

Understanding and Reflections on the Problem of the Representatives of the Supervisory Committee to the People's Congress

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Abstract—The promulgation of the Supervision Law of the People's Republic of China marks a new step in the reform of China's supervision system, but it also brings many new problems. This paper focuses on one of the issues: whether deputies to the NPC can be the object of supervision by the Supervisory Committee. There are two opinions on this issue in academia. Opponents hold that the Supervisory Committee is a state organ created by the National People's Congress to be responsible for the supervision of the National People's Congress. If it is allowed to supervise the deputies to the National People's Congress, it is obviously a violation of the principle of democratic centralism clearly stipulated in the Constitution of China and does not meet the requirements of the principle of self-discipline of the Parliament. Therefore Supporters argue that the supervision of NPC deputies by the Supervisory Committee is in line with the legislative spirit and provisions of the Supervisory Law. Whether the supervision of NPC deputies by the Supervisory Committee will affect the exercise of the functions of the power organs of our country belongs to the limitation of the supervisory power of the Supervisory Committee and should not be included in the discussion of the supervisory objects of the Supervisory Committee. This paper gives a brief introduction to both views, but tends to support the views of the critics.

Keywords—*Supervisory Committee; supervisory power; NPC Representative; democratic centralism; parliamentary self-discipline principle*

I. INTRODUCTION

On March 11, 2018, the First Session of the Thirteenth National People's Congress adopted the Amendment to the Constitution of the People's Republic of China. One of the important contents of the constitutional amendment is to add relevant provisions to the Supervisory Committee and clarify its constitutional status and constitution. On March 20, 2018, in order to implement the spirit of the Nineteenth National Congress of the Party, deepen the reform of the state supervision system, strengthen the supervision of all public officials exercising public power, build a unified, comprehensive and authoritative and efficient supervision system of the Party, and promote the modernization of the state's governance capacity and system, the National People's Congress, in accordance with the Constitution, formulated

the Supervision Law of the People's Republic of China (below), abbreviated as "Supervision Law". According to the provisions of the Supervisory Law, the Supervisory Committee is a special organ to exercise the state's supervisory function. It supervises all public officials who exercise public power, investigates and punishes the illegal and criminal acts of public officials, carries out the work of building a clean government and fighting corruption, and safeguards the dignity of the Constitution and the law. To build a comprehensive coverage of the monitoring system, it is necessary to face such a topic: how to deal with the relationship between the NPC supervision and supervision. Among them, the question whether deputies to the NPC can be the object of supervision by the Supervisory Committee has aroused widespread discussion in the academic circles or not. This paper intends to make some brief discussions on this issue.

II. THE SUPERVISORY OBJECT OF THE SUPERVISORY COMMITTEE COVER DEPUTIES TO THE NATIONAL PEOPLE'S CONGRESS

Before discussing whether the supervisory object of the Supervisory Committee covers the deputies of the National People's Congress, it is firstly needed to define the meaning of "comprehensive coverage" in Article 1 of the Supervisory Law. As Montesquieu said, "Anyone with power tends to abuse it until it encounters restrictions." In order to prevent abuse of power and damage the interests of the people, it is necessary to restrict any kind of state power to operate within a certain limit. The "full coverage" of the supervision of public officials exercising public power by the supervisory committee will naturally have some limitations. This limitation can be understood from the following two aspects: First, the object limitation covers only public officials exercising "public power". The object of "full coverage of supervision" of the Supervisory Committee can only be public officials of state organs authorized by the Constitution and law, members of relevant organizations authorized by laws and regulations, and subjects entrusted by state organs to exercise public power. In addition, other organizations do not belong to the scope of the supervisory object of the Supervisory Committee. The second is the restrictions on

accountability. The accountability investigation carried out by the Supervisory Committee is limited to the above-mentioned subjects' professional crimes and illegal acts. The responsibility of public officials for violation of internal rules of work, the constitutional responsibility for violation of public power, the responsibility for violation of law and inappropriate responsibility do not fall within the scope of accountability of the Supervisory Committee. Does the NPC deputy belong to one of the objects covered by the Supervisory Committee? In this regard, the advocates and the opponents hold different opinions.

A. Opponents: the Supervisory Committee Cannot Supervise Deputies to the National People's Congress

The primary reason for opposing the deputies to the Supervisory People's Congress of the Supervisory Committee is that they believe that such acts violate the requirements of the principle of democratic centralism. The principle of democratic centralism is a fundamental principle generally applicable to Chinese political life and is stipulated in Article 3 of the Constitution. It is available to understand the provisions of Article 3 of the Constitution from three dimensions. First, it is available to understand the relationship between the people's congresses and the people. People's congresses at all levels are elected by the people democratically, responsible to the people and supervised by the people. This is the first meaning of the principle of democratic centralism. Secondly, from the perspective of the relationship between the organs of state power (the People's Congress) and other state organs, it is understood that after the people elect the organs of state power, other state organs (administrative organs, supervisory organs, judicial organs and procuratorial organs) will be created by the organs of state power, which are created by the People's Congress and are responsible for and supervised by the People's Congress. Governor, this is the second meaning of the principle of democratic centralism. Thirdly, from the perspective of the relationship between the central and local state organs, the division of powers between the central and local state organs should follow the principle of giving full play to local initiative and initiative under the unified leadership of the central government, which is the third meaning of the principle of democratic centralism.

As the subordinate law of the Constitution, the Supervisory Law should be consistent with the Constitution in dealing with the relationship between the Supervisory Committee and the organs of state power, abide by the principle of democratic centralism, maintain subordinate status to the organs of power, and emphasize the supervisory and restrictive role of the organs of power to the Supervisory Committee. This is also clearly reflected in the Supervisory Law. Articles 8 and 9 of the Supervisory Law stipulate that supervisory committees at all levels shall be elected by the people's congresses at the corresponding levels and shall be responsible for the supervision work within their respective administrative areas. Their members (directors, vice-directors, members, etc.) shall be elected or appointed or removed by the people's congresses and their standing committees. The Supervisory Committee shall be responsible

for the election of the people's congress. Its Standing Committee shall be responsible for and subject to its supervision. In addition, Article 53 of the Supervisory Law stipulates in more detail the forms of supervision of the NPC and its Standing Committee. According to Article 53 of the Supervisory Law, supervisory committees at all levels shall accept the supervision of the NPC and its Standing Committee. The Standing Committee may listen to and consider the special work reports of the supervisory committees at the corresponding level, organize law enforcement inspections, deputies to the NPC and its Standing Committee. Members of the committee may also make inquiries or inquiries on Relevant Issues in the supervision work in accordance with legal procedures. From the above provisions of the Constitution and the Supervision Law, it is available to clearly see that under the political principle of democratic centralism in our country, the status of the Supervisory Committee should be under the People's Congress and belong to the People's Congress. The Supervisory Committee is created by the People's Congress, responsible for the People's Congress and supervised by the People's Congress. Under such a system, how can the Supervisory Committee go against it? To supervise the members of the People's Congress, deputies to the National People's Congress? If the Supervisory Committee is allowed to supervise the deputies to the NPC, it will inevitably affect the voting behavior of deputies to a certain extent, and then form supervision and restriction on the NPC in fact, which will affect the position of the NPC as the supreme organ of state power, and at the same time make the position of the supervisory organ of the Supervisory Committee blurred. Therefore, in view of the requirements of implementing the principle of democratic centralism, the supervisory committee should not be empowered to supervise the deputies to the NPC.

From the experience of foreign legal system, most countries follow the principle of parliamentary self-discipline in dealing with the relationship between supervisory organs and representative organs. The so-called principle of parliamentary self-discipline refers to the autonomy and autonomy of representative organs (or legislatures) in their internal affairs, which are independent of administrative power and outside judicial power, including the right of self-discipline in management, the right of self-discipline in property, the right of self-discipline in rules, the right of internal discipline and so on. Representatives' internal affairs should not be interfered by other institutions, which is not only the requirement of the principle of parliamentary sovereignty, but also the embodiment of the principle of decentralization and checks and balances.

The principle of parliamentary sovereignty requires that the parliament elected by the people should have a natural superiority over other state organs. Parliament is the representative organ of public opinion. Its members are elected by the people to make political decisions on behalf of public opinion. Many powers, including the power of supervision, come from the authorization of parliament, which are essentially the extension of parliamentary power and a component of parliamentary supervision power. The

supervisory power created by parliamentary authorization should not act on parliamentarians. The principle of separation of powers and checks and balances emphasizes the "core areas" of various powers that can't be interfered by other powers. The principle of separation of powers and checks and balances allows each other to interfere with each other in order to achieve the purpose of checks and balances, but such intervention is obviously limited. If one power can interfere with another power indefinitely, then the power interfered is essentially non-existent (because it is entirely at the mercy of another power). This is not a separation of powers and checks and balances, but a "checks and balances" without "balances".

Therefore, in order to guarantee the implementation of the principle of parliamentary self-discipline, it is necessary to limit the supervisory power of the supervisory organs. Taking the judicial review system of the United States as an example, the United States Supreme Court often takes a negative value position when conducting unconstitutional review, and respects the decisions of the legislature and the executive organs as much as possible, so as not to overthrow the decisions of the legislature and the executive organs easily. As the "Schefflin Principle of Respect" (the well-known principle of administrative law in the United States) emphasizes, if Congress' legislative intentions on a certain issue are very clear, then the courts and administrative organs must obey the legislative intentions clearly expressed by Congress, and if the court considers that Congress has not made an explicit statement on a certain issue or that the expression is vague, the court can't directly put itself. Interpretation is applied to statute law.

Therefore, from the principle of parliamentary self-discipline, the supervision of parliamentarians should belong to the "reserved land" of the representative body, which should not be entrusted to the supervisory body, but should be completed by the internal supervision mechanism established by the representative body itself. Therefore, opponents argue that the Supervisory Committee has no power to supervise deputies to the National People's Congress.

B. Supporters: Supervisory Committees May Supervise Deputies to the National People's Congress

Unlike the opposition, supporters disagree on whether the Supervisory Committee can supervise NPC deputies. Judging from the original legislative intention of the Supervision Law, the Supervision Law was originally formulated to rectify the chaotic phenomenon of pluralistic supervision and to build a unified supervision system. If an independent monitoring system for NPC deputies is created alone, is it needed to create an independent monitoring system for judges, prosecutors and CPPCC members? In this way, how can it be available to reverse the phenomenon of multiple surveillance and fragmentation surveillance? In the view of supporters, it is impossible for NPC deputies to depart from the scope of the supervisory objects of the Supervisory Committee, whether the supervision of NPC deputies by the Supervisory Committee will affect the exercise of the functions of the power organs of our country,

whether it is from the legislative level or considering the actual situation of our country, which belongs to the limitation of the supervisory power of the Supervisory Committee and should not be included in the supervisory pair of the Supervisory Committee. The scope of the image is under discussion.

Supporters argue that the core of judging whether deputies to the NPC belong to the supervisory object of the supervisory committee is to judge whether deputies to the NPC belong to the "public officials exercising public power" stipulated in Article 3 of the Supervisory Law.

Article 3 of the Supervisory Law stipulates that supervisory committees at all levels are full-time organs that perform the functions of state supervision. They have the right to supervise all "public officials exercising public power" according to law, and to investigate duty violations and duty crimes. According to the provisions of Article 3 of the Supervision Law, the key to defining whether deputies to the NPC belong to the supervisory object of the Supervisory Committee is to clarify the concept of "public officials exercising public power". Following a brief analysis of this concept, the first thing to be determined is the meaning of "public power". According to Marxist point of view, public power is the compulsory dominant force in the exercise of public affairs stipulated by laws and regulations. It is the power to organize, direct and manage the members of the community, to make decisions, to legislate and to implement the affairs of the community. Its essence is to transfer the rights of the members of the community within a certain range, or to authorize the members of the community. The power of public officials is not their private property, but the responsibility given by the people. The power granted to public officials by the people is not to let them seek their own interests, but to let them use their power to handle public affairs, perform public duties and serve the people. The key to judge whether a subject belongs to a public official is not whether he has a so-called "public office", but whether he has handled it.

The deputies to the NPC are members of the organs of state power. They are elected by the people, represent the will and interests of the people, exercise state power on behalf of the people in accordance with legal procedures, and manage state and social affairs. The deputies to the NPC at all levels do not act for their own interests, but on behalf of the will of the people and for the interests of the people. The deputies to the People's Congress, acting on behalf of the people in exercising the powers conferred by the Constitution and the law, are of course an act of exercising public power. If deputies to the People's Congress violate the Constitution and the law in exercising public power, they have committed acts of corruption and bribery, power rent-seeking and favouritism (e.g. the bribery election in Hengyang, Hunan in 2013, the bribery election in Nanchong, Sichuan in These acts of course fall within the scope of investigation and investigation by the Supervisory Committee.)

Therefore, from the provisions of Article 3 of the Supervisory Law, deputies to the NPC really belong to the

"public officials exercising public power" stipulated in Article 3 of the Supervisory Law, which is also the object of supervision by the Supervisory Committee.

As the opponents have said, the Constitution of China has established the political principle of democratic centralism and the system of the People's Congress, which is the fundamental political system. The Supervisory Committee is created by the National People's Congress and is responsible for and supervised by the National People's Congress. There is no doubt that the Supervisory Committee is subordinate to the National People's Congress and that the National People's Congress is also the supreme organ of state power in China. To be wavering, the supervisory power needs to remain modest in the face of the power organs, but this only means that the power of the supervisory committee is limited, and does not mean that the supervisory committee can not exercise the supervisory power on the deputies to the NPC. As mentioned earlier, the supervision of public officials exercising public power by the Supervisory Committee is "comprehensive coverage", but even if the expression "comprehensive coverage" is used, it does not mean that the supervisory power of the Supervisory Committee is unlimited. Specifically, the Supervisory Committee has at least two restrictions on the exercise of "supervisory power" by the organs of power:

First, the supervisory committee can only supervise the "personnel" of the power organs, not the institutions. The relationship between the Supervisory Committee and the People's Congress has been fully analyzed in the previous article. The Supervisory Committee is a national body responsible for the NPC. If the Supervisory Committee has the power to supervise the NPC, it is obviously extremely absurd. It is also a serious violation of the principle of democratic centralism clearly stipulated in the Constitution of China, but if the Supervisory Committee is only a supervisor. This logical paradox does not make sense to the people in the People's Congress. But as the opponents worry, if the supervisory committee is given the power to supervise NPC deputies, it will inevitably affect the voting behavior of NPC deputies. In order to prevent this situation, the "supervisory power" of NPC deputies of the supervisory committee needs to be further restricted.

Secondly, the supervisory committee can not interfere in the exercise of the core functions and powers of the power organs. As mentioned above, once the "core area" of a power is infringed by other powers, the balance of powers will collapse. Therefore, in order to ensure that the supervisory power of the supervisory committee does not infringe on the exercise of the core powers of the power organs, it is needed to clarify the core areas of the exercise of the powers of the power organs. For example, the legislative power, decision power, appointment and removal power and supervision power of the NPC and its Standing Committee obviously belong to the "core field" of the functions and powers of the NPC and its Standing Committee. In this field, even if there are errors in the NPC, they can't be corrected by the Supervisory Committee, such as a local regulation formulated by the local people's Congress conflicts with the upper law. Although this is a violation of the Legislative

Law, it should also be corrected by the higher authorities, not by the supervisory committee.

III. CONCLUSION

The reform of the national supervisory system is a major political system reform related to the overall situation. It hopes to achieve the political goal of comprehensive coverage of national supervision by supervising all public officials who exercise public power, and realize the modernization of national governance capacity and governance system. The promulgation of the Supervisory Law and the establishment of the Supervisory Committee are all important measures to achieve this goal, but the establishment of the Supervisory Committee also brings us many new challenges. Whether the NPC deputies belong to the supervisory object of the Supervisory Committee discussed in this paper is only one of the many problems that the supervisory practice needs to face. With the further development of the supervisory practice, more and more problems will be encountered, and these problems need constant collision between theory and practice to provide scientific solutions.

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