Demarcation and Convergence of Investigation Powers of the China Supervision Commission

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Abstract: *The investigative power of the China Supervisory Committee can be divided into the power of investigating duties and the power of investigating crimes. The connotation, scope of power, and power attributes of the two powers are different. The applicable principles, purposes, subjects, and methods of the two powers show Certain distinctions. The power to investigate duty violations and the power to investigate crimes are connected in terms of the operation of procedures and the application of evidence. In dealing with the internal relations of the investigative powers of the Supervisory Committee and the external relations of powers of the Supervisory Committee with other state organs, the state must be avoided. The allocation of power is too focused on the supervisory committee to ensure that the power of the supervisory committee runs on the rule of law.*

Key words: *Duty violation investigation; Duty crime investigation; Power segmentation; Procedure connection*

Introduction

The problem of corruption is a common problem faced by human society. The monitoring system with the goal of preventing and controlling corruption has become a part of the national system. Anti-corruption has been listed as one of the main tasks of the new round of judicial reform in China. Decision of Beijing, Shanxi Province, and Zhejiang Province on the Pilot Work of National Supervision System Reform was amended, and the Criminal Procedure Law was amended in October. The establishment of the law provides a basic legal basis for the reform of the supervision system. The characteristics of China's supervision system reform are the rule of law and anti-corruption, and the logic of the reform of the supervision system is "change the law" and then "reform" (Qin, 2017). The supervisory agency, the Supervisory Committee, originally belonged to disciplinary inspection agencies, administrative supervisory agencies, and people's procuratorates. The functions of investigating crimes and crimes of state public officials were merged into the supervisory committee, and the national supervisory committees at all levels exercised the national supervisory power. The "troika" was transformed into "one horse first" (Li, 2017), and the state supervision power became parallel to the executive and judicial powers. This state power is in the "fourth right" position in the public balance structure (Wei, 2017). The investigative power in the state's supervisory power is the power of the

supervisory authority to investigate duties and crimes committed by the authorities. The purpose of power exercise is to collect evidence that can be investigated. Whether a person has post and criminal acts and evidence of heavy responsibilities, ascertain the facts of the case and seize the offenders, crack down on and prevent corruption, and provide a reliable basis for case handling.

China's "Supervision Law" integrates the previous "Administrative Supervision Law", "Criminal Procedural Law" and other related investigation powers and duty crimes investigation powers, and gives the Supervision Committee a new investigation power content. The Supervision Committee investigation power content covers general duties The right to investigate violations of law and the power to investigate duty crimes[1]. It should be said that the reform of the investigative power system of the Supervisory Committee has changed the past dispersal of supervisory power allocation, weak exercise of investigative power, and low efficiency in anti-corruption work. The new institutional setting creates new state organs, integrates power resources, and grants special investigative power, which helps In order to streamline the supervision system and improve the country's ability to deal with corruption, the reform of the supervisory committee's investigative power involves major adjustments to China's current legal framework, the connection and coordination of the supervisory committee with judicial organs such as the People's Procuratorate, and the nature, categories, Legal regulation and the "dilemma of due process of law" and other issues still need to be discussed.

The Connotation, Power and Attributes of the Right to Investigate Duty Violations

According to the seriousness of the state public office's duty violations, the investigative power of the supervisory commission can be divided into the duty illegal investigation power and the duty crime investigative power. The duty illegal investigation right refers to the evidence collected by the supervisory commission in order to identify and deal with job illegal acts. The activities of collecting materials. The activities of collecting evidence materials include the investigation of individual public officials who exercise public authority; the objects of investigation involve people, things and places; the methods of investigation are expressed as general investigations and individual investigations. Supervisory Committee's right to investigate violations of law Transfer from the original administrative supervision and investigation power.

The Supervisory Committee investigates the facts of the case, what authority it has, and what methods of investigation can be used? Based on the power of investigation, the Supervisory Committee has certain discretion. The Supervision Law clearly specifies the scope of the supervisory committee's powers to investigate violations of the law. **A**. Request for evidence. When conducting an investigation, the supervisory authority has the right to request the parties or third parties to provide documents, materials or articles related to the case, and it also has the right to request relevant authorities to provide documents, files, etc. related to the case. **B**. During the investigation, the supervisory authority may require the respondent to make a statement about the suspected illegal act, and issue a written notice to it if necessary. **C**. Ask the witnesses. During the investigation, the supervisory authority may ask witnesses and other personnel. **D**. Inquiries, freeze deposits, remittances and other properties. Supervisory organs investigating suspected embezzlement,

1 In a broad sense, duty crime also belongs to the category of duty violation. Duty violation here refers to the general duty violation, which has not yet reached the level of crime, so it is a narrow understanding.

bribery, dereliction of duty and other serious duties illegal or duty crimes. According to the requirements of the work, they can query and freeze the deposits, remittances, bonds, stocks, fund shares and other properties of the units and individuals involved in accordance with the regulations. **E**. Seizure, seizure of property, documents and electronic data. Seizure and seizure of property, documents, electronic data and other information used to prove that the person under investigation is suspected of committing a crime. Adopting measures for retrieval, seizure and seizure shall follow legal procedures. **F**. Inspection, inspection and appraisal. The supervisory authority may directly or designate, Personnel with specialized knowledge and qualifications shall be employed to conduct inspections and inspections under the auspices of investigators. **G**. Restriction of exit. To prevent the investigators and related persons from escaping overseas, the supervisory authorities at the provincial level or above may approve the Relevant personnel take measures to restrict exit.

From the content of investigative powers of the Supervisory Committee stipulated in the Supervision Law, the supervisory commission's investigation measures for post violations of law are mandatory, but the scope and extent of the enforcement are lower than the scope and extent of the investigation powers for duty crimes. Investigation measures.

The Connotation, Power and Attributes of the Power to Investigate Duty Crimes

The power of investigating crimes of the supervisory committee from the original procuratorial organ's investigation of crimes from the office is transferred to the special investigation work and related compulsory measures carried out by the supervisory committee in accordance with the law in the process of handling state crimes involving public officials. After the case is filed, the Supervisory Committee exercises its power of investigating crimes, collects evidence, ascertains the facts of the case, and prepares for prosecutions and trials for duty crimes.

The Supervision Law clearly defines the scope of powers of investigation commissions for investigations into crimes on duty. Some of these capabilities overlap with the powers of investigation for violations of duties, such as requiring relevant personnel to provide evidence, question witnesses, query, freeze deposits, remittances and other properties, and retrieve, Seizure, seizure of property, documents, inspections, appraisals, restrictions on exit, etc. Some capabilities are unique to the supervisory committee when investigating crimes committed by the commission. **A**. Interrogation of the investigator. Suspected of crimes of corruption involving corruption, bribery, dereliction of duty, etc. The investigator and the supervisory authority may conduct interrogation and ask them to truthfully confess the suspected crime. **B**. Search. The supervisory authority may investigate the body, belongings, residence and Conducted searches in other relevant places. **C**. Lien. The respondent was suspected of corruption, bribery, dereliction of duty and other serious duties or crimes, and the supervisory authority has grasped the facts and evidence of some of its violations and crimes. There are still important issues that require further investigation. Approval in accordance with the law can be lied in a specific place. Lien measures apply to serious job violations and duties. The crime is an investigation, which has the dual attributes of administrative and criminal justice (Jiang & Wang, 2018). **D**. Technical investigation. The supervisory authority investigates suspected major crimes such as corruption

and bribery. According to needs, after strict approval procedures, technical investigation measures can be taken. Technical investigation measures are Special investigative methods established for some high-hidden job crimes. **E**. Wanted. If the investigator who should be detained according to law is at large, the supervisory authority may decide to want within the administrative area, and the public security organ will issue a wanted order to pursue the case.

Contrary to the previous Administrative Supervision Law's administrative investigative authority's administrative investigation power and the Criminal Procedure Law's prosecution authority's duty crime investigation power, how the supervisory committee's investigative power is positioned is currently controversial. One view is that supervision The investigative power of the commission has an independent attribute. It is not a simple superposition of the powers of the original administrative supervisory investigation power and the criminal power of investigation of official crimes, but an independent power system formed by integrating related powers. The investigation power of official crimes is based on the investigation of official crimes by the supervisory authority. Have independent power, "investigative power" is not "investigative power" (Jiao & Ye, 2017). Another view is that although the term "investigation" is not used, the content of the investigative power of the supervisory authority reflects the supervisory authority. Actually enjoy part of the investigative power originally exercised by the procuratorial organs (Xiong, 2017). "The investigation activities of the supervisory committee should be positioned in the criminal investigation category at least when it involves criminal investigations" (Qin & Shi, 2017). The author believes that, in terms of the power of investigating crimes by supervisory agencies, It has the attribute of investigative power. First, in terms of institutional structure, the overall duty crime investigation department of the procuratorial organ is transferred to the supervisory committee. The criminal investigation function will be transferred to the supervisory committee, and the supervisory committee will assume the duty crime investigation function after the reform. Second, in terms of power, the supervisory committee's power to investigate crimes is the same as or similar to the criminal investigation power. For example, the Supervision Law Established monitoring committee measures such as lien, interrogation, investigation, and technical investigation correspond to investigations such as detention and arrest by criminal investigation agencies, interrogation of criminal suspects, search, and technical investigation. Investigation measures are equivalent to the mandatory nature of investigation The power of investigation of duty crimes is the same as the power of investigation. "Although the Supervisory Committee is not a judicial organ and the supervisory power is not a judicial power, it does not prevent the Supervisory Committee from enjoying judicial power in specific circumstances" (Li, 2019).

Separation of the Right to Investigating Duty Violations and the Right to Investigate Duty Crimes

The essence of the right to investigate illegal duties and the right to investigate crimes is the power of specialized state organs to collect corresponding evidence to determine the facts of a case based on specific purposes. The two investigations have commonality in terms of investigation content, investigation methods and follow procedures, but it cannot be denied that There are also differences between the two.

Differences in applicable principles

The supervisory committee has similarities in the exercise methods and contents of the powers of duty investigations and power crimes investigations, so some common principles apply, such as the principle of powers of investigation and the principle of proportionality. At the same time, power crimes are the most serious of power violations. The duty crime investigation measures are more compulsory than the general duty illegal investigation measures, so the principles applicable to the duty crime investigation power are special. The first is the writ principle. The supervisory authority's duty crime investigation power is highly compulsory and belongs to crime investigation in terms of power attributes. Types of rights. Search, lien, and technical investigations in job crime investigations involve restrictions on the basic rights such as property, person, and privacy of the person under investigation, and the power to investigate job crimes is subject to strict legal regulations. Regulations on crime investigations around the world the common practice is to adopt the writ principle, that is, the investigative agency must apply to the court in advance for the conduct of an investigation, and a special judge must pass a certain judicial review process to issue a warrant. The relevant provisions of the China Supervision Law on liens and technical investigations are not clear. Judicial Justice for Specific Crime Investigation Measures. The investigation methods, but all of them clearly need to go through strict approval procedures. The author believes that based on the compulsory, significant, and fundamental nature of civil rights investigation measures such as search, lien, and technical investigation, it should be exercised by the supervisory authority at the next higher level. The authority to approve and issue related writs. Article 43 of the Supervision Law stipulates that the supervisory authorities take lien measures, which are collectively determined by the leaders of the supervisory authorities. The supervisory agencies below the city level that have districts should take the lien measures and should report to the supervisory authority at the next higher level. Approved. Provincial supervisory authorities take lien measures and should report them to the National Supervisory Committee. This provision reflects the spirit of the writ principle to a certain extent. The second is the principle of purposeful interpretation. In legal practice, it is inseparable from legal concepts and the interpretation of legal principles, the principle of purposiveness is a method of legal interpretation. The purposiveness of interpretation needs to determine the purpose of legal norms, and the conflict of interest is often reflected behind the normative purpose. The law is realized by distinguishing and interpreting the interests behind the norms. The legitimacy of the discretion. The supervisory committee may search a specific person or place for a suspected crime of duty when major crimes of corruption, bribery, dereliction of duty and other duties are suspected, technical investigation measures can be taken as required. Are there objective judgment criteria such as "suspected crimes" and "according to objective needs"? Is it necessary to achieve a certain degree of proof? These concepts themselves It has a certain ambiguity. The ambiguity of the concept creates the arbitrariness of the power of the investigative authority, which is not conducive to the standard exercise of the power of the investigative power. The nature of the public power of the criminal investigative power determines that the investigative authority must make Explain that the initiation and operation of the duty crime investigation procedure should follow the principle of "publicness and reasonableness" (Xie & Wan, 2003).

Differences in applicable purposes

The applicable objects of the power of investigation of duty violations and the power of investigation of duty

crimes are the acts of public officials of the state, but the purpose of application is different. The power of power of duty investigation is to determine whether there is a duty violation; and the power of power of duty investigation is to confirm whether there is a duty crime. The result of the former application is a decision on administrative sanctions against public officials who have committed general office violations; the result of the latter application is that if a suspected crime is committed, the investigation results will be transferred to the procuratorate for prosecution in accordance with the law to pursue criminal responsibility. The differences determine the implementation of investigative measures by the supervisory committee. The purpose of collecting evidence materials is also different, and there are certain differences in the methods and procedures of evidence collection.

Differences in applicable entities

China's "Supervision Law" stipulates that the supervisory committee uniformly exercises the power to investigate crimes of duty violations. Based on the differences between power crimes and duty crimes and the differences in the attributes of powers of powers of power to investigate crimes and powers of power to investigate crimes, it is advisable to set up different institutions within the supervisory authority to exercise them separately. Duty violation investigation right and duty crime investigation right. The General Duty Investigation Bureau and Duty Crime Investigation Bureau are set up within the Supervisory Committee, and their personnel and case handling procedures are relatively independent. Of course, it does not rule out the existence of overlapping or overlapping cases. Initially, the investigation was started as a general duty violation. Later, it was found that the case constituted a duty crime and the investigation was conducted by the duty crime investigation agency, which would involve the convergence of the case handling procedures of the two agencies.

Differences in survey methods

The investigation methods of the Supervisory Committee can be divided into arbitrary investigations and mandatory investigations according to whether they are compulsory and whether they require voluntary cooperation. Arbitrary investigations refer to investigations in which the respondent voluntarily cooperates without using compulsory means. For example, to inform the respondent to state their opinions, to ask witnesses, to request documents, information, etc. Compulsory investigation refers to the investigation of the respondent by means of compulsory methods, such as search, seizure, and lien. It is also the questioning of the respondent, "Inquiry is a cooperative behavior of both parties, but interrogation is not the case. It is more of a conflict and conflict between the two parties" (Xu, 2003). Duty violations and duty crimes are illegal in nature There are points of importance. The investigation of job violations is dominated by arbitrary investigations, supplemented by compulsory investigations. The investigation of job crimes is dominated by compulsory investigations. For arbitrary investigations, as long as they comply with general legal requirements, compulsory investigations are sufficient. In addition to meeting general legal requirements, special requirements such as the writ principle are usually required. "The more investigative acts require coercive means to ensure their effectiveness, invasion. The possibility of private life in the field of fundamental rights of the people of relatively greater " (Sun, 2000), the need for more stringent regulation of procedures to conduct mandatory investigations.

The Connection between the Right to Investigate Illegal Duties and the Right to Investigate Crimes

There are differences in the nature of power, the purpose of application, the content of power, etc. between the duty violation investigation and the duty crime investigation. It is not allowed to simply mix the two. It is determined whether it constitutes a general duty violation or a duty crime. With the deepening of the case handling process, the nature of the case will gradually become clear. Therefore, there is a problem of the connection between the duty violation investigation procedure and the duty crime investigation procedure.

Procedures for investigation of duty violations and procedures for investigation of duty crimes

Generally speaking, the distinction between criminal investigation procedures and administrative investigation procedures involving administrative violations is clear. Criminal filing standards are required for criminal facts and the need to be held responsible for criminal cases. If the conditions are met, criminal proceedings are initiated. After the promulgation of China's "Supervision Law", major changes have taken place in the legal system for the management of offenses and crimes in the post. The investigation procedure is to conduct an investigation and to carry out administrative sanctions on the respondent based on the investigation results; the second is to conduct an investigation in accordance with the duty crime investigation procedure, and the prosecution agency that constitutes a crime is brought to prosecute; the third is to conduct an investigation in accordance with the duty crime investigation procedure. It constitutes a duty crime, but it constitutes a duty violation, and the respondent is subject to administrative sanctions based on the results of the investigation; the fourth is to conduct an investigation in accordance with the duty violation investigation procedure, and it is found in the investigation that it may constitute a duty crime and be transformed into a duty crime investigation procedure for investigation. This situation is relatively simple to deal with, the fourth situation the form is more complicated, and there is a coordination and connection between the investigation procedure of job violations and the investigation procedure of job crimes.

According to the provisions of China's "Supervision Law", the Supervisory Committee exercises unified investigation powers for duty violations and crimes. Although it is possible to distinguish between the duty violations investigation bureau and the duty crimes investigation bureau internally, they conduct investigations into duty violations and duty crimes, but this is only supervision. The internal work of the committee is part of the investigation, and the external investigation is carried out under the overall name of the Supervisory Committee. If a job crime is found to constitute a duty crime during the investigation of a job violation, the previous investigation can be regarded as the initial investigation of the investigation of a job crime. The basis for investigating crimes. Treating the post violation investigation process as the initial investigation process for the post investigation, on the one hand, it helps to quickly find the facts of the case and improve the efficiency of handling the case; on the other hand, the legal status and behavior of the Supervision Law on the investigation of post violations. Means, powers and procedures are clearly stipulated to ensure that the investigation of job violations meets the requirements of the due process, which enhances the legitimacy of the investigation of job violations as a preliminary investigation of a crime investigation.

Evidence of duty violations and evidence of duty crimes

The unified and independent exercise of the supervisory power by the supervisory committee does not exclude the division of labor within the internal organization, which is responsible for and cooperates with each other. Both the duty violation investigation and the duty crime investigation are based on evidence. The differences in compulsory and other aspects, the evidence obtained through the investigation of duty violations, whether the respondent can be used as evidence for prosecution for duty crimes when the suspect is required to be held criminally responsible for a duty crime, or it needs to be transformed into a crime in a certain form later The use of prosecution evidence necessarily involves the convergence of the application of evidence at different stages of the investigation process.

Gathering evidence in accordance with legal procedures and ensuring that the collected evidence is objective and true is a common requirement of the investigation of duty violations and the investigation of duty crimes, and therefore has commonality in the application of evidence. There are differences in the results, etc., so there are different requirements for the application of evidence. How to coordinate the process of connection between the investigation of job violations and the application of the evidence of investigations of job crimes? The author believes that it can be resolved by referring to the relevant provisions of the criminal justice organs in handling administrative cases for obtaining evidence Article 54 of China's Criminal Procedure Law stipulates that material evidence, documentary evidence, audiovisual materials, electronic data and other evidence materials collected by administrative agencies during administrative law enforcement and investigation of cases can be used as evidence in criminal proceedings. Evidence materials such as physical evidence, documentary evidence, audiovisual materials, electronic data collected during illegal investigations can be used as evidence in the prosecution of duty crimes, and there is no need to re-collect them in the investigation of duty crimes. As long as the procedures for collecting evidence are legal, the evidence is used in the investigation and duties of duty violations Crime investigation Both have the effect of proving the facts of the case. The types of evidence established in Article 54 of the Criminal Procedure Law include physical evidence, documentary evidence, audio-visual materials, electronic data and other physical evidence, and whether the provisions of verbal evidence are applicable to this provision is theoretically surviving. The author believes that the verbal evidence collected during the investigation of duty violations shall not be used in the investigation and prosecution of official crimes, and the verbal evidence of the confession of the person under investigation or the testimonies and statements of relevant personnel in the investigation of official crimes shall be collected again. The main reasons are: First, the verbal evidence and physical evidence have different characteristics. The physical evidence is fixed and specific. The collection and retrieval of physical evidence is generally not repeatable. The collection of speech evidence is generally repeatable and can be repeated. Recollection. The second is that the "Supervision Law" separates the requirements for investigating persons who have violated the law and interrogating those who are suspected of having committed crimes, which means that the applicable procedures for the two are different. The identity of the suspect is subject to special protection during the process of evidence collection and investigation. Barrier human rights principles, "which called on the population for the survey tricky.

Conclusion

The formulation of China's "Supervision Law" has made a systematic change to the traditional supervision system and established a new type of supervision legal relationship. The power to investigate duty violations and crimes is a key power of the supervision committee. The effective operation of the investigation right requires coordination between the internal bodies of the supervision committee and The connection between the supervisory committee and other agencies such as the procuratorial organs also needs to clearly define the nature and specific content of the power of investigation in the constitution and laws. The distinction between the power of investigating illegal duties and the power of investigating crimes helps to determine the power of investigation The content and operating procedures of the two powers guarantee the efficiency of the function of the supervisory system on the mechanism, and at the same time respect the protection and protection of human rights, and regulate the exercise of the powers of the supervisory committee. Relations, and the external relationship between the investigative power of the supervisory committee and the powers of other state organs, it is necessary to avoid the excessive allocation of state power to the supervisory organs, unduly compress the powers of other state organs, unreasonably restrict or even deprive citizens of the basic rights enjoyed by the Constitution or equality by law (Tong, 2017). Avoid "to change thinking and innovative thinking to replace the rule of law " (Shi, 2015), security supervision authority to run efficiently on a legal track.

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