

Research on the Judicial Reform Path of Detention Measures

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Abstract: With the deepening of China's supervisory system reform, detention measures—serving as the core investigative tool for investigating official misconduct and crimes—have revealed procedural issues in practice, including insufficient transparency in approval processes, ambiguous time limit regulations, and inadequate protection of investigated individuals' rights. Addressing these challenges arising from the implementation of the Supervision Law, this study employs theories of power checks and procedural justice, combined with comparative legal perspectives on judicial review mechanisms. It explores pathways for judicial reform of detention measures through legislative improvements, establishment of judicial review frameworks, and strengthened rights protections. The aim is to ensure that supervisory authority operates within legal boundaries while achieving a balance between anti-corruption effectiveness and human rights safeguards.

Keywords: Detention measures; Judicial reform; Procedural disputes

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1. Introduction

The promulgation of the Supervision Law of the People's Republic of China in 2018 marked the entry of China's supervision system reform into a stage of legalization. As a compulsory investigative measure replacing “shuanggui” (double regulation) and “shuangzhi” (double finger), the detention measure has played a crucial role in combating official crimes. From the perspective of legal system development^[1], as a compulsory means restricting citizens' personal freedom, the procedural design of the detention measure must comply with the principle of inviolability of personal freedom stipulated in Article 37 of the Constitution. Currently, the approval, execution, and supervision of detention measures are all handled internally by supervisory authorities, forming a relatively closed power operation system that significantly differs from the compulsory measures system in criminal proceedings where “judicial review is the principle.” In this context, exploring the path of judicial transformation for detention measures not only addresses the theoretical proposition of improving China's distinctive supervision system, but also fulfills the practical need to implement the constitutional principle of “respecting and safeguarding human rights” and advance the modernization of the national governance system^[2].

2. Procedural disputes arising from the practice of the detention measure in the implementation of the Supervision Law

2.1. Controversy over the rationality of the retention approval procedure

The Supervision Law stipulates that detention measures by supervisory authorities must be collectively decided by their

leadership. Municipal-level and below supervisory authorities implementing such measures require approval from their superior authorities, while provincial-level supervisory authorities must file with the National Supervisory Commission. However, in practice, this approval process has sparked numerous controversies^[3].

The lack of transparency in approval procedures remains a critical issue. Although collective deliberation is mandated, the specific processes and decision-making bases remain undisclosed, making it difficult for the public to understand how decisions are made. When supervisory authorities take detention measures against individuals under investigation, their collective deliberation procedures lack public disclosure. This leaves the investigated individuals' families and the general public completely unaware of the decision-making rationale, which inevitably raises public doubts about the fairness of approvals. The absence of transparent procedures may lead to irregularities in power operations, resulting in ineffective social oversight and ultimately undermining the credibility of supervisory authorities^[4].

Insufficient internal oversight also poses challenges to the detention approval process. Currently, the system primarily relies on hierarchical supervision within supervisory authorities, where higher-level agencies oversee lower-level ones' approvals^[5]. However, this model has inherent limitations: Overburdened higher-level agencies may fail to conduct thorough reviews of every detention approval due to workload constraints or information asymmetry. When lower-level agencies submit detention approval materials containing evidentiary flaws that higher-level agencies fail to detect promptly, disputes often arise after the detention measures are implemented. The lack of internal supervision makes it difficult to correct errors or misconduct during the approval process in a timely manner, thereby increasing risks of power abuse^[6].

2.2. The issue of the term of retention and the procedure for termination

The Supervision Law stipulates that the detention period shall not exceed three months. In special circumstances, it may be extended once, with the extension period not exceeding three months. When provincial-level or lower supervisory authorities implement detention measures, any extension of the detention period must be approved by the higher-level supervisory authority. In practice, the regulations on detention periods face numerous challenges^[7].

The definition of "special circumstances" remains unclear. Although the Supervision Law allows extension of detention periods under special circumstances, it fails to provide detailed explanations regarding the specific connotations and boundaries of these circumstances. This ambiguity leaves supervisory authorities without clear criteria for determining special conditions, potentially leading to excessive discretionary power. In some cases, authorities justify extending detention periods by citing difficulties in case investigation or evidence collection^[8]. However, the investigated individuals and their families often argue that such circumstances don't meet legal requirements, challenging the extension decisions. The vague definition of special circumstances may result in arbitrary prolongation of detention periods, thereby infringing upon the legitimate rights and interests of detainees.

Controversies persist regarding the calculation of detention periods. In practice, differing interpretations exist concerning how to determine the start and end dates of such periods. Some supervisory authorities calculate detention duration from the date detention measures are announced to the investigated individual, while others begin counting from the actual restriction of personal freedom. There is also no unified standard regarding whether holidays should be included in the end date calculation or if statutory holidays warrant extensions. When calculating detention periods without excluding holidays, supervisory authorities may exceed legally mandated durations, leading investigated individuals to claim violations of legal provisions and demand corrections. Such inconsistencies in period calculations can easily spark disputes, undermining the legitimacy and fairness of detention measures^[9].

2.3. Disputes over the protection of the rights of persons detained

The implementation of detention measures has sparked widespread public concern and controversy regarding the protection of detainees' rights. A prominent issue is the inadequate safeguarding of defense rights. The current Supervision Law does not explicitly stipulate that detained individuals may hire lawyers to provide legal representation during

detention, leaving them in a relatively isolated position when facing investigations without professional legal assistance. Detainees who have doubts about the investigation by supervisory authorities often wish to engage lawyers for legal advice and defense, but their requests remain unmet due to the absence of relevant legal provisions. As one of the fundamental rights of detainees, the lack of defense rights protection may result in their legitimate interests being inadequately safeguarded, thereby compromising the fairness of case investigations^[10].

Obstacles persist in exercising the right to appeal. While the Supervision Law grants detained individuals the right to appeal against illegal acts by supervisory authorities and their staff, it lacks detailed provisions regarding specific procedures, designated authorities, and processing timelines. When detainees believe supervisory authorities have committed illegal acts during investigations, they file appeals. However, these appeals often face prolonged delays in response and lack progress updates^[11]. These procedural barriers prevent detained individuals from receiving timely redress when their rights are violated, thereby weakening oversight mechanisms that should restrain supervisory authorities' power.

3. Specific paths of judicial reform of detention measures

3.1. Improve the legislative provisions on the measures of detention

In order to solve the problems existing in the practice of the detention measure, we should first improve the legislation, clarify the relevant provisions, and enhance the operability and certainty of the law.

Regarding the application scenarios of detention measures, current provisions in China's Supervision Law—including references to “serious violations of duty or official crimes” and “cases with significant complexity” —remain vague without clear criteria for determination^[12]. Legislative interpretations or detailed implementation rules should be established to clarify these concepts. Specifically, cases involving embezzlement or bribery crimes with substantial amounts involved could be classified as serious official crimes. For dereliction of duty crimes, severity assessments should consider factors like economic losses and social impact. The definition of “significant complexity” could be further specified through criteria such as the number of individuals involved, diversity of criminal acts, and challenges in evidence collection^[13].

Refining approval and termination procedures is equally crucial. Regarding the approval process, specific protocols and requirements for collective deliberation must be clearly defined, including the scope of leadership participation, voting mechanisms, and documentation standards. The participating leadership should include the chief supervisor of the supervisory authority, divisional leaders, and heads of relevant departments. Decisions shall be made through secret ballot voting, requiring approval by a majority vote. Detailed records of discussions, opinions from all leadership members, and voting outcomes during deliberations must be maintained and archived for future reference. For approval procedures involving higher-level supervisory authorities, specific review criteria and deadlines should be clearly stipulated^[14].

3.2. Establishing a judicial review mechanism

The establishment of judicial review mechanism is the key link of judicial reform of detention measures. It can effectively strengthen the external supervision of detention measures, protect the legitimate rights and interests of detainees, and ensure that detention measures run on the track of rule of law.

In terms of judicial review entities, courts serve as the most appropriate subject for conducting such reviews. As the state's judicial organs, courts possess three defining characteristics: neutrality, professionalism, and authority. Their neutrality is demonstrated through impartial case handling, where they conduct reviews of detention applications without bias or interference from external parties. When examining detention requests from supervisory authorities, courts strictly adhere to legal provisions, conducting comprehensive evaluations of case facts, evidence, and the necessity of detentions. This ensures fair adjudication free from external influences. Professionalism stems from judges' systematic legal education and extensive judicial experience, enabling them to accurately interpret laws and assess the legality and necessity of detention measures through professional judgment^[15].

The scope of judicial review should encompass multiple critical aspects. First, the court must rigorously examine whether the subject under investigation is suspected of serious official misconduct or criminal offenses, whether supervisory authorities have already obtained evidence of their alleged illegal acts, whether there remain significant unresolved issues requiring further investigation, and whether statutory conditions for applying detention measures are met.

3.3. Strengthening the mechanism for safeguarding the rights of detainees

During the period of detention, the protection of the rights of detainees is crucial, which is directly related to judicial justice and human rights protection. In order to strengthen the mechanism of the protection of the rights of detainees, we need to take a multi-faceted approach.

The right to defense is a fundamental entitlement for detained individuals that must be fully protected. Currently, the Supervision Law does not explicitly grant detainees the right to hire lawyers during detention periods for legal representation, which to some extent undermines the protection of their legitimate rights. Therefore, it is necessary to establish through legislation or judicial interpretations that detainees have the right to appoint lawyers as defense counsel from the initial detention period. Detainees often face numerous questions regarding investigative procedures and legal application by supervisory authorities, yet due to the lack of professional legal guidance, they struggle to effectively safeguard their rights.

The right to visitation is a fundamental entitlement for detainees. It must be explicitly stipulated that detained individuals have the right to meet with family members and legal counsel, ensuring normal communication with the outside world. Supervisory authorities should establish reasonable visitation protocols to guarantee safe and orderly interactions. Detainees' families, deprived of prolonged access, often face significant anxiety due to complete lack of knowledge about case developments or detainees' conditions. By clarifying visitation rights, families can schedule regular meetings to provide emotional support and psychological reassurance, helping detainees maintain a positive mindset and cooperate fully with investigations. Simultaneously, smoother lawyer-client interactions enable legal professionals to better understand case details and deliver more effective legal assistance. Through multiple visits, lawyers gain comprehensive case knowledge, laying a solid foundation for subsequent defense strategies.

Disclosure statement

The author declares no conflict of interest.

References

- [1] Guo H, 2025, Interpretation of the Normative System of Power Restraint and Rights Protection in the Supervision Law—Based on the Revised Supervision Law. *Journal of Financial and Legal Studies*, 2025(03): 64-70.
- [2] Huang X R, Legal and Accurate Application of the Retention Time Extension and Recalculation System. *China Discipline Inspection and Supervision*, (01): 50-51.
- [3] Xia W, 2024, Establishment of Interrogation System in Supervision Retention Facilities. *Journal of Sichuan Normal University (Social Sciences Edition)*, (06): 97-105.
- [4] Wei J G, Wei Y N, 2024, On the Connection between Retention and Criminal Coercive Measures in the Supervision Law—Using Retention Cases from C City Procuratorate (2019-2022) as a Sample. *Journal of Southwest Minzu University (Humanities and Social Sciences Edition)*, (10): 80-88.
- [5] Xiang Y H, 2024, Research on the Connection between Supervision Retention and Criminal Coercive Measures. Haikou: Hainan University, 27.

- [6] Wang B J, 2024, Analysis of Supervision Advantages, Existing Issues, and Improvement Strategies in Retention Measures. Journal of Hebei Science and Technology Normal University (Social Sciences Edition), (02): 68-72.
- [7] He Y, 2024, Practical Landscape and Institutional Improvement of Retention Measures Connection with Criminal Coercive Measures. Changchun: Jilin University, 23.
- [8] Li L F, 2024, Legalization Research on Supervision Retention Measures from the Perspective of Due Process. Zhengzhou; Henan University of Economics and Law, 16.
- [9] Zhang L, 2023, Systematic Construction of Supervision Detention Measures under Digital Rule of Law. Journal of Liaoning University (Philosophy and Social Sciences Edition), (05): 68-77.
- [10] Chao C S, Ding S, 2023, Legal Attributes and Application Research of Supervision Detention Measures under Anti-Corruption Rule of Law. Journal of Changchun Normal University, (07): 43-47.
- [11] Liu M, 2023, Research on Defense Rights Protection for Investigation Targets During Detention Periods. Dalian: Dalian Maritime University, 14.
- [12] Li Z G, 2023, Research on the Connection between Supervision Detention Measures and Criminal Compulsory Measures. Wuhan: Zhongnan University of Economics and Law, 21.
- [13] Zi Z F, 2023, Legal Reflections and Procedural Regulation on the Connection between Supervision Detention and Custodial Measures. Politics and Law, (03): 34-49.
- [14] Yang Y N, Song P P, 2022, Preliminary Exploration of Legal Attributes of Supervision Detention Measures. Journal of Lanzhou University of Arts and Science (Social Sciences Edition), (06): 96-101.
- [15] Meng C C, Zhu Z S, 2022, Deficiencies and Improvements in the Connection between Supervision Detention and Criminal Compulsory Measures. Journal of Zhejiang Wanli University, (05): 41-46.

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