

On the Exclusion of Supervisory Evidence Collected by Illegal Means in China

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ABSTRACT:- Although there is no specific stipulation in the Supervision Law, the Criminal Procedure Law of the People's Republic of China and their judicial interpretations about whether the exclusionary rules of illegal evidence are applicable to the supervisory evidence collected by illegal means stipulated in the Criminal Procedure Law, there is sufficient legal basis to incorporate the supervisory evidence collected by illegal means into the scope of application of the exclusionary rules of illegal evidence. In the process of handling duty-related crime cases, the supervisory organ, the people's procuratorate and the people's court shall, in combination with the practice of supervision procedures, identify and exclude supervisory evidence collected by illegal means in accordance with the detailed rules for the implementation of the exclusionary rules of illegal evidence.

Keywords - The Supervision Law of the People's Republic of China, supervision procedure, criminal procedure, supervisory evidence, exclusionary rules of illegally obtained evidence

I. INTRODUCTION

Although China has a supervision system in place for a long time, the previous supervision system was mainly administrative supervision, involving only administrative areas, but no other state organs and party organs. Since the 18th national congress of the Communist Party of China (CPC), the CPC Central Committee with comrade Xi Jinping as its core has made major strategic decisions to deepen the reform of the national supervision system in order to build a centralized and unified, authoritative and efficient national supervision system with full coverage of public power and improve the efficiency of anti-corruption. On December 25, 2016, in order to promote the reform of the national supervision system and accumulate experience in promoting the reform of the national supervision system throughout the country, based on the pilot plan for the reform of the national supervision system determined by the Party Central Committee, the 25th Session of the Standing Committee of the Twelfth National People's Congress passed the "decision on the pilot work of the reform of the national supervision system in Beijing, Shanxi Province and Zhejiang Province, and decided to establish supervisory commissions in Beijing, Shanxi Province, Zhejiang Province and the counties, cities and municipal districts under jurisdiction to exercise supervisory functions and powers. The relevant functions of the Departments (Bureaus) of Supervision, Corruption Prevention Bureau and people's procuratorates of the people's government in the pilot areas, such as the investigation and punishment of corruption and bribery, dereliction of duty and prevention of duty-related crimes, will be integrated into the supervisory commission. The decision officially kicked off China's deepening reform of the national supervision system.

In October 18, 2017, in his work report at the Nineteenth National Congress of the Communist Party of China, Xi Jinping, the General Secretary, fully affirmed the tangible results achieved during the national supervision system reform pilot plan, and explicitly made a significant strategic decision to push forward the reform of the national supervision system across the country. That is, the pilot work of the reform of the supervision system shall be pushed forward throughout the country, national, provincial, municipal and County Supervision committees shall be established to work together with the party's discipline inspection organs to

achieve the full coverage of supervision over all public officials exercising public power; the Nation Supervision Law shall be formulated, and the supervision committee shall be given the responsibilities, authorities and means of investigation according to law, and the "two regulations" measures shall be replaced by detention (Jinping Xi, 2017)[1]. On November 4, 2017, on the basis of carefully summarizing the experience of the pilot work of the reform of the national supervision system, the 30th Session of the Standing Committee of the Twelfth National People's Congress adopted the "decision on rolling out the pilot work of the reform of the national supervision system across the country". On March 11, 2018, the 1st Session of the Thirteenth National People's Congress passed the "Amendments to the Constitution of the People's Republic of China", which confirmed the achievements of the reform of the national supervision system, clarified the establishment and functions and powers of the National Supervisory Commission, and provided the constitutional basis for the further reform of the National Supervisory Commission and the formulation of the Supervision Law of the People's Republic of China. On March 17, 2018, the 1st Session of the Thirteenth National People's Congress deliberated and adopted the Institutional Reform Plan of the State Council, which incorporated the Ministry of Supervision of the People's Republic of China into the newly established National Supervisory Commission. The National Bureau of Corruption Prevention of the People's Republic of China is incorporated into the National Supervisory Commission. The Ministry of Supervision and the National Bureau of Corruption Prevention will no longer be retained. The Supervision Law of the People's Republic of China, as adopted at the 1st Session of the Standing Committee of the Thirteenth National People's Congress On March 20, 2018, clearly stipulates a series of issues such as functions of supervisory organs, supervisory power, supervision scope, supervision jurisdiction, supervision procedures, supervision of supervisory organs and supervisors, legal liability, international cooperation against corruption, etc. The Supervision Law of the People's Republic of China is a law developed for the purposes of promoting the rule of law of the national governance in an all-round way, realizing the full coverage of nation supervision and conducting the anti-corruption work in an in-depth manner. The establishment of the Supervision Law provides the legal guarantee for supervisory commissions to exercise their anti-corruption functions and powers in accordance with the law.

After the adoption of the Supervision Law of the People's Republic of China, how to use the evidence of duty-related crimes investigated by the supervisory commission in criminal proceedings is not only a major and urgent problem to be solved in the connection between the current supervision procedures and criminal proceedings, but also a controversial topic in theory. In particular, it is a major legal problem needs to be solved urgently in the field of criminal justice that whether the evidence collected by the supervisory commission through illegal means in the process of investigating duty-related crimes is applicable to the exclusionary rule of illegal evidence. This paper will make a preliminary discussion on the exclusion of illegal supervisory evidence in the light of the relevant theories and practices of the Supervision Law and Law of Criminal Evidence of the People's Republic of China.

II. WHETHER THE EXCLUSIONARY RULE OF ILLEGALLY OBTAINED EVIDENCE IS APPLICABLE TO SUPERVISORY EVIDENCE COLLECTED BY ILLEGAL MEANS

Although paragraph 3 of Article 33 of the Supervision Law clearly stipulates that "evidence collected by illegal means shall be excluded according to law", neither the Supervision Law nor the third revision of the Criminal Procedure Law revised for the third time in 2018 clearly stipulates whether the exclusionary rules of illegal evidence stipulated in the Criminal Procedure Law is applicable to the supervisory evidence collected by illegal means after the duty-related crime case is transferred to the People's procuratorate for examination and prosecution. In our opinion, although the supervisory commission does not belong to the criminal justice organ, it does not mean that the supervisory evidence collected by illegal means is not within the scope of application of the exclusionary rule of illegal evidence.

2.1 Legal Difficulties in Applying the Exclusionary Rule to Supervisory Evidence Collected by Illegal Means

Based on China's relatively special anti-corruption system, it is a long-term puzzle for the judicial organs that how to use the evidence collected by the discipline inspection and supervision department without the subject status of criminal judicial organs in the process of investigating and handling the party discipline and political discipline cases in criminal proceedings. In the past judicial practices, the defense lawyers often request for the exclusion of the defendant's guilty confession from the court on the grounds that the discipline inspection and supervision department extorts confessions by torture, while the court often refuses to exclude the illegal confession challenged by the defense lawyers on the grounds that there is no legal basis or the discipline inspection and supervision department is not a criminal judicial organ. In this case, in order to prove the facts of the case and improve the efficiency of criminal proceedings, procuratorial organs often use various kinds of evidence collected by discipline supervision departments through "evidence transformation" or "evidence

conversion" in criminal proceedings (Liheng Zhu & Chao Wang, 2016)[2]. Although this approach solves the problem of how to use the evidence collected by discipline supervision in criminal proceedings, it not only lacks clear basis in law and has various disputes in theory, but also has many drawbacks in judicial practice (Chao Wang, 2014)[3]. Perhaps it is based on this consideration that, in order to improve the efficiency of anti-corruption, paragraph 1 of Article 33 of the Supervision Law adopted at the 1st Session of the Thirteenth National People's Congress clearly stipulates that the evidentiary materials collected by the supervisory commission in the course of duty-related crime investigation, including material evidence, documentary evidence, testimony of witnesses, confessions and defenses of the person under investigation, audiovisual materials and electronic data, may be used as evidence in criminal proceedings, It is used as evidence without the need for the investigation organ to go through the procedure of obtaining evidence again or to collect these evidentiary materials again.

Although the current Supervision Law has solved the problem of the qualification of supervisory evidence in criminal proceedings, it is still an outstanding legal problem whether the exclusionary rule of illegal evidence in criminal proceedings is applicable to supervisory evidence collected by illegal means. Especially considering the nature of the supervisory commission, it seems difficult to directly apply the exclusionary rule of illegal evidence in criminal proceedings. This is because, although the supervisory commission has the power to investigate duty-related violations and crimes, the investigation power exercised by the supervisory commission according to the Supervision Law and that exercised by the investigation organ according to the Criminal Procedure Law are two different powers of different nature (the Interpretation of the Supervision Law of the People's Republic of China, 2018)[4]. On the one hand, according to the provisions of Article 3 of the Supervision Law, supervisory commissions at all levels are the specialized organs that exercise the national supervision function, rather than the applicable subjects of the exclusionary rules of illegal evidence stipulated in the Criminal Procedure Law. It is clearly pointed out by the Discipline Inspection Committee of the CPC Central Committee and the law office of the National Supervisory Commission of the People's Republic of China that the supervisory commission is the supervisory organ and responsible organ that performs the functions of national supervision, bears the functions of building a clean government and anti-corruption, and a political organ that realizes the self-supervision of the party and the country and cooperates with the party's discipline inspection organ. Therefore, it is neither an administrative organ, nor a judicial organ, or a specialized organ in criminal proceedings or other specialized organ. On the other hand, the investigation objects of the supervisory commission are public officials who exercise public power, not ordinary criminal suspects; the investigation contents are duty-related violations and crimes, not general criminal acts. In the process of case investigation, the supervisory commission shall not only collect evidence strictly according to law, but also conduct the ideological and political work of the person under investigation objects with the party constitution, rules and regulations, ideals, beliefs and purposes (the Interpretation of the Supervision Law of the People's Republic of China, 2018)[5]. The special nature and task of the supervisory commission determine that the activities of the supervisory commission in investigating duty-related crimes are only subject to the adjustment of the Supervision Law, but not the adjustment of the Criminal Procedure Law. In this case, according to the prevailing theory of China's Criminal Evidence Law, it is difficult for us to require the evidence collected by the supervisory commission to be directly applicable to the exclusionary rule of illegal evidence stipulated in the Criminal Procedure Law.

Perhaps it is precisely because the supervisory commission is not subject to the adjustment of the Criminal Procedure Law, so in order to prevent the supervisory commission from abusing its power to investigate duty-related crimes, China's Supervision Law draws lessons from the practice of the Criminal Procedure Law, and also stipulates the corresponding exclusionary rules of illegal evidence, that is, according to the provisions of paragraph 3, Article 33 of the Supervision Law, evidence collected by illegal means shall be excluded, and shall not be used as the basis of a case handling. Although the Supervision Law of the People's Republic of China clearly stipulates the exclusionary rules of illegal evidence, the exclusionary rules of illegal evidence can only be applied to the supervision procedure, but not to the criminal proceedings. In this case, if the supervisory commission fails to exclude the qualified supervisory evidence collected by illegal means according to the provisions of the Supervision Law after the investigation is finished, but transfers the supervisory evidence collected by illegal means to the people's procuratorate for examination and prosecution along with the case, then the people's procuratorate and the people's court will confront with the problem of whether they have the right to exclude and how to exclude the supervisory evidence collected by illegal means.

2.2 The Legal Basis for Incorporating Supervisory Evidence Collected by Illegal Means into the Scope of Application of the Exclusionary Rules

Although neither the Supervision Law of the People's Republic of China nor the Criminal Procedure Law nor their judicial interpretations clearly stipulates whether the supervisory evidence collected by illegal means is applicable to the exclusionary rules of illegal evidence stipulated in the Criminal Procedure Law, there is sufficient legal basis for incorporating supervisory evidence collected by illegal means into the scope of application of the exclusionary rules of illegal evidence.

First of all, it is the need for safeguarding the due process of anti-corruption. Although modern countries under the rule of law never deny the necessity and importance of punishing corruption, its prerequisite must be punishing corruption through due process. Although the standards of due process do not necessarily ensure that the state punishes corruption accurately and effectively, and even sometimes lead to the indulgence in corruption, it is acceptable and convincing for the state to punish corruption through due process, regardless of the results. On the contrary, even if all the corrupt officials are brought to justice, it may not be convincing enough to be accepted by the people in their heart if the legitimacy of the procedure is not taken into account in order to effectively punish corruption. Perhaps it is because of the unique advantages and charm of procedural justice that the "preamble" of the United Nations Convention against Corruption not only emphasizes the serious harmful consequences of corruption, but also stresses that states parties should abide by the basic principles of due process of law in the anti-corruption process. It is obviously an essential part of maintaining due process of law to incorporate supervisory evidence collected by illegal means into the scope of application of the exclusionary rules of illegal evidence. After all, there is no reason why the exclusionary rules of illegal evidence in criminal proceedings, as a universally recognized rule of criminal evidence aimed at maintaining due process of law, cannot be applied to the supervisory evidence collected by the supervisory commission to prove duty-related crimes. Moreover, if the illegal supervisory evidence is not included in the scope of application of the rule of excluding illegal evidence, then the supervisory commission may use illegal means to collect evidence in order to achieve the goal of punishing corruption. This not only seriously undermines the dignity of the supervision process, but also may seriously violate the lawful rights and interests of the people under investigation.

Secondly, this is the need to effectively curb illegal forensics. According to the deterrence theory in modern exclusionary rules of illegal evidence, if the evidence collected by the illegal evidence can be excluded by the exclusionary rules of illegal evidence, that is, we can impose procedural sanctions on illegal forensics by negating the legal effect of illegal evidence, then the violators may not be able to obtain the corresponding benefits from illegal forensics, thereby weakening the violators' enticement of implementing illegal forensics. In the case that it is unprofitable or difficult to achieve the expected goal through illegal forensics behavior, in order to avoid that the evidence used to charge crime is excluded by the court due to its lack of legitimacy, which ultimately leads to the failure of the charge of a crime, investigators will collect evidence by legal means in accordance with legal procedures as much as possible in the investigation process, and procuratorial organs will try to avoid that the evidence collected by the investigation organ through illegal means is used as the basis for charging a crime (Chao Wang, 2014)[6]. It is in this sense that the theory of modern criminal evidence law holds that the exclusionary rules of illegal evidence has the effect of guiding the discipline or the law enforcers to handle cases according in accordance with the law, thus playing an objective role in promoting the rule of law. Although after the reform of supervision system in China, the supervision procedures adopted by the supervisory commissions for the cases of duty-related crimes do not fall within the scope of the adjustment of the Criminal Procedure Law, in terms of collecting evidence and ensuring that criminals are punished appropriately, the supervision procedures and investigation procedures are consistent in nature. From this point of view, it is undoubtedly the inherent requirement of preventing the abuse of nation supervisory power and restraining illegal supervisory behavior to include supervisory evidence collected by illegal means in the scope of application of the exclusionary rules of illegal evidence.

Thirdly, this is the need to safeguard the lawful rights and interests of the person under investigation. The special nature of criminal proceedings determines that there is a tense conflict of interest between any person involved in a crime and the state. If there is no proper restriction on the criminal proceedings, the state organs may act recklessly by virtue of the powerful state power and the moral advantage of punishing crimes, thus infringing the lawful rights and interests of the person involved in a crime. In the modern society under the rule of law, in order to prevent the criminal procedure from becoming a kind of oppressive activity, and to ensure that the people involved in the crime are not investigated, prosecuted, tried, convicted and sentenced innocently, it is not only necessary for the criminal proceedings to be conducted strictly in accordance with the procedures prescribed by the law, but also necessary to give the people involved in the crime a series of rights,

so as to provide them with a strong procedural guarantee. Only in this way, the state will not trample on the human rights of the people involved in the crime in the name of punishing the crime, and the people involved in the crime may truly obtain the status of the subject of litigation, and their lawful rights and interests can be truly protected. It is not only helpful to prevent the abuse of nation supervision power, but also to protect the lawful rights and interests of the person under investigation to include supervisory evidence collected by illegal means in the scope of application of the exclusionary rules of illegal evidence. On the one hand, under the restriction of the exclusionary rules of illegal evidence, in order to avoid the exclusion of illegal evidence and ensure that the person under investigation is subject to due criminal punishment, the supervisory organ will try its best to collect evidence in accordance with the procedures prescribed by the Supervision Law in the investigation activities, neither taking the person under investigation as the object and tool of collecting evidence, nor arbitrarily violating the human rights and lawful rights and interests of the person under investigation. On the other hand, in the case that the supervisory organ collects evidence by illegal means, thus violating the basic human rights of the person under investigation, the person under investigation has the right to apply for the exclusion of illegal evidence, so as to achieve the purpose of right relief and guarantee of lawful rights and interests.

Finally, this is the need to realize the centralism of judgment. The promotion of the reform of the criminal procedure system centered on trial is the fundamental measure and important decision-making deployment of comprehensively promoting the rule of law and deepening the reform of the judicial system. As far as the centralism of judgment is concerned, although the Supervision Law enforces the legal effect and evidence qualification of the evidentiary materials collected by the supervisory organs in the criminal proceedings, it does not mean that the supervisory evidence can necessarily become the basis for the final decision. According to the provisions of paragraph 2 of Article 33 of the Supervision Law and the notice issued by the Supreme People's Court on November 7, 2018 on earnestly studying and implementing the Decision of the Standing Committee of the National People's Congress on Amending the Criminal Procedure Law of the People's Republic of China, the people's court shall, in accordance with the requirements and standards of criminal trial on evidence, conduct examination and judgment on the evidentiary materials collected by the supervisory organ, including material evidence, documentary evidence, testimony of witnesses, confessions and defenses of the person under investigation, audiovisual materials and electronic data. This not only embodies the concept of centering on criminal trial, but also means that after the supervisory commission transfers the cases of duty-related crimes to the people's procuratorate for examination and prosecution, the evidence of duty-related crimes investigated by the supervisory commission must be examined and inspected by the people's procuratorate and the people's court before it can eventually be converted into the basis for conviction and sentencing. The people's procuratorate and the people's court can only follow the procedural rules and evidence rules stipulated in the Criminal Procedure Law in the process of examining the supervisory evidence. This means that the exclusionary rules of illegal evidence stipulated in the Criminal Procedure Law can be used as a judgment standard for the people's procuratorate and the people's court to examine whether the supervisory evidence can be used as the basis for the final decision. From this point of view, supervisory evidence collected by illegal means should obviously belong to the scope of application of the exclusionary rules of illegal evidence stipulated in the Criminal Procedure Law.

III. DETERMINATION AND EXCLUSION OF SUPERVISORY EVIDENCE COLLECTED BY ILLEGAL MEANS

On June 13, 2010, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of National Security and the Ministry of Justice jointly issued the Provisions on Several Issues Concerning the Exclusion of Illegal Evidence in Handling Criminal Cases, in order to curb the growing illegal evidence collection activities such as extorting confessions by torture. For the first time, the rules on the exclusion of illegal evidence were systematically stipulated. On March 14, 2012, the 5th Session of the 11th National People's Congress passed the Decision on Amending the Criminal Procedure Law of the People's Republic of China. On the basis of fully absorbing and drawing on this provision, it made relatively clear provisions on the exclusionary rules of illegal evidence at the legislative level for the first time. With the continuous deepening of the reform of criminal justice, in view of various issues existing in the judicial practice of the exclusionary rule of illegal evidence, the Supreme People's Court and the Supreme People's Procuratorate have made more comprehensive and systematic provisions on the exclusionary rules of illegal evidence through new judicial interpretations, such as the Provisions on Several Issues Concerning Strict Exclusion of Illegal Evidence in Handling Criminal Cases jointly issued by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of National Security, and the Ministry of Justice on June 20, 2017, as well as the Procedures for the Exclusion of Illegal Evidence in Handling Criminal Cases by the People's Court (Trial) issued by the Supreme People's Court on November 27, 2017, etc. In the absence of

detailed rules for the implementation of the Supervision Law and the absence of explicit provisions in the current judicial interpretation, in the process of handling duty-related crime cases, the people's procuratorate and the people's court should determinate and exclude illegally obtained supervisory evidence according to these detailed implementation rules of the exclusionary rule.

3.1 Determination of Supervisory Evidence Collected by Illegal Means

According to the interpretation of the Discipline Inspection Commission of the CPC Central Committee and the law office of the Nation Supervision Commission of the People's Republic of China, the supervisory evidence collected by illegal means stipulated in the 3rd paragraph of Article 33 of the Supervision Law refers to the evidence collected by illegal means, which mainly refers to confessions extorted by torture or evidence collected by threat, enticement, fraud, or any other illegal means (the Interpretation of the Supervision Law of the People's Republic of China, 2018)[7]. Although this explanation is reasonable to some extent, it limits the scope of supervisory evidence collected by illegal means only to verbal evidence, obviously narrowing the scope of supervisory evidence collected by illegal means. This is not only because the scope of application of the exclusionary rules of illegal evidence stipulated by China's Criminal Procedure Law and its judicial interpretation includes both illegal verbal evidence and illegal physical evidence, but also from the perspective of judicial practice, the evidence collected by the supervisory organs by illegal means is not only limited to illegal verbal evidence, but also includes illegal physical evidence. In order to ensure the seriousness and consistency of the exclusionary rules of illegal evidence and effectively prevent the occurrence of illegal supervision, the exclusionary scope of illegal supervisory evidence should be consistent with the exclusionary scope of illegal evidence stipulated in the Criminal Procedure Law. Furthermore, according to the detailed rules for the implementation of China's exclusionary rules of illegal evidence, supervisory evidence collected by illegal means should include the following three categories: (1) the statements of the person under investigation collected by illegal means such as extorting a confession by torture, violence, threat, fraud, enticement and illegal restriction of personal freedom; (2) the testimony of witnesses collected by illegal means such as violence, threat and illegal restriction of personal freedom; (3) material evidence or documentary evidence collected in violation of legal procedures.

Since oral evidence has two sides naturally, in order to protect the personal rights of the person under investigation and the witnesses, as long as the supervisors obtain the confession of the person under investigation or the testimony of the witnesses by illegal means such as extorting confession by torture, violence, threat, fraud, enticement and illegal restriction of personal freedom in the process of investigating duty-related crimes, the evidence can be regarded as oral supervisory evidence collected by illegal means. The so-called extorting confession by torture refers to the use of corporal punishment or corporal punishment in any disguised form by supervisors, which causes the person under investigation to suffer severe physical or mental pain or distress, thus forcing the person under investigation to make a guilty confession against their will. The so-called corporal punishment refers to the physical assault or violent means by which supervisors, through beating, binding, electric shock, illegal use of tools and other means, cause the body of the person under investigation to suffer trauma or pain, and then force the person under investigation to make a guilty confession. The so-called corporal punishment in any disguised form refers to the non-physical attack or vicious means by which supervisors, through freezing, starvation, sun exposure, baking, thirst, noise interference, mute handling, fatigue interrogation and other means, cause physical and mental torture or pain to the person under investigation and then force the person under investigation to make a guilty confession. For the determination of violent methods, it is necessary to take the factors such as the means of supervisors, the intensity of enforcement, and the harmful consequences of obtaining evidence through violence into comprehensive consideration. Generally speaking, as long as the supervisors collect the confession of the person under investigation and the testimony of the witnesses through coercive force or means, it is a kind of evidence collection behavior through violence. However, if violent methods such as beating and illegal use of restraint tools are used to collect the confession of the person under investigation, the confession of the person under investigation collected by violent methods should be excluded only when the person under investigation suffers unbearable pain and goes against his / her will. However, there is no such requirement for the witness testimony collected by violence means.

For the determination of threat, enticement and fraud, the boundaries between these acts and investigation strategies should be distinguished. The key to the determination of illegal threats is to determine whether the threatening behavior of supervisors is compulsive. Generally speaking, if supervisors only make use of their functions or powers or position of strength, or just make use of the defects of the person under investigation and witnesses in some aspects, and form a lesser degree of threat, which is not enough to force the person under investigation and witnesses into psychological fear or suffering from unbearable pain, so as to

make a guilty confession or statement against their will, then such threat belongs to the category of investigation strategy and cannot be regarded as a method of illegal threat. However, if the supervisors use violence or seriously damage the lawful rights and interests of the persons and their close relatives and other means of threat, resulting in unbearable pain or fear of the person under investigation and witnesses, thus they have to make a guilty confession or statement against their will, then the threat will go beyond the normal scope of the investigation strategy, and should be determined as a method of illegal threat.

According to the theory and practice of China's criminal evidence law and investigation science, illegal enticement or fraud should be determined from the following four aspects: (1) Basis and intention of the behavior. If the investigators do not have the facts of the crime and try to influence the free will of the person under investigation or the witness by enticing or deceiving, thus forcing the person under investigation to make a guilty confession or the witness to provide a guilty testimony to a certain extent, then it should constitute evidence collection through illegal enticement or fraud. (2) Behavior performance. If the investigators violate the law or the public order and good customs, impinge on the basic ethical bottom line of the society, and cause the uneasiness of the public in the process of enticing or deceiving, then it can be regarded as evidence collection through illegal enticement or fraud. (3) Behavior influence. If the behavior of enticement or fraud by investigators has a strong psychological coercive effect on the applicable object, so that the applicable object has to make a guilty confession or provide a guilty testimony against the will, then it should belong to evidence collection through illegal enticement or fraud. (4) Whether other illegal collection of evidence is involved. If the supervisors extort confession by torture, violence, threat and other illegal evidence collection behaviors in the process of enticing or deceiving, it shall constitute illegal evidence collection through enticement or fraud.

For the determination of the methods of illegal restriction of personal freedom such as illegal detention, it is necessary to consider not only whether the acts of the investigators constitute illegal restriction of personal freedom such as illegal detention, but also whether the purpose that the investigators adopt illegal restriction of personal freedom such as illegal detention is to collect evidence. This means that if the acts of investigators are not to collect evidence, but simply because of the violation of the relevant provisions of the Supervision Law, which constitutes illegal detention or illegal restriction of personal freedom, then although the substantive responsibility of investigators shall be investigated in accordance with the relevant provisions, the confessions of the person under investigation or the testimony of witnesses cannot be excluded. From the perspective of judicial practice, the so-called illegal detention and other methods of illegal restriction of personal freedom mainly refer to the illegal deprivation of the personal freedom of the person under investigation or witnesses by means of mandatory methods such as detention, binding and interrogation without the approval or decision of legal procedures.

The following three conditions shall be met simultaneously for the determination of material evidence or documentary supervisory evidence collected by illegal means: (1) the supervisory organ collects material evidence or documentary evidence in violation of legal procedures in the process of investigation of duty-related crimes; (2) it may seriously affect judicial justice; (3) the supervisory organ cannot make corrections or provide reasonable explanations. The legal procedure here is not the procedure stipulated by the Criminal Procedure Law, but the supervision procedure stipulated by the Supervision Law. This is because, in the process of investigation of cases, supervisory organs collect evidentiary materials based on the Supervision Law, rather than the Criminal Procedure Law. If the legitimacy of supervisory evidence is defined by criminal procedure, the boundary between supervision procedures and criminal procedure will be mixed up. It may seriously affect the judicial justice, which is the prerequisite for excluding material evidence and documentary supervisory evidence collected by illegal means. The judicial organs shall take a number of factors into comprehensive consideration in the determination of whether the judicial justice is affected, including the subjective maliciousness of illegally collected evidence, the severity of the violation of legal procedure, the consequence of the violation of legal procedure, whether the constitutional rights of citizens are infringed, whether the determination of the case facts is affected, the evidential value of material evidence and documentary evidence in the case, whether the material evidence and documentary evidence has been destroyed. In the case that the determination is not in line with the legal procedure and may seriously affect the judicial justice, the key to whether to exclude material evidence and documentary supervisory evidence collected by illegal means lies in whether the supervisory organ can make corrections or provide reasonable explanations. The correction here refers to that the supervisory organ collects or repairs or makes up for the material evidence or documentary evidence previously collected through non-conforming supervision procedures through legal procedures. The so-called reasonable explanation means that the supervisory organ can make a reasonable and logical explanation on the procedure of illegal collection of material evidence or documentary evidence.

3.2 The Exclusion of Illegally Obtained Supervisory Evidence

According to the relevant provisions of the Supervision Law, Criminal Procedure Law of the People's Republic of China and their judicial interpretation, the exclusion of supervisory evidence collected by illegal means should be carried out in stages, and in a whole-process manner. This practice can help the investigators to find and exclude illegal evidence as soon as possible, improve the quality of case handling, and safeguard the legitimate rights of participants in the proceedings (Sheng Lang, 2012)[8]. According to the provisions of paragraph 3, Article 33 of the Supervision Law, supervisory organs assume the obligation to exclude supervisory evidence collected by illegal means, that is, they shall exclude evidence collected by illegal means according to law and shall not take it as the basis for case handling. According to the provisions of Article 45 of the Supervision Law, the handling of cases here includes not only the non-criminal punishment measures taken by the supervisory organ against the person under investigation, such as administrative sanctions, accountability, supervision suggestions, but also the transfer of the case to the people's procuratorate for examination and public prosecution. In order to implement the exclusionary rules of illegal evidence, the supervisory organ should inform the person under investigation of the right to apply to the supervisory organ for exclusion of supervisory evidence collected by illegal means. According to Article 60 of the Supervision Law, if the supervisory organ fails to exclude the supervisory evidence collected by illegal means according to law, the person under investigation and his/her close relatives shall have the right to appeal to the supervisory organ.

After the supervisory organ transfers the case of duty-related crime to the people's procuratorate for public prosecution, the people's procuratorate and the people's court shall identify and exclude the supervisory evidence collected by illegal means according to the operational procedures of the illegal evidence exclusionary rules stipulated in the Criminal Procedure Law and its judicial interpretation. First of all, the people's procuratorate and the people's court shall inform the criminal suspect and the defendant of the right to apply for the exclusion of illegal evidence in the process of handling the cases of duty-related crimes. Secondly, when the criminal suspect applies to the people's procuratorate for exclusion of illegal evidence and provides relevant clues or materials during the examination and prosecution, the people's procuratorate shall conduct investigation and verification, and inform the criminal suspect and his/her defenders of the investigation conclusion in writing. Thirdly, the defendant and his/her defenders shall, in principle, apply for the exclusion of illegal evidence before the trial, except for the discovery of relevant clues or materials during the trial. If the defendant and his/her defenders apply for the exclusion of illegal evidence before the trial and provide relevant clues or materials in accordance with the law, the people's court shall convene a pretrial conference. Finally, the people's procuratorate shall exclude the supervisory evidence collected by illegal means that has been examined and identified and shall not serve as the basis for initiating a public prosecution. In the course of court proceedings, the people's court shall not read out or cross-examine the supervisory evidence collected by illegal means which has been excluded according to law, or take it as the basis for judgment.

IV. CONCLUSION

After the development of the Supervision Law of the People's Republic of China, when the CPC Central Committee clearly defined the supervisory commission as a political organ rather than a criminal judicial organ, since there is no specific stipulation in the Supervision Law, Criminal Procedure Law of the People's Republic of China and relevant judicial interpretations about whether the exclusionary rules of illegal evidence is applicable to the evidence collected by the supervisory commission through illegal means in the process of investigating duty-related crimes, therefore, it is a major problem to be solved urgently that whether the criminal judicial organs can exclude the supervisory evidence collected by illegal means according to the exclusionary rules of the Criminal Procedure Law. According to the theory of modern criminal procedure law, it is not only the need to safeguard the due process of anti-corruption and the lawful rights and interests of the person under investigation, but also the need to effectively curb the illegal evidence collection and realize the centralism of trial to incorporate supervisory evidence collected by illegal means into the scope of application of the exclusionary rules of illegal evidence. In the process of handling duty-related crime cases, the supervisory commission, the people's procuratorate and the people's court shall, in combination with the practice of the supervision procedures, identify and exclude illegal supervisory evidence in accordance with the Criminal Procedure Law and the detailed rules for the implementation of the exclusionary rules of illegal evidence formulated by the Supreme People's Court and the Supreme People's Procuratorate.

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