

Study on the Improvement of External Supervisory System of Supervision Power

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Abstract—The reform of the supervision system and the emergence of the State Committee of Supervisory have made all public officials exercising the public power of the objects of supervision. The power of supervision has expanded unprecedentedly. With respect to the establishment of supervision power, China has made constitutional changes and given supervisory commissions such power. Due to the poor theoretical base and short practical time of supervision, it's difficult for relatively broad legal provisions to deal with the complex problems in practice, so how to deepen the reform of supervision system and the exercise and supervision of procuratorial power are still issues to be explored.

Keywords: *supervision law, supervision committee, supervision power, external supervision*

I. INTRODUCTION

On November 7, 2016, the General Office of the Central Committee of the Communist Party of China issued the *Pilot Program on the Reform of the National Supervision System in Beijing, Shanxi, and Zhejiang*, marking the beginning of the reform of the supervision system in China. In March 2018, the First Session of the Thirteenth National People's Congress passed the law of *Amendment to the Constitution of the People's Republic of China* and *Law of the People's Republic of China on Supervision*.

This not only establishes the status of State Committee of Supervisory from the constitutional level, but also clarifies the power structure, personnel composition, scope of responsibilities and procedures of handling cases of supervisory organs from the organizational and operational levels. At this point, the supervision system has officially become an important part of the socialist rule of law with Chinese characteristics.

General Secretary Xi Jinping published a signed article titled *Adhering to, Perfecting and Developing the Socialist State System and Legal System with Chinese Characteristics* in the 23rd issue of *Fact Seeking*. The article pointed out: Since the 18th National Congress of the CPC, we have deepened reform comprehensively, improved the Party's leadership system and mechanisms, strengthened the system for the people to be masters of the country, revised parts of the Constitution, and established a national supervision

system.¹ The system of socialism with Chinese characteristics has become increasingly mature and finalized, and the system of socialist rule of law with Chinese characteristics has been constantly improved, playing a major role in promoting historic achievements and historic changes in the cause of the Party and the country. Since the 18th National Congress of the CPC, the Party Central Committee with Comrade Xi Jinping at the core has been adhering to a thorough and self-revolutionary spirit and has steadfastly promoted the full and strict administration of the party. The restriction of supervision power is regarded as an important guarantee for maintaining the health of the Party, promoting other supervision through intra-Party supervision, and improving the supervision system of the party and the state. The CPC has continuously enhanced its capacity for self-purification, self-innovation, and self-improvement, so as to display greater vigor and vitality in the new era and journey. General Secretary Xi Jinping pointed out in the report of the 19th National Congress of the CPC that the achievements in the past five years are comprehensive and groundbreaking, and the changes in the past five years are profound and fundamental. Over the past five years, the CPC puts forward a series of new concepts, new ideas, and new strategies with great political courage and strong responsibilities. It has introduced a series of major policies, launched a batch of major measures, promoted a series of major tasks, solved issues that had long been unsolved, and accomplished things that had long been unaccomplished. Historic changes with significant and far-reaching impact were made in the cause of the Party and the country. The reform of the supervisory body and the establishment of the supervisory commission meet the need of the Party's anti-corruption fight.

II. DEFINITION AND ORIGIN OF SUPERVISION POWER

A. Definition

Deepening the reform of the national supervisory system is a major political restructuring made by the CPC Central Committee with comrade Xi Jinping as the core. After the reform, the supervision power that covers all public officials exercising public power has become an important part of

¹ Xi Jinping. Deepening the Reform of the State Supervision System at a New Starting Point. *Fact Seeking*. Issue 5, 2019.

state power. The establishment of supervisory powers meets the needs of the people. Its power is constitutionally established, legal, and appropriate. It is a benign right that conforms to the will of the Party and the people. Both the Constitution of the Communist Party of China and the Constitution embody the concept that all power comes from the people and serves the people wholeheartedly. General Secretary Xi Jinping expressed in the report of the 19th National Congress of the Party: "China is a socialist country led by the working class and based on worker-peasant alliance. All power of the state belongs to the people." The goal of deepening the reform of the national supervisory system is to integrate anti-corruption resources, strengthen the Party's centralized and unified leadership over anti-corruption work, and realize the full coverage of supervision over all public officials exercising public power, which reflects that supervision power comes from the people and works for the people. All public power comes from people's authorization. The foundation of a country lies in its people. The people's democratic dictatorship is the fabric of China. The power of the state belongs to, derives from, and serves the people. Supervision refers to "to be placed on top for surveillance", which is based on the premise that power is vested in the people.² As an independent state organ, the state supervision commission is determined by the people's democratic dictatorship, which is also in line with the people. The supervision law clearly stipulates that supervisory committees shall be formed by the people's congress at the same level, be responsible for it, and be subject to its supervision, which reflects the popular nature of supervisory power. The supreme source of power can not only explain the legitimacy of supervisory power, but also establish its authoritative legal status.

B. The Constitutional origin of supervisory power

Article 123 of the *Constitution of the People's Republic of China* stipulates that: Supervisory committees at all levels of the People's Republic of China are state supervision organs. Article 127: The supervisory committee exercises its supervisory power independently in accordance with the law, and is not subject to interference by administrative organs, social organizations, or individuals. Supervisory organs shall cooperate with judicial organs, procuratorial organs and public security organs in handling cases of job-related violations and job-related crimes and restrict each other. According to the Constitution, the power of supervision is a completely new type of power independent of executive power and judicial power. However, in the case of administrative sanctions against state officials, they exercise administrative power. When dealing with corruption and other crimes, it has the appearance of judicial power. If the supervisory power is the combination of judicial power and administrative power, and the supervisory commission and the disciplinary commission work together, they can also conduct disciplinary actions against public officials; it seems

that the supervisory power is a mixture of administrative power, judicial power, and disciplinary power. However, the power of supervision cannot be simply regarded as the combination of the above powers. It should follow the provisions of the Constitution and laws. It is a power created independently to serve the overall cause of anti-corruption struggle led by the Party.

III. CURRENT PROBLEMS OF SUPERVISION POWER

A. The contradiction between supervision power and supervision of the People's Congress

The reform of supervisory system was carried out on a trial basis in 2016. In 2018, the Constitution was amended and the Supervision Law was enacted. In just two years, the central government has implemented its policy decisions. However, there are still some problems in the implementation of supervision power. The establishment of the supervisory commission and the creation of the supervisory power have gone through rigorous scientific demonstration in top design, but there are still some blind spots in the supervision of supervisory power. According to Article 53 of the *Law of the People's Republic of China on Supervision* (hereinafter referred to as the "*Supervision Law*"), supervisory commissions at all levels shall accept the supervision of the People's Congresses at the corresponding levels and their standing committees. This establishes the corresponding supervisory organ for the supervision of supervisory power, namely, the People's Congress and its Standing Committee. The logic lies in the fact that China is a socialist country where the people are masters of the country. The power of the state comes from the people, and deputies to the People's Congress exercise power on behalf of the people. The supervisory commission is formed and supervised by it.³

However, Article 15 of the Supervision Law stipulates that the supervisory authority shall supervise the following public officials and related personnel: public servants in the organs of the People's Congress and its standing committee. In this way, the supervisory organs seem to be able to exercise the supervisory power over their supervisors, and there is a realistic possibility that the supervisory power and the supervisory power of the people's congresses will collide with each other. With the National People's Congress and its standing committee at the center, the national supervisory commission seems unlikely to break such rules. However, at the grassroots level, contradictions among the organs of power will gradually become prominent, which will easily lead to overlapping powers and hinder the implementation of the top-level design of comprehensively deepening the reform of the supervision system of the central government.

² Lin Chen, Jiang Chen. The Legitimacy and Realization of the Local People's Congress' Exercise of Supervisory Committee's Supervision Power [J]. *People's Congress Studying*. No. 12, 2019: 30-36.

³ Qin Qianhong. Several important issues in the understanding and application of the "Supervision Law -According to Professor Qin Qianhong's recording and finishing, *Southeast Law Review*. 2019: 8-18.

B. Irremedialness in the exercise of supervision power

1) Irremedialness of the decision of monitored object

Article 49 of the *Supervision Law* stipulates that if the object of supervision is dissatisfied with the decision made by the supervisory organ concerning himself, he shall apply to the supervisory organ that made the decision for a review. If he still disagrees with the review decision, he may only apply for review to the supervisory authority at a higher level, and the execution of the original decision shall not be suspended during the review or re-check. Such closed supervision and relief procedure make it difficult for the objects of supervision to fully exercise their right of relief.⁴ In view of the fact that the administrative law still allows administrative litigation to relieve after the administrative review, it seems unreasonable for the supervisory organ to make such provisions. "Without relief, there is no right." China's *Constitution* stipulates that the country respects and protects human rights. Since the 18th CPC National Congress, the Party and the country have safeguarded the dignity and basic rights of the people and given priority to relief, which fully embodies the due meaning of a country under the rule of law. However, the authors believe that the *Supervision Law* is open to question whether reducing the power of the objects under supervision is conducive to the construction of a country under the rule of law for the sake of maintaining high pressure against corruption. The objects of supervision should also enjoy adequate relief rights, which is not against the rule of law in China. *Criminal Law of the People's Republic of China* and *Civil Procedure Law of the People's Republic of China*, as laws to combat crimes and protect citizens, fully protect the rights of criminal suspects, who can state, plead, appeal, and apply for retrial. Even so, there are still wrongful convictions. Therefore, although the supervisory commission, as a national supervisory organ, exercises the supervisory power granted by the constitution, the absence of relief will still lead to wrongful cases and destroy the ecological foundation of the rule of law. Therefore, although the supervisory commission, as a national supervisory organ, exercises the supervisory power granted by the Constitution, the absence of relief will still lead to wrongful cases and destroy the ecological foundation of the rule of law. The reform of the supervision system serves the Party-led anti-corruption struggle. The basic concept of rule of law should be upheld, and the corresponding relief channels should be included in the revision of the *Supervision Law*. Throughout the world, justice is the ultimate relief channel and the last line of defense of the law. The relief under the supervision law should be related to the judiciary, and the judicial procedure should force the supervisory organs to correct themselves, so as to avoid the occurrence of wrongful convictions.

2) Irremedialness of the property involved

According to Article 23 of the *Supervision Law*, when investigating serious violations of official duties such as suspected corruption, bribery, dereliction of duty or crimes

committed by officials, supervisory organs may, in accordance with work requirements, inquire into and freeze the deposits, remittances, bonds, stocks and fund shares of units and individuals involved. Relevant units and individuals should cooperate. If the frozen property is found to be irrelevant to the case, the freezing shall be lifted and returned within three days after the identification. The provision in this article provides only that the freeze shall be lifted within three days of the ascertainment of the frozen property, but no provision is made as to the time of ascertainment. In addition, the *Supervision Law* does not specify how to remedy the freeze. Because of the closed monitoring procedure, citizens whose property rights have been violated cannot resort to legal remedies.⁵ This has caused a great violation of the property rights of the uninvolved citizens. If the property is wrongly frozen, their legitimate rights will not be relieved under the current legal system. Article 13 of the *Constitution* provides that citizens' legitimate private property is inviolable. Although China has not established the corresponding Constitutional court and Constitutional committee to carry out the constitutional review, the expression in *Supervision Law* seems to violate the *Constitution*. Although it is important to investigate corruption and bribery cases and deal with corrupt personnel, it should not be overcorrected, thus leading to citizens' lack of faith in the law. This will not only hinder the establishment of a country and a society under the rule of law, but also undermine the authority of the supervisory commission, which will have a negative impact on the fight against corruption.

IV. IMPROVING THE SUPERVISORY SYSTEM OF SUPERVISION POWER

A. Strengthening the external supervision of the People's Congress over the supervision power

The above has pinpointed the existing problems: there is a conflict between the supervision power and the NPC's supervisory power. The power of supervision is an important power entrusted to people's congress at all levels by the Constitution and laws, and is an important part of the Party and state supervision system. As the strategy of rule of law and construction of democracy and law pick up, the supervision of state organs by the NPC will be the most important form of supervision. China is a country where the people are masters of the country, and all power comes from the people. Whether it is the government or the supervisory organs, law enforcement needs to be supervised by the people. Supervision is the most vivid and specific practice of the supervision system of People's Congresses. It covers the exercise, principles, and legal consequences of the power of supervision, and is an important part of the system of People's Congresses. Therefore, the power of supervision should be subject to the supervision of People's Congresses. People's Congresses, the organs that exercise power on

⁴ Qin Qianhong. Industrial Interpretation of Adverbial Clauses in Legal Supervision: Some Difficulties in Application. *People, Rule of Law*. Issue 1, 2019: 58-60.

⁵ Yao Wensheng. The right of supervision is a constitutional right that conforms to the will of the party and the people. *China Discipline Inspection and Supervision News*, April 26, 2018.

behalf of the people, should strengthen its supervision over supervisory power. The closed procedure of the supervisory commission will inevitably lead to its neglect of its own problems, so the supervision of the NPC is conducive to the exercise of supervisory power. Deputies to NPC exercise power on behalf of the people. During the exercise of supervisory power, an observer system for deputies to People's Congresses shall be established. When handling a case, 1-3 observers are randomly selected from the standing committee members at the corresponding level to participate in the supervision and handling of the case procedure, so that the party exercising the supervisory power can accept the oversight of the NPC. Otherwise, absolute power will lead to absolute corruption. As Hobbes writes, the expansion of power is infinite. Since the 18th CPC National Congress, General Secretary Xi Jinping has put forward a series of new ideas, thoughts, and strategies on perfecting the People's Congress system and doing a good job in the new era. In particular, many new opinions and requirements were put forward regarding the supervision of the People's Congress. General Secretary Xi Jinping stated that the important principles of the People's Congress system and the basic requirements for its design are that the power of any state organ and its staff must be restricted and supervised, which leads to the fully coverage the objects under supervision and introduction of strong supervision measures and means. Therefore, the authors take that the People's Congress should give full play to its supervision and restriction on supervision power, make its supervision more "practical" and "effective", and fully implement the concept of comprehensively governing the country by law.

B. Incorporating the outcome of the supervision power into the jurisdiction of court

Early in ancient Greece, Aristotle said: "People resort to referees for justice when there is endless debate. The referee is regarded as the personification of justice." General Secretary Xi Jinping stated: "To fully promote the rule of law, fair and justice must be upheld. Judicial justice is the last line of defense for maintaining fairness and justice in society. If the people cannot guarantee their legal rights through judicial procedures, the judiciary will have no credibility and the people will not trust it." According to the principle of the rule of law, where rights are impaired, there must be relief channels. If legislation is the institutional guarantee of justice, judicature is the rule of law to maintain justice. Judicature plays an important leading role in social justice. Judicature is the core part of law enforcement, and impartial judgment is the soul of judicature. It not only makes people feel fairness and justice in every specific case, but also serves as a major impetus and guidance for social justice. The irremedialness of the monitoring procedure may lead to unjust, false, or wrongful cases, or to the loss of social equity and justice due to political considerations. If the legal rights cannot be guaranteed through the judicial weapon, the law will lose its credibility, and the people will not believe that the law can maintain social fairness and justice. The authors hold that it is necessary to incorporate the handling procedure of the objects of supervision and the relief procedure of frozen

property involved in the case into the jurisdiction of the people's court, so that they can be fully examined by law. The self-processing procedures adopted by the commission will inevitably lead to superiors acting and inferiors imitating, and sometimes the outcome itself is determined by the superior, so that the right of relief of the subject under supervision cannot be guaranteed. Its inclusion in the jurisdiction of litigation can fully reflect the concept of rule of law. The enforcement of justice is the last line of defense for social equity and justice. At the same time, it draws a prudent boundary for the exercise of the power of the supervisory commission and keeps the power of supervision in the cage of the system.

V. CONCLUSION

Absolute power leads to absolute corruption. Instances are not rare of the power of China's censors is so powerful that corruption is triggered in history. For example, there was a lack of effective supervision and restriction on the imperial court in Ming Dynasty, and some committed crimes in the name of censor. The unprecedented expansion of supervisory power will inevitably lead to the self-expansion of power. Under the rule of law, supervision power should abide by the system. As General Secretary Xi Jinping stated, power is a double-edged sword. Exercising it on the track of the rule of law can benefit the people, and outside the law will inevitably harm the country and the people. Therefore, the improvement of the supervision system of the supervisory power should be accelerated.

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