

A Study on the Construction of Inner-Party Anti-Corruption Laws and Regulations under the Rule of Law

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Abstract: The construction of anti-corruption laws and regulation is the main way to implement the principle that the party must exercise control over itself and is strict with its members. In recent years, the CCP make adjustment to the new surroundings and requirement of build a clean government, and make great progress in the construction of anti-corruption laws and regulations. However, some deficiencies are still existed and need further strengthen.

1. Introduction

The Fourth Plenary Session of the 18th CPC Central Committee put forward the goal of anti-corruption by law, which is very important and far-reaching for promoting the anti-corruption process in China. Strengthening the construction of anti-corruption laws and regulations within the party is an important task and content of anti-corruption by law. Promoting the perfection and development of anti-corruption laws and regulations within the party is of great significance to strengthening the construction of clean party conduct, punishing and preventing corruption, improving the socialist legal system with Chinese characteristics, and comprehensively promoting the rule of law.

2. Overview of Anti-Corruption Law System within the Party

2.1 The Connotation of Anti-Corruption Legislation Within the Party

Referring to the definition of the concept of “inner-party regulations” in the regulations on the formulation of inner-party regulations of the communist party of China, the inner-party anti-corruption regulations are the general name of the inner-party standard system to strengthen the construction of a clean party style and to carry out the fight against corruption, including regulations at different levels of the central government, departments and local governments. In terms of content system, according to the list in the five-year plan outline for the formulation of regulations within the CPC Central Committee (2013-2017), the regulations within the party to fight against corruption mainly include six aspects: operation and supervision of rights, prevention of corruption, investigation and handling of corruption cases, disciplinary punishment system and appeal of Party members, handling of prosecution and accusation, and Disciplinary Supervision System and mechanism.

Since the eighteen Party's Congress, the Party Central Committee with Comrade Xi Jinping as the core attaches great importance to the construction of the party's legal system, has cleaned up the existing Party regulations, and revised a series of regulations. Over the past four years, more than 20 laws and regulations have been revised and newly enacted on the construction of a clean party style and the fight against corruption and the building of a clean government. A system of anti-corruption and the building of a clean government within the party has been formed with the Constitution as the core, the Code of Integrity and Self-discipline of the Communist Party of China, the Regulations on Discipline and Punishment of the Communist Party of China and the Regulations on Supervision within the Communist Party of China as the main supports, and other provisions, methods and detailed rules as the basis, covering the three major functions of prevention, regulation and punishment.

2.2 The Nature of Anti-Corruption Legislation in the Party

In the past, there were doubts about the legal nature of the party's laws and regulations. Some people believed that if we recognize the legal nature of the party's laws and regulations, the national laws will be weakened. The main reason for this concern is to confuse the concept of “state law” and “law”, and to understand “law” in a narrow sense. The Decision on Several Major Issues Concerning Comprehensively Promoting the Rule of Law, adopted by the Fourth Plenary Session of the 18th CPC Central Committee, incorporated the Party's laws and regulations into China's socialist rule of law system, clarified the legal nature of the Party's laws and regulations, and reflected our Party's deepening understanding of the socialist rule of law.

In the long-term anti-corruption practice, our country has formed a dual governance structure in which the inner-party laws and national laws are parallel. This is determined by China's national conditions and the Party's situation, and is compatible and coordinated with the actual operation of China's political system. The inner-party laws and regulations play an irreplaceable and important role in the anti-corruption practice and are an important means and weapon for anti-corruption under the rule of law.

2.3 Characteristics of Anti-Corruption Laws and Regulations within the Party

The first is the specificity and clarity of the applicable object. The anti-corruption laws and regulations within the party are essentially the management norms within the party. In a strict sense, they only restrict the party organization and its members. Second, the code of conduct has a high standard of restraint. Ruling the Party must be done first and strictly. The nature of the Party's vanguard demands that Party rules and discipline be stricter than national laws. In order to ensure the Party's advancement and purity, higher standards and higher standards are required in the code of conduct. Third, the diversity of normative functions. The party's anti-corruption laws and regulations focus on the combination of “ruling the party by law” and “ruling the party by virtue”. While severely punishing corruption, they pay more attention to both the root cause and the root cause, punishment and prevention, comprehensive governance, internal construction of the party, and more comprehensive and detailed contents. Fourth, the means of punishment are special. According to the regulations of the Communist Party of China on disciplinary action, the punishment of Party members within the party is limited to five kinds: warning, serious warning, revocation of party posts, stay in the party for observation and expulsion of Party membership, mainly based on the decision made by the political status of Party members. It should be made clear that party members and cadres are subject to the double constraints of laws and regulations within the party and state laws, rather than the relationship of exclusion and selection.

3. The Value and Function of Anti-Corruption Laws and Regulations within the Party in Anti-Corruption by Law

3.1 Strong Guarantee of Anti-Corruption by Law

Comrade Deng Xiaoping once pointed out: “without party regulations and laws, it is difficult to guarantee the law of the country.” The Fourth Plenary Session of the 18th CPC Central Committee put forward that “the inner-party regulations are not only an important basis for governing the Party, but also a powerful guarantee for building a socialist country ruled by law”. This conclusion reflects our party's deepening understanding on the issue of building a socialist country ruled by law and further highlights our party's characteristics and advantages as the ruling party.

The Party has formulated anti-corruption laws and regulations to standardize the inner-party relations and inner-party life, and to provide Party organizations and Party members with behavioral guidelines and standards. At the same time, as the core of leadership in the cause of socialism with Chinese characteristics, party leadership is the fundamental guarantee for building a socialist country ruled by law. Party leaders and people formulate anti-corruption laws and regulations through legal procedures to regulate official activities and conduct official duties, and impose legal penalties on corrupt acts. Both of them are essentially the same. They are the concrete embodiment

of the basic theory, line, policy and policy of the party's anti-corruption. They are in line with the fundamental interests of the masses and reflect the common expectation of the society for building a good political ecology.

3.2 Leading and Demonstrating Effect on Society

“Discipline before the law” means that the vanguard nature and advanced nature of the Party determine that Party members should abide by the higher standard of “Party discipline” while exemplary compliance with national laws. Party members and cadres objectively have the power of example to observe the laws and regulations within the party, which will produce a good social demonstration effect, make other public officials and the public improve their awareness of abiding by the law, actively and consciously abide by the national laws and other social norms, and build a strong ideological line of defense against corrosion and change.

Historical experience has proved that anti-corruption laws and regulations can be better observed if the party's anti-corruption laws and regulations are implemented well. If the party's anti-corruption laws and regulations are not implemented well and it is difficult to effectively contain and punish corruption, the people's trust in the party will be reduced, their recognition of the rule of law will be reduced, and the fight against corruption under the rule of law will fall into a passive and difficult situation. Therefore, to promote the legalization of the construction of a clean government, we must give full play to the leading and exemplary role of the anti-corruption laws and regulations within the party in practice.

3.3 Make Up for the Lack of Anti-Corruption National Legislation

Speeding up the promotion of national anti-corruption legislation is conducive to strengthening the top-level design of anti-corruption legal construction and enhancing the standardization and legalization of anti-corruption work. However, due to a variety of conditions, China has not yet formulated a special anti-corruption law, and the anti-corruption legislation is still relatively scattered. The scientific and complete anti-corruption legal system needs to be further improved and developed.

Anti-corruption national legislation is a systematic project, involving dozens of laws and regulations. It is impossible to build an anti-corruption national legal system with reasonable structure, standardized content and complete system overnight. In the anti-corruption practice, the party's preventive, punitive and supervisory laws and regulations play a positive role, effectively making up for the deficiencies and absence of national laws and regulations. At the same time, the concept of rule of law embodied in the anti-corruption laws and regulations within the party, the written norms formed, and the accumulated experience and methods in practice provide useful reference for improving the national anti-corruption legal system. When the time is right, some laws and regulations can be upgraded to national laws and regulations. Therefore, while promoting the process of national anti-corruption legislation, we should fully understand the independent value and important role of inner-party laws and regulations in preventing and punishing corruption.

4. The Main Problems of Anti-Corruption Legal System within the Party

Over the past 30 years or so since the reform and opening up, remarkable achievements have been made in the construction of anti-corruption laws and regulations within the party, and the scope of coverage has been continuously widened. Individual laws and regulations are becoming more and more targeted, and a relatively systematic legal system has initially been formed, which provides a basis for the party to carry out the construction of a clean government within the party and the fight against corruption and plays an important role. While seeing the achievements, we should also see that there are still some areas that need to be improved in the construction of anti-corruption laws and regulations within the party.

4.1 The Systematization of Laws and Regulations is Not High

At present, the number of anti-corruption laws and regulations in our party is relatively large,

scattered and fragmented. The main problem is, first, the lack of a general anti-corruption laws and regulations as a guide. Second, the phenomenon of “fragmentation” is serious, with complicated contents, lack of internal logic, and duplication or conflict with each other. Third, we should pay more attention to substance than procedure, and pay more attention to punishment and punishment than prevention. There are system gaps in information disclosure, prevention and control of interest conflicts, and protection of Party members' rights and interests. Fourth, in addition to the main laws and regulations, the supporting laws and regulations are not perfect, and the systematicness, integrity and relevance of the laws and regulations are not high.

4.2 Low Degree of Procedural Regulation

The regulations of the Communist Party of China on the formulation of laws and regulations within the party have made some provisions on the formulation procedure of laws and regulations within the party, which is worthy of affirmation. However, some provisions are not clear enough, no specific time limit requirements and measures are not put forward, or procedural requirements are not paid enough attention, which are mostly advocacy provisions rather than necessary links, resulting in large free space in operation and poor implementation effect. For example, the investigation and study before the promulgation and the draft regulations seeking opinions are often mere formality in practice. In the specific system design, there is also this problem, often only starting from the needs of the work, pay more attention to the entity specification, ignoring the procedural provisions.

4.3 Content Standardization is Not High

The standardization of the content of laws and regulations has direct relevance to the enforcement effect of laws and regulations. At present, some laws and regulations are not perfect in system design. For example, there is a vacancy in the accountability system, there are mandatory provisions but no specific consequences, or the behavior does not adapt to the consequences. The key concepts in some laws and regulations are not clear, the limits of scope are not clear, and the regulations are vague and general, which brings great problems to the implementation. Some laws and regulations are timely, and when there is a new phenomenon of corruption or a new field of corruption, the enactment of a law and regulation is too micro-scattered. Some outdated and invalid laws and regulations cannot be cleaned up in time, which brings some troubles to the study, implementation and supervision.

4.4 Lack of Coordination with National Laws

In the anti-corruption normative system, party discipline and national law have different functional orientations. Only when they complement and coordinate with each other can the overall effectiveness of the anti-corruption normative system be brought into full play. At present, the main problem is that the boundaries between the two are unclear, and some of the party's laws and regulations are duplicated or inconsistent with the national laws. In addition, there is a lack of systematic design and clear regulations for the connection and cooperation at the working level. For example, in the case of violating party discipline and constituting a crime, the regulations on disciplinary action and case inspection are not fully connected with the national criminal law. In practice, Party members and leading cadres who violate laws and disciplines should be punished by both Party discipline and national law. However, due to the same behavior, the degree and way of punishment of the two norms are different, which may lead to the selection of applicable norms to avoid heavier punishment.

5. The Path Consideration of Perfecting the Anti-Corruption Legal System within the Party

By the 100th anniversary of the founding of the party, it is the goal and direction of the party's legislative work in the future to complete a scientific content, strict procedures, complete supporting and effective system of party laws and regulations. As the core content of the inner-party laws and regulations system, the anti-corruption and honest inner-party laws and regulations should move

towards the direction of rule of law, standardization and institutionalization.

5.1 The Essence and Value Pursuit of Embodying the Spirit of Rule of Law

Under the goal of building a socialist legal system, we should adhere to the leadership of the Communist Party of China and, within the orbit and framework of the rule of law, use legal thinking and legal methods to comprehensively promote the improvement and development of the party's laws and regulations. Specific to anti-corruption laws and regulations, can be divided into several levels:

First, “the constitution is above everything else.” The constitution is the fundamental law of our country and the general rule of law. The anti-corruption laws and regulations of the inner-party law must be followed by the constitution, earnestly implement the basic principles and requirements of the constitution, and ensure that the party's organizations at all levels and party members and cadres operate within the scope of the constitution and the law.

Second, “the party constitution is the foundation.” The party constitution is the most fundamental party regulation and party law. it should be based on the party constitution, in accordance with the basic principles and tasks set forth in the party constitution, implement the requirements of the party construction in the new era, implement various principles and policies in the construction of a clean party style and the fight against corruption, and make solid progress in the formulation of anti-corruption laws and regulations within the party.

Third, “Justice is the Soul”. In order to perfect the anti-corruption legal system under the goal of socialist rule of law, we must adhere to the concept of rule of law, the way of rule of law and the procedure of rule of law to carry out related work. In terms of formal rule of law, the standardization and rigour of the formulation procedures can be enhanced by comparing with national legislation. In terms of substantive rule of law, basic values such as fairness and justice, respect for and protection of human rights should permeate the system design and provisions. For example, in investigating and handling corruption cases, we should not only emphasize the responsibility of Party discipline and integrity, but also pay attention to the protection of the legitimate rights of Party members.

5.2 Building a Scientific and Complete Legal System

The Fourth Plenary Session of the 18th CPC Central Committee proposed the goal and task of strengthening the construction of the party's internal legal system and forming a complete set of internal legal system. To speed up the improvement of the anti-corruption laws and regulations within the party, we need to grasp the following key points:

First, improve the system structure of laws and regulations. Under the party constitution, the regulations of the Communist Party of China on building a clean and honest party conduct and anti-corruption are formulated as a general standard for guiding the building of a clean and honest party conduct and anti-corruption, which prescribes the basic concepts, basic principles and framework system of anti-corruption within the party and guides other specific laws and regulations. Gradually improve the anti-corruption leadership system, education mechanism, supervision mechanism, prevention mechanism, punishment mechanism, law enforcement mechanism and law effect evaluation mechanism and other classified laws and regulations, improve their supporting regulations, and build a reasonable structure, comprehensive and complete standard system.

The second is to improve the quality of laws and regulations. Based on the standard of “clear, concise and easy to understand, easy to implement”, the concept is clearly defined, the scope of application is clear, the provisions are expressed accurately and standard, the internal style and logic are meticulous and comprehensive, the disciplinary measures are appropriate, the punishment is appropriate, and it has strong pertinence and operability. We should strengthen the consciousness of procedural justice, add necessary procedural regulations, and standardize the exercise and application of supervision power within the party through strict procedural settings.

The third is to strengthen the internal coordination and unity of laws and regulations. According to the new situation and situation of the clean construction of the party's style of work and the fight against corruption, the implementation of the party's laws and regulations and the effect of their

implementation are evaluated to check whether the various systems and procedures are reasonable and to find problems and deficiencies in a timely manner. So as to provide the basis for the clearing, revision, interpretation and repeal of the anti-corruption laws and regulations within the party, and promote the coordination and unity of the system of the anti-corruption laws and regulations within the party and keep pace with the times.

5.3 Strengthen the Connection and Coordination with National Legislation

In China, the system of taming power is shaped by Party discipline and national law. The construction of China's anti-corruption legal system is driven by both national laws and Party discipline. Although there are some views that once advocated to separate the two completely, under our country's political system and mechanism, there is an internal connection between the two that cannot be separated. At present, the concern is how to realize the coordinated advancement of the two in the structure of binary norms.

First, the boundary is clear and distinct. The anti-corruption laws and regulations within the party and the national anti-corruption laws have their own scope of application, binding standards and disciplinary measures, which are relatively independent and parallel. In an ideal state, the two should not form a tense relationship, but there are some irregularities because the formulation of early party regulations is in the exploratory stage. The "Regulations on Disciplinary Measures of the Communist Party of China" deliberated and adopted at the meeting of the Political Bureau of the Central Committee in October 2015 deleted more than 70 articles of the old regulations that coincide with national laws, stipulating that party members shall be investigated for party discipline and those suspected of committing crimes shall be promptly transferred to relevant state organs for legal treatment. This is the practice of the CPC Central Committee in pushing for "separation of discipline and law". To govern the party strictly and comprehensively, we must scientifically understand the relationship between discipline and law. If there are already relevant national laws and regulations, they should be regulated as far as possible through national laws. The party's laws and regulations should focus on the behavioral constraints above the legal bottom line. They should not take over matters that should be stipulated by laws or expand their scope of application without basis to ensure harmony with the national legal system.

The second is cohesion and cooperation, benign interaction. In terms of institutional setting, we should strengthen the construction of specialized institutions, build bridges and ties for the connection between the party's internal laws and the national laws, improve the contact mechanism at the working level, ensure the exchange of information between the party Committee and the legislature, and do a good job in the connection. In terms of system construction, we should strengthen the awareness of problems, find out the gaps and loopholes in the system, formulate targeted and operable norms, so that the two can smoothly connect in the handling of specific cases, and jointly play a deterrent and disciplinary role in corruption. In terms of function, we should give full play to the timeliness and flexibility of anti-corruption laws and regulations within the party, coordinate with the national anti-corruption laws and regulations, and formulate relevant laws and regulations to supplement the imperfect provisions of the national laws and regulations. We should pay attention to the analysis and summary of the implementation of anti-corruption laws and regulations, and upgrade the content of laws and regulations that have been tested in practice and adapted to the development of the situation to national laws and regulations through legal procedures.

6. Conclusion

It has become the consensus of the whole party and society to lock power into the cage of the system. The construction of China's anti-corruption system is a double insurance between party discipline and law, and the anti-corruption laws and regulations within the party are an indispensable and important part of it. We should strengthen the research on the construction of the laws and regulations of the party against corruption, deepen the understanding of the law of the construction of the laws and regulations of the party against corruption, build a complete system of

the laws and regulations of the party against corruption, put the party in charge of the party and strictly govern the party into practice, and promote the cause of anti-corruption under the rule of law in China to achieve new benefits.

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