

Legal Power: the Core of the Rule of Law and Anti-Corruption under the Background of Strict Party Governance

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Abstract: Anti-corruption by law is the inevitable trend of the in-depth development of anti-corruption struggle, but also an effective mode to curb corruption. From the root of corruption, we must rely on law to regulate public power. Legal power is the core of anti-corruption by law, and its connotation includes legal subject of power, legal scope of power and legal procedure. “Putting power into the cage of institutions”, especially the cage of rule of law, is a sign of the fundamental rule of law. Based on the core essence of legal power, we should promote the legislative system construction of anti-corruption by law, the legal construction of power list system, the construction of power disclosure and power supervision mechanism, bring anti-corruption into the track of rule of law, explore the practical path of anti-corruption by law, so as to realize the anti-corruption effect of cleaning up the air and treating both the symptoms and root causes.

1. Introduction

Curb the spread of corruption, maximum punishment of corruption has formed the potential of thunder. General Secretary Xi Jinping pointed out that “we must be good at fighting corruption with the rule of law thinking and method, strengthen national anti-corruption legislation, strengthen the construction of inner-Party laws and regulations to fight corruption and promote integrity, and ensure the rigid operation of the legal system. “[1] Therefore, the main spirit of anti-corruption by law lies in statutory power, regulating power by law and bringing anti-corruption into the track of rule of law. Compared with other anti-corruption modes, anti-corruption by law pays more attention to legal rules, legal procedures and legal ways, and gives full play to the role of law in regulating and restricting power, so as to achieve the root cause of anti-corruption.

2. The Connotation of “Statutory Power”.

In the development of the society ruled by law, the establishment and operation of power must follow the basic requirements of legal power. The so-called power statutory means that the establishment and operation of power are strictly controlled and restricted by strict laws and regulations. The essence of corruption is the abuse of power, and the abuse of power is mainly reflected in the lack of “boundary” of the exercise of power by the subject, and “power statutory” is to stipulate and set “boundary” for all the power.

The subject of power statutory: the law scientifically configures the power structure to provide legal basis for the exercise of power.

We are a socialist country under the people's democratic dictatorship and practice the system of people's congresses based on the principle of democratic centralism. Our allocation and control of the power structure is determined through the constitution and laws. The people elect The State Council and the Supreme People's Procuratorate to allocate state power through the people's congresses at various levels. It can be seen that the legitimacy of power is based on the people's legal authorization, and the subject of power is elected by the people and exercises relevant power. In modern society, election is considered to be a legitimate way and legal form for the generation of legitimate power. Citizens express their consent and authorize through election, and elect power exercisers who truly represent the will of the people according to their own will. China's

Constitution also stipulates in principle the functions and powers of the legislative, administrative judicial organs, and some special laws give specific authorization to them. It also emphasizes no organization or individual has the privilege to go beyond the Constitution and the law. Thus, configuration of our power structure reflects the demand of the people, and the subject of power should be the public servant of the society, rather than the master of the society.

In the process of modern rule of law construction, only through scientific and reasonable allocation of power, making power perform their respective functions within the scope of law, checking and balancing each other, and realizing the restriction of power, can power corruption be prevented from the source. However, in practice, such behaviors as substituting words for law, overruling law with power and abusing discretion are caused by unscientific allocation of power as excessive concentration, overlapping and mutual restraint of power. Especially in the practice rule of law for many years, the boundary between judicial organs and other power organs is not or the power relationship is unreasonable. It is common that administrative power interferes with judicial power caused by human relations and interests, and judicial power is seriously disturbed. judicial power loses its independence, judicial justice will inevitably have a negative impact. Therefore, the most critical point in judicial reform is to reconfigure and reasonably define the relationship between judicial power and other powers, protect and realize the rights and demands of social members, and effectively ensure the implementation of the principle of judicial legal scope of power: the law sets the limits of power, reflects the limitation of power.

Power is a double-edged sword. Since its emergence, power has been confronted with the paradox of antinomy: on the one hand, power is rooted in the guarantee of social order and the management of social life. On the other hand, power has the nature of self-expansion, and if it is restrained, it is easy to be abused and corrupt. The principle of statutory power is adopted based the assumption that human nature is evil. Based on the weakness of human nature, "a person granted power is always faced with the temptation to abuse power, and the temptation to cross the boundary between justice and morality." [2] Power has a natural tendency to corrupt, so the exercise of power must have corresponding scope and boundary. Laws and regulations should be the basic means to set up the scope of power, as well as the most fundamental measure to realize the restriction of power. The scope of power should be very clear, so that the subject of power can predict the consequences of his own behavior before exercising power, so as to restrain his own power behavior consciously and self-discipline.

With the deepening of political restructuring, we are moving from the so-called "all-powerful government" to "limited government". China's legal system should also clearly define the limits of power while granting broad powers to state institutions, so as to realize the limitation of power. "The limitation of power means that the power exercised by any subject is limited, the boundary of power is clear, and the scope of power is relatively clear." [3] Of course, the goal of statutory power is to show power in practice as the result of "limited power". In addition to specific legal norms, it is also necessary to adjust the relationship between the subjects of power, so that in the exercise of power, the effect is achieved without exceeding the power. "In order to realize the limitation of power and prevent arbitrary power, we should not only formulate the legal rules in the static sense, but also perfect the power structure in the dynamic sense. At the same time, we must try to bridge the crack between the superficial power relationship and the substantial power relationship." [4] Only when the power becomes the power with strict limits, can the due function of the legal power be reflected, and the rule of law and anti-corruption in the sense of power control can also achieve the ideal effect.

legal power procedure: the law determines the due process of power operation, excluding the use of power capricious.

Due procedure is an important mechanism to restrict power, which can reduce and avoid the arbitrariness and arbitrariness of the exercise of power by the subject of power, and ensure that power is carried out in an impartial, legal and reasonable way in the steps, order, form and space and time scope stipulated by law. "As long as power enters the procedure operation, willful behavior will encounter institutional obstacles. Any arbitrary power brought into due process will

be regulated and controlled and will have no place. “[5] Once the power enters the procedure, it will be restricted by the procedure principles and rules. It will limit the arbitrariness of the power subject in a transparent way and guarantee the legitimacy and fairness of the procedure results. National discretion existence is reasonable and necessary, but has a tendency to expand relative generalization, vulnerable to abuse and corruption, the due process of law with the characteristic of equality, the differentiation of checks and balances in public function to guide the power in the process of running subject according to rational manner, in order to achieve the balance of power and right, the combination of efficiency and justice.

For power, due process is not only the redistribution of power, but also the standard and restriction of the subject of power. On the one hand, this kind of restriction on power is to determine the scope of power operation through definite procedures set in advance by law, so as not to go beyond the barrier of rules. On the other hand, the procedure needs the participation of both parties. The opposite party of the subject of power can restrict and supervise the power, prevent the dark box operation, and make the power run under the sun, so as to guarantee the acquisition of rights and the realization of the goal of power. “Due process is characterized by power restriction and right standard, and human rights are realized and guaranteed through power restriction and right relief. “[6] Due process achieves a balance of power and rights with its unique function. The ideal state of the rule of law is the consistency of substantive justice and procedural justice. But when the two conflict and inconsistency, must take procedural justice as priority. Compared with substantive justice, procedural justice is realized in a visible way, and it pays more attention to the formal rationality of equality.

3. The Significance of “Legal Power” for the Rule of Law and Anti-Corruption.

The imperfection of the development of the market economy makes the market utilitarian and money fetishism prevalent, power rent-seeking and power commercialization trend intensified, its direct consequence is the occurrence and overflow of corruption. Legal power is not the whole of anti-corruption by law, it is a necessary condition rather than a sufficient condition, it must be combined with power supervision, corruption punishment and other related systems, to form the resultant force of anti-corruption by law.

Statutory power can reflect that “it is determined by law” and strictly regulate the exercise of power.

The core of democratic politics is to restrict power, and the essence of rule of law is also reflected in the restriction of public power and the protection of private rights. Montesquieu said, “All those who have power are apt to abuse it, and this is an immutable lesson. People with power use power until they reach a limit. “[7] Therefore, unrestrained and unsupervised power inevitably leads to corruption, and law is an indispensable tool for controlling power. Under the rule of law, no power has room for willful arrogance. Anti-corruption by rule of law is to use the rule of law thinking and way to fight against corruption, is to regulate power by virtue of the formed system of legal rules, curb and prevent the occurrence of corruption, and its rules itself has forward-looking, stable and long-term characteristics and advantages. Therefore, “putting power into the cage of the system” is the fundamental symbol of the rule of law. This “institutional cage” is also “legal rules and regulations”. Its main spiritual essence is that power can only be obtained and exercised under legal regulations.

Legal power can achieve “both symptoms and root causes”, effectively curb the occurrence of corruption.

In the process of governing the country, our party has always attached importance to the fight against corruption, and has also experienced a process from “anti-corruption by movement”, “anti-corruption by rule of man” to “anti-corruption by system” and “anti-corruption by rule of law”. Historical experience shows that, in the face of the growing cancer of corruption, mass campaigns such as “three counter-campaigns”, “five counter-campaigns” and “four clearances” cannot solve the problem, nor can arbitrary, changeable and individual-willed anti-corruption campaigns fundamentally solve the problem of corruption. Under the background of governing the country

by law, the requirement and intensity of anti-corruption are strengthened. As the advanced form of institutional anti-corruption, anti-corruption by law has become the natural choice of tackling both the symptoms and the root causes of anti-corruption struggle. To a large extent, governing the country by law is “governing power by law”, which eliminates arbitrary abuse of power and effectively controls the occurrence of corruption. In other words, the extent to which we can achieve the legality of power means the extent to which we can prevent or restrain corruption. The rule of law against corruption is not only to punish corruption, but also to prevent it. We will never tolerate corruption involving the use of power for personal gain and the use of power to bend the law. More important, we will strengthen the source control, regulate power within the scope of the law, create a legal system environment where corruption is not easy to breed, and achieve the desired effect of addressing both the symptoms and root causes of corruption.

Legal power can achieve “shock the mountain and shock the tiger”, to corruption play a warning role.

The way to fight corruption by rule of law is to adopt the means of rule of law, to punish corruption and punish corruption, and to break the myth that “no doctor can be punished by punishment” and create an institutional environment for fighting corruption and upholding integrity. In order to achieve the ideal effect of the rule of law and anti-corruption, not only strict legislation, strict law enforcement and just judicial mechanism are required, but also the subject of power should be aware of the boundaries of power, be in awe of the law rather than be fluke, treat power correctly and use power prudently. In order to effectively prevent corruption and achieve “honest cadres, clear government and clean politics”, it is necessary to realize legal power, determine the establishment of power through the legal system, and ensure the orderly, standardized and open operation of power. The sword of anti-corruption is raised high, “don't stretch out your hand, stretch out your hand will be caught”, abuse of power, power for personal gain, is bound to be punished by the law, a number of major cases have been investigated and dealt with, a number of powerful, high party members and cadres have been severely punished by party discipline and state law, to the society has also played a very good education, warning and deterrence.

Thirdly, based on the legal essence of anti-corruption by law path analysis.

By national anti-corruption practice, the rule of law was proved to be the most effective anti-corruption anti-corruption campaign path, the clear rules, procedures, transparent, strong deterrent, “ban” before designing, and “after” forbidden in already, with the characteristics of fundamental, stability, and long-term, be thorough development the inevitable trend of anti-corruption struggle. We must scientifically construct an institutional system of anti-corruption by law under the legal meaning of power. By improving the legislative system of anti-corruption by law, we should promote the legal construction of power list system, strengthen power disclosure and power supervision mechanism, and establish a long-term mechanism of anti-corruption by power regulation according to the requirements of the rule of law.

We coordinated and unified intra-Party regulations with national legislation, and improved the rule of law and anti-corruption system.

To fight corruption by rule of law, we must first have a good legal system, so as to achieve the effect of anticorrosion and corruption by legal power. At present, China has formed a preliminary anti-corruption system, including inner-party regulations and national legislation, which combines prevention and punishment of corruption. As a “hard law”, national anti-corruption legislation is mainly concentrated in administrative law, administrative Procedure law and criminal law, criminal procedure law and other departmental laws, becoming an important tool for anti-corruption by law. As a part of China's anti-corruption system, the inner-party regulations have the nature of “soft law”, and are more embodied in the normative legislation of clean government in terms of content. In order to actively promote the coordination between inner-Party regulations and national legislative mechanism, laws should have supreme authority in the rule of law and anti-corruption, and inner-Party regulations must also be incorporated into the national rule of law system. In due course, mature and effective Intra-Party regulations can be translated into relevant laws through legal procedures, so as to ensure effective cohesion and internal unity between intra-Party

regulations and the socialist legal system with Chinese characteristics.

Due to the lack of unity and systematization of China's anti-corruption legal system, it is scattered in various national laws and regulations within the Party, with a chaotic structure and unable to form a systematic joint force. National People's Congress and its standing committee have perfect state to punish corruption prevention legal system, to set up and modify the criminal law, criminal procedure law, the government procurement law, anti-money laundering law, relevant laws and regulations such as the tendering, rules brought to power from different angles, but should formulate special anti-corruption laws, improve the effect of anti-corruption and the overall level of detailed planning. Relevant systems and operational procedures should be clearly defined as soon as possible to ensure that anti-corruption work has laws to follow and rules to follow, so as to achieve the effect of combining punishment with prevention and treating both the symptoms and root causes, and to lay a solid foundation for truly institutionalizing, legalizing and standardizing anti-corruption work.

The power list system and the construction of the rule of law are effectively linked to construct a new power operation mechanism.

Government administration in accordance with the law requires the principle that power is statutory and no one can do anything that is not authorized by law. All administrative actions must have a legal basis, and no government department may assume power outside the law. According to the Code of Conduct for Intraparty Political Life under New Circumstances, "We will implement the power list system, make public the process and results of the exercise of power, improve the accountability mechanism for the improper use of power, lock power into an institutional cage, and ensure that power is exercised in an open manner. "The power list is a detailed list of the powers enjoyed by administrative bodies, such as administrative examination and approval, management and punishment, so as to optimize and publicize the exercise of power in accordance with the law and accept public supervision. The boundary of power should be clarified through lists, the content of power and the procedure of power operation should be made public, so as to make power legalized, clear and specific, so as to limit power and realize the goal of "power operation under the sun".

The establishment of power list system is conducive to the establishment of a new power operation mechanism with scientific decision-making, strict execution, effective supervision and clear rights and responsibilities, so that the subjects of power can clearly understand the boundaries of their power and responsibility and the legal consequences of exceeding power and abusing power, so as to regulate the exercise of power. The implementation of power list system must promote the process of the rule of law. Listing of power system under the rule of law, is in the form of legal clear boundaries between local governments at various levels and their departments power, the power of the administrative organs by listing specified type, scope of authority and procedures, such as power, for the administrative organ of authority to establish a legal limits, beyond this range is overstepping, unauthorized will be accountability. The power list system clarifies the power boundary of the government and its departments, conforms to the requirement of the principle of statutory power, and helps promote law-based administration. It is also an effective measure to limit public power and realize the operation of power under the rule of law.

Power disclosure and power supervision complement each other to build a joint force of law and anti-corruption.

The lack of supervisory power provides the potential space for abuse of power and shady operation, thus facilitating the generation of corruption. The sixth Plenary Session of the 18th CPC Central Committee pointed out that "supervision is the fundamental guarantee for the correct exercise of power, and an important measure to strengthen and standardize intraparty political activities. Supervision of leading cadres must be strengthened, and there should be no unchecked power within the Party, nor any special party member who goes unsupervised. " "We need to improve the mechanism for checking and supervising the exercise of power, and establish an institutional arrangement whereby power is held accountable, power is used, and abuse of power is held accountable. "Therefore, only by establishing relatively sound power disclosure mechanism,

strict power operation procedure and perfect power supervision mechanism can power be regulated by procedure and supervised in the open place. The exercise of power in accordance with the law and regulations requires that the work process, responsibilities and powers, decision-making procedures, time limits for handling power, and supervision mechanisms for the exercise of power be made public and subject to supervision. We will increase transparency in the exercise of power, make the exercise of power more open and standardized, and improve the system of openness in Party affairs, government affairs, judicial affairs and all areas of government affairs.

Any public power must be subject to supervision to prevent abuse. Judicial independence and supervision and supervision should exist at the same time, and so should the power implementation and supervision of administrative organs. Supervision and restriction of public power is an important content of constitutions and the principle of rule of law in various countries, as well as the basic system requirements of modern society. We should combine intra-party supervision, legal supervision, administrative supervision, judicial supervision, democratic supervision, public supervision and public opinion supervision to form a three-dimensional and all-round mechanism for exercising power. In practice, due to the high concentration of power and the lack of transparent and effective supervision, over-powerful “no. 1” will lead to despotism and abuse and corruption. The use of power supervision “head”, in particular to hold leadership cadre selection and appointment, engineering construction, administrative examination and approval, the property rights trading, prone to corruption of key links such as government procurement, design the feasible supervision system, to ensure that the leading cadres, especially leading cadres to do a senior high not ShanQuan, weight readers, so as to prevent the occurrence of corruption.

4. Conclusion

As a Chinese saying goes, “when laws and regulations are enforced, the country prospers; when laws and regulations are relaxed, the country is in chaos and the country is weakened.” Anti-corruption concerns the life and death of the Party and the country, and should be prevented and treated with zero tolerance. Anti-corruption by law has become the strategy of all countries to fight against corruption, and also become an irreversible trend of anti-corruption. In carrying out the party's basic strategy of governing the country according to law, the need to further build a long-acting mechanism of anti-corruption under the rule of law, establishing and perfecting the law system of punishing and preventing corruption, through a variety of strict system construction, strengthen the legal regulation on power, formed systemic anti-corruption work together, guarantee the power under the environment of fair, open and transparent operation. Only under the framework of the rule of law, with the rule of law thinking and way to promote anti-corruption, we can achieve both the symptoms and root causes, jointly create a clean political environment, reduce or even eliminate the occurrence of corruption.

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