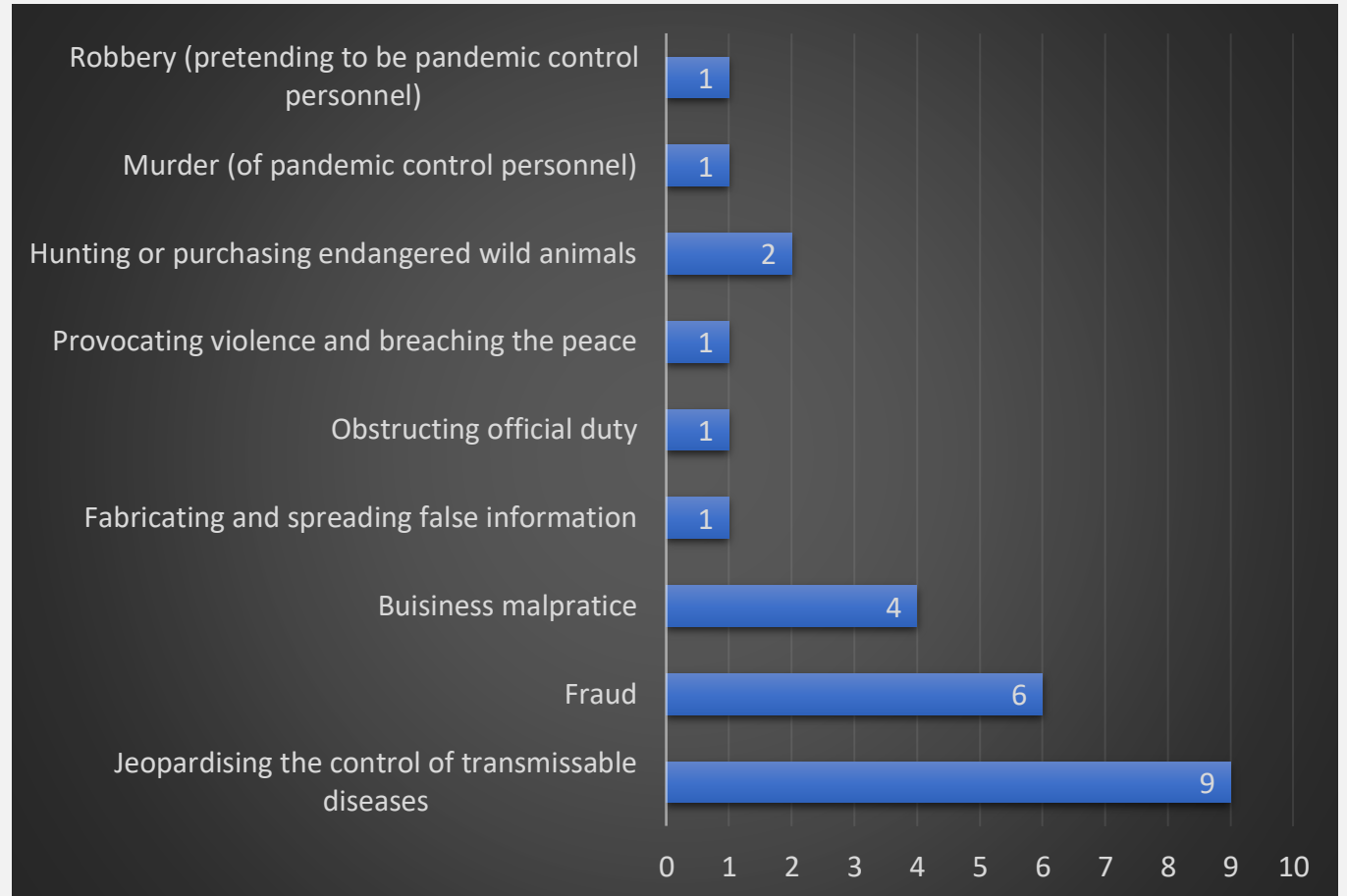
- **Domestic evaluation:**

Mixed evidence (Guo and Sun, 2016) Civil cases/East China

Research Backgrounds

- **Guiding Cases Released During the Pandemic**

- March 10, April 2 and April 15, 2020
- 26 cases
 - 1st release: 10 cases; mixed
 - 2nd release: 8 cases; fraud and business malpractice
 - 3rd release: 8 cases; Jeopardising the control of transmissible diseases



Research Backgrounds

- **Messages Conveyed by the SPC**

- Clarifying how to apply the criminal law to lockdown violations (1st release)

Breaching lockdown rules, assaulting police officers and/or other pandemic control personnel, no serious injuries caused

Obstructing official duties; up to 3 years imprisonment

Same circumstances as above, but serious injuries or death was caused

Murder; up to death penalty
Causing GBH with intent; up to death penalty

Evading mandatory quarantine and/or concealing travel history

Jeopardising the control of transmissible diseases; up to 3 years' imprisonment

Research Backgrounds

- **Messages Conveyed by the SPC**

- **Deterrence**

- ✓ Death penalty for murdering pandemic control personnel
- ✓ Eight years' imprisonment for purchasing endangered wild animals

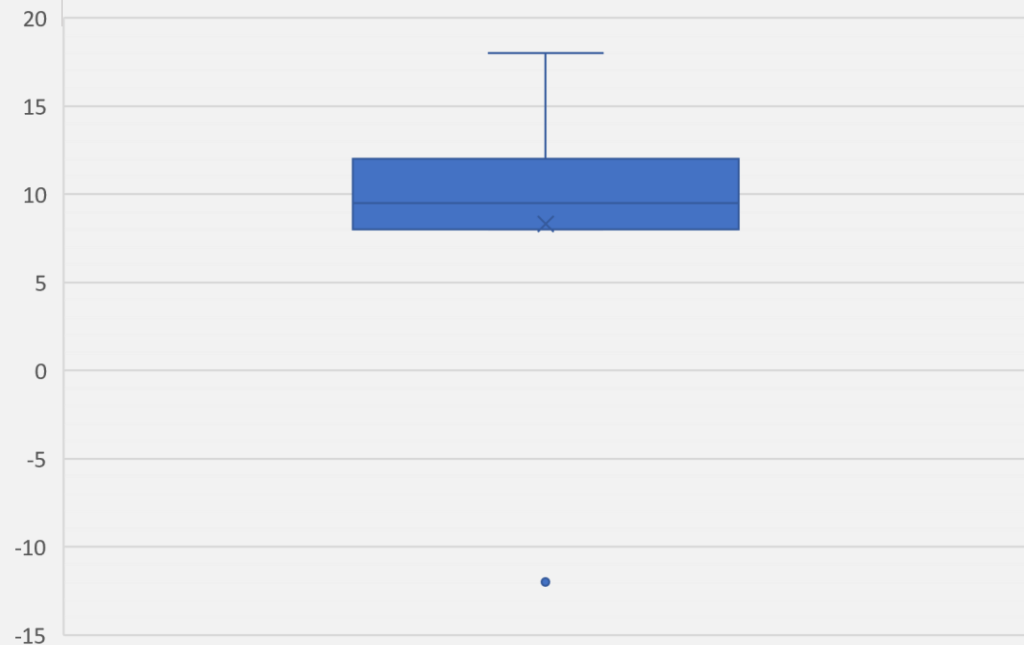
- **Not compulsory** to impose the **highest sentence** prescribed by law

- **Community sentences** are **allowed** if the circumstances justify it.

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Highest sentence prescribed by the Criminal Law of China (1997)

■ Jeopardising the control of transmissible diseases





Research Questions and Methodology

- **Research questions:**

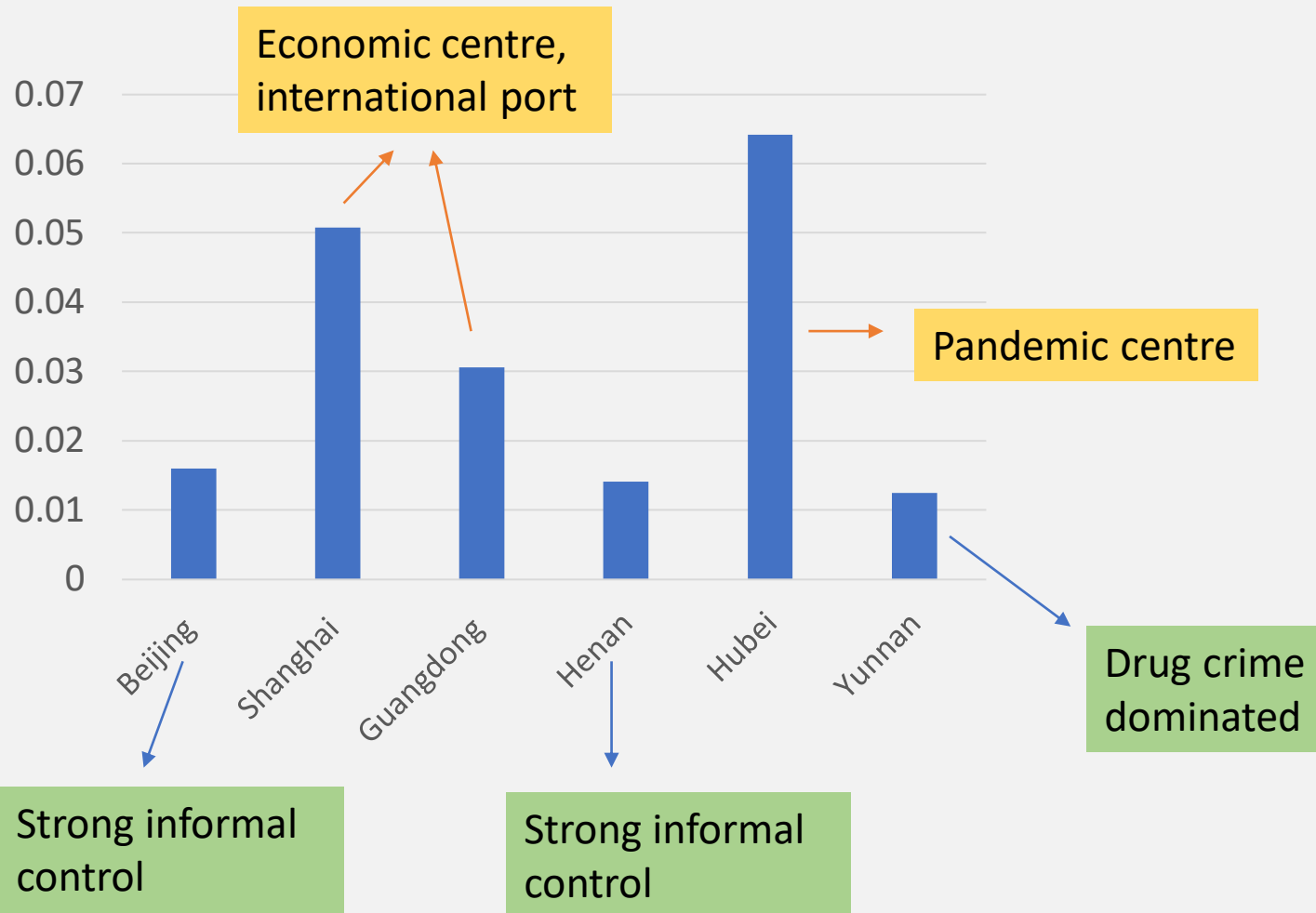
- Did the SPC's guidance impact the criminal sentencing of lower courts during the pandemic?
- If so, did the guidance impact different regional courts equally?

- **Methodology:**

- National Database of Judicial Judgements (Ahl and Sprick, 2017)
- East China (Beijing, Shanghai, and Guangdong), Central China (Henan and Hubei), and West China (Yunnan)
- Criminal sentences passed between March 11 and June 30, 2020 that contain the word 'pandemic'.
- 2,018 'pandemic-related' cases



Regional differences: The weight of the pandemic



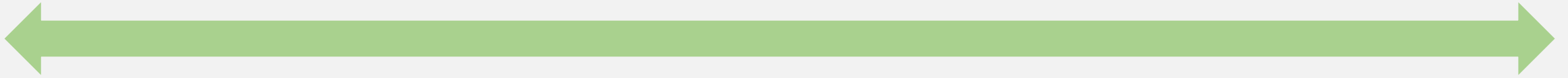
- Overall pandemic-related cases only accounted for a **small part** of the criminal cases heard by regional courts during the chosen period.
- Hubei, Shanghai, and Guangdong were more heavily hit than other regions, but for different reasons
- In comparison, Beijing, Henan and Yunnan **seemed to be** less affected, but also for different reasons.



Regional priorities: Catching up or cracking down

Cracking down

Catching up



Guangdong

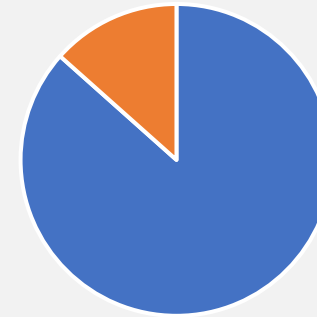
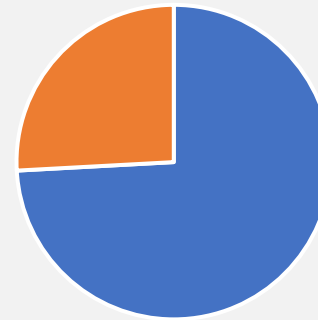
Beijing

Henan

Yunnan

Shanghai

Hubei



Cases where the pandemic has **substantive relevance**, for example, cases arising from lockdown violations.



Cases where the pandemic has **procedural relevance** only, for example, causing delay or suspension, standard procedure being converted into simplified procedure, the use of virtual trial, etc.



Regional priorities: Movement control or economic order

Movement control

Economic order



Yunnan



Hubei



Henan



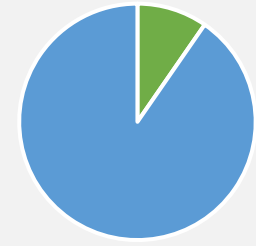
Shanghai





Beijing



Guangdong



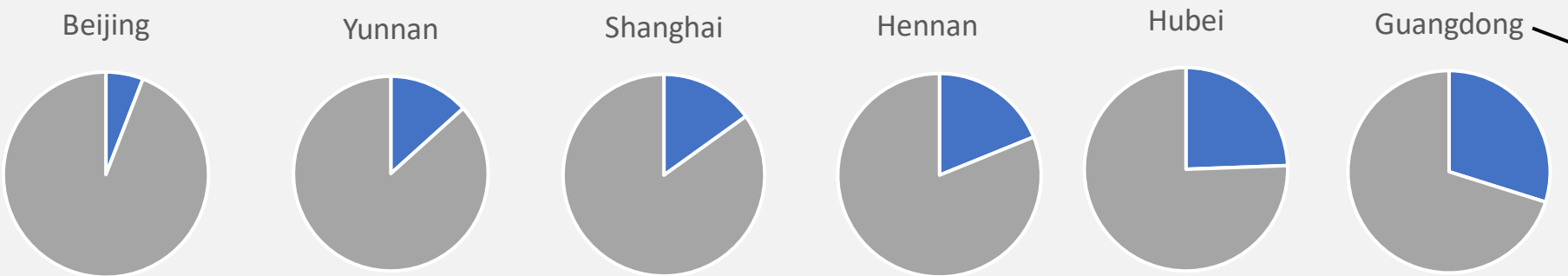
-  Lockdown violation cases
-  Pandemic-related fraud and business malpractice



Regional stances: the impact of the pandemic on individuals

Unlikely to be raised



Likely to be raised



52%
accepted by
the court

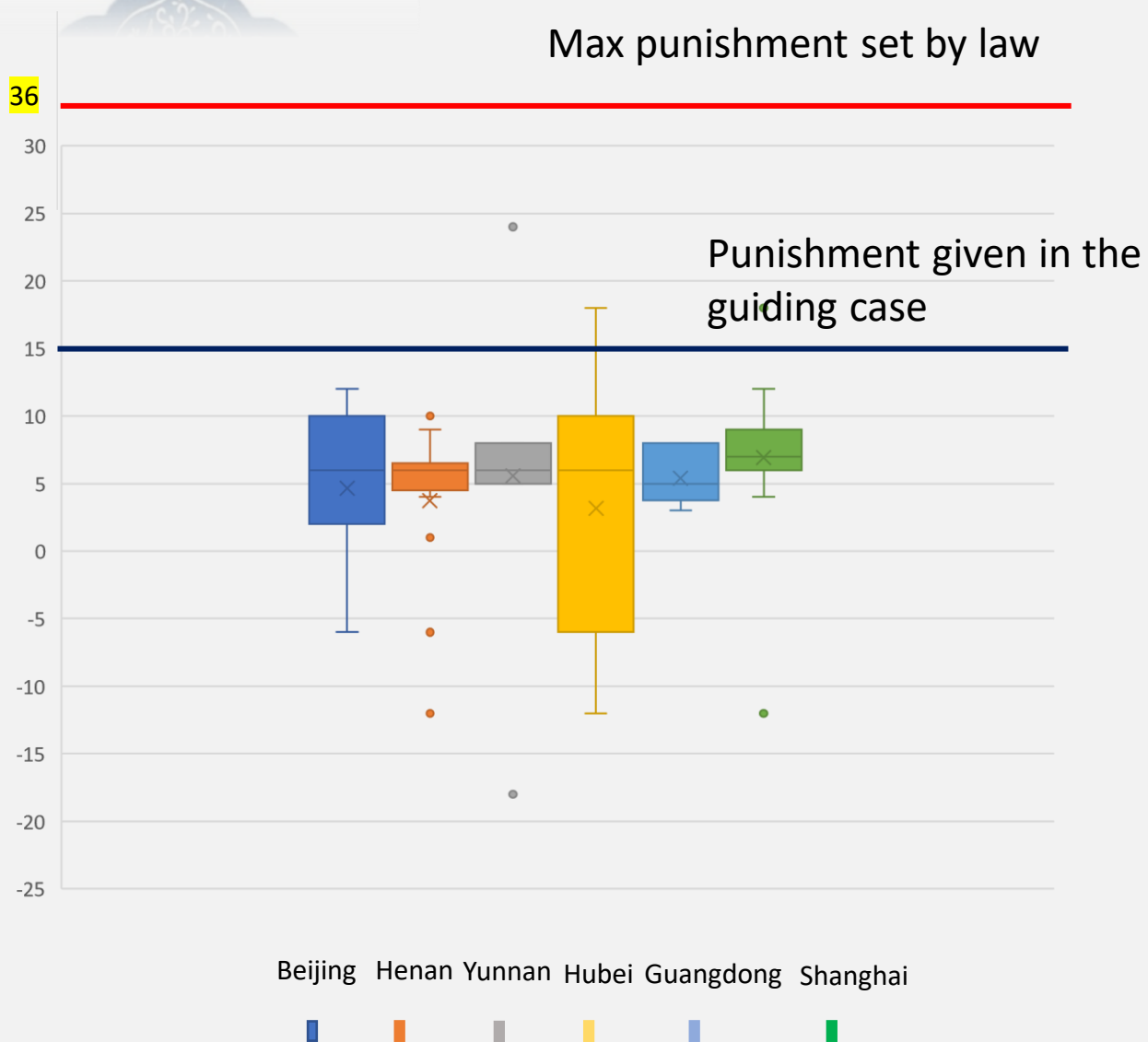
75% accepted by the court (for
ethnic minorities*, 87.5%)

87.5% received non-custodial
sentences, including discharge
and fines

-  Cases where the impact of the pandemic was raised as a mitigating factor by the defense
-  Other cases where the pandemic has substantive relevance

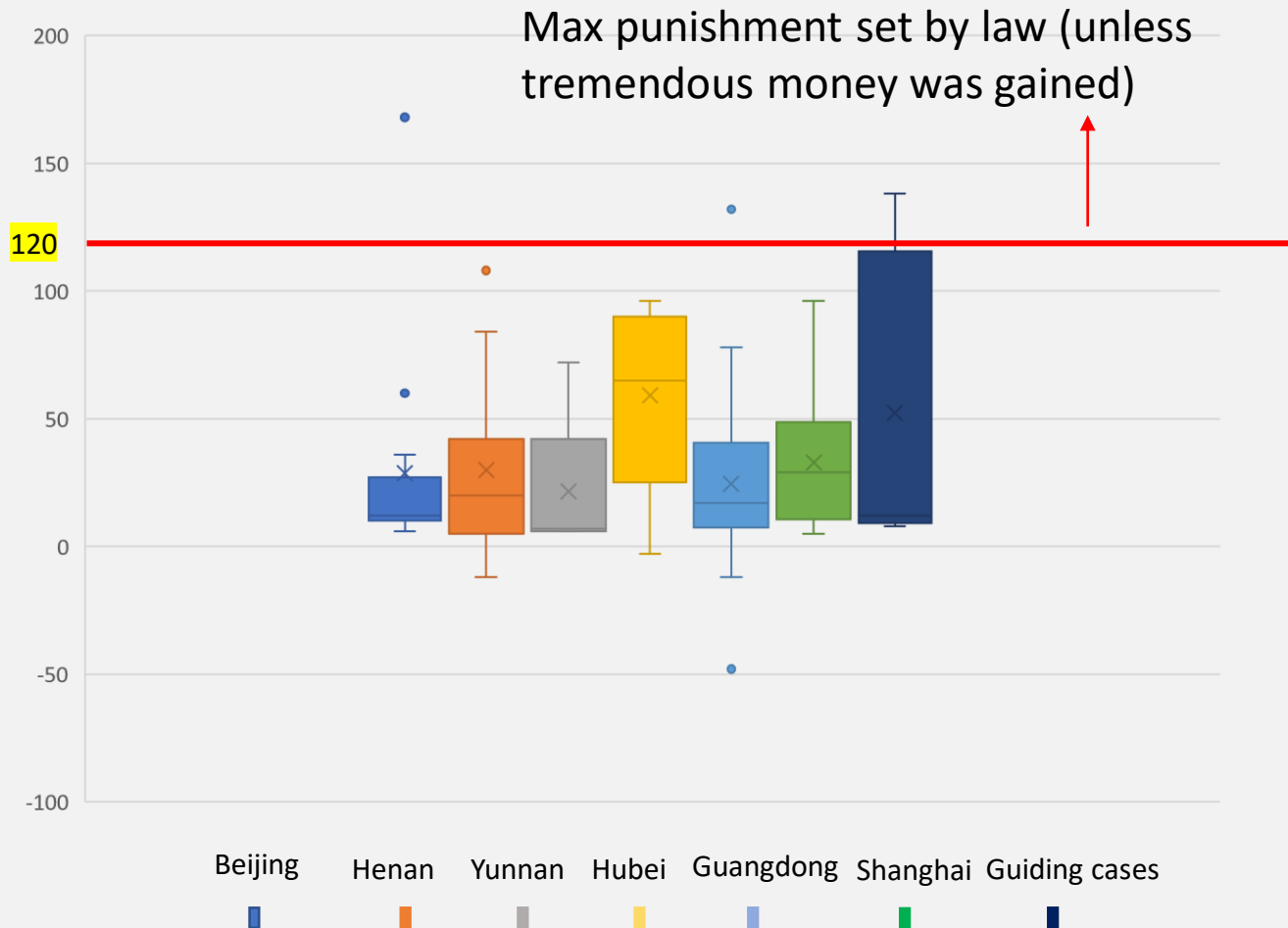
*Please be caution with this finding due to the small sample size here

Regional consistency: Sentence for obstructing official duties



- Overall, sentences given by the lower courts are quite lenient
- There is consistency between Henan, Yunnan, Guangdong and Shanghai. Beijing and Hubei are the two outliers. Beijing falls on the punitive end, while Hubei falls on the lenient end.
- There is strong internal consistency in Henan, Yunnan, Guangdong and Shanghai. In Beijing and Hubei, the internal consistency is weaker, but for different reasons.
- In Beijing, some trivial cases that won't be charged in other regions went into the formal proceedings, which compromised the consistency of sentencing.
- In Hubei, community sentences were more frequently used, which skewed the distribution of data.

Regional consistency: Sentence for PPE-related frauds



- Again, sentencers across all regions rarely reached the upper threshold set by law.
- There is regional consistency between Beijing, Henan, Yunnan, Guangdong and Shanghai.
- Sentencers in Hubei were harsher on PPE-related frauds, which is understandable considering how hard the region was hit by the pandemic.



Conclusions: Farewell to strike-hard campaigns?

- **The political will:**
Being tough on pandemic-related crimes
- **SPC response:**
Mixed message; ‘combining harshness with leniency’ (*kuanyan xiangji*)
- **Regional courts’ responses:**
 - ✓ ‘Business as usual’ except Beijing and Guangdong
 - ✓ Different regional priorities depending on the social-economic context
 - ✓ More lenient than the examples set in the SPC’s guiding cases
 - ✓ Generally speaking, criminal sentencing is consistent among the regions, although Beijing and Hubei are the two outliers. One for political pressure, the other due to the impact of the pandemic.
 - ✓ Judges in Hubei and Guangdong gave more consideration to pandemic-related personal mitigating factors
 - ✓ It was likely that ethnical minorities received more favourable treatment in terms of getting their sentences mitigated based on pandemic impact
- **Implications:**
Judicial professionalism and independence; resistance to political pressure; humanitarian

References

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Thank you!
Any questions?



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