

Discussion on the Connection of the *Supervision Law* and the *Criminal Procedure Law*

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Abstract: The *Supervision Law* and the *Criminal Procedure Law* should be connected from macro and micro levels. The macro connection embodies in the mutual coordination and restriction of state organs in the process of power allocation, and the implementation of the due procedure and human rights protection principles in the whole process. The goal of micro connection is to realize the smooth progresses of the investigation, prosecution and trial for duty-related crime cases. The coordination of case jurisdiction, the transformation of compulsory measures as well as the examination and prosecution are key links in procedure connection. The establishment of a unified evidence standard is the necessary condition for the smooth realization of procedure connection.

1. Introduction

In March 2018, the First Session of the Thirteenth National People's Congress passed and promulgated the Supervision Law of the People's Republic of China (hereinafter referred to as the Supervision Law). The newly established supervisory committee integrates some functions of the original administrative supervisory organs as well as the procuratorial organs, and changes the power structure of state organs in China. It affects the application of relevant laws, and involves many issues of connecting with the Criminal Procedure Law.

2. Macro Connection between the Supervision Law and the Criminal Procedure Law

2.1 Relevant state organs cooperate with each other

Article 4 of the Supervisory Law stipulates that, "when handling cases of duty violations and duty-related crimes, supervisory organs shall cooperate and restrict with judicial organs, procuratorial organs and law enforcement organs". Articles 24, 28, 29 and 30 stipulate that public security organs should assist the supervision and investigation of certain specific matters. Article 34 clarifies the main investigative power of the supervisory organs and the assistance obligations of other organs in the investigation of suspected corruption, bribery, dereliction of duty and duty-related crimes committed by public officials.

The State Committee of Supervisory, the People's Procuratorate and the People's Court jointly constitute the legal anti-corruption force in our country. The three powers are divided into three parts and perform their duties independently. The State Committee of Supervisory has the right of investigation and disciplinary punishment of violators, but it does not have the right to determine the final crime and violation of law; the procuratorial organ has the right to arrest and publicly prosecute the respondent, but it no longer enjoy the right of investigation; the court ultimately determines whether the defendant constitutes a crime.

2.2 Relevant state organs restrict each other

The reform of the supervisory system transfers the power of investigating duty-related crime cases from the procuratorial organ to the supervisory committee. In fact, it establishes the mode that

the Committee of Supervisory exercises the investigative power in duty-related crime cases as a specialized agency. This is similar to Singapore's Corruption Investigation Bureau (CPIB), Hong Kong and Macao's Independent Commission against Corruption, Malaysia's National Anti-Corruption Bureau and Thailand's Anti-Corruption Commission. It also conforms to the international trend of strengthening the independence and effectiveness of job-related crime investigation.

The realization of mutual restriction between supervisory organs and procuratorial organs requires, to a great extent, the substantive examination and prosecution of procuratorial organs. [1] Through the decision of non-prosecution and exercising the right of returning cases for supplementary investigation (self-supplementary investigation), the procuratorial organs can "balance the results" of supervisory organs' criminal investigation, and urge supervisory organs to conform to corresponding prosecution standards when they exercise their powers, thus realizing the restriction of supervisory organs. [2] Then, some supervisory measures adopted by the supervisory committee involve the personal and property rights of citizens, legal persons and other organizations. As the "organ supervises the legal system of the state", when the supervisory committee violates the law of due procedure in the process of investigation, the procuratorial organs should exercise the right of legal supervision and correct these behaviors. [3]

The restrictions imposed by judicial organs on supervisory organs are mainly reflected in the judgment of supervisory investigation conclusions through court trials, in the examination of evidence collected by the supervisory investigation, and in the exclusion of evidence collected through illegal methods. The people's courts have the right to examine facts and evidence in accordance with the Criminal Procedure Law and to render judgments independently, without unlawful interference by other organs. [4] The trial of duty-related crimes investigated by supervisory organs should also be conducted within the framework of litigation system reform, follows the principles of "centering on trial", and insist on independent trial according to the law and assuming disputed crimes innocence.

2.3 Principles of due procedure and human rights protection

The United Nations Convention against Corruption Preamble emphasizes "following the due process of law". Its formulators regard the principle of due process of law as the core principle guiding all procedural issues in anti-corruption actions; it is the basic principle of the anti-corruption action procedure. [5] Article 33 of the Constitution of our country stipulates that "the state respects and guarantees human rights". Implementing the principle of human rights protection is the compliance of all state organs in the process of exercising their functions and powers and the bottom line requirement of legal anti-corruption. The rights of investigation, the power of accusation and the right of adjudication must bear the obligation of respecting and guaranteeing human rights. They should not infringe upon the substantive rights of citizens, such as their personal dignity, personal freedom, freedom of speech, right of communication, property rights and the right to live peacefully; they should also actively safeguard their procedural rights such as the right of defense, the right of appeal, the right of complaint and the right to claim state compensation. [6] The Supervisory Law does not stipulate that lawyers are allowed to intervene in the supervision and investigation process in duty-related crime cases, which seems to be an obstacle in connecting procedures. Nevertheless, in the absence of lawyers and other professionals who can provide legal assistance for the respondents, the supervisory organs should strictly abide by the principle of human rights protection and try their best to avoid harming the legitimate rights of the respondents. It is also the proper meaning of the modern law spirit. Without due process, there will be no human rights. At the same time, human rights are the value pursuit of due process and one of the criteria to measure the "legitimacy" of procedure. [7] The principles of due procedure and human rights protection run through the whole process from supervision and investigation to criminal trial, and become the basis of connecting the supervision procedure with the criminal procedure.

3. Micro Connection between the Supervision Law and the Criminal Procedure Law

3.1 Connection of jurisdiction in legal cases

First is the connection of functional jurisdiction. Compared with situations before, the jurisdiction of procuratorial organs expands after the implementation of the Supervisory Law. First, it includes not only cases of duty-related crimes, but also cases of duty violations. Second, for cases of duty-related crimes, the scope of case-filing of procuratorial organs is no longer limited in charges under the jurisdiction of the procuratorial organs. The Criminal Procedure Law retains the power of the People's Procuratorate to investigate crimes that infringe upon citizens' rights and impair judicial justice during the supervision process, such as illegal detention, extorting confessions by torture and illegal search carried out by judicial staff. There are two different types of office crimes; one is investigated by the supervisory committee in accordance with the Supervisory Law, while the other is investigated by the procuratorate in accordance with the Criminal Procedure Law. The resulting differences, such as whether lawyers can intervene, need to be fully explained by the law. In addition, in the jurisdiction of related cases, the Supervisory Law is inconsistent with some existing provisions in the Criminal Procedure Law.

Second is the connection of differential jurisdiction and territorial jurisdiction. The case jurisdiction of procuratorates and courts is usually based on the principle of territorial jurisdiction, while the case jurisdiction of supervisory organs is also affected by the status of the respondent. Considering such factors as the rank of suspects and the impact of cases, there may be cases investigated and handled by municipal and even provincial supervisory committees but finally submitted to primary level procuratorates and courts for public prosecution and trial. Consequently, the connection of case handling procedures, such as the procedure of return for supplementary investigation by procuratorial organs, the procedure of cross-examination in courts, and the procedure of lawyer's request for evidence, needs to be elaborated.

3.2 Conversion of coercive measures

Article 47 of the Supervision Law stipulates that the People's Procuratorate shall take compulsory measures against persons under investigation in accordance with the Criminal Procedure Law of the People's Republic of China in cases transferred by the supervisory organs. The connection is completed when the procuratorial organ adopts compulsory measures, like arresting the detainees according to law. Prior to this, the decision and implementation of detention measures are completed by the supervisory organs. The existing legislation on detention measures is still slightly rough, and should be gradually improved in practice, so that it can be coordinated with coercive measures such as detention and arrest in criminal proceedings.

The legitimacy of supervision system reform depends largely on the legitimacy of detention measures. [8] However, the Supervisory Law does not stipulate the right of meeting and defense of the detainees. The detention measures lack necessary legal constraints and may be abused. [9] The Supervisory Law stipulates that "the establishment, management and supervision of detention places shall be carried out in accordance with relevant provisions of the State", but does not specify how to set up, manage and supervise places of detention. In the pilot reform of supervisory system in Beijing, Shanxi and Zhejiang, there are two ways dealing with detention places. One is a special place in the detention house; the other is specific places used in "getting detained and interrogated" in the past. Combining with the provisions of Article 43 of the Supervision Law concerning the cooperation of public security organs, the author proposes that the detention place can be unified into a special center in the detention house. The place should be distinguished from regions of other criminal suspects. A special "detention room" can be set up in the detention house, which is mainly used by the staff of the supervision organ. If necessary, the public security needs to provide assistance. In addition, Article 29 of the Supervisory Law stipulates that if a respondent who should be retained in accordance with the law is at large, the supervisory organ may decide to arrest him within its administrative area and the public security organ shall issue a warrant for arrest and bring the person to justice. This is in contradiction with provisions in the Criminal Procedure Law and can lead to the poor connection. Article 22 of the Supervisory Law stipulates that the objects of

detention include those who “seriously violate the law of duty”, while the Criminal Procedure Law stipulates that the objects of arrest issued by public security organs are limited to “criminal suspects”. How to arrest non-criminal suspects and avoid the cognitive deviation of the public, are problems need to be solved.

3.3 Examination and prosecution is the key link

The Supervisory Committee is neither an investigative organ nor a judicial organ; it cannot initiate criminal proceedings. Transferring to examination and prosecution is a key link in the transformation from supervision investigation to criminal procedure. The Supervision Law stipulates the criteria of transferring to examination and prosecution, and clarifies that the procuratorial organs independently exercise the power of examination. Following issues still need to be discussed.

First is to examine the contents of prosecution. Article 47 of the Supervisory Law stipulates that the contents examined by the People’s Procuratorate are whether the criminal facts have been ascertained, whether the evidence is true and sufficient, and whether there are non-prosecution situations stipulated in the Criminal Procedure Law. Article 171 of the Criminal Procedure Law stipulates that in addition to above contents, the examination and prosecution of people’s procuratorate also includes the examination of the nature and charges of crimes, finding out whether there’s omission of crimes and other persons who should be investigated for criminal responsibility, whether there are incidental civil proceedings, and the legality of investigative activities. These are in fact the procuratorial organs’ supervision of cases filling and the investigation procedure. According to Article 171 of the Criminal Procedure Law, for cases transferred by the supervisory organs, the People’s Procuratorate carries out a comprehensive review according to law, which is conducive to preventing the abuse of supervisory power and protecting human rights.

Second is the issue of supplementary survey. The Supervisory Law keeps the supplementary investigative power of the procuratorial organs, but it does not stipulate circumstances which should be returned for supplementary investigation or circumstances which need to be investigated by themselves. The weakening investigative function of People’s Procuratorate and the strengthening of its public prosecution function are the trend of the judicial reform in our country, which conform to the orientation of procuratorial organ’s public prosecution function. [10] After the transferring of investigative personnel, the procuratorial organ lost part of its investigative ability on duty-related crimes. In order to avoid unnecessary occupation pressure on the procuratorial organ, ensure the quality of case handling and keep procedure consistency, we should limit the scope of supplementary investigation into cases which the supervisory organs object to returning for supplementary investigation, cases the supervisory organs withdraw but do not adjust, cases in which the supervisory organ have illegal actions in evidence obtaining, and cases which only need to collect individual evidence.

3.4 Building a unified evidence standard

The Supervisory Law stipulates that evidentiary materials, such as material, documentary evidence, the witness testimony, testimony and defense of the investigated person, audio-visual materials and electronic data collected by the supervisory organs according to law can be used as evidence in criminal proceedings. When collecting, examining and applying evidence, the supervisory organs shall conform to the requirements and standards of evidence in criminal trials. This avoids the reduction of efficiency caused by repeated evidence collection, and achieves the connection of evidence standards in duty-related crime cases at the legislative level. On that basis, the Supervisory Law further specifies the exclusionary rule of illegal evidence; the exclusionary rule of illegal evidence is extended in the Supervisory Law. In the stage of supervision and investigation, the respondents have no right to get help from lawyers. Therefore, in the stage of examination, prosecution and trial, special attention should be paid to the examination of verbal evidence provided by the supervisory organs to ensure the legality of evidence collection procedure. The evidence of supervision and investigation should be in line with the evidence standard of criminal procedure; attention should also be paid to the issue of witness appearing in court. The

supervisory committee is the main body that first contacts the witness testimony. It should help to improve the rate of witness appearing in court while obtaining first-hand investigative information. In the process of court trial, investigators of the supervisory committee can also testify as prosecution witnesses.

4. Conclusions

The promulgation and implementation of the Supervision Law provide the basic framework of connection between the supervision practice and criminal procedure. But from the practical level, some legislation links are still relatively rough. The discussion on some issues is still in blank, such as the limitation of prosecution in supervisory cases and the time limit of handling cases by supervisory organs. All these need to be perfected in legislation and supervision practice. In the process of procedure connection, the judicial organs should supervise and restrict the supervision and investigation process, prevent investigation centralism and realize the trial centralism.

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