

To Study the Formulation Power of Supervisory Regulations of the National Supervisory Commission

Ke Jia

University of Jinan, Shandong, China

Abstract

The national Supervisory Commission exercising the right to formulate supervisory regulations is an important link to further improve and deepen China's supervisory system. The creation of supervisory laws and regulations shall be constitutional and legal, and shall conform to the provisions of the Legislation Law, or be approved by the National People's Congress and its Standing Committee. The supervisory regulations formulated by the National Supervisory Commission cannot establish the code of conduct for the rights and responsibilities of citizens, nor the law; the "supervisory regulations" shall be formulated in accordance with the legal procedures, which is a necessary requirement for deepening the reform of the national supervisory system. The formulation of the "supervision regulations" of the supervision commission cannot cross the restrictive boundary.

Keywords

National Supervisory Commission; Power of Regulation Making; Power of Judicial Interpretation.

1. Introduction

1.1. Background of the Establishment Power of Supervision Regulations

With the rapid development of China's economy, especially after the reform and opening up, more and more corruption of civil servants, has reached a shocking degree, which has affected the high-quality development of society, and also attracted wide attention from all sectors of society. From the perspective of the high incidence, frequent and frequent corruption, on the one hand, the rapid development of our economy and the continuous expansion of government administrative functions provide the breeding ground for official corruption; on the other hand, China's anti-corruption system and top-level design are not perfect, which gives corrupt officials an opportunity. Since the 18th National Congress of the Communist Party of China, the CPC Central Committee led by Comrade Xi Jinping has made an accurate judgment on corruption and had a deep understanding of it, believing that corruption has become an important issue in China's economic and social development and poses a serious threat to the ruling position of the Party. After anti-corruption system cannot match with today's anti-corruption struggle, although in our country has established the National People's Congress supervision, inner-party supervision, audit supervision, democratic supervision, supervision by public opinion supervision mode, however, as the main body of anti-corruption supervision, is always free outside the national unified rule of law system, it is only plays a role within the party, the main executive organ of the party supervision discipline inspection committee enforcement process and procedures by many questions, it also hindered the comprehensive strategy of law. To this end, the CPC Central Committee with the courage to scrape the bone and cure the poison, from the top design, to promote the reform of the supervision system, the anti-corruption supervision system into the framework of the comprehensive rule of law, so that the system construction and the actual anti-corruption adapt, so as to achieve the best results.

1.2. Causes of the Occurrence

First, a comprehensive and systematic study on the formulation of laws and regulations, which is of great significance to the formulation of laws and regulations. Supervisory regulatory power is the standing committee of the people's congress new authorized to the supervisory committee of a major power, but there is no "legislation law" specific provision, and there are still many problems in the process of making, which directly affects the smooth progress of the supervisory work and the authority of the supervisory institutions, therefore, this project put forward the attention of the problems in the supervisory system.

It is conducive to further improving the supervision of laws and regulations and support system. From the formulation to the implementation of a supervision regulation, the implementation process will often encounter many obstacles, and the disharmony between the law and the society will gradually emerge. The solution of these problems not only depends on the follow-up regulations to improve, but also needs the cooperation of laws, regulations, systems and legal interpretation. At present, there are few academia about supervision regulations problems in the process of research, so, in-depth research on the topic, on the one hand, can provide theoretical support for the supervision of regulations and legal basis, on the other hand, also can solve the problems in the process of supervision regulations, put forward feasible Suggestions.

This is beneficial to the anti-corruption work. The original intention of the formulation of supervision laws and regulations is for the sake of supervision work, so the issues related to the formulation of supervision laws and regulations can help supervisory organs to better supervise, but also conducive to the smooth development of anti-corruption work.

Specific guidance is put forward on the problems that may arise in the implementation process of the supervision regulations. Although the national supervisory committee has been authorized to formulate supervisory regulations, but limited by legislative technology, and considering the problems in the execution process, has been formulated and issued the supervision regulations quantity is not much, so, in the process of formulating and implementing supervision regulations, this subject can before the formulation and implementation of supervision regulations, give some constructive Suggestions, the supervision regulations formulation and implementation have certain reference significance.

2. The Subject of the Right to Supervise the Formulation of Laws and Regulations

2.1. The Necessity for the National Supervisory Commission to Have the Power to Formulate Supervisory Regulations

The promulgation of the Amendment to the Constitution and the Supervision Law has put the supervision system on the road of the rule of law. The supervision power is juxtaposed with administrative power, administrative power and judicial power, and is called "the Supreme government and the Supreme People's Court". The supervision legal system (the department law) is produced under this background. Although the supervisory legal system is very different from the traditional administrative law system, criminal law system and civil law system in the object and way of adjustment, it has an internal consistency in the system structure. A perfect supervision legal system with Chinese characteristics should take "formulating the constitution of supervision power" as the core, "the guiding and fundamental supervision law" as the backbone, "the law compatible with the supervision law" as the auxiliary, and "the law compatible with the supervision law" as the auxiliary. Now, the first two have been determined, the third "supporting law" (the Law of the People's Republic of China on Administrative Punishment of Public Officials) has been implemented, or the Supervisor Law has been revised,

so the supervision system is also essential. This law is also clearly stipulated in the Decision: "matters that must be formulated for the implementation of the Law" and "matters that must be formulated in order to perform the duties of leading the local supervisory committees at all levels". After the National Supervisory Commission has the power to formulate supervisory laws and regulations, it can gradually formulate detailed laws and regulations, so as to continuously improve the supervisory legal system and promote the legal process of supervisory work.

2.2. The Legitimacy of the National Supervisory Commission in Having the Right to Formulate Supervisory Regulations

The Legislation Law is a programmatic document of China's legislation, whose purpose is to "standardize legislation and improve legislation". Therefore, the Legislation Law should make clear provisions on the power of supervisory organs to exercise the supervisory regulation system (supervisory legislative power). But even the most recently amended Legislation Law came into effect in 2015, and the Constitution was amended in 2018. It is clear that the Legislation Law does not clearly regulate supervisory legislation. Therefore, the question of whether the procuratorial organ has the legislative power should still be discussed from the aspects of its constitutional status and nature. First of all, as a state organ stated in the Constitution, the supervisory organs enjoy the right of "supervisory legislation", which is not too much, because except for the supervisory organs, other state organs enjoy the corresponding legislative power. The Supreme Court and the Supreme People's Procuratorate have the power to formulate judicial interpretations; military organs have the power to formulate military rules and regulations. Therefore, because the supervisory committee is a form of state organization stipulated in our constitution, it should have considerable legislative power. Secondly, as far as the content of supervision is concerned, the supervisory committee has not only exercised the power of the administrative supervisory organs before the reform, but also exercised the power of anti-corruption and anti-corruption transformed from the procuratorial organs. Therefore, the power of supervision is actually a combination of the two kinds of powers. Before that, the administrative supervisory organs had the power to formulate their own regulations; both the court and the people's Procuratorate have special judicial interpretations for the crimes of corruption and bribery, which are closely related to the anti-corruption work. Since all the institutions before the reform can obtain legislative power, it is reasonable and feasible for the supervisory commission combining the two institutions to obtain legislative power after the reform.

2.3. Nature and Effectiveness of Supervisory Regulations

2.3.1. Nature of the Supervisory Regulations

The term "statute" of the supervisory ordinance is not a narrow law, but a special "statute". The term "regulation" in this paper refers to a special, narrow, differentiated, corresponding, special, and specific significance. About the distribution of power between the legislature and other institutions, different constitutional system has different answers, in 1982, the constitution of the current our country "state legislative power" under the various (generalized) legislative power parallel legislative power structure, that is, in our country, "administrative regulations" formulated by the State Council, "military regulations" formulated by the central military commission, "judicial interpretation" shall be issued by the Supreme People's Procuratorate and the Supreme People's Court, this is a kind of both legal effect, and has the legal system. However, article 58 of the constitution and article 7 of the "legislation law", "national legislative power" can only exercise by the National People's Congress and its standing committee, that is to say, only by the highest authority and the standing committee of the law, can be called "narrow law", and narrow law is divided into "basic law" and "basic law". Supervision regulations do not belong to the legal norms formulated by the NPC and its Standing Committee.

In the form of legal norms, it is neither a basic law nor a law other than the basic law, but a regulation.

2.3.2. The Effectiveness and Rank of the Supervision Regulations

Supervision regulations rank and effectiveness must be lower than the constitution and the law, rank below the constitution this does not need to say, rank below the law also is obvious: first, in the decision about supervision regulations, clearly points out the "according to the constitution and laws, supervision regulations", the laws as supervision regulations, its rank and effectiveness is higher than the supervisory laws and regulations. Second, article 126 of the constitution "national supervisory commission of the National People's Congress and its standing committee is responsible for", according to the principle of constitutional system, the status of the national supervisory commission is lower than the National People's Congress and its standing committee, therefore, formulated by the national supervisory commission supervisory rank of nature is lower than the National People's Congress and its standing committee. Third, from the content of the supervision regulations, we can see that the role of the supervision regulations is greater than the supervision regulations. However, in the process of formulating supervision laws and regulations, the National Supervisory Commission does not only refine the current laws, but also needs to supplement the matters that are not stipulated by the law without violating the legal principles. This involves the issue of how not to overstep the authority or cross the boundaries, which will be explained in detail in the later article.

3. Problems Existing in Monitoring the Right to Formulate Regulations

3.1. The Basis of the Right to Formulate Supervisory Laws and Regulations

Although the Decision on the National Supervisory Commission has been issued, this legal interpretation can only play a temporary role, because the Decision has only three provisions, only two provisions, which cannot cover all the areas that may be involved. In this paper, the rank of monitoring regulations, effectiveness, procedures, is an analysis of theory, more is based on administrative regulations for reference, no specific legal provisions for reference, for example, the regulatory principle and boundaries, etc., all need to have authoritative law to be clear. Similarly, from the emergence to maturity, from the trial of the Regulations for the Enactment of Administrative Regulations to the further improvement of the Legislation Law, and the further definition of its positioning in the Constitution, thus forming a complete and complete system of rules on the enactment of administrative regulations. These are exactly what the power of the formulation of supervision laws and regulations lacks. Although the applicable object of supervision laws and regulations is much less than that of administrative regulations, in today's society, in the process of continuous pursuit of the rule of law, it is more necessary to make more, more clear and more specific provisions on the supervision laws and regulations, the product of the rule of law.

3.2. The Boundary of the Right to Formulate Regulations

After the supervisory system reform, the boundary of the supervision, has become a hot topic of academia, its reason mainly include: one is due to the particularity of the supervisory execution subject, all the supervisory subject are civil servants, and the staff in the supervisory institutions are civil servants, therefore, the public concern in the civil servants of civil servants this supervision process, supervisory power may appear out of control. Second, due to the particularity of the supervision institutions, in fact, the supervision institutions and the discipline inspection institutions are in one place, forming a situation of "two brands, one team", in such a team operation structure, it is easy to confuse the national laws, regulations and party discipline and regulations together. Third, because some supervision procedures are too harsh,

such as lien and technical investigation, if not strictly constrained, it is likely to violate the basic rights and interests of the supervised, resulting in the supervision power of uncontrolled. Since the National Supervisory Commission has the right to formulate supervisory regulations, and the society is also worried about the loss of control, the provisions of the rights of the parties are likely to cause the problem of crossing the line. Therefore, how to clarify the boundaries of power and ensure that it will not be crossed after the formulation has become an important task of the "rectification" of the supervisory institutions.

3.3. The Scope of Application of the Supervision Regulations

After the reform of the supervision system, the commission for discipline Inspection and the supervision commission work together in depth, and in the actual supervision work, more is the "discipline inspection and supervision work". Under the socialist system with Chinese characteristics, the problems caused by the same room are obvious, that is, the relationship and boundary between the discipline inspection commission and the supervision commission are easily confused. In real life, the departments of the supervisory organs and the departments of the commission for discipline inspection are actually also "two brands, one set of teams". For example, the "case hearing room of the supervisory committee" is a functional department specially responsible for the supervision and disposal, which can give up the disposal opinions of the illegal personnel and the disposal opinions of the detention personnel. However, this department is still the "discipline inspection commission case hearing room", its duty is to give disciplinary violations to party members. Most of the staff in such departments are members of the former commission for discipline Inspection, who do not have a deep understanding of the supervision work and cannot accurately grasp the differences between the party laws and regulations and the supervision laws and regulations. Supervision regulations are an important law for the supervision of discipline inspection organs, but in their specific application, there will be problems such as blurred boundary ambiguity and confusion with discipline and discipline. In such organs as the commission for discipline Inspection and supervision, in order to properly use supervision laws and regulations to supervise, investigate and dispose of public officials, it is necessary to clarify the scope of application of supervision laws and regulations, and which kind of supervision laws and regulations should be applied to each type of illegal behavior, rather than the party discipline.

4. Causes of the Problems Existing in the Supervisory Legislation System

4.1. The Reform of the Supervision System Has Not Yet Been Fully Completed

At the fifth meeting of the 19th CPC Central Commission for Discipline Inspection, the CPC Central Commission for Discipline Inspection still proposed to continue to deepen the reform of the discipline inspection and supervision system in the process of arranging the work in 2021, which shows that the reform of the supervision system is far from complete. Supervision system of the next step, is to establish a perfect supervision system, relative to other have more perfect department, the constitution and "inspection law" has become the basis of the supervision system, but the supervision system has not formed a complete system, especially the relevant supervision system and laws and regulations, so, the supervision system reform also need to continue. The supervision system is an important part and an important part of the supervision system. The reform is not only conducive to promoting the perfection of laws and regulations, but also conducive to strengthening the supervision of supervisory organs according to law, enhancing the law-abiding consciousness of public officials, so as to promote the further improvement of supervision legislation. Because the main object of the supervision law is still limited, now, the social attention to the supervision law is still relatively low. I believe that under the guidance of the comprehensive strategy of governing the country by law, the rule of supervision is becoming the development direction of supervisory organs. Experts and

scholars have more and more research on the supervisory law system, more mature theories can provide support for legislative practice, and the legislative system of supervision regulations will be more and more perfect.

4.2. The Supporting Laws and Regulations of the Supervision Law Have Not been Updated

Although the applicable object of supervisory law is given priority to with civil servants, it covers the scope covered by the other department law specification is much smaller, but it also for the supervision associated with the important function of other departments, for example, after the serious illegal civil servants lien, the illegal behavior transferred to the procuratorial organs in the process of prosecution, will involve the connection with the criminal law. For another example, after the supervision of civil servants, it is likely to deal with the civil rights of civil servants, which involves the connection with the civil law. The supervision regulations are the specific refinement of the supervision matters. As mentioned above, they will certainly be connected with the provisions of the criminal law, criminal Procedure law and other departmental laws, and will also jointly issue corresponding laws and regulations with other organs to serve the supervision practice. However, most of these departmental laws have not updated the relevant requirements of the Supervision law. In the criminal procedure system, many provisions of the law is still before the supervisory system reform, for duty crime is still used a review a prosecution mode, obvious lag, it is also because these laws did not update, led to the establishment of the supervisory regulations appeared some problems, obviously, the national supervisory committee cannot directly through their own regulations, to update the original duty crime, this is clearly beyond the scope of the functions and powers. Therefore, in order to improve the law of supervision departments, so that the supervision regulations can better play their role, it is necessary to update the corresponding laws and regulations.

4.3. Theoretical and Individual Issues are Still Controversial

Although in recent years, the research on the supervision department law is increasing, but there are still some debates on some theoretical issues of the supervision regulations. For example, whether the internal organs of supervisory organs and provincial supervisory organs have the power to formulate laws or regulations of supervision; whether the competent authorities at which level should be legal, because scholars regard administrative regulations as "sister" laws of supervisory laws and want to apply the conditions of administrative regulations or rules to supervisory laws. The reason why the Decision only gives the power of the National Supervisory Commission to this, I have stated in my previous study that only the National Supervisory Commission is qualified to be the sole supervisory body, which is why I make such a proposal. However, there is still a theoretical debate about these issues, and some scholars still believe that the internal organs of the National Supervisory Commission or the provincial supervisory commissions should be given the power to formulate supervisory regulations to cope with the supervisory reality of their own departments and local governments. This kind of theoretical dispute also leads to the need to improve the legislative system of supervision laws and regulations, so as to eliminate the theoretical disputes and clarify the National Supervisory Commission as the only legislative subject of supervision laws and regulations.

5. Legislative Improvement of the Power to Supervise Laws and Regulations

5.1. Revised and Amend Subsequent Laws

The simplest and most effective way to standardize the formulation of supervisory laws and regulations is to revise the Legislation Law. After the "administrative regulations", a chapter of

"supervisory laws and regulations" is added to stipulate the scope of application, effectiveness, and formulation procedures of the supervisory laws and regulations, so that the supervisory commission can have laws to follow when formulating supervisory laws and regulations. The core issue of the right to formulate regulations is to define the boundary. Only by clarifying which matters can be formulated, can the authority of regulations be enhanced and the normative and guiding role of regulations be played. This involves the "executive", "creative", "authorized" three kinds of legislative power in the practical problems: first, there is no doubt that "executive", "leadership" creative legislative power, can still be retained by the "national supervisory commission", this is "the standing committee of the National People's Congress" basic meaning, as long as the "" decision "listed" can formulate the content of the supervisory regulations ", into the" legislation "domestic legislation", can be the content of the "supervisory regulations", identified as "legislation". Second, in the "legislation law", the scope of the supervision, and the content of the supervision rules, for example, "clean education of civil servants, can make a supervisory", this way may ignore some need supervision, however, this way of "act in accordance with the law", but more in line with the spirit of the rule of law. Third, the legislation law revision difficulty is that the supervisory committee have authorized legislative power, can refer to the practice of the State Council, gives the supervisory committee legislative power, and clear the scope of its authorization, but also can not give supervisory committee legislative power, after all, supervisory committee has just established, many problems are still in exploration, lack of legislative experience, can not give supervisory committee legislative power. However, if the National Supervisory Commission has the power to make the authorization, the Legislation Law needs to amend the "statutory reservation" in articles 8,9 and 10, and add the corresponding statutory reservation provisions to the statutory reservation provisions related to supervision.

5.2. Build a Supervision and Interpretation System

The abstract nature of law determines its indispensability, "an essential step even in the application of any kind of rule"."The same is true of the legal principles of supervision. Most of the legal principles that have been published are still relatively abstract. Therefore, only by applying the legal principles of supervision and interpreting the legal principles of supervision can we better apply the legal principles of supervision. At present, the interpretation of the supervisory work in our country is mainly "projects", high, three, four, five, six, seven, eight, nine low, nine, ten, 16, seventeen high, 18,19, since the third plenary session of the nineteenth, supervisory work explanation should be a necessary explanation of supervisory work related laws and regulations. For example, before the Law on Administrative Sanctions of Public Officials appeared, the Supreme People's Procuratorate's Interim Provisions on Administrative Sanctions of Public Officials had been published. Some scholars call it a law of supervision, some regard it as an explanation of supervision, while others regard it as a norm. From the actual situation, the supervisory commissions at all levels will adopt the provisions of the Interim Provisions when handling official duties. It is obvious that the promulgation of the Interim Provisions has not been given the supervisory commission the power of the supervisory commission to enact laws. Therefore, this interim provision is more of an interpretation of the supervisory commissions. In the Interim Regulations, the punishment level of national civil servants in the supervisory work is a further refinement of the power of supervisory organs in the Supervision Law, which is an applicable interpretation. The National Supervisory Commission has issued several documents similar to the Interim Provisions, which can be seen from this point that although there is no legal norm on supervisory interpretation, in fact, the National Supervisory Commission has taken the lead in explaining specific supervisory issues.

5.3. Improve the Filing and Review Mechanism

First, is what type of record audit. There is no doubt that all supervisory laws and regulations must undergo record review, which is also the original intention of the rule of law. However, in practice, some of the supervisory normative documents, such as the supervisory explanations mentioned above, and some normative documents formulated by provincial supervisory commissions, are they also subject to filing and review? In this regard, the author believes that, as a supervision and interpretation that can be directly applied to legal documents, it should be filed and reviewed. In addition, some local supervision commissions have specially formulated a set of norms to implement the provisions of the Central Supervision Commission. For example, some local supervision commissions have formulated them in accordance with the Working Measures for Special Supervisors of the Central Supervision Commission. This is the provisions of the Central Supervision Commission and is also the need of local work. However, due to the uneven quality of normative documents in various regions and many items, if all normative documents are submitted to the Standing Committee of the National People's Congress or the National Supervisory Commission for archival review, it is obviously not consistent with the reality. So, in practice, can require the supervisory organs at the provincial level under the normative documents, have to be submitted to the region of the supervisory committee for the record review, and the provincial supervisory organs of the normative documents, to the standing committee of the National People's Congress or the national supervisory committee for the record review, this practice has a strong operability. To this end, the supervision regulations, supervision interpretation and normative documents should be filed for review.

Second, the system of filing and review, about this system, we can refer to the administrative regulations of the record and review system to establish. First of all, we should be clear is that the National People's Congress standing committee for the record review system, after a supervisory regulations passed, must be reported to the standing committee of the National People's Congress, after the record review, although the record review will not affect the effectiveness of the laws and regulations, however, through the review, the National People's Congress standing committee to timely find conflict with the constitution, the law, and can make corresponding changes in time. Secondly, although the supervision Law is aimed at civil servants, the supervision Law should also adopt the method of "requiring review", such as The State Council, the Supreme People's Court and the Supreme People's Procuratorate. If there is a conflict with the Constitution and the law, they can apply for its review. Finally, the supervisory rules and regulations, is also play an important aspect of democratic politics, in the record review of the proposed review, namely any social organizations, individuals, public servants, think the supervisory regulations in violation of the constitution and laws, can be in writing to the National People's Congress standing committee to review.

6. Conclusion

This paper tries to explore and study the main problems in the process of the formulation of supervision regulations with the procedures and boundaries of supervision regulations, and analyzes the problems existing in the process of supervision regulations one by one, and puts forward the suggestions of revising and revising the subsequent laws and adapting to the formulation of supporting supervision regulations. Establish the supervision interpretation system and improve the supervision laws and regulations, improve the record review mechanism, and ensure the correctness and legitimacy of the supervision regulations, with the attention of legislators, experts and scholars, so as to promote the improvement of the supervision regulations and contribute to the reform of the supervision system.

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