

Criticizing Supervisory Detention of China

A Human Rights Protection Approach

Introduction

The Chinese government has concluded that corruption of public officials has blocked economic development in China.¹ It established Supervisory Commissions in 2018, through legislation,² to pursue a course of anti-corruption based on the amendment of constitutional law.³ The Supervisory Commission can use twelve investigative measures, eleven of which are borrowed from other laws.⁴ However, supervisory detention is a new measure, which restricts the freedom of the person under investigation.⁵ Hence, because it is unprecedented and amends previous constitutional law, scholars broadly doubt the legitimacy of supervisory detention.⁶ According to Article 37 of China's Constitution,⁷ is it legal to restrict a citizen's freedom by a supervisory agency other than a people's procuratorate or a people's court?

¹ Geng Shuang: Zhongguo Yuyong Fazhi Siwei He Fazhi Fangfa Zhankai Fanfubai Gongzuo (耿爽: 中国运用法治思维和法治方式开展反腐败工作), <http://chnun.chinamission.org.cn/chn/zgylhg/flyty/tj825557.htm> (last visited at Aug. 23, 2021).

² Zhonghua Renmin Gongheguo Jianchafa (中华人民共和国监察法) [Supervision Law of the People's Republic of China] (Supervision Law), https://www.pkulaw.com/en_law/49d33112b961f99cbdfb.html?keyword=监察法 (last visited at May 31, 2021).

³ XIANFA § 7 (2018) (China).

⁴ Zhang Xiang & Lai Weineng (张翔、赖伟能), *Jiben Quanli Zuwei Guojia Quanli Peizhi de Xiaoji Guifan—Yi Jiancha Zhidu Gaige Shidian Zhong de Liuzhi Cuoshi Weili* (基本权利作为国家权力配置的消极规范——以监察制度改革试点中的留置措施为例) [Fundamental Rights as Negative Norms for the Allocation of State Power—Taking the Detention Measure in the Pilot Reform of the Supervision System as An Example], 6 Falü Kexue (法学科学) [Science of Law] [S. L.] 30, 33 (2017) (China) (eleven investigative measures, such as: searching, freezing, seizing, which borrows from the Criminal Procedure Law).

⁵ The person under investigation (detainee) refers to the person who is implemented supervisory detention under Supervisory Law, and the detainee will lose personal freedom. Although supervisory detention does not mean that the person needs to go to prison, the detainee needs to stay in a certain location, isolating from outside. During the detention period, the supervisor will meet the detainee from time to time to ask case details, and parole is not allowed according to the Supervisory Law.

⁶ See Chen Ruihua (陈瑞华), *Lun Guojia Jianchaquan de Xingzhi* (论国家监察权的性质) [A Discussion of the Nature of National Supervisory Power], 1 Bijiaofa Yanjiu (比较法研究) [Journal of Comparative Law] [J. COMPAR. L.] 1, 9-12 (2019) (China); Liu Yanhong (刘艳红), *Jianchafa Yu Qita Guifan Xianjie de Jiben Wenti Yanjiu* (《监察法》与其他规范衔接的基本问题研究) [A Research on the Basic Issues of the Coordination between Supervision Law and other Norms], 1 Xuefa Luntan (法学论坛) [Legal Forum] [LEGAL F.] 1, 4 (2019) (China); Zhao Wei (赵伟), *Quanli de Xinsheng Lun Jiancha Liuzhiquan de Zhidu Mianxiang Yu Guifan Yunxing—Jiyu Fazhi Guojia Yu Renquan Linian de Sikao* (权力的新生: 论监察留置权的制度面相与规范化运行——基于法治国家与基本人权理念的思考) [The New Power: on the Systematic Aspect and Standardized Operation of Supervisory Detention—Thoughts Based on Rule of Law and Basic Human Rights], 3 Guangxi Zhengfa Guanli Ganbu Xueyuan Xuebao (广西政法管理干部学院学报) [Journal of Guangxi Administrative Cadre Institute of Politics and Law] [J. GUANGXI ADMIN. INST. POL. L.] 11, 13-14 (2018) (China).

⁷ Supervision Law uses detention throughout whole law, and this paper adopts supervisory detention to separate from detentions regulated in other statutes and laws, such as the Civil Code and the Police Law, which both regulate detention methods with different definitions. See XIANFA art. 37, § 2 (2018) (China).

Supervisory detention allows for collecting evidence,⁸ and evidentiary materials collected by the supervisory agency may be used in subsequent criminal proceedings.⁹ However, scholars criticize the supervisory detention clause for its design and failure to protect the person's right under investigation.¹⁰ This article argues that when supervisory detention restricts a person's freedom, the rights of the detainee should not be reduced even though the power to restrict that person's freedom belongs to a power that is independent of the legislature, administration, and judiciary. Courts should set limits on the power of supervisory detention through judicial review in the future. Part II discusses the nature of supervisory detention by commenting on scholars' opinions. Part III describes three main defects of supervisory detention from the perspective of protecting detainees' rights. Part IV advocates for creating an external approval system, distinguishing different situations, allowing counsel to participate, and making criminal procedure law applicable to supervisory detention proceedings to better protect detainees' rights under investigation.

II. The Nature of Supervisory Detention

The nature of supervisory detention stimulates broad scholarly discussion, which reflects how supervisory detention works. Supervisory power is an independent power that parallels the powers of China's legislature, administrative agencies, and judiciary based on constitutional law,¹¹ which means that supervisory power differs from judiciary power. The function and method of supervisory detention, however, overlap with criminal investigative methods, which the judiciary oversees. For example, Article 22 of Supervision Law defines supervisory detention as a supervisory method adopted by the supervisory agency when investigating public officials' contravention or criminal behaviors related to occupational crime,¹² depriving the freedom of detainees under investigation. Like arrest, the method of supervisory detention only applies to the individual, and the supervisors obtain statements and confessions through questioning the detainee during detention.¹³ Besides supervisory detention, there are other investigative methods that the supervisors may use, for example, inquiry, freeze, search,

⁸ Supervision Law, art. 22 (“[W]hen the person under investigation is suspected of corruption, bribery, dereliction of duty, malfeasance, or any other serious occupational contravention or occupational crime, the supervisory agency has known some facts of the case and obtained some evidence related to the contravention or crime, but needs to conduct further investigation of important issues, after examination and approval by the supervisory agency in accordance with the law, the person may be detained at a specific location under any of the following circumstances . . .”).

⁹ Supervision Law, art. 33 (“[E]videntiary materials collected by the supervisory agency in accordance with this Law, including tangible evidence, documentary evidence, testimony of witnesses, confessions and defenses of the detainee, audiovisual materials, and electronic data, may be used as evidence in criminal proceedings . . .”).

¹⁰ See Zhang & Lai, *supra* note 4, at 33; Chen Ruihua, *supra* note 6, at 9-12; Liu Yanhong, *supra* note 6, at 4; and Zhao Wei *supra* note 6, at 13-14.

¹¹ XIANFA art. 3, § 7 (2018) (China) (“ . . . [A]ll administrative, supervisory, judicial, and procuratorial organs of the State are created by the people's congresses, to which they are responsible and by which they are overseen.”).

¹² Supervision Law, art. 22. Occupational crime means “any act punishable by law that is committed through opportunity created in the course of an occupation that is legal”. (GARY S. GREEN, OCCUPATIONAL CRIME 13 (Richard Meade et al. eds., 1st ed. 1990)).

¹³ Supervision Law, art. 20 (the supervisory organ has the right to request the detainee to make a statement or confession on the occupational crime).

and seizure.¹⁴ Hence, it is a divergence that the Supervisory Law defines supervisor detention as an independent investigation method, but the method and function are similar to a criminal investigation method: arrest. Scholars provide several approaches to explain the inconsistency, and the main opinions of the property¹⁵ of supervisory detention are mainly four: disciplinary inspection property,¹⁶ administrative property,¹⁷ criminal investigation property,¹⁸ and a mixture of administrative and criminal investigation property.¹⁹

Supervisory detention has less disciplinary inspection property.²⁰ Although supervisory detention is like *shuanggui*,²¹ supervisory commissions cooperate with the Central Commission for Discipline Inspection (CCDI) led by the Communist Party of China (CPC), meaning that supervisory commissions are not CCDI.²² The fact is that the two institutions share the same staff.²³ Supervisory commissions are the only

¹⁴ Supervision Law, art. 23 (the supervisory agency may inquire and freeze the deposits, remittances, bonds, stocks, fund shares and other properties of the units and individuals involved in the case in accordance with regulations) and 24 (the supervisory organ may conduct searches of the body, articles, and domicile, and other places related to the person under investigation who is suspected of any occupational crime as well as the person who may conceal the person under investigation or criminal evidence . . .).

¹⁵ Here, property means the essential or inherent features or attributes of supervisory detention when seen as characteristic of it according to the function and method described in Supervision Law.

¹⁶ Wang Xiao (王晓), *Jiancha Weiyuanhui de Liuzhi Cuoshi Lunyao* (监察委员会的留置措施论要) [A *Research on the Measures of Supervisory Detention of the Supervisory Committee*], 2 Beijing Lianhe Daxue Xuebao (北京联合大学学报) [Journal of Beijing Union University][J. BEIJING UNION U.] 23, 25 (2017) (China) (the freedom of the detainee is restricted and deprived by the Supervisory Committee during detention, and this method is obviously administrative).

¹⁷ Xiong Qiuhong (熊秋红), *Zhencha Tizhi Gaige Zhong Zhiwu Fanzui Zhenchaquan Bijiao Yanjiu* (监察体制改革中职务犯罪侦查权比较研究) [A *Comparative Study on the Investigation Power of Occupational Crimes in Supervision System Reform*], 2 Huanqiu Falü Pinglun (环球法律评论) [Global Law Review] [GLOB. L. REV] 40, 56 (2017) (China) (the investigative power of occupational crimes, like other investigative powers, is essentially an administrative power, and its executive subject is optional: by the police, the prosecutor, or the personnel of the anti-corruption agency. These institutions that exercise investigative power are different from the courts that exercise judicial power).

¹⁸ Zhang Jianwei (张建伟), *Falü Zhengdang Chengxu Shiye Xia de Xin Jiancha Zhidu* (法律正当程序视野下的新监察制度) [The New Supervision System from the Perspective of Due Process of Law], 2 GLOB. L. REV 40, 61 (2017) (China) (the investigative power exercised by the Supervisory Commission in cases of violating criminal law is essentially the untitled “criminal investigative power”).

¹⁹ Wang Haiyan (汪海燕), *Jiancha Zhidu Yu Xingshi Susongfa de Xianjie* (监察制度与《刑事诉讼法》的衔接) [The Connection between the Supervision System and the “Criminal Procedure Law”], 6 Zhengfa Luntan (政法论坛) [Tribune of Political Science and Law] [TRIBUNE POL. SCI. L.] 84, 87 (2017) (China) (if the supervisory detention is used in the case of violation of law and discipline, it has an administrative attribute. If it is an investigation of an occupational crime case, the supervisory detention has a criminal attribute. At the same time, administrative detention can also be transformed into criminal detention when the fact of the case is clear).

²⁰ Chen, *supra* note 6, at 6.

²¹ *Shuanggui* (双规) refers to the requirements that relevant CPC personnel needs to give an explanation of issues involved in the case at the specified time and location. See Zhongguo Gongchandang Jilü Jiancha Jiguan Anjian Jiancha Gongzuo Tiaoli (中国共产党纪律检查机关案件检查工作条例), <http://cpc.people.com.cn/GB/33838/2539632.html> (last visited Mar. 28, 2021).

²² Guojia Jiancha Weiyuanhui Chengli Yizhounian Jianfu Shiming Zai Chufa (国家监察委员会成立一周年: 肩负使命再出发), http://www.xinhuanet.com/politics/2019-03/23/c_1124271999.htm (last visited at Sep. 28, 2021) (CCDI cooperated with supervisory commissions). See also Chen Ruihua, *supra* note 6, at 6.

²³ Guojia Jiancha Weiyuanhui Chengli Yizhounian Jianfu Shiming Zai Chufa (国家监察委员会成立一周年: 肩负使命再出发), http://www.xinhuanet.com/politics/2019-03/23/c_1124271999.htm (last visited at Sep. 28, 2021) (after the central supervisory commissions and CCDI jointed offices, then the two institutions share a set of personnel with dual responsibilities).

powerful agency to adopt supervisory detention besides the CCDI,²⁴ so it is hard to say that supervisory detention has disciplinary inspection property.

Some scholars indicate that supervisory detention had administrative property because the power of supervisory commissions originated from “*shuangzhi*” of ineffective administrative supervision law.²⁵ However, as investigating the case of occupational contravention does not require such severe investigative methods,²⁶ supervisory detention should only be applied to occupational crimes not occupational contraventions in practice. The view that supervisory detention had administrative property was unpersuasive. Besides, the opinion that supervisory detention was a mixture of administrative and criminal investigation ignored the fact that it did not apply to occupational contravention cases.²⁷

Supervisory detention shares many similarities with several criminal investigation methods except implementing subjects are different, causing broad discussion. If a person meets conditions warranting supervisory detention, the supervisory agency has the right to detain the person to a certain location.²⁸ Such detention provides the supervisors enough time to question the detainee and collect other evidentiary materials based on the detainee’s statement. If the supervisory detention investigation shows that there may have been a crime committed, materials collected in supervisory detention can be used as evidence in subsequent proceedings.²⁹ First, the purpose of implementing supervisory detention is to create a chance to collect evidence since the supervisor is unable to obtain evidence through the detention activity *per se*, especially for confessions.³⁰ The detainee is isolated in a certain location during detention period so that there is plenty of time for the supervisor to interview the detainee, which is the same as compulsory investigation measures, such as custody and arrest.³¹ Both supervisory detention and arrest are investigation methods that temporarily deprive the detainee’s freedom and are used mainly to collect confessions, and supervisory detention is theoretically more severe than arrest because it is less protected. Besides, the length of supervisory detention is three or six months, which is close to an arrest of two to seven months.³² Second, the materials collected during supervisory detention will be used as evidence in subsequent proceedings if the detainee is believed to commit a crime,³³ which means the supervisory agency plays the same role as the investigation

²⁴ Supervision Law, art. 22.

²⁵ *Shuangzhi* (双指) refers to the order that the person suspected of violating the rules of administrative discipline explains and clarifies questions relevant to the matters under investigation at a designated time and location. . .” See art. 20, Zhonghua Renmin Gongheguo Xingzheng Jianchafa (中华人民共和国行政监察法), <http://www.npc.gov.cn/npc/c10134/201006/ca508eceb3f8409d8a6fe894a441459e.shtml> (last visited Mar. 28, 2021).

²⁶ Occupational contravention means that any contravention which is caused by occupation.

²⁷ Wang, *supra* note 19, at 87.

²⁸ Supervision Law, art. 22.

²⁹ Supervision Law, art. 33.

³⁰ Zhang & Lai, *supra* note 4, at 33.

³¹ *Id.*

³² *Id.* at 33-34.

³³ Supervision Law, art. 33.

agency. Additionally, the evidentiary rules of criminal procedure law and related interpretations apply to evidence materials collected by the supervisory agency as well, such as the rules of relevance and admissibility.³⁴ Besides, threats, inducements, deception, and other illegal methods are banned in the process of obtaining confessions according to Article 40 of Supervision Law³⁵, and illegally obtained evidence should also be excluded because the same standard for scrutinizing evidence during criminal proceedings is applied to the process of obtaining evidence of supervisory agency.³⁶ Hence, it is appropriate to say that supervisory detention has criminal investigation property based on the similarities between supervisory detention and arrest and the legal effect of supervisory evidence. As investigating occupational crimes were under the purview of the prosecution in the past, one commentator said that from this point, supervisory detention is almost the same as the investigative power enjoyed by prosecutors before the supervision system reform.³⁷

This paper agrees that supervisory detention has properties associated with the criminal investigation. Even though the supervisory commissions gain independent power based on the constitution, this does not change the way supervisory detention works. As long as evidence materials collected through supervisory detention may serve as evidence, this investigation method shares similar characteristics with criminal investigations.

III. The Defects of Supervisory Detention Clause

The establishment of supervisory commissions is a landmark of the rule of law in the process of CPC anticorruption. However, the supervisory detention clause contains many defects that violate individual's rights. Article 22 of Supervision Law enumerates crimes type, evidentiary condition, and statutory circumstances for which the supervisory agency has the power to implement supervisory detention.³⁸ Without appropriate supervision, supervisory detention may be misapplied at the beginning of and during the procedure. The approval agency of supervisory detention is a higher-level supervisory agency, which excludes external supervision.³⁹ Furthermore, the

³⁴ Supervision Law, art. 33 (. . . [T]he same requirements and standard as in criminal justice should be applied to the supervisory agency when collecting, fixing, and reviewing evidence . . .). See also Chen Ruihua, *supra* note 6, at 8.

³⁵ Supervision Law, art. 40 (. . . [I]t is strictly forbidden to collect evidence by threats, inducements, deception, and other illegal methods, and it is strictly forbid insulting, beating, abusing, corporal punishment, or disguised corporal punishment of the person under investigation and the person involved in the case. . .).

³⁶ Supervision Law, art. 33 (. . . [T]he supervisory organ shall collect, fix, examine and use evidence in compliance with the requirements and standards for evidence in criminal trials. 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).

³⁷ Chen, *supra* note 6, at 1.

³⁸ Supervision Law, art. 22.

³⁹ Bian Jianlin (卞建林), *Peihe Yu Zhiyue Jiancha Diaocha Yu Xingshi Susong de Xianjie* (配合与制约: 监察调查与刑事诉讼的衔接) [*Coordination and Restriction: the Connection Between Supervision and Investigation and Criminal Litigation*], 1 *Fashang Yanjiu* (法商研究) [Studies in Law and Business] [STUD. L. BUS.] 15, 19 (2019) (China) (for the municipal or county-level supervisory authority who decides to take detention measure, detention decision should report to the higher supervisory authority for approval. If the provincial supervisory agency decides to take detention measure, it shall also report to the State Supervision Commission for record except the higher supervisory authority for approval).

lawyer is blocked from the procedure of supervisory detention,⁴⁰ which increases the risk that the supervisory agency abuses power. The following discussions will focus on the lack of external supervision, without distinguishing different situations and excluding lawyers' participation.

A. Lack of External Supervision

The approval agency of supervisory detention is the supervisory agency *per se*, and no external evaluation of the necessity of detention is required during the process.⁴¹ First, the higher-level supervisory agency is an internal approval agency, and the approval procedure is accomplished in the absence of judicial review.⁴² As supervisory detention is a severe investigation method that restricts the person's freedom with the same intensity as imprisonment. Hence, an internal approval procedure is insufficient to guarantee the detainee's rights. Because the laws of supervisory detention are unclear, the supervisory agency has excessive discretion in making decisions. For instance, one of the conditions of implementing supervisory detention is that the related cases are major or complicated,⁴³ but what is defined as major or complicated cases varies from person to person. It is more probable for a supervisory agency to abuse its power in evaluating the necessity of implementing supervisory detention when there is no external supervision. Second, there is no oversight over the decision of what detention is necessary during the process, which may cause unnecessary detention. Article 43 of Supervision Law clarifies that if the supervisory agency finds the detention measure inappropriate, it should dismiss the measure promptly. However, an agency's supervision of its behavior is always not an easy thing, and what is worse is that the internal supervision department has not been established yet. Without external or internal supervision, there is a lower chance that existing errors or questions of the necessity of supervisory detention will be corrected.

B. Without Distinguishing Different Situations

The detention clause of Supervision Law does not distinguish different situations when implementing supervisory detention. The first is that objects who are eligible for detention are too broad, which violates the proportionality principle.⁴⁴ Besides, the length of supervisory detention is inappropriately fixed, lacking flexibility in practice

⁴⁰ *Id.* at 22(current supervision law bans the lawyer innerving during detention period).

⁴¹ Hong Hao & Zhu Liang (洪浩、朱良), *Lun Jianchawei Liuzhiquan Quanli Shuxing Yunxing Yuanze Ji Chengxu Xianjie* (论监察委留置权: 权力属性、运行原则及程序衔接) [*A Research of Supervisory Detention of the Supervisory Commission: Power Attributes, Operation Principles, and Procedural Cohesion*], 2 *Gansu Zhengfa Xueyuan Xuebao* (甘肃政法学院学报) [Journal of Gansu Political Science and Law Institute] [J. GANSU SCI. POL. L. INS.] 1, 5 (2019) (the approval procedure of supervisory detention is a kind of homologous supervision mode).

⁴² Chen, *supra* note 6, at 13.

⁴³ Supervision Law, art. 22.

⁴⁴ The objects here refer to the person that supervision law applies to, as well as supervisory detention, and art. 15 of Supervision Law enumerates the objects. The proportionality principle refers to "punishments should be proportional to crimes" "because the principle grew out of the idea of proportional self-defense and thus had particular application in police law" (Eric Engle, *The History of the General Principle of Proportionality: An Overview*, 10 DARTMOUTH L.J. 1, 7 (2012)).

when cases differ in severity. In the end, the location of supervisory detention needs to be clear, which may affect the effectiveness of supervisory detention.

1. Objects Too Broad for Supervisory Detention

Contract or temporary workers are also applied to supervisory detention,⁴⁵ which makes the objects too broad. For example, temporary workers and contract workers, who are only assume the functions of a civil servant in a short period of time. Article 15 of Supervision Law places public officials and relevant personnel in the scope of supervision law with a miscellaneous clause.⁴⁶ There is no doubt that contract or temporary workers belong to relevant personnel when they are essentially engaged in the exercise of public power. However, it is very risky to include all the personnel with duties into the scope of supervisory detention because legislation has not granted the power to contract and temporary workers.⁴⁷ Defining these contract and temporary workers, who do not have status, in the category of status offense criminals under criminal law will be ineffective.

2. Fixed Length of Supervisory Detention

Applying a fixed length of supervisory detention to all cases is less flexible. Detention length is fixed to three months for a general case, which is eligible for a three-month extension in special situations. Confessions are the most important evidence in occupational crimes and the collection of such evidence does not require such a long detention period. As the purpose of supervisory detention is evidence collection, detention will lose foundation and function after evidence is sufficiently collected. Hence, continuing to imprison the detainee after evidence collection is complete seems unnecessary. A three-to-six months detention is inappropriate in most cases, even though the duration of detention will be offset against the term of any penalty imposed.⁴⁸

3. Vague Locations of Supervisory Detention

⁴⁵ Liu, *supra* note 6, at 9 (many non-civil servants were also applied to disciplines of CCDI in practice, as well as supervisory detention).

⁴⁶ Supervision Law, art. 15 ([S]upervisory agencies shall conduct supervision of the following public officials and relevant personnel: (1) Civil servants of the CPC, the People's Congress and its Standing Committee, the People's Government, the Supervisory Committee, the People's Court, the People's Procuratorate, the Chinese People's Political Consultative Conference committees at all levels, the democratic parties and the Federation of Industry and Commerce, and refer to the "Chinese Personnel regulated by the Civil Service Law of the People's Republic of China. (2) Personnel engaged in public affairs at organizations managing public affairs upon authorization by laws, regulations, or lawful entrustment by state organs. (3) Managers of state-owned enterprises. (4) Personnel engaged in management in public entities in education, scientific research, culture, health care, sports, etc. (5) Personnel engaged in management at basic-level self-governing mass organizations. (6) Other personnel who perform public duties in accordance with the law.)

⁴⁷ Liu, *supra* note 6, at 9.

⁴⁸ Supervision Law, art. 44 (. . . [W]here the detainee who is in charge of committing a crime and sentenced to control, criminal detention, or fixed-term imprisonment in accordance with the law after he or she is transferred to the judicial agency, the period of detention shall be offset against the term of penalty. A day of detention shall be offset against two days of public surveillance, and a day of criminal detention or fixed-term imprisonment . . .).

Article 22 of Supervision Law that regulates the location of supervisory detention lacks clarity, which is not conducive to protecting a detainee's rights. The location of detentions is important for two reasons: avoiding external interference and protecting the detainee's rights. Although detention locations should be implemented in accordance with relevant state regulations, there is no clear explanation about it.⁴⁹ In practice, two places are usually used as supervisory detention locations. One is the original location designated for “*shuangzhi*” in the supervisory agency, and the other is the jail in the investigation agency.⁵⁰ The jail is well equipped with modern facilities to protect the detainee's rights, but it is hard to shield the location from interfering because the detainee holds power in this area for many years.⁵¹ Original locations for “*shuangzhi*” are comparatively self-isolated, which creates a good environment for investigation. However, the detainee likely feels enormous psychological pressure when they are isolated in certain place because the supervisor has the power to interrogate the detainee at any time.⁵² Confessions are probably involuntary,⁵³ and the detainee's rights are likely hard to ensure. The entire interrogation process should be recorded through audio-visual recording, with non-evidence function but rather as reference in the future.⁵⁴ Several cases exposed that the accused was coerced to give confessions by illegal methods.⁵⁵ If there is no clear interpretation about detention locations, it will be easier to cause rights violations.

C. Excluding Lawyers' Participation

The detainee under investigation is denied of accessing to counsel,⁵⁶ and this is the most unacceptable aspect. In Chinese criminal procedural law, a suspect has the right to counsel from the first interrogation by the investigative agency or the date when compulsory measures are implemented.⁵⁷ However, Article 44 of Supervision Law

⁴⁹ Supervision Law, art. 22 (. . . [T]he establishment, management and supervision of the lien site shall be implemented in accordance with relevant state regulations).

⁵⁰ Ma Huaide Guanyu Liuzho Cuoshi de Sikao (马怀德：关于留置措施的思考), Beijing Ribao (北京日报), <http://fzzfyjy.cupl.edu.cn/info/1108/8350.htm> (last visited at Sep. 30, 2021).

⁵¹ Zhao, *supra* note 6, at 17.

⁵² Tuo Zhanrong (妥占荣), *Jiancha Liuzhi Zhong Bei Liuzhi Renyuan Quanli Baozhang Wenti Yanjiu (监察留置中被留置人员权利保障问题研究) [A Research on the Protection of the Rights of the Detainees in the Supervisory Detention]*, 3 Liaoning Gong'an Sifa Guanli Ganbu Xueyuan Xuebao (辽宁公安司法管理干部学院学报) [Journal of Liaoning Administrators College of Police and Justice] [J. LIAONING ADMINISTRATORS C. POLICE J.] 8, 10 (2019) (China).

⁵³ Chen, *supra* note 6, at 14.

⁵⁴ Supervision Law, art. 41 (. . . [I]nvestigators who conduct interrogations, searches, seals, seizures, and other important evidence collection shall record the entire process for future reference through audio-visual equipment).

⁵⁵ Tuo, *supra* note 52, at 10.

⁵⁶ Wang, *supra* note 16, at 29 (the detainee is blocked to appoint a lawyer during the administrative supervision period, let alone meet with a lawyer based on past occupational crimes).

⁵⁷ See art. 34, *Zhonghua Renmin Gonghe Guo Xingshi Susong Fa (中华人民共和国刑事诉讼法) [Criminal Procedure Law of the People's Republic of China (2018 Amendment)]* (CPL) (promulgated by Standing Comm. Nat'l People's Cong, Oct. 26, 2018, effective Oct. 26, 2018) 271, 272 SUP. PEOPLE'S CT. GAT. 3 (China). Shenme Shi Xingshi Qiangzhi Cuoshi (什么是刑事强制措施?), <http://www.npc.gov.cn/npc/c2311/200012/35addeed9f034f8ab0c8bdb444885424.shtml> (last visited Oct. 1, 2021) (compulsory measures refer to methods and methods used by public security agencies, people's procuratorates, and people's courts to restrict or deprive the freedom of the accused in criminal proceedings, including custodial summons, bail, residential surveillance, detention, and arrest).

articulates, “[A]fter the detention measure is taken against the person under investigation, the entity where the detained person works and his or her family member should be notified within twenty-four hours. . . .”⁵⁸ which implies that the lawyer is not allowed to participate during supervisory detention.⁵⁹ Even if the detainee’s family members appoint a lawyer, the lawyer can not obtain the identity of a defense lawyer under the Supervision Law.⁶⁰ When the detainee’s rights are violated, they may not obtain a timely remedy without the assistance of counsel, especially when supervisors adopt illegal methods to obtain evidence.

IV. Conclusion and Suggestions for Supervisory Detention

Supervisory detention has criminal investigation properties based on its method and function, so the principles of criminal procedure should also apply to supervisory detention. However, clauses regulating supervisory detention fail to protect the detainee’s rights in several aspects. Supervisory detention is approved only by the supervisory agency, and no external agency reviews the agency’s procedures and implementation processes. The clause that implements supervisory detention is inflexible, includes broad applied objects, fixed detention lengths, and vague detention locations. The most serious issue is that supervisory detention excludes the participation of a defense lawyer, which cuts off the assistance of a legal professional.

Based on the issues discussed above, this paper proposes several suggestions:

1. Establishing External and Internal Supervision

Internal and external supervision should be established to limit the supervisory agency’s discretion. Setting up an independent department of the supervisory agency is necessary, and the duty of the independent department should be the approval of supervisory detention as a first step.⁶¹ The prosecution agency should be entitled to the power to approve supervisory detention and supervise the process.⁶² As arrest is similar to supervisory detention, the prosecutorial agency is the external approval agency that is best suited to guarantee supervisory detention’s necessity. The prosecutorial agency’s experience is worthwhile for the supervisory agency to learn from, and it is foreseeable that the supervisory agency will be more cautious in deciding whether to detain a person.

2. Distinguishing Different Situations in Implementing Supervisory Detention

More detailed interpretation is urgently needed to clear the clauses’ related objects, length, and locations of supervisory detention. In order to comply with criminal law, it is better to exclude contract or temporary workers from the eligible supervisory

⁵⁸ Supervision Law, art. 44.

⁵⁹ Chen, *supra* note 6, at 14.

⁶⁰ *Id.*

⁶¹ Zhao, *supra* note 6, at 16.

⁶² Liu, *supra* note 6, at 13.

detention objects if they do not have certain administrative power.⁶³ Additionally, the legislature should identify several detention periods based the severity of the cases, for example, one to ten days for less severe cases, fifteen to sixteen days for severe cases, and thirty to ninety days for super severe cases.⁶⁴ The location of supervisory detention should be more specific, and the jail of investigation agency is more efficiently to manage the detainee compared to the *shuangzhi* location because the audio-video recording facilities are relatively equipped.⁶⁵

3. Entitling the Detainee to the Right to Counsel

Legal counsel is conducive to protecting the detainee's rights, and the detainee should be informed of his or her right to appoint a lawyer after the supervisory detention is implemented. During the supervisory detention, the lawyer should have the right to meet the detainee, provide professional suggestions, and review evidence. Besides, the lawyer should also be entitled the same right as other cases according to criminal procedure law.

⁶³ *See id.*

⁶⁴ *See Zhao, supra* note 6, at 17.

⁶⁵ Tuo, *supra* note 52, at 10.