

A study on the connection between the Supervision Law and the Criminal procedure Law

Jialin Yu*

Zhongshan Institute of University of Electronic Science and Technology of China, 528400, China

Abstract. Deepening the reform of the state supervision system is an important decision-making arrangement to strengthen the self-supervision of the party and the state. In essence, the supervisory committee should complete the investigation task of duty crimes, rather than the procuratorial organs, which is a very bold attempt in the system. The supervisory law makes the procedure of investigating crime by the supervisory committee different from that of other procedures, and makes it stand in parallel with the criminal procedure law, which leads to contradictions in the working relations between the judicial organs and the supervisory organs. The fields of investigation are: management of cases, legislative procedures, methods of investigation, methods of enforcement, whether or not evidence can be used, and so on, no matter which of the two laws is changed and perfected. We should all solve the above problems

1. Introduction

Since the 18th National Congress of the Communist Party of China, China has continued to deepen the reform of the supervision system and embarked on the road of reforming the supervision system with Chinese characteristics. The reform has led to the revision of the Supervision Law, the Criminal Procedure Law and other relevant laws and regulations accordingly. How to realize the connection between law and law in discipline inspection and supervision law enforcement has become a question that needs to be answered at the legal and practical levels. Discipline inspection and supervision organs shall meet the standards of procuratorial organs for examination and prosecution and court criminal trials in the determination of facts and the collection, examination and application of evidence, that is, the connection between discipline inspection, supervision and law enforcement and criminal justice. This paper uses the literature research method, qualitative analysis method, normative analysis method, etc. to carry out research. It leads to problems and corresponding countermeasures from the background and necessity of the topic. It believes that supervision and legal inspection, investigation and other departments should strengthen communication, further improve the establishment of rules and regulations, and deal with the relevant contradictions of the connection between the two laws in a targeted manner.

2. Journals reviewed

2.1 The rank of the Law on Supervision and the Code of Criminal procedure

At present, there are three main viewpoints in academic circles: the command of supervision law[1], the high order of supervision law[2], and the theory of low order of supervision law[3].

2.2 Convergence between the jurisdiction system of the Supervision Act and the Code of Criminal procedure

Trapped around this topic, the academic community believes that the main investigation of the supervisory organs, some exceptions[4].

2.3 Evidence-related issues in the application of the Supervision Act

Around this topic, the academic circles believe that the supervisory organs should follow the provisions of the Criminal procedure Law on the authenticity, legality and relevance of evidence[5].

2.4 A series of issues from the supervisory process to the judicial process

Around the current academic research results of this topic, there are three main points of view: (1) in the criminal scope of investigation and the interactive connection of official crime inspection, we should

* Corresponding author: 1259797534@qq.com

distinguish between the use of official crime or crime[6]. (2) when a case is referred to an inquiry for investigation and prosecution, the compulsory examination to be carried out by the Public Prosecutor's Office shall be completed before it is handed over and the relevant decision shall be made at the time of submission, and if returned for reinvestigation, its code of conduct shall be the Code of Criminal procedure[7]. (3) when filing a case, the relevant provisions of the Supervision Law, the Criminal Law, etc., should be amended to realize the connection between supervision and the administration of justice[5].

3 The reasons for the Reform of Supervision system in China

3.1 The requirements of China ruled by Law

In accordance with the Constitution, we should combat corruption and corruption in accordance with the law, bring the actions of all public officials into the track of supervision in accordance with the law, and rectify the atmosphere.

3.2 Trial-centered requirements

The supervision law says that the criteria for the determination of evidence and the judgment of criminal interrogations are consistent, not that they only need to be adjusted by us. Stick to it when you check it, and stick to it consistently in the follow-up investigation and prosecution after it is handed over to the procuratorate. In this way, I will stick to it consistently. The evidence we have confirmed will stand the test of the trial.

3.3 Requirements for punishment of corruption

It ensures the whole process of the investigation and handling of corruption cases by the supervisory organs, and strengthens the political status of the judiciary in the field of anti-corruption. Using the thinking of the rule of law and the way of the rule of law is the only way to crack down on corruption.

4 The need for convergence between the Law on Supervision and the Code of Criminal procedure

4.1 The Constitutionality of the cohesion of Law and Law

The Constitution clearly stipulates that the supervisory organs, judicial organs and procuratorial organs cooperate and restrict each other, which lays the most solid foundation for the convergence of the two laws.

4.2 The rationality of complementary functions

The Supervision Law can not solve all the problems in the field of duty crime. The revised Code of Criminal procedure still retains the supervision function of the procuratorial organ, which is a supplement to the supervision function of the supervision organ.

4.3 The reality of punishing Corruption

In terms of severely cracking down on corruption, both supervisory and judicial organs should have a unified concept of anti-corruption, and their thinking should be taken into account.

5 The problems and Countermeasures of the connection between the Supervision Law and the Criminal procedure Law

5.1 The connection between Supervision and Criminal jurisdiction and its related Countermeasures

5.1.1. Functional jurisdiction

Because it is difficult to make a clear distinction between the illegal and criminal acts that make use of the position, it is difficult to explain the logical relationship between the two types of functional jurisdiction, and it is necessary to give a specific difference between the legal regulations in the supervision law, the noun interpretation, the split of the specific content, so that the management and governance methods of these two types of cases are clearly different, and the executor also gives the difference.

5.1.2. Level jurisdiction

The supervision law does not clearly define the "management authority" of supervision committees at different levels and the jurisdiction of duty crimes and illegal cases. In view of this kind of situation, we can refer to the way the public security organs carry out the trial level, adopt the provisions of the criminal procedure law, and reasonably revise the jurisdiction and scope of the cases at all levels.

5.1.3. Regional jurisdiction

In the supervision law, there are no provisions on the areas under the jurisdiction of the case, and its content is vague, so the content can be explained in detail, supplemented and perfected, and the special cases can be dealt with specially, so that the provisions of the control jurisdiction are more clear and feasible, and the convergence work between the two laws can be better done.

5.2 Problems and related Countermeasures in the implementation of lien measures and compulsory measures

5.2.1. The Transformation Node and Mark of personal compulsory Management

It is now generally believed that the opening point of compulsory management is to review and prosecute. Once the case is handed over to the process of examination and prosecution, the investigated person will be detained, and the legal proceedings will also enter the judicial trial, and the investigated person begins to be forcibly de-tained rather than retained.

5.2.2. Questions of decision and implementation of arrest

In the implementation of the detention or arrest decisions of the respondents, there is a division of labor, the former by the supervisory committee, the latter is naturally into the field of criminal prosecution escape. [8] based on the Constitution, when the criminal investigation and other departments put forward the arrest request, the procuratorial organ should make a decision to see if it needs approval, so the procuratorial organ has the power of examination and approval.

5.3 The connection between the filing procedure and its implementation and the related Countermeasures

When the investigation procedure of the supervisory committee is compared with the procedure steps of filing a case in the criminal procedure law, it is not necessary to use the act of duty crime to trigger the procedure step of investigation, but only the act of breaking the law by duty. The limitation of prosecution in criminal cases should be stipulated in Article 18 of the Criminal Law, but the two laws are different in terms of procedural steps, filing standards and conditions for filing a case. There are also various problems in the interaction and cohesion, such as the supervision of cases in the filing of cases and other rules are very difficult, supervisors have high degree of freedom to deal with cases, flexibility, the use of power has also become our problem.

On the one hand, we should make a clear normative difference between the means of investigation and mandatory treatment that can be used, the form of filing a case is the separation of the two, the second aspect is to make clear rules to determine the use of duty crime in the current criminal procedure law, so that it can be more perfect and detailed, strictly in accordance with the relevant laws and regulations to monitor and file criminal acts, and extract relevant evidence.

5.4 The connection of investigation procedure and its related Countermeasures

When the law is determined to be implemented, these two laws only roughly determine the procedure of

investigation, this definition is very unclear, we need to make the next step of revision and improvement. The countermeasures are as follows: (1) make some regulations detailed.[9] (2) in both the investigation and the returned investigation, the object of investigation belongs to the criminal suspect. (3) the prompt behavior of the investigation case determined to be returned shall be corrected in a timely manner to ensure the standardization of the investigation of the supplementary case.

5.5 Countermeasures for reasonable connection between Supervision Law and Criminal procedure Law

5.5.1. Different investigation and correct understanding of the relationship between investigation Power and investigation Power

First of all, the right of investigation and investigation is consistent with the source of the right. [10] The difference between Wei and Wei lies in the change of the subject of power, and there is no fundamental difference between the essence and form of power. Secondly, although the form of power exercise is homogeneous, it is in the execution of decisions, There are still some differences in signs in order to realize the reasonable docking between the supervision law and the new criminal procedure law, the premise of legal connection should be judged accurately, and the legal and powerful guarantee basis should be provided.

5.5.2. Docking Public prosecution to ensure the order of supervision procedure and public prosecution procedure

In the scope of the procedural connection between the two laws, it is necessary to emphasize three points of concern: (1) to make the difference and similarities between the procedural steps of the supervisory law and the steps of the public prosecution in the new criminal law clear (2) in the handling of the cases involving the use of duty crimes, it is necessary to make the supervisory procedure steps organized, clear and clearly entered into the public prosecution. (3) when the returned cases are tried, the procedures for the docking of the two methods shall be improved.

5.5.3. Serve the trial and ensure the rigour and independence of the execution of the judicial power

The effectiveness of the outcome of the handling of cases is measured by the trial results of the judiciary. The transfer of cooperation between the two laws must also be strictly in accordance with the results of the trial and strictly abide by the principles of judicial fairness to deal with the new criminal procedure law. The relevant provisions of the trial in default are added to the legal provisions of the new criminal procedure law, which makes the criminal proceedings cases be resolved faster,

which is also for the supervisory organs, there is an additional norm for the management of legal procedures. Take the trial as the center, so that the principle of judicial justice can be better reflected.

6 Conclusion

In dealing with the cases of illegal use of duties and the use of duty crimes, so that the supervision law and the criminal procedure law can maintain a reasonable relationship and interaction, so that the internal legal system of supervision can be strictly regulated, and the legal power restraint system between the supervision law and the criminal procedure law can be improved in more detail on the issues of connection and interaction between the supervision law and the criminal procedure law, which can be reflected in the aspects of filing a case, making an investigation. There is a need to address the issues mentioned above from the perspective of regulating the rule of law.

References

1. Jiang Mingan. Discussion on some problems of National Supervision Law legislation Jiang Tao, 2017, (3).
2. Jiang Tao. Research on the important problems of the connection between the State Supervision Law and the Criminal procedure Law. Journal of Nanjing normal University Social Science Edition, 2018,(6).
3. Research on the docking of Zhang Nengquan's Supervision Law and Criminal procedure Law and the connection of Law and Law; Heilongjiang Social Science, 2019, (1).
4. Wei Yuening. A study on the convergence of jurisdiction between supervisory law and criminal procedure law. Journal of Law,2022, (4) .
5. Wang Xiumei Huang Linglin Supervision Law and Criminal procedure Law study on the connection of several issues,2019, (2)
6. Wang Yanyan Huang Weizhi supervised and examined the procedure of prosecution. Journal of Southwest University for nationalities (Humanities and Social Sciences Edition),2018,(11)
7. Wang Yichao's study on the procedural cohesion and Rule of Law in the Application of the Supervision Law and the Criminal procedure Law,2018,(6)
8. Yang Yuguan Gao Tong is a study on the retention of non-supervisory organs in the Journal of Zhejiang Industrial and Commercial University,2018. (5)
9. Li Haifeng. Supervision under the background of the substantive trial The inspection and perfection of the rules of investigation and evidence collection. Social Science ,2020 (5)
10. Ni tie. Monitoring technical investigation of branch operation dilemma and its breaking method ,2019, (6).