

Research on the Justification of Lawyers' Intervening in the Control Commission's Investigation Procedure

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ABSTRACT. *The amendment of Criminal Procedure Law cancels the power of the procuratorial organ to file and investigate the crimes of corruption, bribery, dereliction of duty, etc., and submit it to the Control Commission for “filing and investigation”. In terms of organizational structure, the Anti-corruption Department of the original procuratorate was revoked and transferred to the Control Commission as a whole. Although it is clearly stipulated in Supervision Law that the Control Commission shall exercise the investigation power for the crimes committed by the state public officials by taking advantage of their power, corruption and bribery, and dereliction of duty, in essence, after the transfer of the department, it shall exercise the investigation power of the original procuratorial organ for the above-mentioned crimes. Through the analysis of international conventions, typical countries and regions' legal provisions, we can see that when the criminal investigation stage begins or citizens are triggered by conditions restricting their personal freedom, detention or being taken into custody, the law shall give citizens “rights of access to a lawyer”. Supervision Law in China does not give lawyers the right to intervene in the supervision and investigation procedure, which makes it difficult to guarantee the rights of the investigated persons suspected of post crimes, and also makes the supervision power unable to be effectively supervised and restricted. This may lead to the abuse of power, the occurrence of unjust, false and wrong cases, thus damaging the credibility and image of the state and government.*

KEY WORDS: *Supervisory Organs; Investigation Procedure; Lawyers' Intervening; Right Protection*

1. Introduction

Supervision Law of the People's Republic of China (hereinafter referred to as Supervision Law) was adopted at the first session of the 13th National People's Congress on March 20, 2018. Since December 2016, the legislation has been carried out in Beijing, Zhejiang Province and Shanxi Province for one year, and a series of seminars of experts and scholars have been held. After soliciting opinions from all walks of life, the legislative work has been completed, from which, we can see that

the Communist Party and the state have attached great importance to and have been determined to fight against corruption.

However, as the most basic right of suspects, the “rights of access to a lawyer” have not been mentioned in the Supervision Law. At the same time, lawyers can’t intervene in the investigation procedure, which makes the supervision power can’t be effectively limited and restricted, and the legitimate rights of the investigated people can’t be guaranteed, which makes the abuse of power, the occurrence of unjust, false and wrong cases and the loss of government credibility inevitable. In the procedure of judicial reform in recent years, China has successively issued relevant laws and regulations to protect the “rights of access to a lawyer” of suspects and defendants, which is the symbol of a country ruled by law and the inevitable requirement of building a country ruled by law and governing the country according to law. Lawyer’s intervening in the procedure of supervision and investigation is indispensable in the procedure of legalization. Therefore, in this paper, the author will discuss the legitimacy of lawyer’s intervening in the reform of supervision system from the following aspects, so as to provide theoretical advice for the later reform of supervision system.

2. Theoretical Analysis of the Legitimacy of lawyers’ intervening in the Supervision and Investigation Procedure

Under the reform of the national supervision system, the Control Commission has replaced the procuratorate to exercise the power of case filing and investigation of crimes of using power, corruption and bribery, and malfeasance, but the transfer of power did not lead to the transfer of all powers. Before that, the procuratorial organ did not completely “block out” the lawyer’s intervening when investigating the above-mentioned cases. At present, however, Supervision Law completely excludes the right of lawyers to intervene. The reasons for this change can be summarized as follows:

Firstly, the lawyer’s intervening in investigation procedures of the Control Commission conflicts with the work mechanism of the Disciplinary Committee and the Control Commission. With the reform of the supervision system, in order to investigate and deal with corruption and illegal cases more effectively, the Disciplinary Committee and the Control Commission have jointly worked. At the beginning of handling the case, it is not clear whether the case is an illegal case or a disciplinary case or a criminal case. The nature of the case is usually determined with the gradual deepening of the investigation. However, due to the inner-party issues and judicial efficiency issues involved in illegal or disciplinary cases, lawyers cannot intervene, which also becomes a major obstacle for lawyers to intervene in the investigation procedure of the Control Commission.

Secondly, lawyers’ intervening in the investigation procedure of the Control Commission can bring inconvenience to the fight against corruption. Before the amendment of the Criminal Procedure Law, the “lawyer’s meeting right” of the suspect suspected of major corruption and bribery cases was limited. Since the

Supervision Law was published, the Control Commission has been responsible for investigating and handling cases of corruption and bribery, and dereliction of duty. In addition, when the Control Commission takes investigation measures, the respondents are usually likely to commit suicide, escape or destroy evidence. This kind of case involves many people, its social harm is great, and state-owned assets and people's property will be lost at any time. The lawyer's intervention may have the possibility of collusion, and may even help the investigated to transfer property and destroy evidence, which will bring difficulties to the investigation and evidence collection of the case handling organ. The fight against corruption is a national policy that benefits the country and the people, and the intervention of lawyers will bring inconvenience to it, which is not conducive to the fight against corruption.

Thirdly, the lawyer's intervention is contrary to the nature of the Control Commission's investigation measures. The predecessor of lien measure is "two-regulation" measure. The "two-regulation" measure is a party investigation procedure of the Communist Party of China, in fact, it is the discipline and supervision measure within the Communist Party. After the promulgation of Supervision Law, the relevant departments have repeatedly stressed that the investigation measures exercised by the Control Commission are different from those exercised by the investigation authorities, so the investigation procedures conducted by the Control Commission are not subject to the Criminal Procedure Law. The supervision power of the Control Commission is a kind of compound power. Because it contains the nature of discipline supervision within the party and the political nature in the fight against corruption, the lawyer's intervention is not allowed.

These are the reasons why the lawyers can't be involved in the investigation procedure of the Control Commission. For the author, these reasons are reasonable, but too one-sided. The intervention of lawyers will certainly cause some changes, which may indeed bring obstacles to the handling of cases, but we should not "stop eating for fear of choking", and a proper legal procedure should not be abandoned because of the difficulties of judicial practice. Next, the author will demonstrate the legitimacy of lawyers' involvement in the investigation procedure of Control Commission from the following aspects.

2.1 The investigation power of the Control Commission has investigation attribute

Relevant departments of the central government have repeatedly stressed that the investigation power of the Control Commission is different from the investigation power in criminal proceedings. The function of the Control Commission is to supervise, investigate and dispose of duty violations and post crimes, and its status is independent of other judicial and administrative departments. Therefore, the activities of the Control Commission are subject to the restriction and adjustment of the Supervision Law, and the investigation power exercised by the supervisory organ in respect of duty violations and post crimes is not subject to the Criminal Procedure Law of the People's Republic of China (hereinafter referred to as the Criminal Procedure Law). In view of this, in the investigation procedure of the Control

Commission, the lawyer's intervention can not apply the provisions of Article 33 of the Criminal Procedure Law on the suspect's obtaining the lawyer's help in the investigation stage. The author believes that although the Control Commission independently performs its functions and distinguishes itself from other judicial activities, its investigation power still has the attribute of criminal investigation, which can be deduced from the following aspects:

First of all, with the promulgation of Supervision Law, the Criminal Procedure Law has also been amended accordingly. The Criminal Procedure Law has deleted the provisions of Article 18 of the original Criminal Procedure Law on the crime of corruption and bribery, the crime of dereliction of duty by state functionaries, and the crime of state functionaries using their power to infringe upon the personal rights and democratic rights of citizens, which shall be filed and investigated by the People's Procuratorate. The investigation power of post crimes originally exercised by the Procuratorate's self-investigation department is exercised by the current Control Commission, and the Self-detecting Department of the procuratorate is also transferred to the Control Commission, which will inevitably lead to the transfer of relevant functions and powers, otherwise, it will be meaningless.[1]

Secondly, Supervision Law has given the Control Commission 12 investigation measures, including "lien, conversation, interrogation, inquiry, inquiry, freezing, retrieval, seizure, search, seizure, inquest, inspection and identification". There is no essential difference between the above investigation measures and the compulsory measures for suspects in the investigation stage stipulated in the Criminal Procedure Law. The same is the restriction and interference of citizens' personal rights and property rights.[2] The fifth chapter of Supervision Law provides the lien measures, which are stipulated in the third paragraph of Article 44: If a detainee is suspected of committing a crime and is sentenced to public surveillance, criminal detention or fixed-term imprisonment according to law after being transferred to a judicial organ, one day of detainment shall be converted into two days of public surveillance and one day of criminal detention or fixed-term imprisonment. From the above provisions, we can see that the severity of detention measures is the same as criminal detention and pretrial detention. In addition, the period of retention measures specified in the Supervision Law shall not exceed three months. In case of special circumstances, it can be extended once, and the extension time shall not exceed three months, similarly, compared with Article 156 of the Criminal Procedure Law, the period of investigation and custody after the arrest of a suspect shall not exceed two months. If the case is complicated and cannot be concluded at the expiration of the time limit, it may be extended for one month with the approval of the People's Procuratorate at the next higher level. Therefore, the duration of detaining measures is longer than that of investigation detention. By comparison, we find that the investigation measures carried out by the Control Commission are essentially the same as, or even more severe than, criminal coercive measures.[3]

Finally, according to the concept of modern rule of law, a complete set of criminal procedure includes investigation, examination and prosecution, trial and execution. In the absence of any link, no suspect can be identified as guilty and bear the consequences of violating the law. In 2018, the Criminal Procedure Law was

amended, as mentioned above, to delete the provisions that post crimes should be filed and investigated by the procuratorial organ. But investigation must not be missed, Therefore, Supervision Law gives the Control Commission the power to collect and retrieve evidence when carrying out investigation measures, and the evidence collected and retrieved can be used as evidence in criminal proceedings, and the requirements and standards for evidence are consistent with the Criminal Procedure Law; at the same time, Article 170 of the Criminal Procedure Law stipulates that the People's Procuratorate shall, in accordance with the relevant provisions of this Law and the Supervision Law, and examine cases transferred by supervisory organs for prosecution. Through the above provisions of the two laws, it is not difficult for us to judge that the "investigation" in the criminal procedure is exercised by the supervisory organ, which fills in the vacancy of "investigation, prosecution and trial" and makes the criminal procedure link up and complete normally.

From the above analysis, we can see that the investigation power of duty crime originally exercised by the People's Procuratorate has been transferred to the Control Commission; the investigation measures of the Control Commission are essentially the same as the criminal compulsory measures in the investigation stage of the Criminal Procedure Law; and the investigation procedure of the Control Commission, the prosecution of the people's court, the trial of the people's court and the criminal execution of the executive organ constitute a complete criminal procedure. The Criminal Procedure Law revised in 2012 has advanced the lawyer's intervention to the time when "the suspect is interrogated for the first time", so when the Control Commission exercises the "formal investigation power and substantive investigation power" of duty crime, the lawyer should also be involved.

2.2 Requirements of procedural justice

Nowadays, the theoretical circles have unified their views on procedural justice and substantive justice. Procedural justice is the guarantee of substantive justice, at the same time, the legitimate rights of suspects are protected, and those who violate the law are punished justly.[4] In 2012, the amendment of the Criminal Procedure Law has added such provisions as the exclusionary rule of illegal evidence, the intervention of lawyers in the investigation stage, and no one can be forced to prove his own crime to ensure the fairness of the procedure. Especially in the investigation stage, the investigation activities which may affect the justice of the whole criminal procedure are strictly restricted by law. As the investigation stage of duty crime, the investigation activity of the Control Commission is bound to meet the requirements of procedural justice, which should be in accordance with the provisions of the Criminal Procedure Law.

Lawyer's intervening is an important means to ensure procedural justice, which is necessary to investigate, deal with, collect and obtain relevant evidence for duty violations and post crimes. However, whether the procedures and means of collecting and retrieving evidence are legal and whether the evidence is true and effective directly determines whether the suspect suspected of duty crime can get a

fair trial. Therefore, the intervention of lawyers can effectively supervise and prevent the unfair situation of the investigation procedure, so that those suspected of post crimes can get a fair trial and get due legal sanctions.

2.3 Requirements for human rights protection

The principle of “respecting and protecting human rights” has been clearly stipulated in the 2004 Amendment to the Constitution, which is also an important principle in legislation, law revision, law enforcement and judicial activities. The amendment of the Criminal Procedure Law in 2012 included “respect and protection of human rights” into the task of the Criminal Procedure Law.

The 12 investigation measures exercised by the Control Commission involve the personal rights, property rights, privacy rights and other civil rights of the respondents, which are the most basic human rights guaranteed by the Constitution. Any public power that may violate the above-mentioned civil rights should be supervised and restricted. But the lawyer’s intervening, first of all, can provide legal consultation and legal help for the investigated; second, can make professional judgment when their citizens’ legal rights are violated, so as to take precautions in advance and provide relief after the event.

Some scholars believe that because it is not clear whether the investigated person violates the duty law or the duty crime, if he violates the discipline or the law, he should be punished within the party or administratively. In addition, the cases of corruption, bribery and dereliction of duty are generally complex, involving a large number of people, and the evidence is difficult to collect. Therefore, the intervention of lawyers will bring great difficulties to investigate and deal with corruption and bribery. The author believes that the rights of the investigated should not be deprived because the investigated person is not necessarily a duty crime or in order to give way to “anti-corruption”. We can design a lawyer intervening system to avoid or reduce the inconvenience brought by lawyer’s intervening. For example, we can stipulate the specific time, rights and obligations of lawyers’ intervening, and deal with the procedural diversion of lawyers’ intervening, so that lawyers’ intervening can not only protect the legitimate rights and interests of suspects, but also do not affect the handling of cases by case handling organs.[5]

2.4 The necessity of power restriction

The Communist Party of China leads the national discipline inspection and supervision work and has clear instructions for discipline inspection and supervision departments to strengthen self-supervision. The Central Committee of the Communist Party of China has repeatedly stressed that discipline inspection and supervision departments should be strict in self-discipline, cautious in exercising power, constantly carry out and strengthen self-supervision, and improve internal control mechanism. In addition, they should put their power in a cage, build a clean, loyal and responsible discipline inspection and supervision team, resolutely prevent

“wicked under the light”, and ensure that the supervision power is strictly supervised and restricted. Therefore, we can make it clear that in the reform of the supervision system, the Party and the state are firm in self-discipline, internal control, external supervision and power balance for the discipline inspection and supervision team, and they are also unified in ideology.[6]

Supervision Law has clear provisions for the supervision subject of the Control Commission, which can be divided into three categories: First of all, the supervisory organs, the judicial organs, the procuratorial organs and the law enforcement departments stipulated in the second paragraph of Article 4 cooperate and restrict each other; secondly, the supervisory organs stipulated in Article 54 accept democratic supervision, social supervision and public opinion supervision; and thirdly, the People’s Congresses at all levels and their standing committees exercise supervision, inner-party supervision and self-supervision. The author believes that the above supervision methods can indeed play a supervisory role in the supervision power, but the intervention of lawyers can make the supervision more comprehensive and better. This is because that lawyers are not state functionaries, and they have certain “interest relationship” with the case because of the entrustment relationship. Therefore, they can supervise the whole investigation activities from the perspective of the rights protection of the investigated. Moreover, as a professional group with higher legal literacy and professional knowledge, lawyers are able to grasp the problems in the investigation procedure more acutely and accurately, which is the advantage that the above three kinds of supervision subjects cannot have at the same time. Therefore, to let lawyers involved in the investigation procedure can effectively supervise the supervision power.[7]

3. The Extraterritorial Investigation on the Legitimacy of Lawyers’ Intervening

3.1 Provisions of the “rights of access to a lawyer” in international conventions

The Convention on Civil and Political Rights (hereinafter referred to as the Convention) is a worldwide “white paper” on civil rights, which stipulates the most basic and important rights of every citizen. China signed the Convention in 1998, but there are many conflicting provisions between the Convention and the current laws of China, so it has not been adopted. However, China has repeatedly indicated that it will implement the Convention, and in recent years, the judicial system reform of China has also been moving towards the provisions of the Convention. Article 14, paragraph 3, of the Convention provides that in determining any criminal charge against him, everyone shall be fully equal and entitled to the following minimum guarantees.... (b) to have considerable time and facilities for the preparation of his defense and to contact counsel of his choice.

The Basic Principles on the Role of Lawyers (hereinafter referred to as the Principles) were adopted at the eighth United Nations Congress on the prevention of crime and the treatment of offenders in 1990. “Special guarantees in criminal justice matters” in the Principles stipulates that governments shall also ensure that all

persons arrested or detained, whether or not they are charged with a criminal offence, are promptly given the opportunity to contact a lawyer, in any case no more than 48 hours from the time of arrest or detention. All persons arrested, detained or imprisoned shall have full opportunity, time and facilities to receive without delay, without eavesdropping, without inspection and with complete confidentiality, visits from and consultation with lawyers. Such consultation can be carried out within the range that law enforcement officials can see but not hear. The detaining measure taken by the supervisory organ for the investigated person is a kind of measure to deprive the investigated person of personal freedom, which is essentially the imprisonment of the investigated person, also similar to the criminal detention before arrest.[8] According to the Principles, the respondent should have the opportunity to contact a lawyer when the lien measure is taken.

3.2 Regulations of foreign countries on lawyers' intervening in supervision procedures

China's implementation of the national policy of "one country, two systems" in the Hong Kong Special Administrative Region gives Hong Kong independent legislative and judicial power, so it is appropriate for us to discuss it here. Under Section 4 of the ICAC (Treatment of Detained Persons), a detainee shall be given a reasonable opportunity to communicate with the legal adviser, and in the presence of an officer of the ICAC who cannot hear the conversation, he can consult with his legal adviser. And in order to prepare the detainee for his defense, he shall be allowed to make phone calls with legal advisers and relatives and friends, unless the above acts will constitute unreasonable hindrance or delay in the investigation or enforcement of the suspected criminal acts. The Hong Kong Independent Commission against Corruption is its supervisory organ, which has the same status as the Control Commission in China. After the investigated person is detained, the investigated person is allowed to communicate with his lawyer. Although it also excludes the possibility that the intervention of lawyers may hinder the investigation or law enforcement, it does not deprive the investigated person of this right.

Article 10 of the 1982 Canadian Constitution provides that every person arrested or detained shall have the following rights at the time of arrest or detention....to employ and notify lawyers without delay and to be informed of this right. According to Article 137 of the German Code of Criminal Procedure, a suspect shall have the right to entrust a defender at any stage of the proceedings.

Article 136 of the German Code of Criminal Procedure stipulates that a suspect shall be informed before being questioned, and he shall have the right to consult with his defenders. If the suspect thinks it is necessary and wants to discuss, the inquiry shall be suspended, and the interrogator shall also be obliged to help the suspect determine the defender as much as possible. German lawyers are freer to intervene in criminal proceedings than our country, and they are more perfect in the relevant system. From the perspective of the suspension of inquiry, Germany has attached great importance to the help of lawyer's intervening to the suspect. If the suspect requests to discuss with the defender, the inquiry can only be conducted after

the lawyer's intervention.[9]

Article 34 of the Constitution of Japan stipulates that no one shall be detained or detained unless the reasons are stated directly and the right of the entrusted defender is granted immediately. And no one shall be detained without just cause. At the request of the suspect himself, the reason shall be declared immediately in a public court in which he and his defenders are present. It can be seen from the above provisions that Japan regards the entrusted defender as a condition of whether it is lawful to detain or detain anyone, and whether it is suspected of a crime or a general illegal act or for other reasons, as long as a citizen is detained or detained, it must give his entrusted defender the right. As mentioned above, the detention measures taken by China's supervisory organs for the investigated are the same as the severity of criminal detention and pretrial detention, which is essentially the detention of the investigated. Therefore, when the investigated is taken the detention measures, they should be given the right to entrust the defender.

The United States has quite strict regulations on the procedure of accusing criminal suspects, and through the provisions of five constitutional amendments to protect the procedural rights of criminal suspects. Due procedure of law has become a basic principle of American judicial system, which is embodied in the fifth and Fourteenth Amendments of the constitution of the United States. The two amendments to the Constitution stipulate that the United Nations and the States shall not deprive anyone of his life, liberty or property without due procedure of law, which is also consistent with the core purpose of modern criminal procedure, that is, to investigate the criminal's responsibility in a way that enables people to be sure that the result is fair and correct, and reaches the standard of "due procedure of law".[10] In a 1964 case, the defendant, Massiah, was indicted and commissioned a lawyer. His accomplice was persuaded by the police to act as an informant, the police installed a wiretap on the accomplice to ask him to discuss the case with Massiah who made a statement against himself in the conversation and was obtained by the police. The court held that the statement of Massiah obtained by the police shall not be evidence, because the defendant had hired a lawyer and was prosecuted, so the police, without informing his lawyer to be present, obtained the statement against the defendant in a cunning way, violated the "rights of access to a lawyer" of the defendant. From this case, it can be seen that all statements made by the US investigation authorities on the interrogation of the criminal suspect must be in the presence of their lawyers, otherwise, no matter whether they are true or not, they cannot be used as evidence for the final decision. The famous "Miranda rule" affirms that a criminal suspect shall have the right to entrust a lawyer before being interrogated by the police, and the lawyer can accompany him in the whole procedure of being interrogated. If he can't afford the lawyer's fee, the government shall provide him with a lawyer free of charge if he wants, If the suspect decides to be questioned by the police without a lawyer present, he shall still have the right to stop answering questions at any time until he talks with the lawyer, from which, it can be seen that American law has been very strict on the procedural rights of criminal suspects from the beginning of the investigation stage, only in accordance with "due procedure of law" can judicial organs investigate the legal responsibility

of criminal suspects, and the “rights of access to a lawyer” of the criminal suspect has become an indispensable part of due procedure of law. If the investigation organ deprives the suspects of the “rights of access to a lawyer” in the investigation stage, or even fails to inform them of this right, any evidence obtained by the investigation organ will be invalid. As mentioned above, the Control Commission in China actually plays the role of investigation organ in the investigation and disposal of post crimes. Therefore, we should also protect the “rights of access to a lawyer” of the suspected post criminals, which can meet the value orientation of modern criminal procedure to investigate the legal responsibility of the criminal suspects under the standard of “due procedure of law”.

To sum up, we can learn from the following three aspects about the provisions of international conventions, typical countries and Hong Kong region of China on “lawyer’s intervention”: the first is to establish a special and independent anti-corruption organization in the area, which gives the right to communicate with lawyers to those suspected of corruption and bribery, which is limited but not deprived; secondly, lawyers have the right to intervene at the beginning of the investigation stage in general countries, no matter what kind of crime the person who is suspected of committing by the investigation organ; thirdly, as long as a citizen is detained, imprisoned, deprived of personal freedom or deprived of life and property, he shall be granted the right to obtain the help of a lawyer, regardless of the reason why the citizen is taken measures by the public authority. In comparison, after the amendment of the Criminal Procedure Law in 2012 in China, since the first interrogation or compulsory measures taken by the investigation organ, the criminal suspect can entrust the defender, and the time for the lawyer to intervene is also greatly advanced, which ensures the rights of the criminal suspect and is an important step in the reform of the criminal procedure system. Therefore, the reform of the supervision system should be synchronized with the reform of the criminal procedure system, and should be connected with each other. It should not be a “missed fish” in the procedure of protecting the rights of criminal suspects.

4. Significance of Lawyers’ Intervening in the Investigation Procedure of the Control Commission

In the above, we have discussed the theoretical basis for the legitimacy of lawyers’ intervening in the Control Commission’s investigation procedure, which is the necessary requirement and theoretical basis for lawyers’ intervention in the supervision and investigation procedure. What we will discuss next is the positive significance of lawyer’s intervening in the reform of supervision system

4.1 Better fight corruption crimes

With the promulgation of Supervision Law, the national anti-corruption work has entered the orbit of legalization, which makes the anti-corruption work have legal basis and enhance its authority. The legalization of supervisory power requires that its investigation procedure must be legal, operate according to law and conform to

the standard of “due procedure of law”. A legal and proper investigation procedure can enhance the position of the supervisory organ in the hearts of citizens and establish a higher authority, which is of positive significance for the prevention of crime, the improvement of deterrence to criminals and the better fight against corruption. Moreover, the intervention of lawyers can standardize the operation of investigation procedures, make investigation procedures more transparent, force supervisors to better perform their duties, improve the quality of case handling, strictly follow the procedures prescribed by law, and better investigate, punish and crackdown on corruption crimes.

In addition, the intervention of lawyers can also make the power of both the supervisory organ and the investigated tend to balance. It is this state of mutual restriction and restraint that can make the supervisory organ more careful in the collection and improvement of evidence and the adoption of investigation measures, making the case clearer and the evidence more clear and complete. What’s more, we give the Control Commission the power to investigate and crackdown on corruption and other cases. This does not mean that it needs to transform all illegal and criminal clues into duty-related or duty-related crimes, but rather that it needs to be able to identify the authenticity of the clues, not wronging any innocent person, and crack down on real criminals. At the same time, we also need a “role” that is opposite to the interests of the supervisory organ, because “different voices” can enable the supervisory organ to constantly learn and improve itself, so as to improve the quality of handling cases.

4.2 Preventing and putting an end to wrong cases

The first paragraph of Article 33 of the Supervision Law stipulates that the material evidence, documentary evidence, witness testimony, confession and defense of the investigated, audio-visual materials, electronic data and other evidence materials collected by the supervisory organ in accordance with the provisions of this law can be used as evidence in criminal proceedings. According to the regulation of Supervision Law, the evidence collected and obtained by the supervisory organ can be adopted in criminal proceedings. Although the Criminal Procedure Law stipulates that the Department of Supervision shall return the case transferred by the supervisory organ for supplementary verification to the supervisory organ for supplementary investigation or its own investigation, in judicial practice, the majority of cases are returned to the supervisory organ for supplementary investigation. In other words, the supervisory organ is the main body to collect and fix the evidence of the suspected duty crime cases, and the evidence directly determines what kind of charge the suspect is prosecuted by the public prosecution organ, and how the judicial organ convicts and measures the penalty. Then, if the supervisory organ perverts the law for personal gain in the procedure of online claim handling and evidence collection without the supervision of lawyers, or even collects evidence by illegal means, which causes the false evidence, it is easy to lead to the occurrence of unjust, false and wrong cases.

Lawyers represent the interests of the investigated, and have rich legal

knowledge and practical experience. In this critical stage of the investigation procedure, they can be keen to find defects or illegal acts in the procedure of evidence collection, so as to timely put forward legal opinions or complaints. At the same time, the supervision organ has its own limitations and closeness in handling cases. Therefore, the intervention of lawyers can also help the supervision organ to identify the wrong information and clues and thus play the role of error correction. Therefore, the intervention of lawyers is an effective way of supervision for the supervisory organs, which also forces the supervisory organs not to bend the law for personal gain and standardize their own investigation behaviors and measures, so as to effectively prevent and eliminate the occurrence of unjust, false and wrong cases.

4.3 Preventing the abuse of power and improving the credibility of the government

As mentioned above, Article 54 of the Supervision Law stipulates that the supervisory organ shall disclose the supervision information according to law and accept democratic supervision, social supervision and public opinion supervision. In my opinion, the provisions of this article are relatively general. Because there are no detailed regulations on the open way, procedure, application subject and non-public accountability mechanism of supervision information, and no detailed regulations on the specific steps and methods of accepting supervision, the operability of this article is not strong and it is difficult to achieve the effect of supervision. Moreover, in the interpretation of Article 47 of Supervision Law of the People's Republic of China (hereinafter referred to as "Interpretation"), it is pointed out that there is a sequence between "return supplementary investigation" and "self-supplementary investigation". Considering the strong political and sensitive nature of the cases transferred by the supervisory organ, the public prosecution department of the procuratorial organ considers that supplementary evidence is needed after examination. Generally, it shall be returned to the supervisory organ for supplementary investigation; when necessary, the procuratorial organ shall supplement the investigation itself. Generally speaking, the procuratorial organ believes that the facts of the basic crime of conviction and sentencing in the case transferred by the supervisory organ have been found out, but under any of the following circumstances, it may supplement the investigation by itself: The first is that the main circumstances of witness testimony, confession and explanation of criminal suspect, and statement of victim are consistent, and individual circumstances are inconsistent, which does not affect the conviction and sentencing. The second is that documentary evidence, material evidence and other evidence materials need to be supplemented for identification. And the third is that other cases where the investigation by the procuratorial organ is more convenient, more efficient and more conducive to finding out the facts of the case. At the same time, the Interpretation also pointed out that in practice, before the procuratorial organ makes the decision of not prosecuting, it shall actively carry out communication with the supervisory organ at the working level, and seek the opinions of the supervisory organ or its superior supervisory organ that transferred the case. From the above provisions, we can see that for the cases transferred by the supervisory organ, the operation space for the procuratorial organ to supplement the investigation by itself

is very small, even if it supplements the investigation by itself, it will not affect the conviction and sentencing of the case. As for the decision not to prosecute, the procuratorial organ also has no initiative, and must seek the opinions of the supervisory organ. To sum up, it is impossible to prevent and reduce the abuse of rights when the external supervision is not clear and the restriction and supervision of procuratorial organs are very limited.[11]

The original intention of the design of supervision power is to ensure the fairness and integrity of the whole state power organs and public servants, and to maintain the image of the government. Therefore, if there are cases of favoritism, malpractice, dereliction of duty and abuse of power in the supervisory organs, the credibility and image of the government will be seriously damaged. As one of the parties representing the interests of the investigated, the lawyer stands in the “interest camp” different from other supervision subjects, and can more actively supervise the whole process of the supervision organ’s investigation power operation. In addition, most of the other supervision methods are “post supervision”. When the abuse of power, favoritism and other cases have occurred, the damage of the government’s credibility will be hard to make up. If the lawyer intervenes at the beginning of the investigation procedure, he can find out the problems in time, feed back to the supervision organ or relevant departments, and strangle the abuse of power in the cradle. And if the supervisory organ is an honest, fair and exemplary public authority, the credibility and image of the state and government will be greatly improved.

5. Conclusion

In the amendment of the Criminal Procedure Law of 2012, China has advanced the time of lawyers’ intervention to the stage of investigation, and also included “the state respects and safeguards human rights” in the law. As an important measure of litigation system reform, lawyer’s early intervention has brought the construction of rule of law to a higher level. The reform of the supervision system should also be in step with the construction of the rule of law and the national policy of running the country according to law. Although corruption and bribery and other job-related crimes have their particularity and political nature, the intervention of lawyers will also bring obstacles or difficulties to the investigation and handling of such cases, however, the “rights of access to a lawyer” of criminal suspects cannot be deprived. Moreover, we can design a complete and mature lawyer intervention mechanism, which can not only protect the basic rights of criminal suspects, but also will not affect and hinder the handling of cases by the supervisory organs. The author believes that it is only a matter of time before lawyers intervene in the investigation procedure of the control commission, because the reform of the supervision system needs to be improved, and the supporting laws and regulations need to be studied and formulated.

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