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The Basic Scope of China's Supervisory Evidence Standards and Its Introduction

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Abstract

Since the promulgation of the Supervision Law of the People's Republic of China and the Regulations for the Implementation of the Supervision Law of the People's Republic of China, the rules of evidence for the supervision and investigation of the supervision organs in China have been gradually established. As the core content of the rules of evidence, the research on supervisory evidence standards is on the rise. Supervisory evidence standards only apply before the trial, is to regulate the supervision organs to collect, fix, review, use of evidence to achieve "evidence is true, sufficient", enough to bring a public prosecution, and does not involve about the issue of the power of proof, the standard of proof; Supervisory evidence standards have a double legitimacy and independence of the binary attributes, and the two are not in conflict.Secondly, the supervisory evidence standards contain three major realistic functions, which are the function of integrity maintenance, the function of legal benefit protection and the function of education and salvation; finally, the specific composition of the supervisory evidence standards include the standard of evidence collection, the standard of evidence fixation, the standard of evidence examination and the standard of evidence application.

Keywords

China Discipline Inspection and Monitoring,Standards of Evidence for Inspection,Supervisory Authority, Reform of the Supervisory System

1 Introduction

On March 20, 2018, the First Session of the Thirteenth National People's Congress voted to adopt the Supervision Law of the People's Republic of China. Against the backdrop of the Party Central Committee's comprehensive reform of the supervision system, this landmark legislation marks a new stage in China's supervision system reform efforts. After the promulgation of the Supervision Law, in order to intensify the country's anti-corruption efforts and build a more complete legal system for supervision, the "Two Laws and One Regulation" were introduced one after another, and a series of major legislation of the Party Central Committee is of far-reaching significance for the in-depth anti-corruption work and the promotion of the modernization of the national governance system and governance capacity. Paragraphs 2 and 3 of Article 11 of the Supervision Law stipulate that the duties of the supervisory authorities are to investigate suspected office violations and crimes such as embezzlement and bribery, abuse of power, dereliction of duty, rent-seeking, transfer of benefits, favoritism, and waste of state assets, etc. For the case of suspected job-related crimes, the supervisory authorities

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should transfer the results of the investigations to the People's Procuratorate to be examined and prosecuted. Before that, suspected job-related crime cases are the part of the People's Procuratorate self-investigated cases, which also means that the investigation of suspected crimes of duty to a certain extent from the scope of criminal proceedings, the formation of the supervision and investigation and criminal proceedings of the procedural division.

In fact, as a subordinate concept to the standard of proof and standard of evidence, the demarcation between the supervisory evidence standards and supervisory standard of proof should be the same: the supervisory standard of proof appears only at the trial stage, while the the supervisory evidence standards applies only before the trial, it regulates the collection, fixation, examination and application of evidence by the supervisory authorities to the extent that the evidence is "solid and sufficient" to bring a prosecution, and does not address the issue of the power of proof, the standard of proof. Therefore, Article 34, paragraph 2 of the Supervision Law "is consistent with the requirements and standards of evidence in criminal trials", it is for the supervisory organs as the main body (equivalent to the investigative organs), for the supervisory evidence standard, the requirement of the "Criminal Procedure Law" on the requirements and standards of pre-trial evidence, that is to say, supervision evidence standard is consistent with the standard of evidence for public prosecution, thus promoting the convergence of the standard of evidence for supervision and prosecution.

However, the essence of the convergence of law and law is to promote the supervision authorities to transfer cases of suspected job-related crimes to the people's procuratorate for examination and prosecution in accordance with the law, and the most critical and central issue, which also triggers the most controversy, is the convergence of evidence. The convergence of evidence for supervision and prosecution can be defined as whether evidence of job-related crimes meeting the standards of evidence for supervision can continue to meet the standards of evidence for criminal prosecution by the procuratorial authorities for examination and prosecution. Although the Supervision Law and the Regulations for the Implementation of the Supervision Law have made relevant provisions on Supervisory Evidence Standards, in practice, there are still operational problems regarding the convergence of supervisory and prosecutorial evidence, and it is urgent to put forward a new optimization path.

2 The Reality function of standards of evidence for inspection

As far as the study of the standard of evidence for supervision is concerned, the goal orientation of the supervision system in the Supervision Law determines the functions of the specific standards of evidence for supervision, and these functions further determine the construction of the specific standards of evidence. According to Article 1 of the Supervision Law, "In order to deepen the reform of the state supervision system, strengthen the supervision of all public officials exercising public power, achieve comprehensive coverage of state supervision, carry out in-depth anti-corruption work, and promote the modernization of the state governance system and governance capacity, this Law is enacted in accordance with the Constitution." We can analyze the three main functions of the standards of evidence for supervision from the legislative purpose: the function of legal benefit protection, the function of integrity maintenance, and the function of education and salvation.

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2.1 The function of integrity preservation

Undoubtedly,the promulgation of the Supervision Law is an important milestone in the reform of China's supervisory system, and plays an important role in the construction of the theoretical system of the rule of law under socialism with Chinese characteristics. The primary purpose of the legislation of the Supervision Law is to resolutely combat crime, discover the truth in cases and ensure the integrity of public officials in their positions, all of which highlights the State's strict supervision of the conduct of public officials and its high level of protection of the interests of the people.

Under the framework of China's Constitution and laws, especially the Constitutional Amendments and the Supervision Law adopted at the First Session of the Thirteenth National People's Congress in 2018, a mechanism for controlling and restraining public power with distinctive Chinese characteristics has been designed, which not only clarifies the duties and powers of the supervisory authorities, but also provides a solid legal safeguard for the smooth implementation of the supervisory work. Paragraph 2 of Article 11 of the Supervision Law stipulates that the main duty of the supervisory organs is to investigate suspected job violations and job crimes such as embezzlement and bribery, abuse of power, dereliction of duty, rent-seeking, transfer of benefits, favoritism and waste of state assets. These behaviors not only seriously harm the interests of the State and the people, but also damage the image and credibility of public officials. Therefore, the supervisory organs must strictly perform their duties and investigate and deal with these acts in accordance with the law. In practice, the supervisory organs should make full use of various investigative and technical means to dig deeper into case clues and comprehensively collect evidence and materials. At the same time, they should also focus on protecting the legitimate rights and interests of those under investigation and ensuring the legality and impartiality of the investigation. In addition, the supervisory organs should also strengthen the coordination with the judicial organs, jointly combat corruption, to maintain social harmony and stability.

In conclusion, the implementation of the Supervision Law has injected new vitality into the mechanism for controlling and restraining public power in China. By strictly fulfilling their duties, carrying out investigations in accordance with the law, and strengthening coordination and cooperation with other organs, the supervisory organs will surely be able to better perform their functions and make greater contributions to the fight against corruption and the building of the rule of law in China.

2.2 The function of legal interest protection

The Supervision Law not only gives the supervisory authorities corresponding powers, enabling them to supervise all public officials exercising public authority in accordance with the law, and to realize the comprehensive coverage of State supervision, but should also be regarded as a law that effectively controls the power of supervision. In order to ensure the impartiality and legality of supervision, it is necessary to establish a "supervision of supervision" of the supervisory organs and supervisory personnel, and to set clear standards of evidence for supervision, so as to safeguard the lawful rights and interests of the persons being investigated.

First of all, the quantity and quality of supervisory evidence has a bearing on the impartiality of surveil-

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lance matters, as well as on the practical interests of the subject of surveillance and the persons involved in the case. For example, article 40, paragraph 1, of the Supervision Law stipulates that "evidence shall be collected as to whether the person under investigation has violated the law or committed a crime, as well as the severity of the circumstances, so as to clarify the facts of the violation or crime and to form a complete and stable chain of evidence that corroborates each other". Article 60, paragraph 1, of the Regulations stipulates: "Evidence of whether the person under investigation has violated the law or committed a crime, as well as of the gravity of the circumstances, shall be collected and fixed comprehensively and objectively, and a mutually corroborating, complete and stable chain of evidence shall be formed." These reflect the quantitative requirements of evidence supervision and highlight the mutual corroboration of evidence.

At the same time, in order to prevent the occurrence of coerced confessions and other improper evidence-gathering behaviors, the Supervision Law imposes strict requirements on the quality of supervisory evidence. For example, article 60, paragraph 2, of the regulations stipulates, with reference to the Criminal Procedure Law, that "a confession cannot be used to establish a case on its own", that is to say, the confession of the person under investigation alone is not sufficient to establish a case, it must be combined with other evidence to make a comprehensive judgment. This provision effectively prevents the occurrence of wrongful convictions due to improper means of obtaining evidence.

In supervisory practice, the examination and judgment of evidence is a crucial task. In supervisory practice, the examination and judgment of evidence is usually based on a "collective file-reading system", which establishes a "triple gate-keeping" model of review at each level by the supervisory leader, the main leader, and the Standing Committee. This model regulates the exercise of supervisory power and avoids undue infringement of the legitimate rights and interests of the subject of supervision through the strict examination of supervisory evidence. In addition to the strict examination of inspection evidence, the inspection authorities also focus on strengthening the training and education of inspection personnel. By continually improving the legal literacy and operational capacity of inspectors, they are better able to perform their duties of inspection and ensure the smooth conduct of inspection work.

2.3 The function of educational salvation

The Supervisory Commission, as an important part of the national supervisory system, assumes a number of responsibilities, including supervision, investigation and disposal, with the aim of safeguarding the dignity and impartiality of the national legal system, guaranteeing that public officials perform their duties in accordance with the law, and promoting the in-depth development of clean government and the fight against corruption. According to article 11, paragraph 1, of the Supervision Law, one of the primary duties of the Supervisory Commission is to carry out integrity education for public officials. This means that the Supervisory Commission not only has to identify problems in the course of supervision, but also, through education and guidance, has to urge public officials to consciously abide by the rules of integrity and self-discipline. In practice, the Supervisory Commission provides integrity education to public officials in a variety of forms, such as conducting integrity lectures, organizing integrity culture activities, and producing integrity publicity materials, in order to raise their awareness of integrity and self-discipline and their ability to resist corruption and change.

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In addition to integrity education, the Supervisory Commission is also responsible for supervising and inspecting the performance of public officials in accordance with the law, the exercise of public authority, the clean conduct of public officials and their moral integrity. This responsibility requires the Supervisory Commission to carry out comprehensive, detailed and in-depth supervision of the conduct of public officials to ensure that they exercise their powers in accordance with the law, do not abuse their power or seek personal gain, and always maintain a good image of integrity in the conduct of public affairs.

Furthermore, the regulations emphasize the principle of "insisting on the combination of punishment and education". This principle runs through the entire process of supervisory work, reflecting the concept of "treating the sick before they get sick". In carrying out its supervisory duties, the Supervisory Commission not only has to deal seriously with disciplinary violations, postal violations and postal crimes found, but also, through education and guidance, has to help public officials realize their mistakes, correct their behavior, and avoid the recurrence of similar problems. This combination of discipline and education reflects both the majesty and justice of the law and the role of humanistic care and education and guidance.

3 Specific components of the standard of evidence for supervision

Article 33, paragraph 2, of the Supervision Law stipulates,"In collecting, fixing, examining and applying evidence, the supervisory organs shall be consistent with the requirements and standards for evidence in criminal trials." From this, it can be seen that the standards of supervisory evidence run through the whole process of collecting, fixing, examining and applying supervisory evidence, and are the basic guideline for supervisory evidence work. At the same time, this provision also reveals the specific composition of the supervision evidence standards, providing a clear direction and guidance for the supervision organs to carry out evidence work.

3.1 Standards of the collection of supervisory evidence

Standards for the collection of surveillance evidence, the core of which is the supervision of the legality of evidence collection standards, and prohibitive standards(equivalent to the illegal evidence exclusion standards) are two different aspects of the same rule, which together constitute a complete and rigorous system of evidence collection rules.

Article 41, paragraph 1, of the Supervision Law explicitly mentions that,"two or more investigators shall be involved in the taking of investigative measures", a provision that ensures the standardization and impartiality of supervisory forensics and prevents the subjectivity and bias that may be brought about by single-member forensics. At the same time, paragraph 2 further stipulates the important evidence collection work of the whole process of audio-visual recording, this measure is not only conducive to the process of evidence collection after the fact supervision, but also ensures the transparency and authenticity of the evidence collection process. In addition, the regulations also provide more detailed provisions on the standards for the collection of evidence for supervision. Articles 87 (1), 97, 114 (1), 116, 120, and 126 (1) and (2) specify the specific operations, procedures, and requirements for the collection of evidence for supervision, providing a strong institutional guarantee for the collection of evidence by the supervisory authorities in accordance with the law.

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Prohibitive standards in the standards for the collection of surveillance evidence include rules for the exclusion of illegal evidence and rules for the exclusion of defective evidence. With regard to the rules on the exclusion of illegal evidence, article 33, paragraph 3, of the Supervision Law provides that, "evidence collected in an illegal manner shall be excluded in accordance with the law and shall not be used as the basis for the disposition of the case". Article 40, paragraph 2, of the Supervision Law lists in detail the specific ways in which evidence may be collected illegally, including threats, inducements, deception and other illegal ways of collecting evidence, and it is strictly prohibited to humiliate, abuse, mistreat, physically punish, or in a disguised form physically punish the person being investigated or the person involved in the case. And article 64 of the regulations further details the various illegal means, article 65 of the first two paragraphs to further explain what is "violence", article 66 "confirmed or can not rule out the use of illegal methods of evidence collection, the evidence shall be excluded according to law, shall not be used as a basis for the qualitative disposition of the case and transfer for examination and prosecution. The evidence shall be excluded according to law and shall not be used as the basis for the characterization and disposition of the case or for its transfer for examination and prosecution. In addition, the rule on the exclusion of defective evidence is also an important part of the prohibitive standards. Article 65, paragraph 3, of the Regulations contains clear provisions on the exclusion of material and documentary evidence from illegal evidence.

3.2 Standards of the fixation of supervisory evidence

The standard of evidence fixation in inspection work is mainly reflected in the proper storage and handling of property involved in the case, as well as the transfer of such property.

First of all, article 46 of the Supervision Law clearly stipulates that,"property obtained in violation of the law shall be confiscated, recovered or ordered to be refunded in accordance with the law; property suspected of having been obtained in connection with a crime shall be transferred with the case to a people's procuratorate". This provision clarifies the legal basis and scope of authority of the supervisory authorities in dealing with property involved in a case. At the same time, for property suspected of having been obtained in connection with a crime, the supervisory authorities shall transfer the case to the people's procuratorate, so that the people's procuratorate can review and prosecute the case in accordance with the law. This provision ensures the timely transfer of property involved in the case and the consistent handling of the case.

In addition, in order to more specifically regulate the conduct of the supervisory authorities in handling property involved in the case, article 208, paragraphs 1 and 2, of the regulations are respectively refined. Article 208, paragraph 1, of the regulations stipulates that,"property and fruits derived from suspected job-related crimes that are seized, detained or frozen shall be kept in a proper manner, and a List of Property Involved in the Case that is to be Transferred to Judicial Organs shall be made and forwarded to the People's Procuratorate along with the case ." This provision ensures the safety and integrity of the property involved in the case and prevents it from being lost or damaged during the transfer process. At the same time, by producing the list and transferring it with the case, the people's procuratorate can clearly understand the type, quantity and value of the property involved in the case, providing an important basis for the examination and prosecution of the case. Paragraph 2 of Article 209 of the regulations provides that,"the principle

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of recovering property involved in a case shall be to recover the original property; if the original property has been transformed into other property, the transformed property shall be recovered." This provision reflects the flexibility and reasonableness of the supervisory authorities in recovering case-related property. In practice, since the nature and state of the property involved in the case may change, the supervisory authorities need to judge and deal with it according to the actual situation. By recovering transformed property, the integrity and traceability of the property in question can be better safeguarded, providing more adequate evidentiary support for the trial of the case.

3.3 Standards of the examination of supervisory evidence

According to the relevant articles of the Supervision Law and regulations, the standards for reviewing supervisory evidence mainly include standards for the amount of supervisory evidence, the nature of the evidence, and the relationship between the evidence.

Firstly, the specific criteria relating to the quantity and nature of evidence for inspection are reflected in the "comprehensive and objective collection and fixing of evidence", as stipulated in article 40, paragraph 1, of the Supervision Law. By analogy with the provisions of the Criminal Procedure Law, "comprehensive and objective" here means that in the process of comprehensively and objectively collecting and fixing evidence, the supervisory authorities and supervisory personnel must grasp the criteria for reviewing the evidence. Specifically, this requires that, in carrying out their supervisory work, supervisory personnel must not only collect and fix evidence of the guilt of the person being investigated, but also evidence of the innocence of the person being investigated, and at the same time, collect and fix evidence of the seriousness and triviality of the crime of the person being investigated. In addition, the provisions of paragraph 1 of article 60 of the Regulations have been further refined, while paragraph 2 provides for the addition of "rules for the reinforcement of confessions".

Secondly, with regard to the specific criteria for the relationship between evidence, such as "the formation of a mutually corroborating, complete and stable chain of evidence" as stipulated in article 40 of the Supervision Law, the regulations have been refined, as reflected in article 61, which stipulates that, "the examination and determination of evidence shall be made in the light of the specific circumstances of the case, from the comprehensive judgment on the degree of connection between the evidence and the facts to be proved, the links between the evidence, and whether it was collected in accordance with legal procedures". The examination and determination of evidence shall, in the light of the specific circumstances of the case, be based on the evidence and the facts to be proved in terms of the degree of relevance of the evidence, the link between the evidence and whether it is collected in accordance with the legal procedures and other aspects of comprehensive judgment. It is not difficult to see that, "one law and one regulation" all focus on the examination standard of supervision evidence, and the examination standard of supervisory evidence is the most important standard of supervisory evidence.

It can clearly be seen that both the Supervision Law and the regulations pay focused attention to the standard of review of supervisory evidence, in which the standard of review of surveillance evidence is regarded as the core of the standard of supervisory evidence. This not only reflects China's rigorous standards for the review of inspection evidence, but also highlights China's determination and strength in safeguarding judicial impartiality and maintaining social justice.

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3.4 Standards of the application of supervisory evidence

The use of evidence refers to the role of evidence to prove the role of play, related to the practical application of evidence in the process of proof and its role in proof. In common parlance, the use of evidence is to use evidence to prove the facts to be proved, and to make corresponding disposition processing according to the degree of proof achieved. China's supervisory organs are co-located with the Party's disciplinary and inspection organs, and the scope of supervision covers all public officials exercising public power, with the types of cases spanning disciplinary violations, functional violations and functional crimes. In accordance with the principle of proportionality, paragraph 3 of Article 11 of the Supervision Law, taking into account the degree of violation of the law by the public official, the degree of necessity to pursue responsibility, and other elements, divides the supervisory authority's actions into "administrative sanctions", "accountability", "referral for examination and prosecution", and "investigation and prosecution". referral for examination and prosecution" and "formulation of supervisory recommendations".

In the convergence of evidence, cases of job-related crime involve referral for examination and prosecution, and then to the trial stage. Article 63 of the Supervision Law clearly stipulates the standards for the use of evidence in cases of crimes of office, requiring that cases of crimes of office must meet the requirements of "clarity of facts, certainty and sufficiency of evidence", and that where there is insufficient evidence, the case shall not be transferred to the people's procuratorate for examination and prosecution. These are strict controls and requirements for the use of evidence, reflecting the importance and necessity of evidence in the handling of cases.

4 Conclusion

In this paper observes and summarizes the existing rules of supervision evidence standard, defines the basic concept of supervision evidence standard and its binary attributes on the basis of the legal doctrinal study of the relevant contents of the Supervision Law of the People's Republic of China and the Regulations for the Implementation of the Supervision Law, and reveals three major real-life functions of the supervision evidence standard and the specific composition, which is a useful attempt to study the supervision evidence standard.

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