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**China's Supervision
Commissions
and 2018
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引言

在当代中国，腐败一直都是一个问题。中国的主要反腐败框架是党委监督工作。党和国家办公室都负责管理工作，党的纪检办协调工作。主要职能机构是：国家司法机关、政府监督机关和审计机关、党纪检查机关和国家防贪机构。中国共产党中央纪律检查委员会是中国共产党的反腐败机构，它也执行党的规则。中华人民共和国监察部是国家的反腐败机构，它执行行政法规。而中华人民共和国最高人民检察院提供“法律监督”，也执行刑法。虽然这些机构正式负责不同的任务，但是纪律检查委员会通常在执法过程中处于领导地位并指导调查。

从中国共产党执政起，一直都在实施反对腐败的战略，目的是打击党内腐败。自 1927 年中国共产党成立以来，尽管名称不同，但是纪律和检查委员会一直存在了。纪律和检查委员会的职责是净化共产党组织和加强党内的纪律，它们有权监督和调查党的所有干部。各委员会的权力以及调查范围随着时间的推移而发生变化，但是值得注意的是，只有党员干部才是此类调查的对象。2012 年习近平当选为中华人民共和国主席后，反腐败斗争达到顶峰。事实上，中国目前的领导层已经表达出对打击腐败的巨大承诺，原因是打击腐败对于追求经济增长和政治稳定至关重要。习近平上任后不久，他发起了一项名为“老虎苍蝇一起打”的新运动。这项新运动的范围，深度和强度是前所未有的。事实上，2012 年反腐败运动的主要特点是：它不仅查处了党的干部，而且也查处了许多以国有企业为领导的经济部门的人员。

习近平对打击腐败的重视导致了在党外推行反腐败运动的决定。该项目是 2016 年以试点计划开始实施的，那时候政府决定扩大监督系统，直至使其成为国家一级系统。该试点项目在北京、山西和浙江这三个地区开展。鉴于其积极影响，该试点项目获得了广泛公众的支持，因此政府决定在全国范围内扩大该计划。

在这种背景下，2018 年的中国宪法修正案标志着中国历史的一个里程碑。这次修正案可以说是自 1982 年中国通过“宪法”以来最重要的修改。有三个主要原因解释这一修正案的重要性：第一，新的修订强化了习近平手中的权力集中；第二，这次修订重申了中国共产党的至高无上的地位和主导作用；第三，这一修订引入了一个新的宪法机构，也就是说监察委员会。

监察委员会的引入是最重要的修正案之一，原因是这种委员会是有史以来第一次作为宪法机关。在宪法中，明确了监察委员会的职能，建立了覆盖中央和地方政府的完整的国家监察体系，提高了国家反腐败机构的安排。该体系的建立旨在巩固以前存在的多个反腐败力量，并减少重复性调查，从而更有效地打击腐败。监察制度的改革将加强廉洁党和政府的建立，通过增加监察的覆盖和手段会更好地打击腐败。监察制度的改革会建立一个集中、权威、有效的制度，这样增强监察委员会的独立性。地方执政的影响力仍然存在于反腐败体系中，但这股影响受到上级监察委员会的限制。监察委员会的工作范围扩大到调查所有政府官员，无论党员身份如何，监察委员会有权调查在国有公司、教育机构和其他营企业工作的个人。

在行政方面，中华人民共和国国家监察委员会级别与国务院、最高人民检察院和最高人民法院的级别相同，这意味着它的排名高于中国政府的大多数机构，包括司法机关。

监察法遵循宪法修正案。这份法规详细地解释监察委员会地所有特征，以及调查的范围和方法。

下面的这些是监察法的主要特点：

第一，这项法律通过巩固以前在不同机构之间分配的反腐败工作，将权力集中在检查委员会中。这项法律整合了党纪律检查委员会、政府监督机构和检察院的检察权。由于这种整合，更多的官员被列入到日常监督和调查中。

第二，在监察委员会系统下建立了一种新的腐败嫌疑人检测机制，以取代双规。这种新机制被称为留置（保留在押）。留置和双规体系的主要区别是留置是法律编纂的，并受到更严格的内部程序。这项法律赋予在 24 小时内通知家人的权利，这是双规不充许的。此外，被拘留者应该得到充足的食物，休息和医疗；拘留期限为三个月，经批准后在延长三个月。最后，审讯被录像。通过留置收集的证据可以直接用于起诉，而通过双规这是不可以做的。

第三，在它们的工作中，监察委员会由特别的内部监督机构监察，这些机构的任务是执行监察法的要求，以确保忠诚和干净的监察团队。但是，没有具体说明这些内部自我监察机构应如何运作。

第四，这项法律是否以及如何进行调查以及确定可能导致的惩罚留下了很大的自由裁量权。

许多批评者对新的检查制度表示了关注，特别是关于新引入的“留置”制度下嫌疑人基本权利的保护，以及监察委员会与司法机关的整合。尽管对该法已经进行了一些改进，但是仍然有许多事情尚不清楚，这些事情在国家和国际层面都引起了关注。一些批评者也质疑为什么监察委员会没有被纳入刑事诉讼程序，使反腐败工作不受到中国刑司法和行政法律制度的正当程序要求的约束。

其他批评者认为深化国家监察制度是加强党和国家自我监察，加强党领导的战略决策。因此，这项决定可能是一种习近平在自己的手里集中力量的工具，而不是监察他。事实上，实施国家监察制度是习近平实现权威集中制，反腐败制度化，惩戒官员们的实际步骤。中华人民共和国国家监察委员会有可能是一种习近平反对不忠和怀疑意识形态倾向的关键工具，甚至是执行政策的手段。

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ACRONYMS

CCDI → Central Commission for Discipline Inspection

CCP → Chinese Communist Party

CDI → Commission for Discipline Inspection

CMC → Central Military Commission

MIC → Monitoring and Inspection Commission

NPC → National People's Congress

NSC → National Supervision Commission

PBSC → Politburo Standing Committee

PLA → People's Liberation Army

PRC → People's Republic of China

SC → Supervision Commission

INTRODUCTION

In contemporary China, corruption has always been a problem. From the came into power of the Chinese Communist Party (CCP 中国共产党 *Zhongguo gongchandang*), anti-corruption strategies have always been implemented to combat corruption inside the Party itself¹. Even though under different names, since the CCP's foundation in 1927, commissions for discipline inspection have always existed. Their function has always been to purify the Party organization and strengthen discipline, they had the power to monitor and investigate all Party cadres. The powers of the commissions, as well as the scope of their investigation, changed over time, but what is noteworthy is that, during this period, only Party cadres were the target of such investigations.

The fight against corruption reached its peak in 2012 when Xi Jinping 习近平 came into power². China's current leadership has shown great commitment to combatting corruption as the fight against it is fundamental to pursue economic growth and even political stability. As Xi Jinping started his mandate, he launched a new campaign called "hunting tigers and swat flies", which had unprecedented scope, depth and intensity. As a matter of fact, 2012 anti-corruption campaign's main feature was the fact that it hit not only Party cadres, but also workers of many economic sectors which are dominated by state-owned enterprises.

The importance attached by Xi Jinping to the fight against corruption led to the decisions to extend the anti-corruption campaign also outside the Party. This project started to take place with 2016 Pilot Program for expanding the supervision system at national level. The Pilot Program was carried out in three regions: Beijing, Shanxi and Zhejiang, and, given its positive effects and the fact that it won broad public support and popularity, it was decided to expand it national wide.

¹ On corruption and anti-corruption strategies in China see: He Zengke, "Corruption and anti-corruption in reform China", 2000; Guo Xuezhi, "Controlling Corruption in the Party: China's Central Discipline Inspection Commissions" 2014; Li Ling, "The Rise of the Discipline and Inspection Commission, 1927-2012: Anticorruption Investigation and Decision-Making in the Chinese Communist Party", 2016; Guo Yong, "The Evolvement of the Chinese Communist Party Discipline Inspection Commission in the Reform Era", 2012

² On anti-corruption under Xi Jinping see: Samson Yuen, "Disciplining the party: Xi Jinping's anti-corruption campaign and its limits", 2014; Liu Hong, Ying Cheng, Zhou Xingwang, "The Xi Jinping Era: His Comprehensive Strategy Toward the China Dream", 2015

In this context, China's 2018 constitutional amendment has marked a milestone in Chinese history and it is considered to be the most important revision made since the adoption of the Constitution in 1982³. There are three main reasons explaining the importance attached to this amendment: first, the new revision boosts the centralization of power in the hands of Xi Jinping; second, it reaffirms the supremacy of the Chinese Communist Party and its leading role; third, it introduces a new constitutional organ: the Supervision Commissions (SC 监察委员会 *jiancha weiyuanhui*). The introduction of the SCs is one of the most important changes made, not only because these commissions are introduced as constitutional organs, but also because the National Supervision Commission (NSC 中华人民共和国国家监察委员会 *Zhonghua Renmin Gongheguo guojia jiancha weiyuanhui*) is given the same rank of the State Council, which means that it ranks higher than most institutions of the Chinese government. This fact creates many concerns about the powers the Commissions have, and also about the possibility for them to outclass the judicial organs.

The constitutional amendment has been followed by the Supervision Law which explains in detail all the characteristics of the SCs, as well as the scope and methods of their investigations⁴. Many critics have expressed their concerns about the new supervision system, especially about the protection of suspects' basic rights under the newly introduced *liuzhi* system, and about the integration of SCs with the judicial organs. Even though some improvements to the Law have been made, there are still many things that remain unclear, creating concerns both at national and international level.

³ On 2018 constitutional amendment see: Tian Feilong, "Beyond term limits: China's new constitution is written for a nation on the rise", 2018; NPC Observer, "Annotated Translation: 2018 Amendment to the P.R.C. Constitution (Version 2.0)", 2018

⁴ On the Supervision Law and its implications see: Horsley Jamie P., "What's so controversial about China's new anti-corruption body? Digging into the National Supervision Commission", 2018; Chen Ruihua, "*lun jiancha weiyuanhui de diaochaquan* 论监察委员会的调查权 (On the investigating power of the Supervision Commissions)", 2018

CHAPTER 1: THE ANTI-CORRUPTION COMMISSIONS OF THE CHINESE COMMUNIST PARTY

When addressing China's anti-corruption agencies' topic, it is important to remember that they should be analysed and described in the context of an institutional arrangement that promotes the dominance of the CCP over the government. In China there have always been different agencies vested with judicial power. China's main anti-corruption framework is that the Party committees oversee the work, both the Party and the state offices manage the work, and the Party's discipline inspection office coordinates the work. The main functional agencies are: state judicial organs, government supervision organs and auditing organs, Party discipline inspection organs, and the state corruption prevention agency.⁵

The Central Commission for Discipline Inspection (CCDI 中国共产党中央纪律检查委员会 *Zhongguo gongchandang zhongyang jilü jiancha weiyuanhui*) is the anti-corruption authority for the CCP and enforces Party rules, whilst the Ministry of Supervision is its counterpart for the Chinese government and enforces administrative law or rules, the People's Procuratorate provides "legal supervision" and enforces criminal law.

The Supreme People's Procuratorate has been established in 1954⁶ and its task is to prosecute conduct proscribed by law and conduct "legal supervision" of state organs, as it is the state's legal supervisory authority⁷. In the Party-state structure, the Supreme People's Procuratorate reports to the National People Congress (NPC 全国人民代表大会 *quanguo renmin daibiao dahui*) and its standing committee, whilst the local People's Procuratorates report to their respective local People's Congress and its standing committee. The People's Procuratorates are charged with investigating and prosecuting conduct penalized by the Criminal Law.⁸ In 1995, the Supreme People's Procuratorate established an Anti-Corruption Bureau, which was an independent organization under the procuratorate and whose aim was to prosecute crimes of corruption, tax evasion, and trademark infringement; the same happened at local level⁹.

The Commission for Discipline Inspection (CDI 纪律检查委员会 *jilü jiancha weiyuanhui*) is the anti-corruption enforcement authority of the CCP: it is an agency of the Party committee

⁵ Deng Jintong [2017], pp. 58-59

⁶ 中华人民共和国宪法 [1954 年], 第八十一条

⁷ 马国英 [2016]

⁸ Chen Lyric [2017] pp. 142 - 146

⁹ 马国英 [2016]

established at each level of the party-state structure. The CCDI is the national level Party enforcement agency and it has jurisdiction over officials with ranks of minister, vice minister, provincial governor and vice governor, whilst the local commissions have jurisdiction over officials of lower ranks. The Commissions, both at local and at national level, enforce Party discipline rules against a wide range of behaviour classified as “unethical”; when enforcing rules, as the Commissions are entities of the Party rather than of the legal system, they are not guided by the notion of due process and are not limited by criminal procedures. The Party may decide to transfer the case file to the People’s Procuratorate for prosecution in the court system and punishment under Criminal Law.¹⁰

The Ministry of Supervision is a State Supervision Organ and enforces administrative rules that regulate the state agencies, it may inspect the functioning of government units and work of their officers, investigate allegations of wrongdoing, recommend sanctions and carry out punishment. It was established to oversee operations, integrity and effectiveness of the executive branch and of its employees. At central government level, the Ministry of Supervision was merged with the CCDI in 1993, therefore, since then, it conducts business jointly with the CCDI, while at local level, local supervision offices work together with the local CDIs to conduct business.¹¹

Auditing bureaus include the State Auditing Administration and the Auditing Commissions at local government level. Their task is to audit the fiscal spending of the ministries under the State Council, local governments, and state-owned financial institutions and enterprises. The State Corruption-Prevention Bureau was created in 2007 to prevent corruption and it was directly under the State Council.¹²

Although these institutions are formally charged with different missions, the CCDI typically has a leading role in the enforcement process and directs investigations. In 1993, the CCDI, the Supreme People’s Procuratorate, and the Ministry of Supervision agreed to enhance interagency cooperation and participate in regular tripartite consultation. Therefore, even if criminal conduct is involved, the Procuratorate often is subordinated to the Commissions and

¹⁰ Chen Lyric [2017] pp. 147 - 148

¹¹ Ibid. pp. 149

¹² People’s Daily [2016]

them in investigations. More than 80% of cases are investigated by the CDIs and Party control over enforcement is even stricter for cases involving higher ranking officials.¹³

1.1 Chinese Communist Party's Commissions for Discipline Inspection

Commissions for discipline inspection have always existed inside the CCP, because control is a mechanism used for self-regulation within the Party itself. The Party disciplinary system is primarily a means for consolidating the authority of the Party Central Committee (中国共产党中央委员会 *Zhongguo gongchandang zhongyang weiyuanhui*) and preserving Party unity. Its aim is controlling the work of the various organs of the Party, as well as the discipline of its members. The development of the disciplinary system between 1927 and 2012 exemplifies how the Party tried both to empower and contain its enforcement agency through a process of institutionalization. This process was characterized by three features:

- A concentration of disciplinary power in the executive bodies of Party committees;
- A centralization of disciplinary power in the Party Centre;
- A policy shift that designated the investigation and punishment of corruption as the primary disciplinary tool to consolidate power within the Party;¹⁴

Between 1927 and 1982, the Party's disciplinary institution underwent constant shifts, whether in its name, configuration, status or mandate, reflecting the top Party leaders' attitude towards the disciplinary system. The first Party disciplinary body was the Monitoring and Inspection Commission (MIC 监察委员会 *jiancha weiyuanhui*), which was created in 1927, but whose mandate was unclear. During the 1930s and 1940s, many disciplinary bodies were set up one after another, with mandates that ranged from auditing the Party's finances, reviewing members' loyalty and inspecting performances in terms of the implementation of the Party Constitution to investigation, indoctrination and punishment of violations of discipline. Disciplinary bodies' members were elected by the Party Congress, which would elect also the Party Committees; members of such bodies couldn't serve simultaneously the Party Committees, but they could attend their meeting without the right to vote. In 1945, at the 7th

¹³ Chen Lyric [2017] pp. 150

¹⁴ Li Ling [2016] pp. 450

CCP National Congress, MICs were reintroduced into the Party Constitution, but only as an optional unit to be established at the discretion of the Party Central Committee; due to the imminent civil war, no MIC was established in that year. The amendment of the Party Constitution of 1945 also included the fact that the members of the MICs would be elected by the Party Committee at corresponding level, which meant that the MICs' leaders were elected by the very institution they had to monitor, investigate and discipline.¹⁵ After the civil war (1945 – 1947), the Party's disciplinary institution was revived with the name of Commission for Discipline Inspection, which purpose was "to better implement the Party's political line, as well as its programs and concrete policies, to preserve confidential information of the Party and the nation, to purify the Party organization and strengthen discipline, to eliminate bureaucracy, to maintain close ties with the people and to ensure proper implementation of all the Party's resolution".¹⁶ The main distinction between this body and the previous ones, was that the CDIs were entrusted with the responsibility of enforcing internal disciplinary education; such task imposed the Party's ideological control and guidance on its members. The CCDI was subordinated to the Politburo leadership, while local CDIs were subordinated to local Party organizations. Therefore, the disciplinary agencies were neither independent nor free from the political influence of the Party;¹⁷ they were too restricted in their powers and functions. In practice, the CDIs seemed to have had little impact in the early 1950s, as demonstrated by the Gao-Rao incident in 1955, characterized as an "anti-party conspiracy" of Gao Gang 高岗 and Rao Shushi 饶漱.¹⁸ As a matter of fact, it was claimed that the local CDI had failed in restraining Gao because it was staffed by his loyal clique, thus demonstrating that the performance of control work depended upon Party committees and that higher-level control organs had no right to intervene at lower levels. For this reason, the CDIs were replaced by the local MICs, which were authorized to investigate and sanction minor disciplinary violations as well, but they were still actually weak and ineffective.¹⁹ One major change due to the experience of the Gao-Rao incident was that the new control system departed from the previous hierarchical principle; hence control commissions had the right of checking on lower-

¹⁵ Li Ling [2016] pp. 453

¹⁶ 中国中央组织部 *Zhongguo zhongyang zuzhibu* [2000] vol. 5, p. 48

¹⁷ Guo Xuezi [2014] pp. 598 - 599

¹⁸ On the Gao-Rao incident see: Mao Min, "The Revival of China" pp. 303-307, 2017; Zhu Fang, "Military Regionalism and the Gao-Rao Incident" pp. 59-85, 2019

¹⁹ Li Ling [2016] pp. 452

level commissions and approving or changing their decisions, while lower-level commissions had the right to appeal against Party committee decisions and were obliged to report to higher-level commissions.²⁰

From 1956 to the Cultural Revolution (1966 – 76), the MICs functioned as an enforcement agency for the Party's political campaigns and started wide corruption investigation; in that moment the subordination of control commissions to Party committees was reaffirmed. Any trend towards a control system independent of the Party structure was unlikely to flourish; the moves towards an external, vertically-integrated control system were both tentative and brief. Another problem was the persistent ambiguity in the scope of control work and in its relationship to other Party organizational principles. Therefore, MICs' focus was on control commissions operating as inner-Party courts, as institutionalized means for handling cases of indiscipline, but their role was not restricted to this, as they had to be concerned broadly with ideological deviance and policy implementation. However, any role they might have in reinforcing the ideological basis of discipline was a by-product of dealing with specific disciplinary cases.

During the "Mao era", the Party's disciplinary agencies had the task to supervise Party members and officials, as well as controlling corruption. The containment of corruption in government agencies and economic institutions was achieved mainly through political campaigns such as the "three-anti" and "five-antis" movements²¹ rather than by the creation of disciplinary organizations. Under Mao's leadership, "mass supervision" was the most important mechanism used to mobilise ordinary citizens to monitor and criticise Party cadres and to get rid of corruption. The CCDI set the rules dealing with mass complaints based on the seriousness of the case: if Party cadres were involved, the CCDI forwarded the case to the CDIs where suspects were employed, while the CCDI itself dealt only with cases involving high-ranking officials and serious disciplinary violations. The CCDI and the CDIs were created to function as a subordinate department of the CCP Central Committee and not to check the Committee itself, therefore they implemented the Party leadership's directives on supervision and mobilized the population to conduct "mass supervision" to monitor Party cadres. In this

²⁰ Graham Young [1984] pp. 26 - 27

²¹ The three antis imposed were corruption, waste, and bureaucracy; the five antis imposed were bribery, theft of state property, tax evasion, cheating on government contracts, and stealing state economic intelligence

context, the Cultural Revolution was Mao's attempt to encourage a mass movement to attack bureaucratism and use the masses to supervise and control Party cadres and members.²²

In 1977, the 11th Party Congress re-established the Party control system composed by the CDIs, which primary aim was strengthening the Party organization by maintaining organizational discipline, but their work expanded also to oppose deviant tendencies classified as degeneration of the "Party style" (党风 *dangfeng*), where "Party style" describes a style of politics, that is a combination of prescribed political relationships consistent with a narrow conception of legitimate political activity.²³ The CDIs had priority over the judiciary power in examining and dealing with Party members involved in criminal activities. Furthermore, they became the Party's internal organ for cracking down corruption, which had been endemic in the Party throughout the post-Mao era. The CDIs were established at and above *xian* level, or regimental level in the army; they were elected by and under the leadership of Party committees. The new control system became much more prominent in December 1978 with the establishment of the CCDI, which tried to promote and supervise the establishment of CDIs at lower levels. The importance of the CCDI was reinforced stipulating that the CCDI chief must be a member of the Politburo Standing Committee (PBSC 中国共产党中央政治局常务委员会 *Zhongguo gongchandang zhongyang zhengzhiju changwu weiyuanhui*). The first CCDI secretary was Chen Yun 陈云, who was also the Party vice-chairman. This was a sign of the willing that the CCDI was expected to play a significant role in Party politics, as well as to fulfil three main objectives, which were extremely important for Party leaders: conduct purges against the Maoist radicals, rehabilitate veteran cadres and rectify Party conduct.

1982 is a turning point in the development of the Party's disciplinary system because, at the 12th Communist Party National Congress of that year, the most comprehensive amendment of the Party Constitution was promulgated, which provided expansion of the CDIs' network (to 15 offices and 785 personnel) and gave responsibilities far greater than those of their predecessors. The Party Constitution stated that the CDIs perform three main tasks:

1. safeguarding the authority of the Party Constitution and other important Party rules and regulations;

²² Guo Xuezhong [2014] pp. 600

²³ Graham Young [1984] pp. 25

2. assisting Party committees in rectifying “Party style”, as it was essential for the Party’s survival,
3. inspecting the implementation of the line, principles, policies, and decisions of the Party, and corruption as well²⁴.

Furthermore, article 44 stated that the CCDI and the local commission should conduct regular disciplinary education for Party members; investigate and handle violations of the Party Constitution, Party discipline, and state laws and regulation; make decisions to preserve Party discipline; receive and process allegations and complaints from Party members; and impose as well as remove disciplinary sanctions against Party members²⁵. Article 38 stated also that Party members must be investigated and sanctioned by state organs if their conduct violates not only the Party discipline but also state laws and regulations; and that Party members who have violated state criminal laws must be expelled from the Party. At the 12th Party Congress, the CCP decided that the CCDI could station its inspection teams in ministries and departments, if needed; nevertheless, the Party discipline inspection organs continued to be subjugated to the Party committees they had to supervise, and they were influenced by Party leaders, as they could influence the appointment of key members of the CDIs. Therefore, unless asked to do so by higher authorities, it was uncommon for a CDI’s official to investigate a leading figure in his/her host Party committee.²⁶

The 1982 Party Constitution also set the configuration of the CDIs, their relationship with the Party committees, and the relationship between the CCDI and the local commissions. The members of the Party disciplinary organs are now elected by Party congresses at the corresponding level, while previously the members were chosen by Mao. Moreover, the amendment also authorized the establishment of a standing committee within the CDIs; and stated that the head of the CCDI must be chosen from members of the PBSC²⁷.

The concept of “dual supervision” (双重领导 *shuangchong lingdao*) was introduced in article 43 as governing principle for the operations of local CDIs; this method is commonly used by organs of both the Party and the State, according to the principle of double

²⁴ Graham Young [1984] pp. 31

²⁵ Li Ling [2016] pp. 455

²⁶ Guo Xuezi [2014] pp. 609-610

²⁷ Li Ling [2016] pp. 456-457

dependence, which is both hierarchical and political. "Dual supervision" means that local CDIs are subject to the supervision of both the corresponding Party committee and the CDI at the next higher level. This allows superior CDIs to exercise considerable influence over lower-level CDIs under some circumstances, because superior CDIs have the power to approve and change decisions of lower CDIs. If a CDI disagrees with a decision by its own Party committee or discovers disciplinary violations by members of that committee, it may appeal to a higher CDI. The Party Constitution, however, has never empowered the CDI to supervise its corresponding CCP commission; if a CDI finds out that a member of its corresponding CCP commission violated the CCP discipline, it should first carry out a preliminary verification, and if formal investigation is necessary, it should apply for the approval by its corresponding CCP commission. If a member of the standing committee of the corresponding CCP commission is involved, the CDI should also obtain the approval of its superior CDI, because, according to the CCP's rules, such a member is outside of the CDI's jurisdiction. This means that the CDI is subject to the leadership by its corresponding CCP commission and has no independent power to investigate.²⁸ The only exception to the dual supervision system is at the Central level, where the CCDI remains subordinated to the Party Central Committee, even though the CCDI is elected by the National Party Congress. At other levels, a clear vertical CDIs' hierarchy was introduced. This dual supervision system has been a vital component of China's governing structure, which is characterised by both vertical and horizontal lines of authority, but the dominance of local Party committees and the CDIs' lack of independence contributed to the ineffectiveness of the disciplinary organizations.²⁹ Throughout the 1980s, the Party expanded the scope of disciplinary violations to include also various forms of corrupt conduct that fell under the reach of the Party's disciplinary system.

Between 1983 and 1987, the CCDI replaced all its ad hoc inspection teams with 21 government departments and agencies, it also increased its powers and its role in influencing leadership decisions, especially those regarding disciplinary education and anti-corruption policies.³⁰ The CCDI suffered an important setback in 1987, after the 13th Party Congress, when Zhao Ziyang 赵紫阳 came into power and affirmed that the CCDI "should not be involved in

²⁸ Guo Yong [2012] pp. 19 - 20

²⁹ Guo Xuezhi [2014] pp. 609

³⁰ Ibid. pp. 600

any cases related to the legal (法纪 *faji*) and administrative (政纪 *zhengji*) violations of its members, but rather should only focus on Party discipline and assisting Party committees to improve the Party's work style"³¹. Therefore, the CCDI's leadership role over government legal organizations and administrative supervision agencies was revoked. One of the main reasons for this decision is that Zhao framed a new vision of reform, which included the separation of Party and state, as a result, more than 75% of all discipline inspection groups of that period were abolished; and the CCDI chief was no longer given a seat on the PBSC. Thus, probably the reform launched by Zhao Ziyang was an attempt to give the supervision agencies and judicial and legal systems more autonomy, with the purpose to promote a limited separation of power and the "rule of law".³²

After 1989 Tiananmen incident, the situation changed and the CCDI increased its powers again, implying that the CCP, instead of relying on the legal system, would lead the initiatives against discipline violations and corruption itself, and it would also manage corruption investigations directly. This turned out to be a powerful means of restraining bureaucratic behaviour, especially if compared to the ineffective legislative supervision due to a weak legal system. In this period, strict rules were imposed to discipline Party and government officials, including the "five forbiddens" for Party cadres, which stated that cadres were not allowed to operate a business, work in an economic entity, trade in stocks, accept gifts and use public funds for lavish entertainment.³³ In the early 1990s, due to the powerful influence of the Party or government agencies on local CDIs' officials, the CCDI began sending officials to local Party and government organizations, to directly control and supervise local government and Party agencies.³⁴ In 2004, due to its limitations and lack of effectiveness, the system of "dual leadership" of local CDIs came to an end, and it was replaced by a new system according to which CDIs' units stationed within host Party organizations at provincial or ministerial level only come under the leadership of the CCDI headquarters in Beijing, in this way guaranteeing the absolute vertical control of the CCDI over its local officials. Moreover, by increasing the power of upper-level CDIs to appoint and promote lower-level CDIs officials, the CCP leadership began ensuring that the authority of local CDIs would not be constrained

³¹ Wei, Mingduo [1993] pp. 435

³² Guo Xuezhi [2014] pp. 601

³³ CCP and State Council [1993]

³⁴ Guo Xuezhi [2014] pp. 610

by host Party committees. All these changes had the scope to strengthen supervision over Party organizations and to weaken their influence over the disciplinary organs as well. However, without the cooperation and support of local Party committees or leaders, it was very difficult for the CCDI and CDIs to conduct independent investigation, as, if the host Party leaders under investigation were still in charge, the CDI was unable to corroborate evidence and conduct an effective inquiry.³⁵

According to the current Party Constitution, the CCP Central Commission for Discipline Inspection and the local discipline inspection commissions are responsible for policing the political order of the Party and investigating individual violations of the Party discipline.

In China, the CCDI and the People's Procuratorate are the two main anticorruption enforcement agencies. According to the Constitution, the Procuratorate is the statutory law supervision agency, while the anti-corruption bureau within the People's Procuratorate is responsible for investigating anticorruption. However, in reality, the CCDI acts as the leader and policy maker for China's anti-corruption policies; additionally, as an internal discipline inspection agency of the ruling party, it investigates many suspected corruption activities and takes charge of corruption prevention, integrity education, and imposition of disciplinary or administrative punishment for corruption. The CDIs and the anti-corruption bureau of the People's Procuratorate both possess the power to initiate an investigation upon potential corruption activities, but the CDIs have no statutory rights to investigate, therefore once it confirms that a suspect is corrupt, it needs to transfer the case to the People's Procuratorate for formal investigation and prosecution. In practice, most corruption cases are first investigated by the CDIs and then transferred to the People's Procuratorate. Therefore, the CDIs and the anti-corruption bureau usually cooperate. It is important to highlight that, for cases initially investigated by the CDIs and then transferred to the prosecutors, the evidence collected by the CDIs cannot be used because it lacks legality; therefore, the prosecutors must redo the investigation process to recollect the evidence so that it can be used in criminal trials.³⁶ An advantage of having multiple anti-corruption agencies is that this creates competition among

³⁵ Guo Xuezhong [2014] pp. 611-612

³⁶ Deng Jintong [2018] pp. 61-62

them and thus increases the probability that corruption activities are discovered, but the disadvantage is that the responsibilities of these anti-corruption agencies are usually not clearly defined. Due to the lack of statutory authorization, the CCDI has only limited powers to investigate corruption activities, therefore, "double designation" (双规 *shuanggui*), introduced in 1994 by regulations on Party discipline,³⁷ has become the usual means for the CCDI to investigate corruption and obtain evidence. The *shuanggui* is a practice that requires a suspect to be confined for questioning at a stipulated time and in a stipulated place under the CCDI's supervision, without judicial involvement or oversight.³⁸ Party regulation considers this "dual designation" system as separate from criminal procedures and "no-coercive"; the measure is not regulated by the Criminal Procedure Law, therefore the investigators do not need to obtain warrants, while suspects and witnesses have no right to counsel. Also to be noted, there is no restriction on the amount of time an individual may be required to stay and respond to questioning.³⁹ The *shuanggui* can be used only at county level and above upon approval, moreover commissions are not allowed to detain official when investigating "important" and "complex" cases, where "important" refers to cases involving officials ranking at the county level or above, while "complex" refers to cases where there is conspiracy among officials and/or agencies of the party-state.⁴⁰ Under this system, physical torture is prohibited, but the psychological pressure on the suspect is huge, and often the questioning involves extended detention and isolation to obtain a confession from the suspect. However, even though torture is not permitted during the *shuanggui* (but there are cases in which it has been used), as Flora Sapio points out, it "can easily occur because, as the *shuanggui* begins, all basic procedural guarantees are removed";⁴¹ this makes the evidence obtained useless, as torture becomes ineffective in uncovering actual crimes. This system gives the CCDI priority over the judicial system and facilitates the gathering of evidence because high-ranking leaders are often protected by a strong *guanxi* 关系 network, which would have influence if the case was investigated in an open legal process. Nevertheless, the lack of clear standards and institutionalized checks and balances on the CCDI and the CDIs makes the *shuanggui*

³⁷ Art. 28 of the 1994 Case Inspection Directive, available at: <http://cpc.people.com.cn/GB/33838/2539632.html>

³⁸ Guo Xuezhong [2014] pp. 605

³⁹ Li Ling [2016] pp. 468-469

⁴⁰ Sapio Flora [2008] pp. 13

⁴¹ Sapio Flora [2010] pp. 107

process arbitrary, particularly when it comes to local CDIs where officials are poorly trained. There are also questions about the legality of the CCP authority exercising policing and semi-judicial powers. The *shuanggui* has made the CCDI the most powerful specialised anticorruption institution of the Party-state structure and made the Party disciplinary system the Party's most forceful instrument for consolidating its power.⁴²

We can conclude that the pre-cultural revolution control agencies played a very limited role in the maintenance of standards of organization and discipline, while CDIs' tasks can be seen as a response to a crisis affecting all aspects of the Party structure. CCDI's lack of autonomy combined with weak legal and regulatory systems has been an obstacle to its fight against corruption, nevertheless the agency played an important role in containing the strength and scope of the widespread abuse of power by Party members.⁴³ Since 1978, the CCDI and CDIs has been a deterrent against the abuses of power and against corruption as well, not only for Party members, but also for the People's Liberation Army (PLA 中国人民解放军 *Zhongguo renmin jiefangjun*), which, since 2010, is subject to their oversight as well. The changes introduced at the 12th Party Congress increased CDIs' formal authority and the scope of their operation, but the lack of an independent anti-corruption body combined with weak legal and regulatory systems remain the major factors behind widespread corruption in China. Therefore, the CDIs played a very marginal role in limiting administrative misbehaviour. The lack of autonomy of the CDIs is given by the fact that all anti-corruption agencies must accept the leadership of the Politburo or of the local party committee on issues including personnel appointment and significant political decisions. Moreover, their funding depends on allocation made by the financial department of government, the anti-corruption agencies at lower levels must accept the direction of their high-ups, and, in investigating, anti-corruption agencies often face heavy pressure from various sources, including from some senior officials. All these factors restrict the ability of the anti-corruption agencies to investigate and deal with corruption independently. Furthermore, the overlapping and divided powers of the agencies make it difficult for them to function in harmony.

⁴² Guo Xuezhong [2014] pp. 606-608

⁴³ Ibid. pp. 612

1.2 Xi Jinping's 2012 anti-corruption campaign

Anti-corruption, in China, is a stone that kills two birds, because it aligns the Party with the interests of the people, providing legitimacy for the Party's rule; it provides the Party with an apolitical approach to consolidate political order without the risk of conflicts and splits in its leadership, because party unity is considered fundamental for the success of the Party itself. As a matter of fact, disciplinary actions based on corruption may help the Party in solving internal disputes and conflicts without making them public, therefore preserving the strength of the Party institution as a whole and avoiding exposure of its vulnerability if challenged by external political forces.⁴⁴

China current leadership has shown great commitment to combatting corruption as the fight against corruption is fundamental to pursue economic growth and even political stability;⁴⁵ therefore, the country has begun to reform its anticorruption system. China's fight against corruption really began just few months before the 18th Party Congress with the conviction of Bo Xilai 薄熙来,⁴⁶ the former Party secretary of Chongqing municipality and a possible contender for a seat on the Party's PBSC; however, there is a relative silence surrounding the case, which is probably intended to minimize the political nature of the anti-corruption campaign, which followed the case.⁴⁷

At the end of 2012, Xi Jinping and his administration launched a high-impact anticorruption campaign. Since 1978, the Chinese government has launched five anti-corruption campaigns. The first one, which had a significant success, began in 1982 and targeted economic crimes; the second anti-corruption campaign began in 1983, lasted until 1987 and had as target the consolidation of Party organizations. The third campaign began in 1988 and its focus was corruption inside the Party; the fourth one, which began in 1993 and

⁴⁴ Li Ling [2016] pp. 473

⁴⁵ Deng Jinting [2018] pp. 58-59

⁴⁶ The Chongqing CCP Party leader Bo Xilai case represented the greatest challenge to the Party's legitimacy since the 1989 Tiananmen Square incident. The scandal showed the decadent lifestyles of some high-ranking leaders. On April 10, 2012, Bo Xilai was suspended from his posts on the Party's Politburo and PBSC for investigation, and he was sentenced guilty in September of the same year. In handling the case, Xi and his colleagues decided it was better to focus on Bo's official corruption, and not on his immoral behaviour, thus avoiding the exposure of the CCP's and of Chinese political system's flaws and avoiding criticism as well. The trial sent the clear message that President Xi would not tolerate dissent and corruption among the elite.

⁴⁷ Fewsmith Joseph [2015] pp, 1-3

had some positive effects, had three goals: addressing the issue of self-regulation of senior officials; strengthening the investigation and prosecution of large-size corruption cases, and controlling unhealthy tendencies within the government departments. In all these campaigns, moral education constituted an important element.⁴⁸ A feature that distinguishes the fifth and last anti-corruption campaign from the previous ones is the ever-expanding scope of its investigations, because it had as targets not only provincial and central Party-state bureaucracy officials, but also workers of many economic sectors which are dominated by state-owned enterprises, as well as Party-state units that have remained intact from previous corruption probes.⁴⁹ The unprecedented scope, depth, and intensity of the campaign, as well as the selectiveness of its targets have raised speculation that the effort made is a cover for power struggle, and a tool for President Xi to remove his political opponents. The anti-corruption campaign was certainly aimed at clearing the way for deepening reforms and enhancing public faith in Xi Jinping's leadership.⁵⁰

Since assuming power, President Xi perceived that the CCP's diminishing legitimacy in the eye of Chinese people was the biggest threat the Party was facing, therefore he introduced measures to enforce Party discipline and to ensure internal unity. Xi Jinping, in his first speech as Party General Secretary, declared: "our Party will always be a strong leadership core in the historical course of upholding and developing socialism with Chinese characteristics". He also stated that "combating corruption" and "preventing degeneration" are priority tasks of his leadership, as they are a means to purify the CCP and to enhance its power.⁵¹ The main reason for this is that the governing position of the CCP might be shaken only in three ways, which are: first, failure to do its job, causing the people to rise in revolt; second, defeat by foreign enemies; third, problems within the Party. It is clear in the mind of the CCP leaders that the first two ways are unlikely, while the third one holds the greatest possibility: therefore, corruption is still one of the major problems to keep the consensus of Chinese society. The authority and legitimacy of public officials depends on the proper use of their power for the public good; therefore, if officials use their power for public ends at the

⁴⁸ He Zengke [2000] pp. 267-268

⁴⁹ Samson Yuen [2014] pp.41-43

⁵⁰ Ibid pp. 43-45

⁵¹ Speech available at: <https://www.bbc.com/news/world-asia-china-20338586>

expense of public interests, their authority and legitimacy will decline. For this reason, according to Xi Jinping, “the Party should supervise its own conduct and run itself with strict discipline to fully solve the prominent, open problems it has”; Xi has also added that if the anti-corruption campaign was not going to succeed, this would lead to the downfall of the Party and to the ruin of the country. This last anti-corruption campaign is the most enduring one, as a matter of fact, the role of the CCDI’s ad hoc inspection teams has been strengthened and improved in terms of their scope, intensity, and frequency of inspections of Party organizations at all levels of government. The CCDI has also a new task, which is to support and oversee the CDIs’ supervision and control, to remedy the problems created by local leaders in the attempt to exercise influence over both Party organizations and the local CDIs. Xi Jinping and the CCDI Secretary Wang Qishan 王岐山 both emphasized that the fight against corruption is a systematic and continuous task that will be carried out through three steps⁵²:

1. Making officials afraid to be corrupt
2. Making officials unable to be corrupt
3. Making officials unwilling to be corrupt⁵³

President Xi launched a series of measures, which are characterised by a zero-tolerance approach, intended to rectify poor administration and crack-down on corruption: these are called “hunting tigers”. Since the 18th CCP Congress, there have been more than 100 corrupt officials under investigation and receiving punishment, these include also senior officials in high positions. To be noted, over a thousand city/prefecture-level cadres have been investigated and removed from their positions for corruption.⁵⁴ Xi Jinping, in this way, set a departure from the Chinese saying that “anti-corruption has an upper limit”, because, under his leadership, whoever, at whatever level, regardless of how much power he/she has, will be held accountable once he/she breaks the law or the standards of the CCP discipline.

Xi Jinping underscores how important it is for officials to have strict morals and diligently carry out the principles of self-discipline. In December 2012, Xi Jinping already set up the “Eight Rules” (八项规定 *baxiang guiding*), that are well operable rules which aim is to

⁵² Deng Jinting [2018] pp.61-62

⁵³ President Xi’s talk [2017]

⁵⁴ Deng Jinting [2018] pp. 58-59

strengthen the trust of the people towards the Party, as well as to bring an altogether new aspect to the working style of the Party and to the atmosphere in governing bodies.⁵⁵ The rules required government officials to reconnect with masses, banned the use of luxury cars, eliminated lavish gifts, and reduced pomp, banquets, ceremony, bureaucratic visits, and meetings. According to “Survey Shows: 75.8% of urban and rural citizens look at the bright side of anti-corruption” published on the *People’s Daily Online* on February 23, 2015 “the Eight Rules comply with the wishes of the people, understand the wills of the people, and most importantly, they are ‘the real thing!’”, especially if compared to the other rules that have been published but never respected. No rules or regulations in the past were so specific, detailed and rigid, while these rules are practical and concrete; they require both morality and competency, these rules include prohibitions concerning widespread and visible behaviours. Xi Jinping also stressed repeatedly that China should start its anti-corruption campaign with the Central Political Bureau, therefore he is the first one respecting these rules and he also shows people he himself is morally upright.⁵⁶ Under the new leadership, the CCP’s officials at all levels have improved their working styles markedly, Party members must conduct themselves better than average citizens do, therefore party discipline is stricter than national law. Xi Jinping also elaborated the standards of a good cadre: “The major aspects of a cadre are competence and integrity; good cadres should have steadfast ideals and beliefs, serve the people, be diligent and pragmatic, have the courage to go outside of their comfort zones, and be clean and honest”.⁵⁷

The anti-corruption campaign has been defined as 老虎蒼蠅一起打 *laohu cangying yiqi da* that means hunting tigers and swat the flies, where “tigers” stands for high-ranking officials, and the elite in general, and “flies” stands for low-ranking officials, compared to tigers, there are more flies that are closer to people. This expression has been expanded to include also spiders and foxes, that are respectively those at the centre of economic fields and corrupt officials who have fled overseas. Government officials who have built great economic and political bases are the main target of Xi Jinping’s anti-corruption campaign.⁵⁸ In 2013, about 19 “tigers”, ministerial and provincial-level senior leaders have been arrested, four of which were

⁵⁵ Liu, Ying, Zhou [2015] pp. 275

⁵⁶ Ibid. pp. 280 -281

⁵⁷ Ibid. pp. 269

⁵⁸ Wang Zhengxu, Zeng Jinghan [2016] pp. 8-9

members of the 18th Central Committee of the CCP. An example of a “tiger”, that has been punished is Zhou Yongkang 周永康, member of the 17th Politburo Standing Committee, Secretary of the Central Political and Legal Affairs Commission between 2007 and 2012, and Minister of Public Security from 2002-07. He was placed under investigation for abuse of power, corruption, and intentional disclosure of state secrets; in 2015 he was sentenced to life in prison.⁵⁹ The PLA has also been struck by the anti-corruption campaign.⁶⁰ Since the beginning of Xi’s campaign, authorities have investigated more than 2.7 million officials and punished more than 1.5 million people, including 35 member of the Party Central Committee and 9 members of the CCDI itself.

One of the main characteristics of this campaign is that it was a Party-building one, therefore it heavily relied on the Party disciplinary mechanism rather than the legal system, as a matter of fact austerity measures, as well as disciplinary codes, were introduced by the Party Central Committee, and not by the NPC, this have fostered the centralization of power in the CCDI. Therefore even though the Chinese government established many agencies dealing with corruption, the main responsibility for investigating suspected cases of corruption and illegal activities within the Party ranks still fell on the CCDI and CDIs.⁶¹ Xi’s order is to investigate all the members of the CCP, and, if we consider just 2013, 180.000 cadres have been punished, and, since that year, 1.34 million officials have been punished for corruption, showing the reach of Xi Jinping’s campaign against graft.

By arresting Bo Xilai and Zhou Yongkang, Xi Jinping tried to show that the anti-corruption was not driven by factional politics, fact that made him gain support from the Chinese public, however, there is still the belief that these two arrests⁶² and other investigations are often politically motivated, even if they uncover real corruption⁶³. In fact, the anti-corruption campaign has been also used as a weapon for the political struggle inside

⁵⁹ Zhou Yongkang used his activities and his circles of relations to build his empire. In particular, he relied on his family, on the relations cultivated during his working in the oil industry, on his current and former secretaries, and on the relations, he built up during his tenure as Sichuan party secretary from 1999 to 2002. These overlapping circles of relations allowed Zhou to exercise enormous power and extract equally enormous wealth.

⁶⁰ Goh Sui Noi [2017]

⁶¹ Samson Yuen [2014] pp. 45-47

⁶² The doubts arise because no other member of the PBSC has been held accountable for corruption or any other crime in the reform era, therefore one has to ask if there were not something besides a desire to purify the Party that prompted Xi’s determination to go after Zhou and Bo

⁶³ Fewsmith Joseph [2015] pp. 1-3

the CCP, as a matter of fact, Xi Jinping took advantage from the departure of Zhou Yongkang and of Bo Xilai. It is clear that the anti-corruption drive is a way to consolidate Xi's grip on power over the Party and the State, but it is also a way to increase the legitimacy of the Party in the eyes of the public. Anti-corruption is Xi's most powerful weapon to consolidate its control over the Party elite. The widespread presence of corruption among Party cadres, together with the absence of legal procedures, gave Xi the possibility to arbitrarily choose the targets of his campaign, thus selecting the campaign victims also on the base of power struggle considerations.⁶⁴

While there are doubts about the actual effectiveness of this campaign to eradicate systemic corruption, it is clear that it has a positive effect in limiting lavish official entertainment and show-off of wealth by officials at all levels, in promoting clean governance, and in winning public support and high endorsement from the international community. The anti-corruption policy's aim is to reduce and contain abuse of power, but it will not change the nature of the political system.

1.3 2016 Pilot Program for reforming the National Supervision mechanism

The idea of a national supervision system was introduced in October 2016 with the Communiqué of the Sixth Plenary Session of the 18th CCP Central Committee, in which it is stated that four government organizations are vested with state powers. These four organizations are: the People's Congress, the government, supervision organs and judicial organs, whereby "supervision organs" is added for the first time. On November 7, 2016, the Pilot Program for Reforming the National Supervision Mechanism in Beijing Municipality, Shanxi Province and Zhejiang Province was announced. The aim of the Pilot Program was to test out the mechanism and the structure of the supervision system, and to accumulate experience for it to be extended nationwide. This national supervision system tries to solve the problem of overlapping duties among the Party CDIs, the administrative supervision departments and the procuratorates in the fight against corruption and the investigation of duty-related crimes, as sharing powers among different agencies did not provide full coverage

⁶⁴ Wu Guoguang [2018]

over all public sectors.⁶⁵ Another aim of such a national supervision system is to consolidate the functions of administrative supervision and corruption-prevention, as well as the procuratorate's corruption investigation, dereliction investigation and work-related crime prevention. A further aim of the national supervision system is to replace the *shuanggui* system, which is separate from the ordinary Chinese law enforcement process, because regulating detention helps settle a protracted legal problem, and makes the supervision system more authoritative and efficient. The Plan highlighted that the state supervision system reform would be significant as it would affect the overall situation in China, consolidating anti-corruption resources, expanding the scope of supervision, and enriching the means of supervision; it should also advance the supervision system reform and improve the self-monitoring of the Party and the State, working in parallel with the People's Congress and the State government. The Supervision Commission is defined as an integrated oversight organ, meaning that it merges the functions from the state supervision organs, auditing organs, corruption prevention agency, and the anti-corruption office.

With the Pilot Program, a National Supervision Commission was established by the NPC and it worked in the same offices where the Party's discipline inspection was in; this showed how the NSC was an expansion of the CCDI, the latter leading the NSC's work to ensure that it was under the control of Party leaders.⁶⁶ The NSC then established supervision bureaus in provinces, cities and counties. The commissions were vested with various police and semi-judicial powers, from interrogation to freezing property and detention. If Beijing is taken as an example, the structure of the SC is as follows: the letter-and-visit reception department (信访部门 *xinfang bumen*), the daily supervision department (日常监察部门 *richang jiancha bumen*), the case investigation department (案件审查部门 *anjian shencha bumen*), the case resolution department (案件审理部门 *anjian shenli bumen*) and the case supervision and management department (案件监察管理部门 *anjian jiancha guanli bumen*). This structure corresponded to the structure of the Beijing CDI.⁶⁷

⁶⁵ 新华社 [2016]

⁶⁶ Jiang Richard F. [2018]

⁶⁷ Deng Jinting [2018] pp. 63-64

In November 2016, the General Office of the CCP Central Committee established supervision commissions at various levels in Beijing, Shanxi and Zhejiang, which acted as special anti-corruption bodies, performing unified decision-making and command responsibilities. The most likely organizational change to implement the new system was to merge the supervision offices and the procuratorate's anti-corruption offices into the new SC, as this was easy to implement and would have offered the SC more means to conduct business. According to the Pilot Program, the SCs and the Party's discipline inspection office conducted their operations jointly in the same office. In this way, they oversaw all staff in the public sector, regardless of the membership in the Party and of the work in government offices.⁶⁸

During the carrying out of the Pilot Program, three institutional arrangements have been tested:

1. Incorporating the existing administrative supervisory organs and the CDIs in the Supervision Commission that was responsible to the people's congress at the corresponding level and to the supervision commission at higher level; this to respect the dual supervision system already existing;
2. The integrated commission had the power to oversee public functionaries, as well as investigate illegal or criminal offence of public functionaries such as suspected bribery, rent-seeking, corruption and misappropriation;
3. In the case of conflicts between the work of the supervisory commission and that of the administrative or procuratorial bodies, the application of the Administrative Supervision Law of China and of the Criminal Procedure Law of China may be suspended until the investigation by the supervision commission is concluded⁶⁹

According to Liu Jianchao 刘建超, a deputy of the 13th NPC, head of the CCP Zhejiang Provincial CDI and Director of the CDI of Zhejiang Province, under the leadership of Party committees at every level, the CDIs in the province act as special anti-corruption bodies, carrying out unified decision-making and command responsibilities, in this way solving the problem of overlapping duties. Zhejiang moved 1889 officials from anti-graft, anti-misconduct, corruption prevention and duty-related crime prevention departments to supervision

⁶⁸ 新京报 [2016]

⁶⁹ Qiao Congrui [2018]

commissions, expanding the discipline enforcement force on the frontlines and utilizing the available resources for fighting corruption.⁷⁰

The supervision agencies under the Pilot Program restructured their existing disciplinary and anti-graft departments before establishing a check and balances mechanism. The supervision sectors worked routinely but didn't handle any specific case; whilst inspection departments filed and investigated cases suspected of law and discipline violation; the case review departments examined holes in the evidence and unjustified claims; all these different departments were under the management of different leaders. The three pilot regions established a strict internal supervision system in which supervision, inspection and case review offices performed different functions with a balance of power, which aim is to give full play to the supervision role of the commissions. According to the Xinhua agency, in the first eight months of implementation of the Pilot Program, Supervision Commissions detained 183 public functionaries in the three pilot areas during their investigations and expanded their oversight to 700,000 public functionaries in Zhejiang, 1.3 million in Shanxi, and nearly a million in Beijing.

With the merging of the SCs and the CDIs, and without internal separation of the legal and disciplinary supervision departments, some previous extra-legal investigations, such as the *shuanggui*, became subject to legal requirements.⁷¹

In November 2017, the Standing Committee of the 12th NPC decided to expand the pilot program nationwide, therefore a new national Supervision Law was proposed, and it was adopted by the NPC on March 20, 2018. The law incorporated practices used in the Pilot Program for reforming the National Supervision mechanism, which ensured that the reform of the supervision system operates in a legal framework.⁷²

All these measures, from the 2012 anti-corruption campaign to the decision to establish a supervision system at national level, show that Xi Jinping still see a great necessity to fight enemies within the Party and to overcome intra-party elite resistance. According to Wu Guoguang, two factors have been important in shaping the new circumstances under which

⁷⁰ Zeng Wenhui [2018]

⁷¹ Deng Jinting [2018] pp. 63-64

⁷² Chinascope [2017]

Xi's authority has been undermined and elite resistance has gained new momentum. First, the growing social tensions fueled by Xi's actions in his post-19th Party Congress governance. These include: the constitutional amendment that eliminates the term limit for the president of the People's Republic of China (PRC 中华人民共和国 *Zhongguo renmin gongheguo*); the crackdown on private business people by depriving them of their personal freedom and property; brutal policies carried out by local leaders who are widely regarded as Xi's favorites, as exemplified by Beijing's expulsion of millions of migrant workers and a province-wide campaign in Jiangxi to destroy the coffins of rural residents. Second, social disillusionment with Xi resonates with the anti-Xi elite discontent, which has been increasingly encouraged to express itself.⁷³

⁷³ Wu Guoguang, 2018

CHAPTER 2: THE CONSTITUTIONAL AMENDMENT AND THE SUPERVISION LAW

2.1 The Supervision Commissions and the shift from the Party to the State

Given the positive effects of the Pilot Program, which won broad public support and popularity, with the constitutional amendment of 2018,⁷⁴ the PRC set up the National Supervision Commission⁷⁵ clarifying the functions and authorities of such commissions, establishing a complete national supervision system covering both central and local governments, and improving the arrangement of national institutions in combating corruption. The creation of these new Supervision Commissions certainly addressed the issue of unifying and simplifying the Chinese anti-corruption system. Therefore, the creation of this system is intended to consolidate the previously-existing multiple anti-corruption forces and to reduce repetitive investigations, in this way combatting corruption more effectively.⁷⁶

China's anti-corruption system has been described by the literature analysing it as a "dual-track" and "dual-leadership" system.⁷⁷ "Dual-leadership" system means that both the local Party leader and the superior anti-corruption agency lead the work of the local anti-corruption agency, while, previously, it was only the local Party leader who controlled the nomination and promotion of the local anti-corruption agency members, which means that the Party leaders prevailed and had strong influence over the anti-corruption agency. "Dual track" means that the CCDI investigates the case primarily as an internal CCP disciplinary matter, and then decide whether to transfer the case to the prosecutors. The judicial system is the second track, with the prosecutors investigating ordinary corruption cases and prosecuting all corruption cases.⁷⁸ With the reform and the introduction of the SCs, the system moved from

⁷⁴ 中华人民共和国宪法 [2018]

⁷⁵ Art. 124 of the Chinese Constitution; Art 2 of the Supervision Law

⁷⁶ 新华社 [2016]

⁷⁷ See Fu Hualing, "Wielding the Sword: president Xi's new anti-corruptio campaign", 2015; Gong Ting, "The Party Discipline Inspection in China: its evolving trajectory and embedded dilemmas", 2008; Guo Xuezhi. "Controlling Corruption in the Party: China's Central Discipline Inspection Commission", 2014; Kelihier, Macabe, Wu, Hsinchao, "Corruption, anti-corruption, and the transformation of political culture in Contemporary China", 2016; Manion Melanie, "Corruption by design: building clean government in Mainland China and Hong Kong", 2004; Zhu Li, "Punishing corrupt officials in China", 2015

⁷⁸ Deng Jinting [2018] pp. 58-59

a dual-track anti-corruption model to a single anti-corruption agency model, because all the anti-corruption forces of the prosecutors (including the Anti-corruption Bureau, the Anti-dereliction of Duty Department, the Corruption Prevention Department and the National Corruption Prevention Bureau System) and the CDIs are merged into a single anti-corruption agency.⁷⁹

The reform of the supervision system will fasten the establishment of a purified Party and government, and will better combat corruption by increasing the coverage and means of supervision, also by creating a centralized, authoritative and effective system,⁸⁰ which will strengthen the independence of the SCs from the local governors, even though local Party's leadership keep on controlling the SCs, and the SCs keep on reporting to both the local people's congress and the superior SCs.⁸¹ Thus, the local Party's influence is still present in the anti-corruption system, but it is limited and exceeded by the superior SCs. The Party centre is also strengthening its control over anti-corruption efforts, outlining the principles for the anti-corruption efforts, and controlling the direction, scope and degree of anti-corruption work. Moreover, it has the power to decide some high-level sensitive public corruption cases. The Party centre tries to create such leading control over the SCs through some steps:

1. Centralising control over anti-corruption agencies
2. Expanding the CDIs' system and preparing for the SCs' system
3. Establishing a single anti-corruption agency and creating balances
4. Having vague and incomplete anti-corruption laws which create room for Party control
5. Providing clear instructions and establishing Party rules⁸²

Therefore, it is important to emphasize that the SCs are largely independent from local Parties, but not from the Party centre's leadership, to whom they keep on report, as they report also to the NPC.⁸³

⁷⁹ Smith Tobias [2019] pp. 30-31

⁸⁰ Art. 2 of the Supervision Law [2018]

⁸¹ Art. 126 of the Chinese Constitution, art. 9 of the Supervision Law

⁸² Deng Jinting [2018] pp. 65-66

⁸³ Gilholm Andrew [2018]

According to many critics, deepening the State supervision system is a strategic decision to strengthen the self-supervision of the Party and the State, and to strengthen the Party's leadership as well. Thus, it can be considered as a tool for Xi's centralized power, rather than a check on it. As a matter of fact, a deeper State supervision system is a practical step of Xi Jinping to centralize authority, to institutionalize anti-corruption and to discipline officials. The NSC is a key tool in Xi's fight against disloyalty and suspect ideological leanings, and even a means to enforce policy.⁸⁴

2.2 2018 Constitutional revision

2.2.1 Context

In China, the constitution is seen as a document about the future as it is perceived by the present leadership of the CCP. Therefore, the Party exercises strong control over the revision of the constitution: as a matter of fact, all amendments have been initiated and drafted by the Party⁸⁵, and no proposal for amendment has ever been rejected by the NPC. For this reason, the Chinese constitution reflects changes in the CCP leadership and in its policies. We must remember that, in China, the Constitution has a programmatic role as it sets parameters for social and legal developments, and it is a weapon in the hands of the Party⁸⁶.

On March 11, 2018, the 1st Session of the 13th NPC Congress of the PRC adopted the Amendment to the Constitution of the PRC.⁸⁷ This is the fifth revision of the 1982 Constitution, following those of 1988, 1993, 1999 and 2004.⁸⁸ Even though China has already revised the Constitution four times, the extent and the impact of this time changes are greater than before. This last revision passed with a majority of 2958 votes in favour, two votes against, three abstentions and one invalidated vote:⁸⁹ it is considered to be the most important revision since the adoption of the Constitution. There are many reasons to consider this revision as the most important one: first, the revision boosts the centralization of the power in the hands of

⁸⁴ See Gilholm Andrew [2018], Zhong Jiyan [2018]

⁸⁵ Chen Jianfu [2008] pp. 99-100

⁸⁶ Ibid. pp. 78

⁸⁷ 中华人民共和国全国人民代表大会公告 - 第一号

⁸⁸ 中华人民共和国宪法 [2018]

⁸⁹ NPC Observer, Annotated Translation: 2018 Amendment to the P.R.C. Constitution (Version 2.0)

President Xi Jinping; second, it reaffirms the supremacy of the Chinese Communist Party and its leading role, which is the defining feature of socialism with Chinese characteristics; third, it also introduces a new constitutional organ i.e. the Supervision Commissions. Public attention has been mainly focused on the abolition of the presidential term limits, but the revision is significant as a whole, as it signals a changing of the times. As a matter of fact, with this last revision, the Party reaffirms its key part in the state system, creating a constitutional foundation for political reform that is aimed at integrating party and government functions.⁹⁰

Since the era of “Reform and Opening up”,⁹¹ China’s top leaders made institutional reforms to ensure that the power could not be overly centralized and concentrated in the hands of few individuals, deciding to use the system of the “collective leadership” (集体领导 *jiti lingdao*) combined with the “division of work with individual responsibility” (个人分工负责 *geren fengong fuze*), which heavily influenced China’s power politics, causing China’s poor governance and administrative performance.⁹² These two systems combined made people think that Xi Jinping would be the weakest leader since 1949,⁹³ but, on the contrary, Xi’s political power is different from these expectations. Evidence shows that Xi’s power could also surpass that of Mao Zedong, because it does not only concern foreign policy, national security and military affairs, but also domestic security, economy, society, and legal affairs which were previously assigned to other PBSC members.⁹⁴ This situation can be explained by a series of political events, which happened shortly before the 18th Party Congress in 2012. Specifically, reference is made to Bo Xilai affair, to Zhou Yongkang scandal and to other cases of abuse of power and corruption by Party members. These scandals made some critics argue that it was the decentralization of power that led to the ineffectiveness of government system, to the corruption of government officials, to their political irresponsibility, and to the damage to national interest.⁹⁵ Thus, the 18th Party Congress suggested that the Party would push for centralizing political power, placing a great emphasis on enforcing Party discipline and

⁹⁰ Tian Feilong [2018]

⁹¹ Launched by Deng Xiaoping in 1978

⁹² Sangkuk Lee [2017] pp. 326

⁹³ William A Callahan [2012]

⁹⁴ Lam Willy [2015]

⁹⁵ Zheng Yongnian [2012]

upholding centralized leadership.⁹⁶ Xi Jinping took advantage of this situation to centralise and consolidate the power in his hands, reconfiguring reform norms and values, and partially rearranging formal institutions.

2.2.2 Amendments

2018 amendments leave the framework of the 1982 constitution intact, but they project a new self-confidence which was previously missing. As a matter of fact, today's China is confident of its own system, path, theory and culture, all of this is supported by its rapid economic growth and its rising role in the international context. Indeed, China moved from being a "follower" country in the late 1970s to be a leading country today, having two goals in mind: national renaissance, and a more active role in shaping a common destiny for the world as a whole.⁹⁷

The 2018 revision concerns both the Preamble and the main body of the Constitution.⁹⁸ As long as the Preamble is concerned, it has been amended in several parts. Hereafter the most important changes are presented:

- Next to Mao Zedong Thought, Deng Xiaoping Theory, and the important thought of Three Represents are added "the Scientific Outlook to Development, and Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era". This change adds two guiding political ideologies: that of Hu Jintao and that of Xi Jinping. While there is no direct reference to Hu Jintao's name, there is a direct reference to Xi Jinping's name and thought, in this way formalizing his personality cult and bolstering also the centralization of powers in his hands;
- The word 法制 (*fazhi*, legal system) in paragraph seven, is substituted with the homophone 法治 (*fazhi*, rule of law), which means governing the country in accordance with law, showing the importance Xi Jinping attaches to the law. According to this principle, the law is seen as an instrument for politics, and rights are protected only if

⁹⁶ Evidence can be found in Hu Jintao's work report for the 18th Party Congress of November 2012, chapter XII, paragraph 8, available at http://www.china-embassy.org/eng/zt/18th_CPC_National_Congress_Eng/t992917.htm

⁹⁷ Tian Feilong [2018]

⁹⁸ See NPC Observer, Annotated Translation: 2018 Amendment to the P.R.C. Constitution (Version 2.0)

they correspond to the public interest. Thus, this is not a form of rule of law, rather is a rule by law with Chinese characteristics;

- The expression “apply a new vision of development” (新发展理念 *xin fazhan linian*) is inserted. The “new vision of development” is a concept articulated by Xi Jinping in the Party’s 2015 recommendations for the 13th Five-Year Plan⁹⁹ and which was later written into the Party’s Constitution.¹⁰⁰ According to this concept, innovation must become the first driving force for development, and sustainable development is fundamental;
- The idea of ecological civilization (生态文明 *shengtai wenming*) is introduced and the objective of building a strong country is reaffirmed. This concept is also added in the main body of the Constitution (art. 89), in which it is stated that the State Council exercises the functions and powers “to direct and administer economic affairs and urban and rural development, as well as the building of an ecological civilization”;
- The description of “socialist ethnic relations” (社会主义民族关系 *shehui zhuyi mingzu guanxi*) is changed to include the term “harmony” (和谐 *hexie*). which has to exist among the different nationalities present in China, and which is fundamental to build the “Harmonious Socialist Society” (社会主义和谐社会 *shehui zhuyi hexie shehui*) developed during Hu’s mandate;
- Many references to the role of the PRC in the international context are introduced, specifically the adherence to a “peaceful development” (和平发展道路 *heping fazhan daolu*) and to “a mutually beneficial strategy of opening up” (互利共赢开放战略 *huli gongying kaifang zhanlüe*). Moreover, a new foreign policy goal is introduced, that is creating “a community with a shared future for mankind” (人类命运共同体 *renlei mingyun gongtongti*), expression which was introduced also in the Party’s Constitution in 2017.¹⁰¹ These changes show how China wants to play a leading role on the global stage, and how it also wants to play an active role in shaping a common destiny for the global community.

⁹⁹ Available at: http://www.gov.cn/xinwen/2015-11/03/content_2959432.htm (last access: 7.05.19)

¹⁰⁰ The expression is inserted in the part named 总纲 *zonggang*, general program, available at: chinese: <http://www.12371.cn/special/zggcdzc/> (last access: 7.05.19), English: <https://china.usc.edu/constitution-communist-party-china> (last access: 7.05.19)

¹⁰¹ The expression was introduced in the “general program”

Major changes concern also the main body of the Constitution. In paragraph 2 of article 1 of the Constitution is inserted the sentence “The defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China”. This is the first time the terms “Communist Party of China” and its “leadership” are included in the main body of the Constitution, while previously the Party was mentioned only in the Preamble. The reference to the Party reappears in the main body of the Constitution after almost 40 years. In fact, it was present in 1978 Constitution, but not in the 1982 one, in which there is the formal separation between the State organization and the one of the Party; moreover, every reference to the Party was removed. With the new amendment, the Party becomes a key part of the state system, forming a constitutional foundation for political reform that is aimed at integrating party and government functions.¹⁰²

Article 24 paragraph 2 incorporates into the Constitution the “Core Socialist Values” (社会主义核心价值观 *shehui zhuyi hexin jiazhi guan*), that are: the four national values of “democracy”, “prosperity”, “harmony”, and “civility”; the four social values of “justice”, “freedom”, “equality”, and “rule of law”; and the four individual values of “dedication”, “integrity”, “friendship”, and “patriotism”.

The revision of article 27, for the first time, states that all “state functionaries shall take a public oath of allegiance to the Constitution when assuming office”. Therefore, it constitutionalizes the requirement that all state employees take the constitutional oath upon taking office. The first person of doing this was Xi Jinping on March 17, 2018 when he was appointed President of the PRC and of the Central Military Commission (CMC 中国共产党中央军事委员会 *Zhongguo gongchandang zhongyang junshi weiyuanhui*).

Another change refers to paragraph 3 of article 79, from which the sentence referring to the fact that the President and Vice President of the PRC must not serve more than two consecutive terms is removed. The elimination of the presidential term limits gives an end to the efforts to separate Party and State, which has been a goal of political reform since 1980.¹⁰³ This change effectively helps the work of the President but helps also the centralization of power in his hands. The removal of the presidential term limit merely has a fundamental symbolic value, in fact, in China, the President has a formal role, which has not changed over

¹⁰² Tian Feilong [2018]

¹⁰³ Ibid.

time, and the elimination of the presidential term limit has not been followed by other changes extending or strengthening the presidential powers. This revision has been explained by the fact that, in this way, President Xi Jinping can complete his project of transformation of the Chinese society; moreover, stability is guaranteed. This change can also help maintain the trinity system (三位一体 *sanwei yiti*), which is a trinity of leadership consisting of: CCP Central Committee general secretary (which is not subjected to term limit), President of the nation and chairman of the CCP Central Military Commission; moreover, it can improve the institution of the leadership of the CCP and of the Nation.

The revision also includes the creation of a new anti-graft agency, specifically the National Supervision Commission, which is a new constitutional organ and a new state power. Its aim is to extend the powers of the Central Commission for Discipline Inspection of the CCP. The new organ is introduced in the third chapter of the Constitution, titled “国家机构 *guojia jigou*”, the Structure of the State; moreover, many other articles, such as the 37, 62, 63, 65 etc, have been changed to adapt to the existence of the SCs. The decision to create the Supervision Commissions as a national organ will promote the supervision of public officers and will also push forth the strategy of deepening reform, implementing the rule of law and strengthening Party discipline.

As previously said, a new section titled “监察委员会 *jiancha weiyuanhui*”, the Supervision Commissions, is added to chapter III of the Constitution; and five articles are added as articles 123 through 127. The articles have the following contents¹⁰⁴:

第一百二十三条 中华人民共和国各级监察委员会是国家的监察机关。

Article 123: The supervision commissions of the People’s Republic of China at various levels are the supervisory organs of the State.

This article confirms the legal status of supervision commissions as state organs.

¹⁰⁴ 中华人民共和国宪法 [2018]

第一百二十四条 中华人民共和国设立国家监察委员会和地方各级监察委员会。

监察委员会由下列人员组成：主任，副主任若干人，委员若干人。监察委员会主任每届任期同本级人民代表大会每届任期相同。国家监察委员会主任连续任职不得超过两届。监察委员会的组织和职权由法律规定。

Article 124: The People's Republic of China establishes the State Supervision Commission and local supervision commissions at various levels. A supervision commission is composed of the following: a chairperson, several vice chairpersons, and several members. The term of office for the chairperson of a Supervision Commission is the same as that of the people's congress at the same level. The Chairperson of the State Supervision Commission must not serve more than two consecutive terms. The organization and functions and powers of the supervision commissions are prescribed by law;

This article defines the organization of the SCs, sets out the basic structural composition of the commissions and sets the term limit for both the officials and the Chairperson; moreover, it opens the way for the adoption of the Supervision Law, stating that the functions and powers of the SCs are prescribed by law, therefore there must be a law regarding them.

第一百二十五条 中华人民共和国国家监察委员会是最高监察机关。国家监察委员会领导地方各级监察委员会的工作，上级监察委员会领导下级监察委员会的工作。

Article 125: The National Supervision Commission of the People's Republic of China is the highest supervisory organ. The National Supervision Commission directs the work of local supervision commissions at various levels, and supervision commissions at higher levels direct the work of those at lower levels;

This article establishes the supremacy of the NSC over the other commissions, as well as the hierarchy of the entire system.

第一百二十六条 国家监察委员会对全国人民代表大会和全国人民代表大会常务委员会负责。地方各级监察委员会对产生它的国家权力机关和上一级监察委员会负责。

Article 126: The National Supervision Commission is responsible to the National People's Congress and its Standing Committee. Local supervision commissions at various levels are responsible to the organs of State power that created them and to the supervision commissions at the next higher level;

Article 126 describes the responsibility system of the SCs both at central and local level. The system of dual leadership is here reaffirmed. Being responsible only to the NPC and to its Standing Committee, the NSC ranks alongside the State Council, the Supreme People's Procuratorate and the Supreme People's Court, and above most institutions of the Chinese government.

第一百二十七条 监察委员会依照法律规定独立行使监察权，不受行政机关、社会团体和个人的干涉。

监察机关办理职务违法和职务犯罪案件，应当与审判机关、检察机关、执法部门互相配合，互相制约。

Article 127: The supervision commissions exercise supervisory power independently in accordance with the provisions of law, not subject to interference by any administrative organ, social group, or individual. In handling cases of illegal or criminal abuse of public office, the supervisory organs shall mutually cooperate with and mutually check adjudicatory organs, procuratorial organs, and law enforcement departments;

This article affirms the independence of the SCs from the other organs and states the principle of cooperation among the different organs.

The articles describe in general terms the organization of the supervision commissions, as well as the principles they must follow in performing their duties. The section stipulates the nature, status, title, composition of staff, term office, leadership system and working mechanism of the SCs, laying the basis for their creation. Similar to other organs, supervision commissions are also subject to dual oversight – both by higher-level supervision commissions and by people’s congresses at the same level. The supervision commissions’ main roles include investigating duty-related illegal activities and duty-related crimes, constructing a clean government and launching anti-corruption campaigns, so as to safeguard the Constitution and the law. The three major functions of the commissions are: supervision, investigation and handling. The commissions have many powers among which we can find: investigation, communication, questioning, enquiry, assets freezing, evidence collection, seizure of assets, property search, inspection, detention, identification and confiscation.

2.3 The Supervision Law

Next to the revision of the Constitution, a new Supervision Law (中华人民共和国监察法 *Zhonghua renmin gongheguo jianchafa*) has also been approved on March 20, 2018 by the 1st meeting of the 13th session of the NPC.¹⁰⁵ The Law marked the finalization of China’s supervision system reform.¹⁰⁶ The law passed with 2914 votes in favour, 28 against, and 18 abstentions.¹⁰⁷ It consists of 69 articles which are divided into nine chapters covering the following matters: general provisions, duties of the SCs, scope of supervision and jurisdiction, scope of supervision authority, procedures, internal cooperation against corruption, oversight of supervision organs and supervision personnel, legal responsibility, and supplementary provisions.¹⁰⁸

The first chapter covers the general provisions and include articles from 1 to 6.

¹⁰⁵ 中国人大网 [20.03.18] 中华人民共和国主席令

¹⁰⁶ Chen Ruihua 陈瑞华 [2018]

¹⁰⁷ NPC Observer, Supervision Law of the People’s Republic of China

¹⁰⁸ 中华人民共和国监察法 [2018]

第一条 为了深化国家监察体制改革，加强对所有行使公权力的公职人员的监督，实现国家监察全面覆盖，深入开展反腐败工作，推进国家治理体系和治理能力现代化，根据宪法，制定本法。

Article 1 This Law is drafted in accordance with the Constitution for the purposes of deepening the reform of the national supervision system, strengthening the supervision of all public officials exercising public power, realizing the full coverage of national supervision, conducting the anti-corruption work in an in-depth manner, and promoting the modernization of the national governance system and governance capacity.

This article explains the aim of the creation of the SCs, which are seen as a means to deepening the reforms and strengthening the supervision no more only of Party cadres, but of all public officials, whose list will be presented later; this is the first time such fact is stated, because in the Constitution there was no reference to this change. Moreover, it states that the law is written in accordance with the Constitution, leaving no space open for doubts over the constitutionality of the law. In this context, it must be remembered that in China there is no concept of constitutionality as intended in Europe, because it is the legislative organ, i.e. the NPC, that decides whether a law is written in accordance with the Constitution or not, there is no other organ controlling it.

第二条 坚持中国共产党对国家监察工作的领导，以马克思列宁主义、毛泽东思想、邓小平理论、“三个代表”重要思想、科学发展观、习近平新时代中国特色社会主义思想为指导，构建集中统一、权威高效的中国特色国家监察体制。

Article 2 Adhering to the leadership of the Communist Party of China over the national supervision work, and having Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory, the Theory of “Three Represents”, the Scientific Outlook on Development, and Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era as the guide, build a centralized, unified,

authoritative and efficient national supervision system with Chinese characteristics shall be established.

Article 2 also explains the aim of the law, which is to build a state supervision system with Chinese characteristics that is centralized, unified, authoritative and highly efficient. Here, what is noteworthy is the fact that the guiding political ideologies of the PRC are cited to be the guidelines that should be followed in establishing the supervision system.

第三条 各级监察委员会是行使国家监察职能的专责机关，依照本法对所有行使公权力的公职人员（以下称公职人员）进行监察，调查职务违法和职务犯罪，开展廉政建设和反腐败工作，维护宪法和法律的尊严。

Article 3 Supervision commissions at all levels are the specialized organs responsible for exercising state supervisory functions. In accordance with this Law, they shall conduct supervision of public officials exercising public power (hereinafter referred to as public officials), investigate duty-related violations and crimes, carry out efforts to establish a clean government and fight corruption, and maintain the dignity of the Constitution and the law.

Article 3 explains the task of the SCs, which is not only fight corruption, but also to investigate all violations and crimes related to the duties of public officials. In this way, the power of the SCs is somehow expanded as new tasks are added to those of the CDIs. In this article, the duties of the SCs are described only in general terms, while they are described in detail in the successive articles.

第四条 监察委员会依照法律规定独立行使监察权，不受行政机关、社会团体和个人的干涉。

监察机关办理职务违法和职务犯罪案件，应当与审判机关、检察机关、执法部门互相配合，互相制约。

监察机关在工作中需要协助的，有关机关和单位应当根据监察机关的要求依法予以协助。

Article 4 Supervisory commissions shall independently exercise the supervisory power in accordance with the law, free from interference by any administrative organ, public organization or individual. In handling duty-related violations or crimes, Supervision organs shall cooperate with judicial organs, procuratorial organs, and law enforcement organs, with mutual checks. Where the supervisory organ requires assistance in its work, the relevant organs and entities shall provide assistance in accordance with the law according to the requirements of the supervisory organ.

Article 4 states the independence of the Supervision Commissions in exercising their powers and the fact that the Commissions shall cooperate with adjudicatory organs, procuratorial organs, and law enforcement departments; how this cooperation should be carried out is not clearly explained. According to Chen Guangzhong 陈光中, a procedural jurist and professor at the China University of Political Science and Law in Beijing, this article is worth considering, because this means that, even if the SCs are co-located with the CDIs, the CDIs must accept the leadership of the SCs at the same level and above.¹⁰⁹

Article 5 states that the work of the SCs must be performed in accordance with the Constitution and the laws, having them as basis. Moreover, it states that the law shall be equally applied, ensuring the interests and rights of the people involved. Article 6 reaffirms what the aim of the SCs is, placing great importance to education and ethics, which shall be strengthened. It places great importance also to the Chinese traditional culture, so that corruption can be rooted out not only through supervision, but also through education.

Chapter 2 contains articles from 7 to 14, and it is about Supervision organs and their duties. Article 7 explains the distribution of the Commissions from national level to municipal districts level, reaffirming that the NSC is the highest supervisory organ. Articles 8 and 9 describe the composition of the SCs both at national and local level, which their area of

¹⁰⁹ Wang Lina [2017]

supervision is, how they are elected and the term limit of the office, that is of two consecutive terms. Moreover, article 9 also reaffirms the principle of dual supervision, according to which the SCs are responsible to both the people's congress at corresponding level and to the SC at the next higher level. Article 10 states which the hierarchy of the SCs in the direction of the work is.

第十一条 监察委员会依照本法和有关法律规定履行监督、调查、处置职责：

（一）对公职人员开展廉政教育，对其依法履职、秉公用权、廉洁从政从业以及道德操守情况进行监督检查；

（二）对涉嫌贪污贿赂、滥用职权、玩忽职守、权力寻租、利益输送、徇私舞弊以及浪费国家资财等职务违法和职务犯罪进行调查；

（三）对违法的公职人员依法作出政务处分决定；对履行职责不力、失职失责的领导人员进行问责；对涉嫌职务犯罪的，将调查结果移送人民检察院依法审查、提起公诉；向监察对象所在单位提出监察建议。

Article 11 In accordance with the provisions of this Law and relevant laws, a supervision commission shall perform the duties of supervision, investigation and disposition:

(1) It shall provide education in clean governance to public officials and conduct supervision and inspection of public officials' performance of functions in accordance with the law, impartial exercise of power, clean administration, and ethical conduct;

(2) It shall conduct investigations of duty-related violations and crimes such as suspected corruption, bribery, abuse of power, neglect of duty, power rent-seeking, siphoning benefits, twisting the law for personal gain, as well as the waste of state assets;

(3) In accordance with the law, it shall make decisions on governmental sanctions against public officials who violate any law, hold liable the leadership personnel who perform their functions ineffectively or neglect their duties and responsibilities, transfer investigation results on suspected duty-related crimes to

people's procuratorates for examination and initiating a public prosecution in accordance with the law, and offer supervision suggestions to the units of the targets of supervision.

Article 11 explains in detail which the duties of the SCs are. Article 12 states that SCs can station and dispatch supervision bodies or Supervision Commissioners in organs of the CCP, state organs, organizations and entities managing public affairs, but this can happen only upon authorization. Article 13 explains which the duties of dispatched supervisory bodies and supervisors are. Article 14 affirms that the State must implement an ombudsmen system, as well as determine the systems of their hierarchical setup, appointment and removal, evaluation, and promotion.

Chapter 3 contains articles from 15 to 17 and describes the scope of Supervision and Jurisdiction.

第十五条 监察机关对下列公职人员和有关人员进行监察：

（一）中国共产党机关、人民代表大会及其常务委员会机关、人民政府、监察委员会、人民法院、人民检察院、中国人民政治协商会议各级委员会机关、民主党派机关和工商业联合会机关的公务员，以及参照《中华人民共和国公务员法》管理的人员；

（二）法律、法规授权或者受国家机关依法委托管理公共事务的组织中从事公务的人员；

（三）国有企业管理人员；

（四）公办的教育、科研、文化、医疗卫生、体育等单位中从事管理的人员；

（五）基层群众性自治组织中从事管理的人员；

（六）其他依法履行公职的人员。

Article 15 Supervisory organs shall conduct supervision of the following public officials and relevant personnel:

(1) Officials of the Chinese Communist Party organs, organs of people's congresses and their standing committees, people's governments, Supervision Commissions,

people's courts, people's procuratorates, organs of CPPCC commissions at all levels, organs of democratic parties, and organs of the associations of industry and commerce, and personnel managed with reference to the "People's Republic of China Law on Public Officials";

(2) Personnel engaged in public affairs at organizations managing public affairs upon authorization by laws or regulations or lawful entrustment by state organs;

(3) Management of state-owned enterprises;

(4) Personnel engaged in management in public education, scientific research, culture, health care, sports and other such units;

(5) Personnel engaged in management at basic-level autonomous mass organizations;

(6) Other personnel who perform public duties in accordance with the law

Article 15 describes who is under supervision. As we have already said, the list does not only include CCP cadres at various levels, but also people working in public sectors, such as teachers or doctors. Note that non-managerial staff of SOEs and public institutions are not subjected to the Supervision Law, therefore teachers, doctors etc. without managerial positions in their respective organizations do not fall under the SCs' system. What is noteworthy is that the SCs exercise supervision also on people's courts and people's procuratorates.

Article 16 states which is the extent of SCs' jurisdiction and who is responsible to solve disputes in case they arise. Article 17 explains the terms to which the jurisdiction of a supervision organ may be extended and when it may be transferred to a higher-level supervision organ.

Chapter 4 contains articles from 18 to 34 and concerns the scope of Supervision Authority. Article 18 explains the rights of Supervision organs in exercising their functions and powers. Moreover, it states their duty to keep confidential any secret to which they have access while performing their functions. Article 19 states that Supervision Organs may question relevant organs or personnel if needed. Articles 20 and 21 describes what Supervision organs can do while investigating.

第二十二条 被调查人涉嫌贪污贿赂、失职渎职等严重职务违法或者职务犯罪，监察机关已经掌握其部分违法犯罪事实及证据，仍有重要问题需要进一步调查，并有下列情形之一的，经监察机关依法审批，可以将其留置在特定场所：

- （一）涉及案情重大、复杂的；
- （二）可能逃跑、自杀的；
- （三）可能串供或者伪造、隐匿、毁灭证据的；
- （四）可能有其他妨碍调查行为的。

对涉嫌行贿犯罪或者共同职务犯罪的涉案人员，监察机关可以依照前款规定采取留置措施。

留置场所的设置、管理和监督依照国家有关规定执行。

Article 22 Where the person under investigation is suspected of corruption, bribery, dereliction of duty, or any other serious duty-related violation or duty-related crime, and the Supervision Organ has obtained some facts and evidence on the violation or crime, but needs to conduct further investigation of important issues, after examination and approval by the Supervision Organ in accordance with the law, the person may be retained in custody at a designated location in any of the following circumstances:

- (1) The circumstances of the case in which the person is involved are major or complicated;
- (2) The person may escape or commit suicide;
- (3) The person may make a false confession in collusion or forge, conceal or destroy evidence;
- (4) The person may commit any other conduct that obstructs investigation.

In accordance with the provision of the preceding paragraph, The Supervision Organ may detain any person who is suspected of giving bribes or committing any

joint duty-related crime. The setup, management and supervision of detention places shall be implemented with the relevant state provisions.

Article 22 states the right for Supervision organs, under specific circumstances, to retain in custody people under investigation and explains the terms of use of the *liuzhi* system, which is the substitute for the *shuanggui* system. First of all, to resort to the *liuzhi* system, there must already be some evidence on the violation or crime committed; furthermore, the person may be retained in custody only under the circumstances described in the article. This article may be considered inconsistent with Article 37 of the Constitution that gives the power to arrest Chinese citizens only to “people’s procuratorate” and “people’s court”. However, as previously said, in China there is no such a thing as the European concept of constitutionality of laws, therefore there is no inconsistency.

Articles from 23 to 34 give dispositions about how the investigation must be carried out, highlight the principle of cooperation among the different organs, the cases in which the freedom of movement of the suspects may be restricted, as well as the cases in which the punishment may be more lenient

第三十三条 监察机关依照本法规定收集的物证、书证、证人证言、被调查人供述和辩解、视听资料、电子数据等证据材料，在刑事诉讼中可以作为证据使用。

监察机关在收集、固定、审查、运用证据时，应当与刑事审判关于证据的要求和标准相一致。

以非法方法收集的证据应当依法予以排除，不得作为案件处置的依据

Article 33 Evidence collected by the Supervision Organs in accordance with this Law, including physical evidence, documentary evidence, testimony of witnesses, confessions and defenses by investigation subjects, audiovisual materials and electronic data, may be used as evidence in criminal proceedings. The supervisory organ shall collect, fix, examine and use evidence in compliance with the requirements and standards for criminal adjudication. Evidence collected by

illegal means shall be excluded in accordance with the law and shall not be taken as the basis for the disposition of cases.

This article is important as it is written to solve one major problem of the CDIs, i.e. the fact that the evidence collected by the CDIs could not be used as evidence in criminal proceedings, therefore all investigations had to be done again, making all the process time and money expensive. Article 33 tries to eliminate this problem by stating what follows: if evidence is collected according to the standards and requirements for criminal adjudication, such evidence can be used also in criminal proceedings, with no need of other investigations to recollect the same evidence. Now the material collected by the SCs during their investigations could be recognized as evidence for later legal proceeding, no matter whether the materials were collected in disciplinary or legal violation investigations; this greatly reduces the repetitive investigations when disciplinary agencies have already achieved useful evidence for legal violations. Although this reduces the repetitive investigations when evidence for legal violations has already been collected, it also lifts the requirements for disciplinary investigations so that the materials could satisfy legal standards.¹¹⁰

Chapter 5 describes Supervision procedures and contains articles from 35 to 49, which describe in detail how the work of Supervision organs shall be carried out. Article 36 states that it is necessary to implement a mechanism of check and balances among the different departments, as a means to avoid the problem of overlapping work. Article 40 affirms the need to follow the principle of innocence, meaning that one person is considered innocent unless proven guilty.

第四十三条 监察机关采取留置措施，应当由监察机关领导人员集体研究决定。设区的市级以下监察机关采取留置措施，应当报上一级监察机关批准。省级监察机关采取留置措施，应当报国家监察委员会备案。

¹¹⁰ Deng Jinting [2018] pp. 64-65

留置时间不得超过三个月。在特殊情况下，可以延长一次，延长时间不得超过三个月。省级以下监察机关采取留置措施的，延长留置时间应当报上一级监察机关批准。监察机关发现采取留置措施不当的，应当及时解除。

监察机关采取留置措施，可以根据工作需要提请公安机关配合。公安机关应当依法予以协助。

Article 43 Adoption of retention in custody measures by a Supervision Organ shall be decided upon collective research of leaders of the Supervision Organ. Adoption of retention in custody measures by a Supervision Organs at or below the districted city level, shall be reported to the Supervision Organ at the immediately higher level for approval. Provincial level Supervision Organ employment of retention in custody shall be reported to the National Supervision Commission for recording. The period of retention in custody must not exceed three months. Under special circumstances, the Supervision Organ may extend the period once for not more than three months. If a Supervision Organ at or below the provincial level employ retention in custody measures, the extension of the period of retention in custody shall be reported to the Supervision Organs at the next higher level for approval. If the Supervision Organs find the retention in custody measure inappropriate, it shall promptly remove the measure. Supervision Organs employing retention in custody measures may request the public security organ to cooperate, as necessary for work. The public security organs shall provide assistance in accordance with the law.

Article 43 explains how the *liuzhi* system can be adopted, i.e. it shall be used upon the decision of the leaders of the SC, and which use shall be reported to the next higher-level supervision organ for approval. In this article, it is stated which the time limit of detention under the *liuzhi* system is (three months, plus, under specific circumstances, three additional months). The principle of cooperation between the supervision organs and the public security organs is here reaffirmed.

第四十四条 对被调查人采取留置措施后，应当在二十四小时以内，通知被留置人员所在单位和家属，但有可能毁灭、伪造证据，干扰证人作证或者串供等有碍调查情形的除外。有碍调查的情形消失后，应当立即通知被留置人员所在单位和家属。

监察机关应当保障被留置人员的饮食、休息和安全，提供医疗服务。讯问被留置人员应当合理安排讯问时间和时长，讯问笔录由被讯问人阅看后签名。

被留置人员涉嫌犯罪移送司法机关后，被依法判处管制、拘役和有期徒刑的，留置一日折抵管制二日，折抵拘役、有期徒刑一日。

Article 44 After a person under investigation is retained in custody, the entity where the detained person works and his or her family shall be notified within 24 hours, except under the circumstance where evidence may be destroyed or forged, the testimony of a witness may be interfered with, a false confession may be made in collusion, or the investigation may otherwise be affected. After the circumstances obstructing the investigation have been eliminated, the entity where the detained person works and his or her family shall be notified immediately. The Supervision Organs shall guarantee the food, drink, rest and security of the detained person, and provide medical services. Interrogation time and length shall be reasonably arranged for the interrogation of the detained person, and interrogation records shall be signed by the interrogated person after reading. Where the detained person who is suspected of any crime is sentenced to controlled release, short-term detention or fixed-term imprisonment in accordance with the law after he or she is transferred to the judicial organ, the period of retention in custody shall be offset against the term of penalty. One day of retention in custody shall be offset against two days of public surveillance, and one day of criminal detention or fixed-term imprisonment.

Article 44 explains the rules under which the *liuzhi* system operates. First of all, it states the duty of notification to the family members within 24 hours, except under specific circumstances. Moreover, it is stated that the suspect shall be guaranteed the basic rights: food,

drink, rest, security and medical services. In addition, interrogation records shall be signed by the interrogated person. Note that individuals under the *liuzhi* system are not entitled to a lawyer or other criminal procedural protections that could help prevent abuse during the investigation. Even though through these articles the system of retention in custody has been greatly improved if compared to the *shuanggui* system, there are still many concerns regarding it, which will be analyzed in chapter 3. Article 45 describes the measures that can be adopted for public officials who have committed any duty-related violation.

Chapter 6, containing articles from 50 to 52, describes the role of the National Supervision Commission in the fight against corruption, affirming the need to plan and cooperate also with other nations, regions and international organizations.

Chapter 7, containing articles from 53 to 61, describes the methods of oversight of the Supervision organs and their personnel. Article 53 states that all levels of Supervision Commissions are under the oversight of the people's congress of that level and its standing committee, which, in return, shall deliberate special work reports of SCs at the corresponding level, and organize law enforcement inspections. Article 54 declares that all information about the supervision work shall be public, and Supervision organs shall accept democratic, social and public opinion oversight. Article 55 describes the oversight of the supervision personnel, while article 56 describes the duties of such personnel, highlighting those of being impartial, honest and upright. Article 57 states the duty of supervisors to promptly register and file relevant information for the record. Article 58 states the terms to request the withdrawal of a supervisor. Article 59 specifies the duties of Supervision organs' personnel when leaving their post, specifically that of nondisclosure. Furthermore, it states that for three years after the resignation or retirement, supervisors cannot engage in professions that may have possible conflicts of interest with their previous work. Article 60 explains when people being investigated have the right to file an appeal to the Supervision organ, and the time-terms for such appeal. Article 61 concerns the responsibility of the personnel in case there were major mistakes in the handling of the case.

Chapter 8, containing the articles from 62 to 67, describes what the legal responsibilities of the supervision personnel or any related person are. Article 66 states that whoever violates the Supervision Law is subjected to criminal liability if a crime occurs. Article 67 describes the terms for state compensation in case any damage is caused.

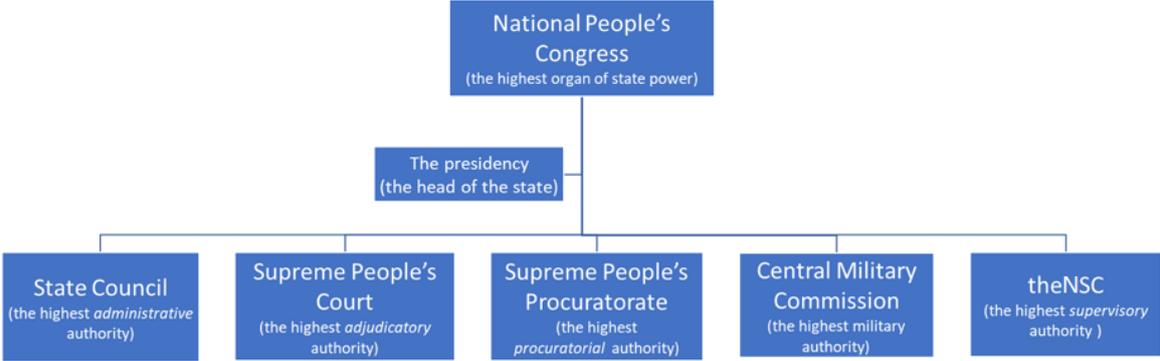
Chapter 9 includes article 68 and 69 and contains supplementary provisions. Article 68 states that the CMC shall formulate specific provisions on the carrying out of supervision work by the Chinese PLA and the Chinese People's Armed Police Force; while article 69 states when the law is to come into force and the simultaneous abolition of "The Administrative Supervision Law of the PRC".

Reading the law, it is possible to draw some conclusions about the Supervision Commissions. First of all, the NSC is a State institution and not a Party one, the same is true for the supervision system in general, as a matter of fact the SCs are dedicated to the supervision of all personnel exercising public powers and not only of Party members.¹¹¹ The work of the SCs is extended to investigate all the government officials regardless of Party membership, including individuals working in state-owned companies, educational institutions, and other state-run enterprises. Therefore, it can be said that the anti-corruption policy has been institutionalized through the supervision commissions' system,¹¹² under which various anti-corruption apparatuses of different Party and state departments will be streamlined. The SCs are a political organization, which is given the task of safeguarding the rights and interests of the people and of cracking down on corrupt official within the Party. Furthermore, the SCs have to control that Party officials respect Party's discipline and national law, task that was previously spread among different national-level agencies, in particular it was task of the CCDI.

¹¹¹ Shen Zhourong [2018]

¹¹² Gilholm Andrew [2018]

Administratively, the NSC ranks alongside the State Council, the Supreme People’s Procuratorate, the Supreme People’s Court and the Central Military Commission, and above most institutions of the Chinese government.



The NSC reports directly and is responsible to the NPC.¹¹³ The NSC incorporates the Ministry of Supervision, the National Bureau of Corruption Prevention, and the Department of Anti-corruption and Bribery; all these agencies became departments of the Supervision Commissions and subjected to their leadership, while the procuracy has no authority to investigate corruption.¹¹⁴

Furthermore, according to the authoritative interpretations, the Supervision Law realizes “full coverage of state supervision”, completes the organic integration of national anti-corruption resources, and makes administrative supervision, the criminal investigation and the corruption prevention unified into the supervision commissions, and the integration of the supervision commissions and the commissions for discipline inspection is realized. At the same time, the adoption of the Supervisory Law also ends the situation of separated party discipline investigation, political investigation and criminal investigation of the past years, and gives the supervision commissions a unified investigation to determine the functions of three illegal crime facts and achieves party discipline investigation. The organic connection between political investigation and criminal investigation avoids the duplication and delay of investigations by the different investigation organs in the same case and improves the efficiency of investigation activities in anti-corruption cases.¹¹⁵ Thanks to the above-mentioned changes, the material collected by the SCs during their investigations can be recognized as evidence for later legal proceeding, no matter whether the materials are collected in

¹¹³ Art. 126 of the Constitution, art. 9 of the Supervision Law
¹¹⁴ Deng Jinting [2018] pp. 60-62
¹¹⁵ Chen Ruihua 陈瑞华 [2018]

disciplinary or legal violation investigation;¹¹⁶ this greatly reduces the repetitive investigations when disciplinary agencies have already achieved useful evidence for legal violations.¹¹⁷

Both the Constitution and the Supervision Law do not explain the Commission's relationship with the CCDI, but the CCP's restructuring plan¹¹⁸ makes clear that the CDIs and the SCs are to be co-located, and the enforcement of party discipline and state supervision must be integrated.¹¹⁹ Evidence can be found in the following text which is taken from the paragraph 深化党中央机构改革 *shenghua dangzhongyang jigou gaige*, deepening the reforms of the Party Central Organization, of the CCP's restructuring plan.

（一）组建国家监察委员会。为加强党对反腐败工作的集中统一领导，实现党内监督和国家机关监督、党的纪律检查和国家监察有机统一，实现对所有行使公权力的公职人员监察全覆盖，将监察部、国家预防腐败局的职责，最高人民检察院查处贪污贿赂、失职渎职以及预防职务犯罪等反腐败相关职责整合，组建国家监察委员会，同中央纪律检查委员会合署办公，履行纪检、监察两项职责，实行一套工作机构、两个机关名称。

主要职责是，维护党的章程和其他党内法规，检查党的路线方针政策和决议执行情况，对党员领导干部行使权力进行监督，维护宪法法律，对公职人员依法履职、秉公用权、廉洁从政以及道德操守情况进行监督检查，对涉嫌职务违法和职务犯罪的行为进行调查并作出政务处分决定，对履行职责不力、失职失责的领导人员进行问责，负责组织协调党风廉政建设和反腐败宣传等。

国家监察委员会由全国人民代表大会产生，接受全国人民代表大会及其常务委员会的监督。

不再保留监察部、国家预防腐败局。

¹¹⁶ Art. 39 of the Supervision Law

¹¹⁷ Deng Jinting [2018] pp. 64-65

¹¹⁸ Available at: <http://news.sina.com.cn/c/nd/2018-03-21/doc-ifysnhat1097446.shtml> (last access: 6.05.19)

¹¹⁹ Horsley Jamie P. [2018]

Establish a National Supervision Committee. In order to strengthen the party's centralized and unified leadership over anti-corruption work; to realize the unity of the supervision inside the Party and at national level, as well as the organic unity of the party's disciplinary inspection and the national supervision; to achieve full coverage of all public officials exercising public power, to supervise the duties of the Ministry of Supervision, the National Bureau of Corruption Prevention, the Supreme People's Procuratorate investigation and punishment against corruption, bribery, dereliction of duty and job-related crimes and other anti-corruption-related duties, to create the National Supervision Commission, which will share the offices with the Central Commission for Discipline Inspection, fulfilling the duties of discipline inspection and supervision, and operating as one set of working institutions with two differently named organs.

The main duties are: to uphold the party's statutes and other party's internal regulations; to check the general and specific guiding policies of the Party, as well as the implementation of resolutions; to supervise the exercise of powers of party members and leading cadres; to uphold constitutional laws, to perform disciplinary supervision over the situation of performance of duties in accordance with the law, impartial use of power, integrity in politics as well as moral personal integrity for public officials; to conduct investigation about actions suspected of illegal performance of duties and job-related crimes, and to make decisions about taking administrative disciplinary actions; to call to accountability leaders, who perform poor duties and dereliction of duty; to be responsible for organizing and coordinating the construction of Party's work style and of an honest and clean government, as well as the propaganda against corruption, etc.

The National Supervision Commission is established by the National People's Congress and is subject to the supervision of the National People's Congress and its Standing Committee.

The Ministry of Supervision and the National Bureau of Corruption Prevention are no longer retained.

From this text, it is clear that the SCs work together with the Party's discipline inspection commissions, as the SCs are built upon the corresponding CDIs, meaning that they are located where the CDIs are located, their structures follow the CDIs' organization and the transferred prosecutors have been moved into the CDIs building gradually and are subjected to the leadership of the CDIs. In relation to the above, after the establishment of the SCs, the CDIs still exist and operate according to the CDIs' current institutions.¹²⁰ The decision to build the SCs' system upon the CDIs' system and to absorb the other existing anti-corruption forces had two effects: first of all, it strengthened the leading role of the CDIs in fighting corruption; second, it impacted on China's legal system, as the system is established in the Constitution and regulated by the criminal laws and criminal procedure laws.¹²¹

The Supervision Law does not mention the fact that the local Supervision Commissions are subjected also to the oversight of the CCP committee at the same level and of the CDI at the next-higher level. This fact creates concern about the SCs' lack of accountability to individual targets and under Chinese law.¹²² When it comes to the members of the CDIs versus SCs, we can notice how the PBSC member Zhao Leji 赵乐际 heads the CCDI, while the PB member and Deputy CCDI Director Yang Xiaodu 杨晓渡 heads the NSC. The different rank of the heads of the two offices indicates that the CCDI is politically superior to the NSC.¹²³

Reading the articles, it clearly emerges that the Supervision Law does not deal a lot with anti-corruption, while saying a lot about the workings of the supervision system, but, at the same time, it leaves a huge scope for discretion in whether and how to pursue investigations and in determining what punishment may result. It can be noticed that the Law includes vague references to some crimes such as "dereliction of duty", which suggests a potentially much wider remit.¹²⁴

¹²⁰ Deng Jinting [2018] pp. 60-62

¹²¹ Ibid. pp. 67 - 68

¹²² Horsley Jamie P. [2018]

¹²³ Ibid. [2018]

¹²⁴ Gilholm Andrew [2018]

Hereafter, the main characteristics of this Supervision Law are listed.

First, the Law concentrates power in the SCs by consolidating the anti-corruption work, that was previously split among different agencies, as a matter of fact this law integrates the supervision power of the party disciplinary agencies, of the administrative supervision agencies and of the procuratorates. Due to this integration, more officials are added to daily supervision and investigation.¹²⁵

Second, a new mechanism of detection for corrupt suspects is established under the SCs' system to replace the *shuanggui* system. This new mechanism is called *liuzhi* 留置 (retention in custody),¹²⁶ which is similar to the Residential Surveillance at a Designated Location.¹²⁷ The main difference between the *liuzhi* and the *shuanggui* systems is that the first is codified by the law and subjected to stricter internal procedure; it gives the right to notification to the family within 24 hours, which was not permitted with the *shuanggui*; detainees must be given adequate food, rest, and medical treatment; detention is limited to three months, and, upon approval, to another three months; moreover, interrogations are videotaped.¹²⁸ The evidence collected through the *liuzhi* system can be directly used for prosecution, while it was not possible with that collected through the *shuanggui* system. Moreover, while the *shuanggui* system concerns only Party cadres (as it is used by the CDIs which investigates only Party members), the *liuzhi* system concerns all people subjected to supervision, as prescribed by the Supervision Law.¹²⁹ This means that the *liuzhi* system involves not only Party members, but also public employees and "relevant personnel" including managers of state-owned enterprises, people engaged in management in public education, scientific research etc.¹³⁰ This system stands in direct legal tension with due process protections laid out by China's Criminal Procedure Law, China's Constitution and international law.¹³¹

¹²⁵ 新华社 [2018]

¹²⁶ Art. 22 of the Supervision Law

¹²⁷ It is a form of detention used by authorities against individual accused of endangering state security. A system for prolonged, house arrest detention that has been used on lawyers, journalists and rights defenders. The detention occurs at a location that is typically not disclosed. This measure has been used heavily since 2015.

¹²⁸ Human rights watch [2017]

¹²⁹ 吴高庆、夏文忠 [2018]

¹³⁰ Art. 15 of the Supervision Law

¹³¹ Tobias Smith [2019]

Third, in their work, the SCs are supervised by special internal oversight bodies, which are tasked with enforcing the Supervision Law's requirements to ensure loyal and clean supervision corps. However, it is not specified how these internal self-supervision bodies should work.¹³² The SCs are supervised also by the people's congresses at various level, which can review the special reports of the corresponding level of supervisory commissions and scrutinize their law enforcement performance;¹³³ even procuratorial and judicial organs can cooperate and exercise mutual restraint with the SCs. Even though the Supervision Law calls for external oversight of the SCs by people's congresses and by the public, due to the fact that the SCs supervise these congresses, it is not clear how effective congressional oversight will be carried out. The Supervision Law introduces a kind of checks-and-balances system by assigning supervision over different discipline inspection functions to different division, calling for "mutual coordination and constraint" among them.¹³⁴ Furthermore, an accountability mechanism for supervision personnel will be established with the purpose to evaluate whether the supervision work has been done in accordance with State laws and regulations.¹³⁵ This is a means to restrain improper behavior and abusive treatment of suspects by supervision personnel.

The SCs increased disciplinary activity and the increased use of resources in state organization will reinforce an atmosphere in which officials face more ideological and political pressure; this is true for Party organs but also for officials working in banks, state-owned enterprises and the financial regulatory sector too. State employees may also face similar scrutiny. Such pressure can work positively for preventing and fighting corruption and to solve the problem of central policies being ignored at local level. But it can also have some negative side-effects, such as officials making politically safe decisions, or acting politically correct rather than solving problems.¹³⁶ Critics argue that the Supervision Law removes the legal circuit breakers that are used to partially regulate anti-corruption power,¹³⁷ as the new Supervision Law crosses the state and Party wires.¹³⁸

¹³² Horsley Jamie P. [2018]

¹³³ Art. 126 of the Constitution, art. 9 of the Supervision Law

¹³⁴ Horsley Jamie P. [2018]

¹³⁵ Wu Jianxiong [2018]

¹³⁶ Gilholm Andrew [2018]

¹³⁷ Sapio Flora [2008] pp. 7-37

¹³⁸ Smith Tobias [2019]

CHAPTER 3: DEBATE AND IMPLICATIONS OF THE SUPERVISION COMMISSIONS

When addressing the issue of the debate about the constitutional amendment, it must be firstly clarified that that the proposal for the revision of the Constitution has been announced by the Xinhua agency on February 25, 2018,¹³⁹ while the amendment has been adopted by the NPC just two weeks later, on March 11, 2018. Therefore, the revision was subjected neither to consultation nor to debate or to public confrontation, as the brief time lapse between the announcement and the adoption left no space open for disagreement. However, there has been some space for discussion before the proposal of constitutional revision was announced. The constitutional revision work began in November 2017; in this period the Party Central Committee issued a notice requesting comments on the revision of the contents of the Constitution, inviting all parties in various regions to propose constitutional amendments, and receiving 2639 proposals for amendment. The CCP Central Committee then published the draft amendments asking for opinions and received back 230 proposals and 118 written reports by various departments in various regions. Thereafter, Xi Jinping listened to the opinions and suggestions of non-party people, receiving 10 written statements about the amendments. From the thousands of suggestions, the staff of the constitutional revision team draw 21 constitutional amendments, which were discussed during the 2nd Plenary Session of the 19th Party Central Committee. This was the first time in the history of the CCP to discuss the issue of constitutional revision in the Plenary Session of the Party. This decision showed how Xi Jinping attached great importance to the constitutional revision, as well as to governing the country according to the law and to the Constitution.¹⁴⁰ After the official announcement of constitutional revision, the only articles that can be found on Baidu, the most used research tool in China, are about the constitutional amendment per se, describing in what it consists and what the major changes it establishes are. Despite the controversy and the importance of the amendments, public discussion about it was minimal and was kept under control. Many comments have been made by international newspapers,¹⁴¹ but they mainly focalised on the

¹³⁹ Announcement available at: http://www.xinhuanet.com/english/2018-02/25/c_136998770.htm

¹⁴⁰ Xinhua [2018]

¹⁴¹ See Babones S., "China's Constitutional Amendments are all about the Party, not the President" on *forbes.com*; Global Times, "Constitutional amendment will improve CPC leadership" on *globaltimes.cn*; Phillips T., "Dictator

abolition of the presidential term limit, which has raised many concerns about the threat to democracy that it constitutes. If compared with the ones about the abolition of the presidential term, just few articles focused on the other changes. In this case, the focus was on the introduction of the CCP leadership in the main body of the Constitution, which raised concerns on the renewed role of the Party in the state system, as it forms the basis for the integration between Party and government functions. Just few articles addressed the issue of the creation of the SCs and raised questions about the implications of this choice, even though this can be considered as one of the most important changes made.

When addressing the issue of the debate about the Supervision Law, it is to be said that the draft version for consultation was released on November 7, 2017 and was available for public consultation until December 6, 2017. The draft law received much public attention.

Many comments focused on the importance of the creation of such agency, on the constitutionality of the draft law, and on the need to change the Constitution, in order to integrate the SCs in it. Many questions have been raised about this last topic.

An article titled “监察委员会如何纳入《宪法》的“国家机构”体制 *jiancha weiyuanhui hui ruhe naru «xianfa» de “guojia jigou” tizhi* (How will the Supervision Commissions be included in the “the Structure of the State” of the Constitution) was issued by Ma Ling 马岭, a Chinese law professor of the Chinese Youth Political College, on November 10, 2017 on *calaw.cn*¹⁴² and addressed the issue of the inclusion of the Supervision organs in the Constitution and how this could be carried out. The article raised some concern about the symbolic value of the position chosen for the introduction of the new organ. The author, in his article, made some prospects about the possible decisions that could have been taken. As the new section has already been included, here, only the implications of the choice the NPC has made will be exposed. The section referring to the Supervision Commissions has been introduced in Chapter III section 7, just before the section dedicated to the People’s Courts and the People’s Procuratorates. In the author’s opinion, this should not have happened, because the judicial power is a more important state power than the supervisory one. Therefore, the author thinks that placing the

for life: Xi Jinping’s power grab condemned as step towards tyranny” on *theguardian.com*; Fisher M., “Xi sets China on a collision course with history” on *nytimes.com*

¹⁴² Available at: <http://www.calaw.cn/article/default.asp?id=12402> (last access: 15.05.19)

Supervision Commissions' section before the Courts and Procuratorates' one has the symbolic value of attributing more importance to the SCs rather than to the Courts and Procuratorates, somehow subordinating the latter to the first.¹⁴³ However, this decision can be explained by the fact that the Supervision Commissions are not only judicial organs, but also administrative ones; therefore, the NPC has chosen to place the section regarding the SCs before that regarding the People's Courts and Procuratorates.

It can be generally said that the comments made about the draft law and the need to integrate the SCs in the Constitution had positive effects and have been accepted by the Government, as the Constitution has been amended to include also the section regarding the Supervision Commissions.

Some critics raised questions on why the Supervision Commissions have not been integrated into the criminal procedure, making the anti-corruption work not subject to the due process requirements of China's criminal justice and administrative law systems. Instead, its stipulations appear to be enforceable only by the state supervisors it purports to regulate and by the CCDI.¹⁴⁴ This arrangement makes the NSC accountable only to the CCP, threatening both to undermine efforts to establish law-based governance and to complicate China's global anti-corruption campaign. Furthermore, Chen Guangzhong stated that it is absolutely necessary to formulate a monitoring law,¹⁴⁵ even though this has not been made yet.

Some other critics have said that this new agency can be considered a "legal cover" for the Party's CCDI, permitting it to continue to investigate and detain suspects without giving them access to lawyers. Moreover, it also permits to expand the reach of the supervision, including also public personnel without CCP membership.¹⁴⁶

3.1 The investigative powers of the Supervision Commissions

Critics have expressed their concerns about the investigative powers of the Supervision Commissions. Chen Ruihua 陈瑞华, Doctor of Law and professor at the Beijing University Law

¹⁴³ Ma Ling 马岭 [2017]

¹⁴⁴ Horsley Jamie P. [2018]

¹⁴⁵ Wang Lina [2017]

¹⁴⁶ Chen Ruihua 陈瑞华 [2018]

School, reported that the new supervisory system combines party discipline investigation power, political investigation power and criminal power, avoiding the duplication and delay of investigations by the different bodies in the same case, in this way improving the efficiency of investigation activities in anti-corruption cases. Chen Ruihua and other legal experts have expressed their doubts on the negation of the SCs' investigative power, because, according to them, it is very difficult to establish that the SCs do not exercise the rights to investigate, and do not implement the Criminal Law. This is true especially if we consider the fact that the evidence collected by the SCs can be directly transferred to the procuratorates and become evidence of crime. According to these legal experts, the possibility to transfer the evidence collected to the procuratorates does not ensure the protection of the rights of people being investigated and deprives them of personal freedom, the reason is that the investigation of the SCs is not subject to the Criminal Procedure Law. As a matter of fact, legal experts insisted on the need for the SCs to implement the provisions of the Criminal Procedure Law during the investigation process, and stressed the need to provide suspects with access to a lawyer.¹⁴⁷ Chen Ruihua also argued that only by separating the party discipline and political investigations of the SCs from the criminal investigations, effective and balanced anti-corruption investigations, as well as the maintenance of due process, can be reached. The main concern of Chen Ruihua is that the SCs' investigation has created a situation which is characterized by the confusion of the essential differences between party discipline investigation, political investigation and criminal investigation, leading to a lowering of the legalization level of criminal investigation, because the evidence collected does not meet the standard requirements of the Criminal Procedure Law, but only those of the Supervision Law. According to Chen Ruihua, there are some aspects of the SCs' political investigation that should be restricted. In principle, since this kind of investigation does not lead to serious consequences for the suspect, and at the best is only a kind of "government punishment", it is not necessary to raise too high evidence requirements for such investigations. Moreover, investigators do not need to follow the strict procedural requirements set by the Criminal Procedure Law, while applying the principle of "freedom of evidence",¹⁴⁸ with no need to

¹⁴⁷ Chen Ruihua 陈瑞华 [2018]

¹⁴⁸ The principle of freedom of evidence can be defined as the right of parties in criminal trial to establish with any form of evidence all the relevant facts of the case, provided that the evidence is presented in accordance with the

reach the highest standard of “excluding reasonable doubt”.¹⁴⁹ As a result, we can conclude that the evidence obtained by the supervision authority can be used in criminal procedure even though it does not meet the standards of the Criminal Procedure Law; however, this could easily lead to abuse of investigative power.

Chen Ruihua also suggested the adoption of a dual-track system, which can help solving all the problems that appeared with SCs’ investigation, effectively restraining and controlling their investigative powers. “Dual-track” investigation system means that two independent departments are set up within the SCs: the Ministry of Political Investigations and the Criminal Investigation Department. The former exercises the power of party and political investigation in a unified manner, while the latter exercises the power of criminal investigation, respecting the standards required by the Criminal Procedure Law. This division can alleviate many problems encountered in the supervision system reform, can maintain a new balance between effectively punishing corruption and complying with due process, and can avoid the abuse of power during investigations; however, this system has not been adopted yet.

3.2 The concerns about the *liuzhi* system

Some legal experts are optimistic about the new Law, because, according to them, it signalled an abandonment of the Soviet model on which *shuanggui* was based, increasing the efficiency of the anti-corruption and supervision work. “It both protects those handling the case, ensuring that they carry out their duties via rule of law ... and gives more protection to suspects than *shuanggui*, because [the new system] carries more specific regulations,” said Li Yongzhong,¹⁵⁰ an anti-corruption scholar and former vice-president of the China Academy of Discipline Inspection and Supervision.

However, other several Chinese legal experts think that the Law does not go far enough when addressing the issue of the *liuzhi* system, because some basic human rights are still not

Code of Criminal Procedure and the provisions of the national Constitution. The principle of freedom of evidence is understood as the right that the parties have to make their case using the means at their disposal.

¹⁴⁹ Chen Ruihua 陈瑞华 [2018]

¹⁵⁰ Walsh M. [2017]

respected, such problem has been raised also by Human Rights Watch¹⁵¹ and Amnesty International. Chen Guangzhong suggested that any supervisory authority should permit detainees to see a lawyer, guarantee their human rights, and ensure a fair legal process, improving also the quality of case handling and preventing false and wrong cases.

In response to public concerns, the Law's final version contains some procedural improvements¹⁵² even though still insignificant. However, the Law still do not address the right to attorney of those retained in custody, neither entitles the suspects to other criminal procedural protections that help prevent abuse during investigation; two things which were among the critics' major concerns.

3.2.1 The case of Chen Yong

The problems with the *liuzhi* system have clearly emerged with two real cases happened after the implementation of the Law.

The first case is that of Chen Yong 陈勇, whose death under the *liuzhi* system was reported on 9th May 2018 by Caixin,¹⁵³ a Chinese media. Caixin reported that Chen Yong, 45, a former government contract worker from Fujian province, died after being detained for 26 days under the *liuzhi* system for investigation into a corruption case. The family told Caixin that Chen was taken from home on 9th April by the Jianyang local branch of the SC, and that evening they received an official notice from the SC that he had been taken into the *liuzhi*. When the family, called by the SC to arrange a visit to him, arrived, they found him dead. According to the article, his sister said he had "a disfigured face", he had a cave-in in his chest, and his torso was covered in bruises, moreover she was stopped when she tried to check

¹⁵¹ See <https://www.hrw.org/news/2017/11/10/china-revise-draft-national-supervision-law> (last access: 16.05.19)

¹⁵² Added a provision that the setup and administration of the venues for retention in custody are to follow State regulations (art. 22, para. 4).

Added requirement that retention in custody must be lifted when found to be inappropriate (art. 44, para. 1)

Added requirements that the property or documents that are sealed, frozen, or seized must be released and returned within three days after the measures are found to be inappropriate (art. 23, para. 2 & art. 25, para. 3).

Added requirement that the supervision commissions must ensure the safety of those retained in custody (art. 44, para. 2).

Specified the circumstances where the investigation would be impeded so that the employers and family members of those retained in custody need not be notified within 24 hours (art. 44, para. 1).

Deleted the requirement that the procuratorates solicit the opinions of the supervision commissions before deciding not to prosecute.

¹⁵³ Article available at: <https://www.caixinglobal.com/2018-05-09/death-in-custody-raises-questions-about-new-anti-graft-oversight-101246477.html> (last access: 15.05.19)

Chen's lower body; his wife said she also found bruises on other parts of his body, including his cheeks. For these reasons, the family requested an investigation into the death. According to the local commission officials, Chen collapsed while being interrogated and was later rushed to hospital but died there. However, Chen's family said he regularly took medication to control his blood pressure and had problems with his stomach that predated his detention but had no other illness. When confronted with the family, the local SC admitted certain negligence, but when Chen's wife requested video recordings of the interrogations, the quest was rejected, despite being guaranteed by law.¹⁵⁴ The death of the man is raising questions about transparency and oversight at local level. Especially for the fact that, after the implementation of the SC system, the public has been given little information on how the new agency handles investigations and suspects.

3.2.2 The case of Chen Jieren

The second case is a 2018 case in Hunan (central China), which showed how the commissions' activities could be used to deny detainees held by other law enforcement agencies access to legal counsel, even over unrelated offences. The case which is made reference to is that of Chen Jieren 陈杰人, a political commentator and former journalist, and his family, which, on July 4, 2018, were stopped by the police from meeting their lawyers while retained in custody by the local SC for suspected bribery and for running an illegal business.¹⁵⁵ Chen and his family were put under "residential surveillance at a designated location" and, according to Zhang Lei, one of the family's lawyer, when lawyers went to the police to request a meeting with Chen and others, they were told it was impossible, as no meeting with lawyers was allowed. The Supervision Law has been widely criticized by academics and rights advocates for the *liuzhi* system, which denies detainees access to legal counsel, but it was not known that suspects under investigation could be denied meeting with lawyers in the earliest stages of a probe. Qin Qianhong, law professor at Wuhan University, said that complete denial of legal access has become a common practice after the implementation of the Supervision Law; "the current understanding and practice is that once the supervision commission launches an

¹⁵⁴ RSDL monitor [2018]

¹⁵⁵ Yang Fan [2018]

investigation, legal counsel will not be allowed. This means that suspects are not only denied access to a lawyer during the *liuzhi* phase, but this access is denied throughout the whole operation process in which the supervision commission is involved.” Qin said. This practice creates a lot of problems as it fails to protect the rights of suspects during investigations, and also contributes to the commissions’ unchecked power.¹⁵⁶ A confession of Chen Jieren has been obtained, as reported by Xinhua agency, but, as Chen has been locked up for more than 40 days and hasn’t been allowed to see a lawyer, none of the statements made in such circumstances can be taken at face value, as it is not reliable.¹⁵⁷ Furthermore, his lawyer also wrote that the report of Xinhua violated the principle of presumption of innocence, having been issued before the trial and while the case was still under investigation.¹⁵⁸

Fu Hualing 傅華伶, law professor at the University of Hong Kong, said that, if true, the supervision commission’s intervention in Chen’s police custody was illegal and a perfect example of the new agency’s excessive power, because “the supervision commission does not have the right to command the police – the two organizations are totally separate and operate under different laws. There is no direct supervision relationship between the two, at least legally, if not politically” Fu said.

With the constitutional amendment, the SCs have a status close to the State Council and is ranked higher than the supreme court and top prosecutor’s office, therefore, according to Fu, now the SCs can lead the police, later they may lead the prosecutors by commanding which cases should be proceed and what should be the penalty. He, therefore, argues that the supervision commissions’ power has already escaped the cage of the Supervision Law.”

3.3 The report of Amnesty International

According to Nicholas Bequelin, Amnesty International’s East Asia Regional Director, “The Supervision Law is a systemic threat to human rights in China. It places tens of millions of people at the mercy of a secretive and virtually unaccountable system that is above the law. It by-passes judicial institutions by establishing a parallel system solely run by the Chinese Communist Party with no outside checks and balances. The law eviscerated China’s legal

¹⁵⁶ Gan Nectar [2018]

¹⁵⁷ Yang Fan [2018]

¹⁵⁸ Lai Catherine [2018]

system. It allows for arbitrary and prolonged incommunicado detention without any meaningful oversight and increases the risks of torture and forced “confessions”. Under the new system, supervision bodies can detain and interrogate Communist Party members or public sector personnel – virtually anyone working directly or indirectly for the government. Judges, academics and personnel of state-owned enterprises could all face up to six months detention without charge or legal process, and without guaranteed access to lawyers or their families being told.”

Amnesty International, in 2017, issued a document about the draft of the Supervision Law analyzing the possible problems concerning the protection of international human rights, as some provisions of the Law appear to be incompatible with it. Since Amnesty International has not released any other document after the issuing of the Supervision Law on March 2018, it was decided to take as reference the document about the Draft Law, considering only things that have not been changed in the Supervision Law.

In the document, Amnesty International stated that it “believes anti-corruption efforts can aid in the protection of human rights and broadly supports anti-corruption efforts and international cooperation to tackle corruption. However, we do not support anti-corruption efforts that in themselves result in violations of human rights. According to our analysis, the Draft Law falls short on this point”.¹⁵⁹ The two main concerns about the Law are that: (1) it legalizes the *liuzhi* system, which is a form of arbitrary detention; (2) it creates a new extra-judicial system, which far reaching powers have significant potential to infringe human rights.

The first point analyzed by the document is the fact that the Law states the adherence of the Law itself to the Constitution, without mentioning the need of adherence also to China’s international legal obligations, including the respect and protection of internationally recognized human rights, such as the right to fair trial and protection from arbitrary detention, even though China has signed the Universal Declaration of Human Rights. Moreover, as already said, the Law appears in direct conflict with the provision of the Constitution, too, specifically with art. 37 which provides that:

¹⁵⁹ Amnesty International [2017] pp. 3

No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ.

Unlawful detention or deprivation or restriction of citizens' freedom of the person by other means is prohibited, and unlawful search of the person of citizens is prohibited.

However, as said in Chapter 2, in China there is no such a thing as the European concept of constitutionality of laws, as it is the legislative organ itself, i.e. the NPC, that decide whether a law is written in accordance with the Constitution or not, and there is no other organ controlling it. Therefore, as the art. 1 of the Supervision Law, which has been approved by the NPC, states that the Law is written in accordance with the Constitution, there is no inconsistency.

The second concern, as already said, is about the respect and protection of human rights. Art. 9 of the Universal Declaration of Human Rights¹⁶⁰ states that: "No one shall be subjected to arrest, detention or exile". Therefore, the prohibition of arbitrary detention is a rule of international law, but, being a form of arbitrary detention, the *liuzhi* system is in direct conflict with this provision. Moreover, under the *liuzhi* system, there are no guaranteed rights of access to family or lawyers, as the case of Chen Jieren showed us. According to Amnesty International, the *liuzhi* system is a form of incommunicado arbitrary detention, infringing the rights to liberty and security of persons, and human treatment of persons deprived of liberty; in addition, it places individuals retained in custody at risk of torture and other ill-treatment. Furthermore, the *liuzhi* system infringes the international standards call for a person in detention to have access to legal counsel during all stages of criminal proceeding, including pre-trial questioning. This is a safeguard against torture and other ill-treatment, for instance to coerce a "confession", which is a common problem in the Chinese justice system, as also recognized by Chinese authorities; the access to a lawyer is one of the key norms for a fair trial under international human rights standards. The Supervision Law, however, has no provisions on suspects' access to legal advice in the investigation stage, this increases the risk

¹⁶⁰ Available at: <https://www.un.org/en/universal-declaration-human-rights/> (last access: 13.05.19)

of self-incrimination and coerced “confession”. In addition to this, there is no system established to regulate the unofficial detention facilities conditions and treatment of people under the *liuzhi*; this violates the right under international law for all people held in custody to be held only in a place of detention that is officially recognized and supervised and could amount to enforce disappearance.¹⁶¹ Even though art. 44 of the Supervision Law provides protection for some basic rights, such as food, drink and rest, it alone is not sufficient to protect the person in custody from torture or other ill-treatment.

The period of notification to the family also rises some concerns, as rule 68 of the revised UN Standard Minimum Rules for the Treatment of Prisoners¹⁶² states that:

Every prisoner shall have the right, and shall be given the ability and means, to inform immediately his or her family, or any other person designated as a contact person, about his or her imprisonment, about his or her transfer to another institution and about any serious illness or injury. The sharing of prisoners’ personal information shall be subject to domestic legislation.

As the rule states that the family shall be informed “immediately”, the period of 24 hours¹⁶³ already creates concerns regarding its compatibility with the international standards, especially if we consider the following part of the article stating: “except under the circumstance where evidence may be destroyed or forged, the testimony of a witness may be interfered with, a false confession may be made in collusion, or the investigation may otherwise be affected”, which is regularly used in criminal cases monitored by Amnesty International, and which creates a pretext for the Supervision agents to deny the right to family notification. Moreover, it increases the potential for torture and other ill-treatment, as the families are not able to monitor the whereabouts and well-being of their family members. Furthermore, the exception is not clearly defined by the law, in this way providing space for infringement of the rights of the suspect, especially if we consider the fact that the risk of

¹⁶¹ Article 17(2)(c) of the Convention on Enforced Disappearance; Human Rights Committee, General comment no. 35: Article 9 (Liberty and security of person), UN Doc. CCPR/C/GC/35, 16 December 2014, para. 58; Human Rights Committee, General comment no. 20, Article 7, UN Doc. HRI/GEN/1/Rev.1 (1994) at 30, para. 11; Special Rapporteur on torture, UN Doc. E/CN.4/2003/68 (2002), para 26(e).

¹⁶² Available at: <https://undocs.org/A/RES/70/175> (last access: 13.05.19)

¹⁶³ Art. 44 of the Supervision Law

torture or other ill-treatment is particularly acute in the first period of any detention. The wording of the Supervision Law allows a denial of family notification for up to six months in total (the total maximum period of retention in custody), this clearly infringes the international standards.

The last concern of Amnesty International in its report refers to the opportunity to challenge the detention, which is not adequately provided. Art. 60 of the Supervision Law states that if the SC does not lift the retention in custody when the period is complete, the person being investigated, and his/her relatives have the right to appeal to the commission, but no appeal is foreseen against detention as such. Moreover, the appeal will be impossible if the family has not been notified and the person being investigated is being held incommunicado. Another problem is that the appeal is directly to the SC itself and there is no provision for appeal to an outside body or court.

The right to challenge the lawfulness of detention is essential to safeguard the right to liberty and security. It provides protection against human rights violations such as torture and other ill-treatment and can also serve as a safeguard against enforced disappearances. Moreover, under the Supervision Law, also the possibility to request re-examination of supervision decisions or challenge internally certain unlawful conduct is not given.

3.4 The problem of oversight over the Supervision Commissions

Concerns have also been expressed about who oversees the SCs, as the Supervision Law states that the NSC is responsible to the NPC, while local SCs are responsible to the people's congresses at the same level and to the SCs at the next-higher level. However, the law fails to mention that the SCs are subject also to the oversight of the CCP committee at the same level and to the CDI at the next- higher level, as it has been reported by Zhang Shuofu 张硕辅, head of the Beijing SC.¹⁶⁴ This extra-legal subordination could lead to SCs' ultimate lack of accountability to individual targets and under Chinese law generally.¹⁶⁵ The Supervision Law calls for external oversight of the SCs by people's congresses and by the public, even

¹⁶⁴ Xinhuashe 新华社 [2018]

¹⁶⁵ Horsley Jamie P. [2018]

procuratorial and judicial organs can cooperate and exercise mutual restraint with the SCs. The people's congresses at various level can review the special reports of the corresponding level supervision commissions and scrutinize their law enforcement performance;¹⁶⁶ but since the SCs supervise the congresses, there are doubts about the actual effectiveness of the oversight.¹⁶⁷ As long as public oversight is concerned, the SCs appear not to be subject to the statute on government information disclosure, which applies to administrative agencies and can be enforced through litigation by the impacted public. Thus, it is not clear what law will govern the disclosure obligations making public oversight effective.¹⁶⁸ For this purpose, Wu Jun 吴俊 suggests publishing every year white papers for supervision work, as well as holding regular press conferences, and publishing typical cases so that the public can better understand the case handling situation.¹⁶⁹

The SCs are also supervised by special internal oversight bodies, which are tasked with enforcing the Supervision Law's requirements to ensure loyal and clean supervision corps. However, it is not specified how these internal self-supervision bodies should work.¹⁷⁰ Wu Jun, in his article, suggests that there is the need to further strengthen the self-monitoring of the SCs; his suggestion is to design a system that combines random supervision with special supervision, so as to randomly conduct discipline inspection on the personnel at any time.¹⁷¹ Furthermore, he suggests a separation of the various departments, in order to prevent conflicts as well as favouritisms among them. There have been similar suggestions also by Li Yueren 李月仁, director of the People's Daily Department, for the subordinates and personnel management of the SCs and CDIs. As a matter of fact, he suggests that the SCs and the CDIs should be separate, because being co-located and working shoulder-to-shoulder prevent them from getting mutual restraint and mutual supervision, especially if we consider the fact that the CDIs are also subject to the supervision of the SCs.¹⁷²

¹⁶⁶ Art. 126 of the Constitution, art. 9 of the Supervision Law

¹⁶⁷ Horsley Jamie P. [2018]

¹⁶⁸ Ibid.

¹⁶⁹ Wu Jun [2017]

¹⁷⁰ Horsley Jamie P. [2018]

¹⁷¹ Wu Jun [2017]

¹⁷² Li Yueren [2018]

The Supervision Law introduces a kind of check and balances system by assigning supervision over different discipline inspection functions to different departments, calling for “mutual coordination and constraint” among them.¹⁷³ Furthermore, an accountability mechanism for supervision personnel will be established with the purpose of evaluating whether the supervision work has been done in accordance with State laws and regulations.¹⁷⁴ Nevertheless, the SCs’ apparent lack of legal accountability raises concerns over whether the new supervision system might undermine the establishment of a law-based governance. This is explained by the fact that for 20 years, the CCP has been promoting legal restraints on the exercise of state power through mechanisms such as official transparency, civil participation, and government accountability. However, the NSC appears to be exempted from these restraints.¹⁷⁵

3.5 Implications of article 15 of the Supervision Law

As already said, art. 15 of the Supervision Law gives the SCs authority over civil servants within a wide range of bodies, reported by the law as follows:

- (1) Officials of the Chinese Communist Party organs, organs of people's congresses and their standing committees, people's governments, Supervision Commissions, people's courts, people's procuratorates, organs of CPPCC commissions at all levels, organs of democratic parties, and organs of the associations of industry and commerce, and personnel managed with reference to the “People’s Republic of China Law on Public Officials”;
- (2) Personnel engaged in public affairs at organizations managing public affairs upon authorization by laws or regulations or lawful entrustment by state organs;
- (3) Management of state-owned enterprises;
- (4) Personnel engaged in management in public education, scientific research, culture, health care, sports and other such units;

¹⁷³ Horsley Jamie P. [2018]

¹⁷⁴ Wu Jianxiong [2018]

¹⁷⁵ Horsley Jamie P. [2018]

- (5) Personnel engaged in management at basic-level autonomous mass organizations;
- (6) Other personnel who perform public duties in accordance with the law

Note that non-managerial staff of SOEs and public institutions are not subjected to the Supervision Law, therefore teachers, doctors etc. without managerial positions in their respective organizations do not fall under the SCs' system. Nevertheless, non-managerial staff could still fall under the SCs' investigation, if it is implicated in business which falls under the investigation, as it happened to Chen Yong or to Yang Guilan 杨贵蓝, a contract worker of a local urban management agency in Guangzhou¹⁷⁶. What is noteworthy is that the SCs exercise supervision also on people's courts and people's procuratorates, which could create concerns where it comes to the correct handling of judicial cases. The SCs have no jurisdiction over personnel from the People's Liberation Army and People's Armed police, who are instead supervised by the CCP-led Central Military Commission.¹⁷⁷

In this way, with the Supervision Law the scope of supervision broadens, as a matter of fact the number of personnel subject to supervision have been increased by 200 per cent and, in some regions, this percentage is even higher.¹⁷⁸

The Supervision Law might constitute a threat also to foreign citizens or companies doing business in China, even though it does not directly target private sector businesses, but it has some implications for them, especially if the businesses have dealing with government agencies, SOEs, and public institutions in China, as they may be required to provide information or evidence to assist supervision commissions' investigations. Moreover, an employee or officer of this kind of business may be detained by SCs if they are suspected of giving bribes to public power holders.¹⁷⁹ The same applies to foreign companies doing business in China, which could be implicated if their business falls within the investigation conducted under the Supervision Law. Furthermore, the expected shift in focus to the source of corrupt payments means that if any third parties are engaged in corrupt behavior in their

¹⁷⁶ Article on the case at: http://m.xinhuanet.com/gd/2018-03/09/c_1122513487.htm (last access: 31.05.19)

¹⁷⁷ Art. 68 of the Supervision Law

¹⁷⁸ Horsley Jamie P. [2018]

¹⁷⁹ O'Melveny & Myers LLP [2018]

conduct on behalf of a company, there is an increased risk that the company itself will be held liable, even if unaware of such behavior.¹⁸⁰ There have already been cases of detention of businesspersons in private sector under the Pilot Program of 2016, an example is a shareholder of a local private owned company in Zhejiang, who was suspected of giving bribes to the official in exchange for higher compensation for relocating a factory. It is reported that this shareholder also destroyed evidence and colluded with other people in responding to inquiries from local SC, therefore, to prevent him from further obstructing and investigation, the local SC detained the shareholders. Both the shareholder and his company were finally convicted of bribery in December 2017.

Thus, it can be concluded that companies, especially those that deal with Chinese government agencies, SOEs, and public institutions must comply with the Supervision Law as they could also be subject to SCs' supervision.

¹⁸⁰ Rowse B., Chang A. [2018]

CONCLUSIONS

In China, the process of institutionalization at national level of a supervision system has been accomplished through the creation of the Supervision Commissions; the implementation of such an anti-corruption system has many implications, not only at national level, but also at international level. The main reason for this is that the SCs' establishment could constitute an increase in risk as the scope of anti-corruption investigations and enforcement broadens. Some critics argued that the establishment of such commissions may also signify a move towards an institutionalization of President Xi Jinping's anti-corruption drive,¹⁸¹ as well as an attempt to further consolidate its power using the commissions to eliminate its opponents.

In the last chapter, it has been shown what the critics' main concerns about the new Supervision Law are. It is clear, that the main concern is created by the newly introduced *liuzhi* system. Even though this system has been limited by the Law and protection of basic rights has been guaranteed through it, there are still some points that remain unclear, leaving space open for interpretation of the Law and for the infringement of human rights.

It appears clear how this new Law could lead to abuse of power and how the SCs could be used to eliminate opponents of the CCP leadership, however, as it has been just over a year since the Supervision Law was implemented, it is still too early to draw conclusion about the implications and effects of this new Agency.

¹⁸¹ Rowse B., Chang A. (2018)

ATTACHMENT

中华人民共和国监察法

第一章 总则

- 第一条** 为了深化国家监察体制改革，加强对所有行使公权力的公职人员的监督，实现国家监察全面覆盖，深入开展反腐败工作，推进国家治理体系和治理能力现代化，根据宪法，制定本法。
- 第二条** 坚持中国共产党对国家监察工作的领导，以马克思列宁主义、毛泽东思想、邓小平理论、“三个代表”重要思想、科学发展观、习近平新时代中国特色社会主义思想为指导，构建集中统一、权威高效的中国特色的国家监察体制。
- 第三条** 各级监察委员会是行使国家监察职能的专责机关，依照本法对所有行使公权力的公职人员（以下称公职人员）进行监察，调查职务违法和职务犯罪，开展廉政建设和反腐败工作，维护宪法和法律的尊严。
- 第四条** 监察委员会依照法律规定独立行使监察权，不受行政机关、社会团体和个人的干涉。
- 监察机关办理职务违法和职务犯罪案件，应当与审判机关、检察机关、执法部门互相配合，互相制约。
- 监察机关在工作中需要协助的，有关机关和单位应当根据监察机关的要求依法予以协助。
- 第五条** 国家监察工作严格遵照宪法和法律，以事实为根据，以法律为准绳；在适用法律上一律平等，保障当事人的合法权益；权责对等，严格监督；惩戒与教育相结合，宽严相济。
- 第六条** 国家监察工作坚持标本兼治、综合治理，强化监督问责，严厉惩治腐败；深化改革、健全法治，有效制约和监督权力；加强法治教育和道德教育，弘扬中华优秀传统文化，构建不敢腐、不能腐、不想腐的长效机制。

第二章 监察机关及其职责

- 第七条** 中华人民共和国国家监察委员会是最高监察机关。
省、自治区、直辖市、自治州、县、自治县、市、市辖区设立监察委员会。
- 第八条** 国家监察委员会由全国人民代表大会产生，负责全国监察工作。
国家监察委员会由主任、副主任若干人、委员若干人组成，主任由全国人民代表大会选举，副主任、委员由国家监察委员会主任提请全国人民代表大会常务委员会任免。
国家监察委员会主任每届任期同全国人民代表大会每届任期相同，连续任职不得超过两届。
国家监察委员会对全国人民代表大会及其常务委员会负责，并接受其监督。
- 第九条** 地方各级监察委员会由本级人民代表大会产生，负责本行政区域内的监察工作。
地方各级监察委员会由主任、副主任若干人、委员若干人组成，主任由本级人民代表大会选举，副主任、委员由监察委员会主任提请本级人民代表大会常务委员会任免。
地方各级监察委员会主任每届任期同本级人民代表大会每届任期相同。
地方各级监察委员会对本级人民代表大会及其常务委员会和上一级监察委员会负责，并接受其监督。
- 第十条** 国家监察委员会领导地方各级监察委员会的工作，上级监察委员会领导下级监察委员会的工作。
- 第十一条** 监察委员会依照本法和有关法律规定履行监督、调查、处置职责：
（一）对公职人员开展廉政教育，对其依法履职、秉公用权、廉洁从政从业以及道德操守情况进行监督检查；
（二）对涉嫌贪污贿赂、滥用职权、玩忽职守、权力寻租、利益输送、徇私舞弊以及浪费国家资财等职务违法和职务犯罪进行调查；

（三）对违法的公职人员依法作出政务处分决定；对履行职责不力、失职失责的领导人员进行问责；对涉嫌职务犯罪的，将调查结果移送人民检察院依法审查、提起公诉；向监察对象所在单位提出监察建议。

第十二条 各级监察委员会可以向本级中国共产党机关、国家机关、法律法规授权或者委托管理公共事务的组织和单位以及所管辖的行政区域、国有企业等派驻或者派出监察机构、监察专员。

监察机构、监察专员对派驻或者派出它的监察委员会负责。

第十三条 派驻或者派出的监察机构、监察专员根据授权，按照管理权限依法对公职人员进行监督，提出监察建议，依法对公职人员进行调查、处置。

第十四条 国家实行监察官制度，依法确定监察官的等级设置、任免、考评和晋升等制度。

第三章 监察范围和管辖

第十五条 监察机关对下列公职人员和有关人员进行监察：

（一）中国共产党机关、人民代表大会及其常务委员会机关、人民政府、监察委员会、人民法院、人民检察院、中国人民政治协商会议各级委员会机关、民主党派机关和工商业联合会机关的公务员，以及参照《中华人民共和国公务员法》管理的人员；

（二）法律、法规授权或者受国家机关依法委托管理公共事务的组织中从事公务的人员；

（三）国有企业管理人员；

（四）公办的教育、科研、文化、医疗卫生、体育等单位中从事管理的人员；

（五）基层群众性自治组织中从事管理的人员；

（六）其他依法履行公职的人员。

第十六条 各级监察机关按照管理权限管辖本辖区内本法第十五条规定的人员所涉监察事项。

上级监察机关可以办理下一级监察机关管辖范围内的监察事项，必要时也可以办理所辖各级监察机关管辖范围内的监察事项。

监察机关之间对监察事项的管辖有争议的，由其共同的上级监察机关确定。

第十七条 上级监察机关可以将其所管辖的监察事项指定下级监察机关管辖，也可以将下级监察机关有管辖权的监察事项指定给其他监察机关管辖。监察机关认为所管辖的监察事项重大、复杂，需要由上级监察机关管辖的，可以报请上级监察机关管辖。

第四章 监察权限

第十八条 监察机关行使监督、调查职权，有权依法向有关单位和个人了解情况，收集、调取证据。有关单位和个人应当如实提供。

监察机关及其工作人员对监督、调查过程中知悉的国家秘密、商业秘密、个人隐私，应当保密。

任何单位和个人不得伪造、隐匿或者毁灭证据。

第十九条 对可能发生职务违法的监察对象，监察机关按照管理权限，可以直接或者委托有关机关、人员进行谈话或者要求说明情况。

第二十条 在调查过程中，对涉嫌职务违法的被调查人，监察机关可以要求其就涉嫌违法行为作出陈述，必要时向被调查人出具书面通知。

对涉嫌贪污贿赂、失职渎职等职务犯罪的被调查人，监察机关可以进行讯问，要求其如实供述涉嫌犯罪的情况。

第二十一条 在调查过程中，监察机关可以询问证人等人员。

第二十二条 被调查人涉嫌贪污贿赂、失职渎职等严重职务违法或者职务犯罪，监察机关已经掌握其部分违法犯罪事实及证据，仍有重要问题需要进一步调查，并有下列情形之一的，经监察机关依法审批，可以将其留置在特定场所：

- （一）涉及案情重大、复杂的；
- （二）可能逃跑、自杀的；
- （三）可能串供或者伪造、隐匿、毁灭证据的；
- （四）可能有其他妨碍调查行为的。

对涉嫌行贿犯罪或者共同职务犯罪的涉案人员，监察机关可以依照前款规定采取留置措施。

留置场所的设置、管理和监督依照国家有关规定执行。

第二十三条 监察机关调查涉嫌贪污贿赂、失职渎职等严重职务违法或者职务犯罪，根据工作需要，可以依照规定查询、冻结涉案单位和个人的存款、汇款、债券、股票、基金份额等财产。有关单位和个人应当配合。

冻结的财产经查明与案件无关的，应当在查明后三日内解除冻结，予以退还。

第二十四条 监察机关可以对涉嫌职务犯罪的被调查人以及可能隐藏被调查人或者犯罪证据的人的身体、物品、住处和其他有关地方进行搜查。在搜查时，应当出示搜查证，并有被搜查人或者其家属等见证人在场。

搜查女性身体，应当由女性工作人员进行。

监察机关进行搜查时，可以根据工作需要提请公安机关配合。公安机关应当依法予以协助。

第二十五条 监察机关在调查过程中，可以调取、查封、扣押用以证明被调查人涉嫌违法犯罪的财物、文件和电子数据等信息。采取调取、查封、扣押措施，应当收集原物原件，会同持有人或者保管人、见证人，当面逐一拍照、登记、编号，开列清单，由在场人员当场核对、签名，并将清单副本交财物、文件的持有人或者保管人。

对调取、查封、扣押的财物、文件，监察机关应当设立专用账户、专门场所，确定专门人员妥善保管，严格履行交接、调取手续，定期对账核实，不得毁损或者用于其他目的。

对价值不明物品应当及时鉴定，专门封存保管。查封、扣押的财物、文件经查明与案件无关的，应当在查明后三日内解除查封、扣押，予以退还。

第二十六条 监察机关在调查过程中，可以直接或者指派、聘请具有专门知识、资格的人员在调查人员主持下进行勘验检查。勘验检查情况应当制作笔录，由参加勘验检查的人员和见证人签名或者盖章。

第二十七条 监察机关在调查过程中，对于案件中的专门性问题，可以指派、聘请有专门知识的人进行鉴定。鉴定人进行鉴定后，应当出具鉴定意见，并且签名。

第二十八条 监察机关调查涉嫌重大贪污贿赂等职务犯罪，根据需要，经过严格的批准手续，可以采取技术调查措施，按照规定交有关机关执行。

批准决定应当明确采取技术调查措施的种类和适用对象，自签发之日起三个月以内有效；对于复杂、疑难案件，期限届满仍有必要继续采取技术调查措施的，经过批准，有效期可以延长，每次不得超过三个月。对于不需要继续采取技术调查措施的，应当及时解除。

第二十九条 依法应当留置的被调查人如果在逃，监察机关可以决定在本行政区域内通缉，由公安机关发布通缉令，追捕归案。通缉范围超出本行政区域的，应当报请有权决定的上级监察机关决定。

第三十条 监察机关为防止被调查人及相关人员逃匿境外，经省级以上监察机关批准，可以对被调查人及相关人员采取限制出境措施，由公安机关依法执行。对于不需要继续采取限制出境措施的，应当及时解除。

第三十一条 涉嫌职务犯罪的被调查人主动认罪认罚，有下列情形之一的，监察机关经领导人员集体研究，并报上一级监察机关批准，可以在移送人民检察院时提出从宽处罚的建议：

（一）自动投案，真诚悔罪悔过的；

（二）积极配合调查工作，如实供述监察机关还未掌握的违法犯罪行为的；（三）积极退赃，减少损失的；

（四）具有重大立功表现或者案件涉及国家重大利益等情形的。

第三十二条 职务违法犯罪的涉案人员揭发有关被调查人职务违法犯罪行为，查证属实的，或者提供重要线索，有助于调查其他案件的，监察机关经领导人员集体研究，并报上一级监察机关批准，可以在移送人民检察院时提出从宽处罚的建议。

第三十三条 监察机关依照本法规定收集的物证、书证、证人证言、被调查人供述和辩解、视听资料、电子数据等证据材料，在刑事诉讼中可以作为证据使用。监察机关在收集、固定、审查、运用证据时，应当与刑事审判关于证据的要求和标准相一致。

以非法方法收集的证据应当依法予以排除，不得作为案件处置的依据。

第三十四条 人民法院、人民检察院、公安机关、审计机关等国家机关在工作中发现公职人员涉嫌贪污贿赂、失职渎职等职务违法或者职务犯罪的问题线索，应当移送监察机关，由监察机关依法调查处置。

被调查人既涉嫌严重职务违法或者职务犯罪，又涉嫌其他违法犯罪的，一般应当由监察机关为主调查，其他机关予以协助。

第五章 监察程序

第三十五条 监察机关对于报案或者举报，应当接受并按照有关规定处理。对于不属于本机关管辖的，应当移送主管机关处理。

第三十六条 监察机关应当严格按照程序开展工作，建立问题线索处置、调查、审理各部门相互协调、相互制约的工作机制。

监察机关应当加强对调查、处置工作全过程的监督管理，设立相应的工作部门履行线索管理、监督检查、督促办理、统计分析等管理协调职能。

第三十七条 监察机关对监察对象的问题线索，应当按照有关规定提出处置意见，履行审批手续，进行分类办理。线索处置情况应当定期汇总、通报，定期检查、抽查。

第三十八条 需要采取初步核实方式处置问题线索的，监察机关应当依法履行审批程序，成立核查组。初步核实工作结束后，核查组应当撰写初步核实情况报告，提出处理建议。承办部门应当提出分类处理意见。初步核实情况报告和分类处理意见报监察机关主要负责人审批。

第三十九条 经过初步核实，对监察对象涉嫌职务违法犯罪，需要追究法律责任的，监察机关应当按照规定的权限和程序办理立案手续。

监察机关主要负责人依法批准立案后，应当主持召开专题会议，研究确定调查方案，决定需要采取的调查措施。

立案调查决定应当向被调查人宣布，并通报相关组织。

涉嫌严重职务违法或者职务犯罪的，应当通知被调查人家属，并向社会公开发布。

第四十条 监察机关对职务违法和职务犯罪案件，应当进行调查，收集被调查人有无违法犯罪以及情节轻重的证据，查明违法犯罪事实，形成相互印证、完整稳定的证据链。

严禁以威胁、引诱、欺骗及其他非法方式收集证据，严禁侮辱、打骂、虐待、体罚或者变相体罚被调查人和涉案人员。

第四十一条 调查人员采取讯问、询问、留置、搜查、调取、查封、扣押、勘验检查等调查措施，均应当依照规定出示证件，出具书面通知，由二人以上进行，形成笔录、报告等书面材料，并由相关人员签名、盖章。

调查人员进行讯问以及搜查、查封、扣押等重要取证工作，应当对全过程进行录音录像，留存备查。

第四十二条 调查人员应当严格执行调查方案，不得随意扩大调查范围、变更调查对象和事项。

对调查过程中的重要事项，应当集体研究后按程序请示报告。

第四十三条 监察机关采取留置措施，应当由监察机关领导人员集体研究决定。设区的市级以下监察机关采取留置措施，应当报上一级监察机关批准。省级监察机关采取留置措施，应当报国家监察委员会备案。

留置时间不得超过三个月。在特殊情况下，可以延长一次，延长时间不得超过三个月。省级以下监察机关采取留置措施的，延长留置时间应当报上一级监察机关批准。监察机关发现采取留置措施不当的，应当及时解除。监察机关采取留置措施，可以根据工作需要提请公安机关配合。公安机关应当依法予以协助。

第四十四条 对被调查人采取留置措施后，应当在二十四小时以内，通知被留置人员所在单位和家属，但有可能毁灭、伪造证据，干扰证人作证或者串供等有碍调查情形的除外。有碍调查的情形消失后，应当立即通知被留置人员所在单位和家属。

监察机关应当保障被留置人员的饮食、休息和安全，提供医疗服务。讯问被留置人员应当合理安排讯问时间和时长，讯问笔录由被讯问人阅看后签名。

被留置人员涉嫌犯罪移送司法机关后，被依法判处管制、拘役和有期徒刑的，留置一日折抵管制二日，折抵拘役、有期徒刑一日。

第四十五条 监察机关根据监督、调查结果，依法作出如下处置：

（一）对有职务违法行为但情节较轻的公职人员，按照管理权限，直接或者委托有关机关、人员，进行谈话提醒、批评教育、责令检查，或者予以诫勉；

（二）对违法的公职人员依照法定程序作出警告、记过、记大过、降级、撤职、开除等政务处分决定；

（三）对不履行或者不正确履行职责负有责任的领导人员，按照管理权限对其直接作出问责决定，或者向有权作出问责决定的机关提出问责建议；

（四）对涉嫌职务犯罪的，监察机关经调查认为犯罪事实清楚，证据确实、充分的，制作起诉意见书，连同案卷材料、证据一并移送人民检察院依法审查、提起公诉；

（五）对监察对象所在单位廉政建设和履行职责存在的问题等提出监察建议。

监察机关经调查，对没有证据证明被调查人存在违法犯罪行为的，应当撤销案件，并通知被调查人所在单位。

第四十六条 监察机关经调查，对违法取得的财物，依法予以没收、追缴或者责令退赔；对涉嫌犯罪取得的财物，应当随案移送人民检察院。

第四十七条 对监察机关移送的案件，人民检察院依照《中华人民共和国刑事诉讼法》对被调查人采取强制措施。

人民检察院经审查，认为犯罪事实已经查清，证据确实、充分，依法应当追究刑事责任的，应当作出起诉决定。

人民检察院经审查，认为需要补充核实的，应当退回监察机关补充调查，必要时可以自行补充侦查。对于补充调查的案件，应当在一个月内补充调查完毕。补充调查以二次为限。

人民检察院对于有《中华人民共和国刑事诉讼法》规定的不予起诉情形的，经上一级人民检察院批准，依法作出不起诉的决定。监察机关认为不起诉的决定有错误的，可以向上一级人民检察院提请复议。

第四十八条 监察机关在调查贪污贿赂、失职渎职等职务犯罪案件过程中，被调查人逃匿或者死亡，有必要继续调查的，经省级以上监察机关批准，应当继续调查并作出结论。被调查人逃匿，在通缉一年后不能到案，或者死亡的，由监察机关提请人民检察院依照法定程序，向人民法院提出没收违法所得的申请。

第四十九条 监察对象对监察机关作出的涉及本人的处理决定不服的，可以在收到处理决定之日起一个月内，向作出决定的监察机关申请复审，复审机关应当在

一个月内作出复审决定；监察对象对复审决定仍不服的，可以在收到复审决定之日起一个月内，向上一级监察机关申请复核，复核机关应当在二个月内作出复核决定。复审、复核期间，不停止原处理决定的执行。复核机关经审查，认定处理决定有错误的，原处理机关应当及时予以纠正。

第六章 反腐败国际合作

第五十条 国家监察委员会统筹协调与其他国家、地区、国际组织开展的反腐败国际交流、合作，组织反腐败国际条约实施工作。

第五十一条 国家监察委员会组织协调有关方面加强与有关国家、地区、国际组织在反腐败执法、引渡、司法协助、被判刑人的移管、资产追回和信息交流等领域的合作。

第五十二条 国家监察委员会加强对反腐败国际追逃追赃和防逃工作的组织协调，督促有关单位做好相关工作：

（一）对于重大贪污贿赂、失职渎职等职务犯罪案件，被调查人逃匿到国（境）外，掌握证据比较确凿的，通过开展境外追逃合作，追捕归案；

（二）向赃款赃物所在国请求查询、冻结、扣押、没收、追缴、返还涉案资产；

（三）查询、监控涉嫌职务犯罪的公职人员及其相关人员进出国（境）和跨境资金流动情况，在调查案件过程中设置防逃程序。

第七章 对监察机关和监察人员的监督

第五十三条 各级监察委员会应当接受本级人民代表大会及其常务委员会的监督。

各级人民代表大会常务委员会听取和审议本级监察委员会的专项工作报告，组织执法检查。

县级以上各级人民代表大会及其常务委员会举行会议时，人民代表大会代表或者常务委员会组成人员可以依照法律规定的程序，就监察工作中的有关问题提出询问或者质询。

第五十四条 监察机关应当依法公开监察工作信息，接受民主监督、社会监督、舆论监督。

第五十五条 监察机关通过设立内部专门的监督机构等方式，加强对监察人员执行职务和遵守法律情况的监督，建设忠诚、干净、担当的监察队伍。

第五十六条 监察人员必须模范遵守宪法和法律，忠于职守、秉公执法，清正廉洁、保守秘密；必须具有良好的政治素质，熟悉监察业务，具备运用法律、法规、政策和调查取证等能力，自觉接受监督。

第五十七条 对于监察人员打听案情、过问案件、说情干预的，办理监察事项的监察人员应当及时报告。有关情况应当登记备案。

发现办理监察事项的监察人员未经批准接触被调查人、涉案人员及其特定关系人，或者存在交往情形的，知情人应当及时报告。有关情况应当登记备案。

第五十八条 办理监察事项的监察人员有下列情形之一的，应当自行回避，监察对象、检举人及其他有关人员也有权要求其回避：

- （一）是监察对象或者检举人的近亲属的；
- （二）担任过本案的证人的；
- （三）本人或者其近亲属与办理的监察事项有利害关系的；
- （四）有可能影响监察事项公正处理的其他情形的。

第五十九条 监察机关涉密人员离岗离职后，应当遵守脱密期管理规定，严格履行保密义务，不得泄露相关秘密。

监察人员辞职、退休三年内，不得从事与监察和司法工作相关联且可能发生利益冲突的职业。

第六十条 监察机关及其工作人员有下列行为之一的，被调查人及其近亲属有权向该机关申诉：

- （一）留置法定期限届满，不予以解除的；
- （二）查封、扣押、冻结与案件无关的财物的；
- （三）应当解除查封、扣押、冻结措施而不解除的；
- （四）贪污、挪用、私分、调换以及违反规定使用查封、扣押、冻结的财物的；
- （五）其他违反法律法规、侵害被调查人合法权益的行为。

受理申诉的监察机关应当在受理申诉之日起一个月内作出处理决定。申诉人对处理决定不服的，可以在收到处理决定之日起一个月内向上一级监察机关申请复查，上一级监察机关应当在收到复查申请之日起二个月内作出处理决定，情况属实的，及时予以纠正。

第六十一条 对调查工作结束后发现立案依据不充分或者失实，案件处置出现重大失误，监察人员严重违法的，应当追究负有责任的领导人员和直接责任人员的责任。

第八章 法律责任

第六十二条 有关单位拒不执行监察机关作出的处理决定，或者无正当理由拒不采纳监察建议的，由其主管部门、上级机关责令改正，对单位给予通报批评；对负有责任的领导人员和直接责任人员依法给予处理。

第六十三条 有关人员违反本法规定，有下列行为之一的，由其所在单位、主管部门、上级机关或者监察机关责令改正，依法给予处理：

（一）不按要求提供有关材料，拒绝、阻碍调查措施实施等拒不配合监察机关调查的；

（二）提供虚假情况，掩盖事实真相的；

（三）串供或者伪造、隐匿、毁灭证据的；（四）阻止他人揭发检举、提供证据的；

（五）其他违反本法规定的行为，情节严重的。

第六十四条 监察对象对控告人、检举人、证人或者监察人员进行报复陷害的；控告人、检举人、证人捏造事实诬告陷害监察对象的，依法给予处理。

第六十五条 监察机关及其工作人员有下列行为之一的，对负有责任的领导人员和直接责任人员依法给予处理：

（一）未经批准、授权处置问题线索，发现重大案情隐瞒不报，或者私自留存、处理涉案材料的；

（二）利用职权或者职务上的影响干预调查工作、以案谋私的；

（三）违法窃取、泄露调查工作信息，或者泄露举报事项、举报受理情况以及举报人信息的；

（四）对被调查人或者涉案人员逼供、诱供，或者侮辱、打骂、虐待、体罚或者变相体罚的；

（五）违反规定处置查封、扣押、冻结的财物的；

（六）违反规定发生办案安全事故，或者发生安全事故后隐瞒不报、报告失实、处置不当的；

（七）违反规定采取留置措施的；

（八）违反规定限制他人出境，或者不按规定解除出境限制的；

（九）其他滥用职权、玩忽职守、徇私舞弊的行为。

第六十六条 违反本法规定，构成犯罪的，依法追究刑事责任。

第六十七条 监察机关及其工作人员行使职权，侵犯公民、法人和其他组织的合法权益造成损害的，依法给予国家赔偿。

第九章 附则

第六十八条 中国人民解放军和中国人民武装警察部队开展监察工作，由中央军事委员会根据本法制定具体规定。

第六十九条 本法自公布之日起施行。《中华人民共和国行政监察法》同时废止。

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