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## **Legality, discretion and informal practices in China's courts : a socio-legal investigation of private transactions in the course of litigation**

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**Chapter 7 Extending the applicability of the  
framework – Decision-making and corruption in  
anti-corruption institutions**

### 7.1. Introduction

The previous chapter has discussed how the social institution of guanxi-practice and the political institutional design of China's courts in terms of decision-making have facilitated the contracting process of corrupt exchange and resulted in the proliferation of corrupt activities in the process of litigation. This chapter will discuss how corruption can similarly arise in other public institutions, in particular, the specialized anti-corruption institutions due to their exposure to similar conditions.

In terms of anti-corruption efforts, China claims the largest volume of anti-corruption regulations<sup>479</sup> and anti-corruption campaigns,<sup>480</sup> hosts the most empowered anti-corruption enforcement agencies – the Discipline Inspection Commissions of the Chinese Communist Party (hereinafter the DICs)<sup>481</sup> with the most populated manpower<sup>482</sup> and the most severe punishment.<sup>483</sup> However, accompanying the rise of power of these institutions is the rising number of incidences of corruption committed by anti-corruption agents. By the time of writing, 6 DIC secretaries and 14 procuratorate directors and deputy directors in charge of anti-corruption prosecution, including a director from the Supreme People's Procuratorate, had been reportedly punished for corrupt conduct during anti-corruption investigations.<sup>484</sup> Meanwhile, 35 presidents and vice-presidents of the People's Procuratorates, including 7 high-ranking presidents at the provincial level, had been punished for corrupt conduct while performing their duties.<sup>485</sup> This chapter will demonstrate how on the one hand the institutional design of anti-corruption institutions has created a permissive environment of corruption in these institutions and on the other hand how the presence of corruption in anti-corruption institutions has seriously affected the effectiveness of anti-corruption measures and efforts. In doing that, this chapter also links to the findings of the previous chapters,

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<sup>479</sup> According to a New York Times interview of Professor Gao in Chinese Academy of Social Science, China has promulgated 1200 laws, rules and directives against corruption. For details, see [http://www.nytimes.com/2009/09/04/business/global/04corrupt.html?\\_r=1](http://www.nytimes.com/2009/09/04/business/global/04corrupt.html?_r=1)

<sup>480</sup> Melanie Manion, "Corruption by Design: Bribery in Chinese Enterprise Licensing," *The Journal of Law, Economics & Organization* 12, no. 1 (1996). p.2.

<sup>481</sup> The Discipline Inspection Commission is granted the power to detain corruption suspect for 2 months, which can be extended to an unspecified period of time, before court trial. Working Procedures of Case Investigations for the Discipline Inspection Commissions. Art.28.

<sup>482</sup> The ratio between the number of public officials and the number of DIC agents (not including prosecutors) is 8.3:1 in China, namely, in average one anti-corruption agent monitors eight officials. The ratio is 153:1 in Hong Kong and 2000:1 in Singapore. "International Heat of The "Anticorruption Storm" in China," *International Herald Leader* 26 June 2008. Available at <http://www.gzjj.gov.cn/redShow.asp?ArticleID=6507>

<sup>483</sup> The highest criminal punishment of bribe-taking and embezzlement is death penalty. Chinese Criminal Law (1997). Art. 383(1).

<sup>484</sup> Cases are on file with the author.

<sup>485</sup> Ibid.

which identify certain factors as the common causes of corruption in courts as well as in specialized anti-corruption institutions.

Data of this chapter firstly come from authoritative sources, such as laws, bylaws, internal regulations, guidelines of the major anti-corruption institutions, most notably, the party discipline inspection commissions and the procuratorates. The second source of data consists of approximately 100 cases concerning corruption in anti-corruption institutions spanning from 1985 till 2009. Information concerning these cases comes from media reports of court-trials or press releases from courts or corruption investigative bodies, principally the party discipline inspection commissions and the procuratorates.<sup>486</sup>

It is necessary to note that this chapter is to identify certain features in corruption investigation while using only limited data. Access to information on the detailed practices of anti-corruption institutions, especially information on corrupt practices in these institutions is strictly controlled. Therefore, the findings of this chapter shall be primarily applied only to the materials indicated in this research. More general application shall be conducted with caution and be tested when freer access to data can be gained.

The rest of the chapter is divided into four parts. Section II introduces the institutional structure of anti-corruption institutions, including the main actors and their structural relations with the political institution of the CCP. Section III discusses features of decision-making in the main anti-corruption institutions. Section IV connects the features of decision-making discussed in Section III with the occurrences of corrupt activities, employing reported cases collected during the course of the research.

## *7.2. Organizational structure of anti-corruption institutions*

According to the recent OECD (Organization for Economic Co-operation and Development) review of anti-corruption institutions in various countries, the main models of these institutions include institutions specializing in law enforcement, institutions focusing on preventive measures, policy development and co-ordination, and institutions

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<sup>486</sup> These sources include the legal sections of *Fazhi Ribao* (Legal Daily), *Jiancha Ribao* (Procuracy Daily), *Jiancha Fengyun* (Procuracy Affairs), *Nanfang Zhoumo* (Southern Weekly), *Caijing Magazine* and *Minzhu yu Fazhi* (Democracy and Rule by Law) and *Anti-corruption Weekly* published on *Zhengyi Wang*, an internet-based magazine run by the Supreme Procuratorate. They also include the legal channels of two major internet news websites in China: [www.sina.com](http://www.sina.com) and [www.xinhuanet.com](http://www.xinhuanet.com).

with all above functions.<sup>487</sup> China hosts all three types, some of which have overlapping functions.

### 7.2.1. Main anti-corruption institutions

The first group of anti-corruption institution is the Discipline Inspection Commission of the Chinese Communist Party (DIC), which is designed as a multi-purpose anti-corruption institution, encompassing all the functions mentioned above.

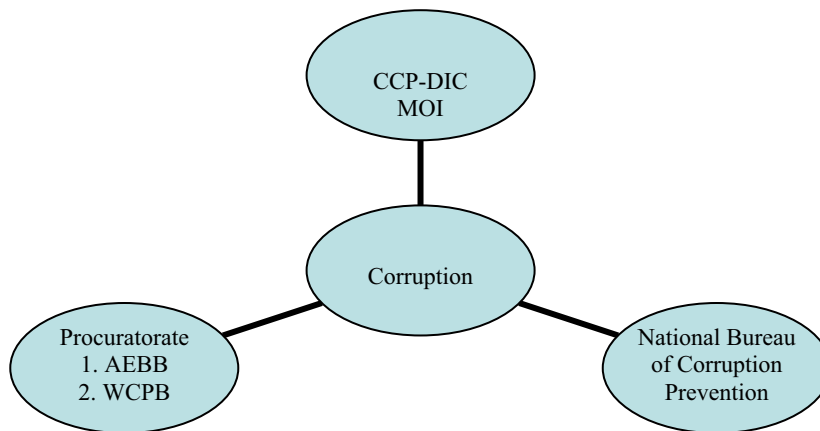


Chart 7.1 Outline of Anti-Corruption Institutions in the PRC

According to the Charter of the Chinese Communist Party, the current main tasks of the DIC are to collect information from the public, to conduct pre-prosecution investigation of corrupt conduct of party members and to coordinate among various anti-corruption institutions.<sup>488</sup> Since the DIC can only exercise jurisdiction over party-members, the People's Inspection Committee was established in 1949 at both the national and local level to scrutinize disciplinary violation of civil servants, who are not party members.<sup>489</sup> The committee was dismantled in 1959 and restored as Ministry of Inspection (MOI) in

<sup>487</sup> Dan Dionisie, Francesco Checchi, "Corruption and Anticorruption Agencies in Eastern Europe and the Cis: A Practitioners' Experience," (UNDP Bratislava Regional Centre, 2008). pp.7-15. OECD, "Specialised Anti-Corruption Institutions - Review of Models," (Anticorruption Division, OECD, 2006). pp.5-8.

<sup>488</sup> CCP Charter (2002). Ch.8.

<sup>489</sup> Propaganda Office CCDI, *A Brief Course of the Institutional Development of Discipline Inspection Commissions* (Beijing: China Fang Zheng Press, 2002).p.4.

1986.<sup>490</sup> In 1993 the MOI was merged into DIC. Since then, the MOI and the DIC share the same personnel and facilities but carry out their activities under their respective names of offices.<sup>491</sup>

The second group of anti-corruption institution is the people's procuratorates. More specifically, a specialized branch of the procuratorates, the Anti Embezzlement and Bribery Bureau (AEBB), is responsible to carry out the anti-corruption activities. The AEBB and the DIC-MOI have different but also overlapping functions in terms of corruption investigation. In general, the DIC-MOI has higher authority and is entitled to perform the preliminary investigation and to decide whether an indictment is necessary. When indictment is deemed necessary, the DIC will transfer the case to the procuratorate for further investigation to secure evidence and to prosecute. Other than the AEBB, the White-collar Crime Prevention Bureau (WCPB) was also established within the procuratorates. Its function mainly concerns prevention-oriented anti-corruption research, consultation and training.

The third group of anti-corruption institution is the National Bureau of Corruption Prevention (NBCP), which was established under the directorship of the Minister of Inspection in 2007.<sup>492</sup> There is no clear division of labor between the NBCP and the White-collar Crime Prevention Bureaus of the procuratorates, which were established earlier.<sup>493</sup> Lastly, it is important to note that apart from the specialized anti-corruption institutions, the head of each public institution is also responsible to monitor, investigate and punish disciplinary violations committed by his staff members. The rest of the chapter will focus on the investigative activities, mainly carried out by the DIC-MOI (which will be abbreviated as DIC in the rest of the chapter) and the AEBB of the procuratorates. In other words, preventive anti-corruption institutions are not featured in this chapter.

### *7.2.2. Anti-corruption institutions and the party*

The same as courts, all anti-corruption institutions in China are incorporated into the cadres' ranking system, which is administered by the party. Such an institutional design clearly helps the party to exercise control over anti-corruption activities. More specifically, the incorporation of the ranking system in anti-corruption institutions means that all permanent posts in these institutions are assigned with a rank. Each post is delegated certain decision-making power corresponding to its rank. The

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<sup>490</sup> Ibid. p.5.

<sup>491</sup> Ibid. p.6.

<sup>492</sup> Official website of the Bureau. <http://politics.people.com.cn/GB/8198/114315/114316/6763150.html>

<sup>493</sup> Annual Report of the Supreme People's Procuratorate of 2003. Information available at <http://news.qq.com/a/20090310/001269.htm>

commander-in-chief has the highest rank and accordingly the widest decision-making power in the given institution. At the national level, the CCDIC answers only to the Central Committee of the CCP.<sup>494</sup> So is the Supreme People's Procuratorate.<sup>495</sup> The regional and local DIC and procuratorates are subject to dual-administration (*shuangchong guanli*). It means that they are subordinate to both the party committee of the corresponding geographical jurisdiction and the respective DIC or procuratorate at the superior level. Between the DIC and the procuratorate of the same geographical jurisdiction, the former enjoys more power since the top leader of the DIC has an important seat (usually only second to secretary of the party committee) in the decision-making body of the party committee,<sup>496</sup> a privilege that the procuratorates do not have.

Nonetheless, the procuratorates are endowed the power to conduct corruption investigation on its own initiative as long as the investigation does not encroach upon the jurisdiction of the DIC or is not of immediate interest of the leaders of the DIC. According to the data collected during this research, the procuratorates' self-initiated corruption investigations are notably concentrated on offenders of lower-ranks, especially those who serve in SOEs, and corruption in the private sectors, which falls out of the jurisdiction of the DICs. Apart from having a lower political status, the procuratorate is out-powered by the DIC also due to its limited investigative measure. Unlike the DIC, the procuratorate is subject to Article 133 of the Criminal Procedural law, which requires the procuratorate to release the detained suspect in 24 hours if sufficient evidence for arrest cannot be established.<sup>497</sup> This legal constraint limits the investigative power greatly compared with the DIC even though in practices the constraint can be circumvented through various means, for example, by applying for extensions.<sup>498</sup>

### 7.3. Decision-making in anti-corruption institutions

Since all anti-corruption institutions are state apparatus and are incorporated in the ranking system, the rules that feature the decision-making process in China's courts, as introduced in Chapter 5, also fully apply in the anti-corruption institutions. These rules

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<sup>494</sup> CCP Charter (2002). Ch.8.

<sup>495</sup> The highest decision-making body of the SPP is its party-group, which is bound by the party rules. The political status of the party group is defined in Chapter 9 of the CCP Charter (2002).

<sup>496</sup> This reform was launched as a measure to empower the DICs. CCDI, *A Brief Course of the Institutional Development of Discipline Inspection Commissions*. p.43.

<sup>497</sup> Criminal Procedural Law. Art. 133

<sup>498</sup> Interview H022. Also see Ling Yue, "A Study on the Legal Regulation of Hidden Unlawful Practices of Extended Detention [Yinxing Chaoqi Jiya De Falv Guizhi Yanjiu]," *Hebei Legal Study [Hebei Faxue]* 25, no. 10 (2007). Jie Zhao, "Consequences and Control on the Hidden Unlawful Practices of Extended Detention [Shilun Chaoqi Jiya De Weiha Yu Kongzhi]," *Hebei Legal Study [Hebei Faxue]* 24, no. 11 (2006).

are characterized by a loosely monitored process of formulation of decisions and strictly disciplined process of implementation of such decision.

### 7.3.1. General features

The above-mentioned characteristics of decision-making are most conspicuous in the DIC, which, unlike other anti-corruption institutions, are part of the party apparatus. One immediate example is their exclusive power to apply *shuanggui* (meaning “two designations”), an “extra-legal” investigative measure. This measure allows the DIC investigator to detain the suspect for interrogation for a lengthy period of time without a charge.<sup>499</sup> According to the DIC regulations, the *shuanggui* measure can be applied during the preliminary investigation, which can take two months with a one-month extension if necessary.<sup>500</sup> At the formal investigation procedure, the detention can take three months with possible extension.<sup>501</sup> The *shuanggui* measure is highly effective in extracting confession from the suspects. Such confession is used as key evidence for conviction and sanction.<sup>502</sup> Despite that the Criminal Procedural Law prohibits torture during interrogations, courts are not competent to conduct independent judicial examination on this issue and to exclude such evidence produced by the investigative bodies.<sup>503</sup> Legal consultancy for the suspect is not allowed or provided during the DIC investigation.<sup>504</sup> Once the DIC has concluded its investigation, it can render the sanction, ranging from warning to removal from office and revoking of the CCP membership,<sup>505</sup> according to its own procedure, which is non-transparent and governed by few rules. The

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<sup>499</sup> The full expression of *shuanggui* is “to report at the designated time and at the designated place”. In practice, a more accurate expression should be “to be interrogated and to wait for being interrogated at the designated place (usually a confined place) for a designated length of time”. It should be noted that this detaining measure is a prerogative for the DICs. Procuratorates, for example, are subject to the criminal procedures. According to article 133 of the Criminal Procedural Law (1996), the procuratorate can detain a suspect of corrupt crimes for 24 hours and has to release the suspect if it finds the detention is not warranted. Meanwhile, article 134 states that the procuratorate can decide whether to arrest a suspect in 10-14 days, which implies that the detention can last to two weeks maximum if doubts are not removed. For a more elaborate historical introduction of this measure, see Sapio, "Shuanggui and Extralegal Detention in China."

<sup>500</sup> DIC Regulation of Case Inspection. (1994). Art.15

<sup>501</sup> DIC Regulation of Case Inspection. (1994). Art.39.

<sup>502</sup> Only in recent years, the Supreme People’s Procuratorate as well as the Supreme People’s Court started to demand from investigators other forms of evidence to complement confession for conviction in courts. One slogan of this campaign is “zero-confession (*ling kougong*)”. However, this does not reduce the value and the need to extract confession in the investigation since the confession can provide important leads to the discovery of other forms of evidence.

<sup>503</sup> Only recently, the Supreme People’s Procuratorate issued a directive requiring procuratorates to exclude evidence obtained through torture in felony concerning the application of death sentence. For the report on the directive, see [http://opinion.nfdaily.cn/content/2009-08/11/content\\_5531190.htm](http://opinion.nfdaily.cn/content/2009-08/11/content_5531190.htm)

<sup>504</sup> Interview C011. H022.

<sup>505</sup> Directive on Disciplinary Sanctions of the CCP (2004) Art.10.



DIC is not competent to render criminal punishment but is responsible to transfer cases to procuratorates for prosecution if the DIC finds the offense is indictable.

As an inner-party disciplinary organization, the DIC enjoys an “extra-judicial” or “above-judicial” status and its decisions have a quasi-legal or above-legal effect. In other words, the decisions of the DICs are not challengeable by any institution or individual other than its leaders in the superior party organization.<sup>506</sup> This research has not come across a case, where a prosecutor prosecutes an offender or drops the charge against an offender because the prosecutor disagrees with the decisions of the DIC. In fact, for high-profile cases, the DIC sometimes engages both the procuratorate and the court concerned at the investigating stage so that the procuracy and the judiciary can be properly instructed at an early stage and their concerns, if any, can be incorporated in the investigative strategy.<sup>507</sup> In this circumstance, the following prosecution and trial will be a showcase since the conviction and sentencing will have already been determined during the investigation.<sup>508</sup> In procuratorates, the decision-making process has similar features but their decision-making power is limited due to their institutional constraint, which places them inferior to party apparatus, including the DICs.

To ensure the implementation of decisions that are reached through a loosely regulated and unchecked procedure, strict discipline is applied in and among anti-corruption institutions to regulate the superior-subordinate relationships. For example, the Supreme People’s Procuratorate (SPP) has been repetitively emphasizing that the relationship between the superior and subordinate procuratorates is a relationship of leading and being led<sup>509</sup> rather than supervising and being supervised,<sup>510</sup> as stipulated in the Constitution (2004).<sup>511</sup> According to the Notification on Registration and Report of Leads of Important Cases in Preliminary Investigation Level issued by the SPP, all leads concerning officials, who hold a rank of or beyond *xian/chu* level, have to be registered and submitted to the superior procuratorate within five days since discovery.<sup>512</sup> Such

<sup>506</sup> The “above-judicial” status of the party is suggested by Article 126 and 131 of the Constitution, which do not place party organizations under the constraint of not interfering the judiciary and the procuracy from exercising their power independently.

<sup>507</sup> Such practice is usually referred to as “*lianhe ban’an* (collaborated investigation)”, which is most frequently applied in investigations initiated by the Central DIC. Examples can be found in No. 8 Section CDIC, *Practices and Research on Corruption Investigation* (Beijing: China Fangzheng, 2003). Wang, *Juebu Yunxu Fubaifenzi You Cangshenzhidi - Tupo Da’an Yao’an De Shijian Yu Sikao [Nowhere to Hide - Practices About and Reflections Upon Successful Detection of Major Corruption Cases]*

<sup>508</sup> Such show-trial is often referred to as “*xianding houshen* (trial after conviction)”, which has a frequent appearance in discussions on Chinese criminal procedural practices.

<sup>509</sup> For example, see SPP Opinions on Strengthening the Leadership of Superior Procuratorates over Subordinate Procuratorates [2007].

<sup>510</sup> In comparison, for example, in the judiciary, superior courts “supervise (*jiandu*)” the performance of subordinate courts. PRC Constitution (2004). Art.127.

<sup>511</sup> PRC Constitution (2004). Art.132.

<sup>512</sup> SPP Regulation [1995] No.17.

top-down control is further strengthened in recent years. In 2005, a regulation was issued which requires all local procuratorates that are below the provincial-level to obtain approval from the provincial procuratorate first before they can drop a charge.<sup>513</sup> In 2008 another regulation was issued, which takes the decision-making power on making an arrest from local procuratorates to provincial procuratorates as well.<sup>514</sup>

Between the DIC and the procuratorate, the former enjoys a more superior political status, as mentioned in Section 7.2. For cases which the DIC exercises its jurisdiction, the DIC has the discretion to decide whether or not to send the case to the procuratorate for indictment.<sup>515</sup> If the DIC decides to send the case for prosecution, a conviction usually follows.<sup>516</sup>

Strict discipline is applied not only in inter-institutional relations but also in the inner-institutional relations. It means that within each anti-corruption institution decision-making power is highly concentrated in the hands of the staff with superior ranks. Namely, all decisions concerning important issues such as the initiation of investigation, the application of detention measures and the conclusion of an investigation, have to be approved by the top leaders of the anti-corruption institution concerned.<sup>517</sup> Such authoritarian organizational culture has a notably conspicuous display in procuratorates.<sup>518</sup> On an internet bulletin board, a young procuratorator instructed new law graduates on “how to behave as a new-comer in procuratorates” and said, “Try to make a good impression to your superiors and colleagues ... everyone cares about his status ... be careful not to offend them ... always hide your true opinion”.<sup>519</sup>

Such top-down disciplinary control is even more rigid in the DICs. Since the DICs are party institutions, the relationship between superior-subordinate DICs is immediately subject to the CCP disciplinary rules, which require the subordinate party institution to implement decisions and to execute instructions from the superior party institution

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<sup>513</sup> SPP Regulation [2005] No.15. Available at [http://law.baidu.com/pages/chinalawinfo/6/66/e25627b04ed47bd51c8595def4b251f7\\_0.html](http://law.baidu.com/pages/chinalawinfo/6/66/e25627b04ed47bd51c8595def4b251f7_0.html)

<sup>514</sup> In 2008 the SPP launched a new procedural measure, which requires local procuratorates to acquire approval from a superior procuratorate (at the provincial level at least) for decisions to arrest a corruption suspect as well. The measure is termed “*shuang baobei, shuang baopi* (double reports on case-registration, double application for approval)”.

<sup>515</sup> CCDI [1989]. No.7. Art.1. Also Yongjian Guan, ed. *Investigating Procedures of Dic* (China Fang Zheng Press,2006). p.190.

<sup>516</sup> Manion, *Corruption by Design: Building Clean Government in Mainland China and Hong Kong*. p.133.

<sup>517</sup> Interpretation of the Guidelines of the Working Procedure of the DICs (1994). Art. 9, 18, 19, 22, 40. SPP, "Decisions on Issues Concerning Internal Checks and Balances in Anti-Corruption Investigation," in No. 27 (1998). Art. 8. ———, "Decisions on Certain Issues Concerning Anti-Corruption Investigation," in No. 27 (1999). Art.21.

<sup>518</sup> Interview of a local procuratorate conducted in 2007.

<sup>519</sup> The essay was removed from Tianya Net Bulletin Board but is on file with the author.

unconditionally.<sup>520</sup> To guarantee that the discipline will be smoothly followed by DIC agents, “personality screening” starts at the recruitment stage. For example, in DICs, choosing the “right” staff is considered crucial.<sup>521</sup> The primary criteria of selection are the candidate’s political performance and *dangxing* (literally means “party spirit” and actually means one’s tendency to follow leaders).<sup>522</sup>

In an organization governed by such rules on decision-making, dissidents can easily be singled out, ostracized and given discriminative treatment since the leaders enjoy great discretion in task assignment, performance evaluation and promotion.<sup>523</sup> It means that opposition from bottom-up will be rare and can be easily frustrated, if occurs. For example, Luo Ziguang, former DIC chief secretary of Loudi City, Hunan Province, had once conspired with a colleague to “take down” a provincial leader by exposing certain illicit conduct of the latter. Before they were able to make any impact, the conspiracy was detected and Luo was detained by the Hunan Provincial DIC for “political corruption issues”, including, “maliciously attacking certain provincial leader”. It was never disclosed whether Luo and his colleagues’ allegation against the “provincial leader” was investigated and whether it was true. Instead, an investigation was soon carried out against Luo for his own corrupt conduct. Luo was found having taken bribes from various favor-seekers worth of 310,000 *yuan* and sentenced to a term of imprisonment of 11 years.<sup>524</sup>

### 7.3.2. “Rank jurisdiction (*jibie guanxia*)”

Other than the general features mentioned in the previous section, the decision-making in anti-corruption institutions is regulated by a distinctive rule, namely, the “rank jurisdiction”. It means that an anti-corruption institution cannot carry out an investigation against a suspect, who holds a rank above that of the investigating institution, unless such an investigation is instructed or approved by the superior institution, which has appointed the suspect.

<sup>520</sup> CCP Charter (2002). Art.15, 43, 44.

<sup>521</sup> CCDI, *A Brief Course of the Institutional Development of Discipline Inspection Commissions*. p.64.

<sup>522</sup> *Ibid.* p.73.

<sup>523</sup> Trade unions do not have an independent role to protect employees’ from exploitation by the employer, in this case, the State. Feng Chen, “Between the State and Labour: The Conflict of Chinese Trade Unions’ Double Identity in Market Reform,” *The China Quarterly* 176 (2003). pp.1025-8. The only institutions to address such discrimination are more likely to take the side of the employer rather than the employee, if such complaints can be lodged at all. For illustration of the difficulties for citizens to sue the State, see Kevin J. O’Brien, Lianjiang Li, “Suing the Local State: Administrative Litigation in Rural China” *The China Journal* 51 (2004).

<sup>524</sup> In this case, Luo may well be truly guilty for the crime of bribe-taking. However, an investigation against him would probably have never been carried out had he not offended the higher power first. See the report at <http://news.sina.com.cn/c/2004-07-26/09073200972s.shtml>.

Since the ranking system is applied in all public institutions and administered by the same procedures, the rank competence can be easily identified. Taking the procuratorates as an example, according to the “rank-jurisdiction”, county/district (*xian/qu*) procuratorates have jurisdiction over officials of a rank at the township (*xiangzhen*) and village (*cun*) -level; city procuratorates have jurisdiction over officials of a rank at the county (*xian/chu*) -level; provincial procuratorates over officials of a rank at the city (*ting/ju*) -level; and the Supreme People’s Procuratorate (hereinafter SPP) over officials of a rank at the province (*sheng/bu*) –level.<sup>525</sup> National leaders (typically, the Politburo members) are not indicated in the regulation, which suggests that no procuratorate has the competence to initiate an investigation against a national leader. Similar rules apply to the DICs. According to the working procedure of the DICs, the authority of an investigating body corresponds to its rank and the rank of the investigated. In other words, a DIC secretary has no authority to initiate an investigation against an official higher than his own rank.<sup>526</sup> To do that, approval from the DIC at the superior level has to be obtained. Meanwhile, the subordinate anti-corruption institutions are obliged to follow the leads handed down by their superior institutions and to start investigation according to the instructions.<sup>527</sup>

The following case will provide a more concrete understanding of the “rank jurisdiction” in practice. The case is about Hu Jianxue, former party secretary of Tai’an City, frustrated an investigation initiated by his subordinate Gong Pihan, former president of Tai’an City Procuratorate, until Gong Pihan obtained support from the superior leaders. The story began with a fraud case handled by Gong’s procuratorate in 1994.<sup>528</sup> The investigation led to detection of corrupt conduct of Yan Kezheng, the then deputy captain of the district police bureau. “A leader of the city party committee” specifically instructed Gong not to dig further. However, Gong was determined to get to the bottom of the case. Before Gong was able to take any further action, he was summoned by Hu Jianxue, the chief party secretary of Tai’an City. Hu instructed Gong to hold the investigation until a party committee deliberation on the case is conducted. Gong waited but the meeting was never held. Eager to advance the investigation, Gong had a detailed report delivered to Hu, enlisting the evidence and requesting for the permission to resume the investigation. Hu ignored the report. Being stonewalled by Hu, Gong called for help from his other superior, Zhao Changfeng, the president of the provincial procuratorate. Under the support from the provincial leader, Gong was able to detain the key perpetrator and witness, Yan

<sup>525</sup> Notification on Strengthening Investigation on Grand and Significant Cases, Issued by the Supreme People’s Procuratorate in 1993. Art.3.

<sup>526</sup> Working Procedure of the DIC (1984). Art. 4. Art.10, Guidelines of the Working Procedure of the DICs (1994). Art.17.

<sup>527</sup> Guidelines of the Working Procedure of the DICs (1991). Art.10(5).

<sup>528</sup> The title is the translation of the Chinese title of the journalistic report of the case. Yamin Li, "Taishan Jiao Xia De Jiaoliang [a Wrestle at the Foot of Mount Tai]."

Kezheng, the deputy police captain. During the interrogation, Yan leaked partial information about corrupt conduct of some high-rank city party leaders, including the party secretary Hu Jianxue.

As the investigation progressed, the more evidence Gong was able to acquire, the more desperate Hu became. He even once had words passed on to Gong, promising Gong a promotion if he could close the case. Gong rejected the proposal. At the same time, the provincial procuratorate took over the case from the city procuratorate and formally established an investigation against Hu Jianxue. In order to increase the authority and determination of the provincial procuratorate, at one point of the interrogation, a vice-president of the Supreme People's Procuratorate was brought in to show the suspects that the superior power was on the side of the investigators. Soon after the visit, a primary suspect confessed his corrupt conduct and that of Hu. Two days later, Hu was arrested and later convicted of having taken 99 bribes worth 600,000 *yuan*.

Although the investigation was eventually successfully carried out, Gong had suffered serious psychological distress during the investigation due to the difficulties laid to him because of the rank jurisdiction.<sup>529</sup> Even with his integrity, courage and perseverance, Gong would not have won the battle against the party secretary, had he not obtained support from the superior power from the provincial procuratorate up to the Supreme People's Procuratorate.<sup>530</sup> In reality, such support was, to a great extent, contingent. Had Hu Jianxue managed to gain protection from the superior power, Gong could have been forced to abort the investigation and likely to face personal revenge brought against him. In fact, after the event, Gong was later transferred from the procuratorate to the Provincial Department of Justice, which handles administrative legal affairs and has no investigative function. The only public report about Gong after Hu Jianxue's case is him inspecting the order of a national judicial exam.<sup>531</sup>

Gong Pihan's experience shall not be an isolated case. The reason that this case was publicly reported is because Hu Jianxue, the corrupt official, had fallen out of power and protection. Had Gong failed to obtain support from the provincial leaders and forced to

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<sup>529</sup> According to the report, Gong was almost driven to insanity because of the personal pressure placed on him by Hu Jianxue and his collaborators during the investigation. See *Ibid*.

<sup>530</sup> According to the reports of the "front-line" anti-corruption investigators, suspects of corruption usually demonstrate a sense of defiance towards the investigator, whose ranks are usually inferior to that of the suspects. Most suspects also show great resistance towards the investigation on the belief that their patron, or "guanxi", would come to rescue. Therefore, successful interrogation very often relies on the engagement of the leader of the investigating institution, whose rank matches or supersedes the rank of the suspect, in the interrogation. It is often this final push that breaks the psychological defense system of the suspect and leads to valuable confession. Such reports can be found at <http://law.law-star.com/cac/305048835.htm>, <http://www.cnjccn.com/html/200863015192816336.html>, <http://www.psychcn.com/enpsy/200210/144933305.shtml>.

<sup>531</sup> See the report at <http://www.laiwu.gov.cn/006news.asp?id=7408>.

withdraw the investigation, what had happened would probably never fall in the public's view. Even in the report of Gong Pihan, the battle was largely portrayed as a victory of wise individual leaders against evil individual corruption offenders. The institutional defect of the "rank jurisdiction" is seldom challenged.

Subjecting anti-corruption investigation to the strict rules of rank-jurisdiction shows the strong desire of the top political leadership to reserve top-down control over anti-corruption investigations. It grants privileges for the powerful, places them above the law and manifests a questionable commitment to uproot corruption. This practice together with those concerning the decision-making process mentioned in the previous sub-section constitutes the environment of anti-corruption institutions where the corrupt activities studied in this research took place.

#### 7.4. Corruption in anti-corruption institutions

Handling the leads (*anjian xiansuo*) is the start of any anti-corruption investigation.<sup>532</sup> In a recent public interview, a former director of Jianli County (Hubei Province) Inspection Bureau summarized current practices on how citizens' reports are handled in the local DIC.<sup>533</sup> According to this director, 90 percent of the leads will go to the chief secretary of the DIC directly after it has been collected from the post, phone calls or other means. Then three scenarios will follow, depending on the closeness of the personal relationship between the chief secretary and the condemned official. The first scenario is when the chief secretary happens to bear a grudge against the official. The chief secretary would instruct the investigating agent to start the investigation "seriously" and "immediately". When the reported corrupt conduct is confirmed, the chief secretary would set the tone of the concluding remark to ensure that his opinion will be followed before he holds the commission meeting. The second scenario is when the chief secretary has a fairly good relationship with the condemned official. The chief secretary would then intercept the report, not to register it, and summon the official for a "talk". During the conversation, the chief secretary would leak the report and emphasize the severity of its consequences if he decides to initiate an investigation, until the official pleads for help

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<sup>532</sup> Public reports reveal that 80 percent of the leads of corruption cases come from citizens' reports (*qunzhong jubao*) either by letters, phone calls or even emails. See the press release of the SPP <http://www.gmw.cn/01gmr/1998-07/21/GB/17760%5EGM4-2110.htm>. Other than citizens' report, the lead may also come from targeted investigation of anti-corruption agents and leads handed over by the superior anti-corruption institutions or other authorities. Anti-corruption agents normally react actively towards the leads, which are detected by themselves from their targeted investigation. They are also expected to act actively towards leads instructed and transferred to them by superior authorities. Directive of Case Investigation of the DIC (2004) Art.10(5). Rules on Leads Processing of the People's Procuratorates (2009). Art. 38-43. Also, see an article on "How to successfully complete the cases handed over by the superior authorities" at the website of a local procuratorate <http://www.yyjcw.gov.cn/Article/ArticleShow.asp?ArticleID=90>.

<sup>533</sup> Available at [http://news.qq.com/a/20070612/002512\\_1.htm](http://news.qq.com/a/20070612/002512_1.htm)

and registers the “help” as a personal favor to be reciprocated. The last scenario is when the chief secretary is indifferent to the condemned official. Then the normal procedure will follow.

According to the cases studied, the Jianli official’s summary is a pertinent description of the corrupt practices during anti-corruption investigations and it is applicable not only to lead-handling but all phases in the investigative process. The rest of this section will demonstrate such practices employing real cases. These cases are categorized in two groups. The first group refers to the scenario, in which an investigation is conducted for the private benefits, either financial or non-financial, of the investigator. The second group refers to the scenario, in which an investigation is NOT conducted due to the private benefits of the investigator. The cases to be introduced concern the DICs and the procuratorates as the external monitors of corruption as well as the leaders of the public institutions concerned as the internal monitors of corruption.

#### *7.4.1. Scenario I – corruption by carrying out investigation*

The first scenario refers to the situation where an anti-corruption investigation is conducted to realize the investigator’s private interest. Such private interests include both financial and non-financial interests.

##### *7.4.1.1. For non-financial corrupt interests*

To conduct an investigation for non-financial private interests is mainly conduct, which is carried out to take revenge and/or to remove a political rival or threat. Some of the revenges were carried out based on true evidence of corrupt conduct; some were carried out by perjury, such as the case of Jia Ailing, a 51-year-old judge in Luoyang Intermediate Court, Henan Province. Judge Jia had been wrongfully imprisoned for almost a year on the ground of a false corruption charge because she had offended the head of the local procuratorate. In 2001, Jia was assigned a contractual dispute case. During the litigation, Jia declined a bribe offered by one of the litigants, who was introduced to Jia by the president of the local procuratorate. Jia did not yield to the pressure and proposed an impartial ruling to the court adjudicative committee. Although the court adjudicative committee rejected the ruling proposed by Jia and rendered the final decision in favor of the procuratorate president’s acquaintance instead, Jia’s defiance to the instruction of the procuratorate president was evident. Soon after the closure of the court case, the local procuratorate initiated an anti-corruption investigation against Jia based on a false allegation of the litigant, who reported that Jia had extorted 15,000 *yuan* from his girlfriend during the trial. The investigators reexamined all previous cases that Jia had adjudicated and interrogated more than 80 litigants, none of

whom reported having succeeded in bribing Judge Jia. Without sufficient evidence, Jia was arrested and put into custody nonetheless. Jia had been kept in custody for 265 days until a report of Jia's grievance attracted the attention of Luo Gan, the then chief secretary of the CCDIC. Upon Luo's interference, Jia was eventually acquitted and released.<sup>534</sup> However, there is no public report about whether the perjuring litigant and the head of procuratorate president have been held accountable.

In this case, Judge's Jia's mistreatment was not only a result of the fact that decisions on restricting suspects' freedom are not scrutinized by an independent judiciary; it is also a result of the particular way of decision-making in anti-corruption institutions, which permits an ungrounded decision formed by an individual leader to be unconditionally implemented by subordinates. When the investigators had failed to obtain any evidence of corrupt conduct of Judge Jia, none of them seemed to have challenged their superior's decision and asked for the judge's release. Law and justice are arrested by blatant abuse of power and the only effective remedy comes from the interference of the higher power, in this case, a national leader from Beijing. In this aspect, Judge Jia should consider herself lucky that her case had eventually attracted attention and gained sympathy from the CCDIC secretary. Li Guofu, another victim of abuse of anti-corruption investigative power, was, however, not that fortunate.

Li Guofu, an entrepreneur from Fuyang City, Anhui Province, was once a protégé of Zhang Guo'an, the then chief secretary of Yingquan District of Fuyang. Having worked closely with Zhang for a long time, Li knew quite a few "dirty secrets" of Zhang, particularly about the extravagant construction project of the Fuyang city hall, which was nicknamed "White House" because of their resembling external outlook. Soon Li started to send report letters to authorities exposing Zhang's corrupt conduct in the construction project. However, one of Li's letters was intercepted by a friend of Zhang, who worked as a secretary of the Fuyang city municipality. Zhang was immediately informed of the letter. Outraged, Zhang ordered to intercept the rest of Li's report letters from the post offices and instructed the then president of the district procuratorate to establish a corruption case against Li. The prosecutor followed the instruction and Li Guofu was soon arrested. At the same time, upon Zhang's instruction, Li's mother and son-in-law were also arrested for false corruption allegations. Six months after having been detained, Li was prosecuted for embezzlement, bribe-taking, forging government documents and seals, all based on ungrounded allegations. Li was denied access to lawyer and visits from his family. The day before a scheduled, Li was allowed for the first time to meet his lawyer. Just a few hours before the meeting, Li was found dead in the detention center from some unnatural cause. The procuratorate insisted that Li hanged himself, which Li's

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<sup>534</sup> Available at [http://www.onlyit.cn/mba\\_article/at\\_m/at\\_m\\_06143\\_558.htm](http://www.onlyit.cn/mba_article/at_m/at_m_06143_558.htm)



family found unconvincing.<sup>535</sup> The procuratorate did not release the body to Li's family and coroner's examination was not conducted. The case was later reported by a national newspaper China Youth's Daily and broadcasted by a few civil-right activists, which generated wide public attention. In order to avoid a public crisis, Anhui provincial leaders instructed an investigation to be carried out against Zhang three months after Li's death. Zhang was prosecuted for plotting and avenging as well as taking 52 bribes worth 3.6 million *yuan* during his term in office.<sup>536</sup> However, the delayed punishment of Zhang could never bring back the life of Li Guofu to his family.

In the above two cases, the vicious vengeance of the procuratorate president in Judge Jia's case and the party secretary in Li Guofu's case are shocking. However, we should also take notice that in neither of the two cases the revenge could have been succeeded through the two vindictive leaders' individual efforts if their ungrounded decisions had not been loyally and effectively implemented by their subordinates. This strictly disciplined superior-subordinate relationship is one critical feature of the decision-making process in anti-corruption institutions as well as courts, which had been discussed in Chapter 5 and 6. This institutional design constitutes the deeper root of corruption in anti-corruption institutions as well as other law enforcement institutions, which sustains corruption even after individual corruption offenders have been exposed and removed. In some cases, such as that of Judge Jia mentioned above, her vindication has not necessarily led to the punishment of the perpetrators, a demand that she had not seemed to insist in pursuing. After having been jailed for 265 days, Judge Jia probably felt, understandably, too grateful for being able to regain her freedom and for her reinstatement to the court she used to work at. Tan Shibin, another victim of abuse of anti-corruption power, is not as lucky as her.

As a former vice-president of Lianyuan County Court, Hunan Province, Tan Shibin was framed and wrongfully charged for abuse of judicial power in a court auction presided by him in 2000. Tan was detained for 292 days before he was acquitted and released. However, the acquittal would never regain Tan the job as a judge. In fact, a leader "from above" had explicitly instructed that Tan should never be reinstated in the justice system, if to be reinstated at all."<sup>537</sup> Tan lamented, "As a court vice-president, with all evidence at hands, it had been so difficult to prove my innocence. Imagine how difficult it would be if it happened to an ordinary folk."

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<sup>535</sup> The family later found that Li's both eyes went blind before the death, which makes suicide difficult to commit in a guarded detention center. In addition, the lawyer found that the alleged place where Li hanged himself is of the same height of Li, which makes suicide by hanging unlikely to succeed. For more information on the case, see the defense lawyers' website <http://www.imlawyer.org/Article.asp?ArticleID=666>.

<sup>536</sup> A news column dedicated to this incident can be accessed at <http://news.sohu.com/s2008/baigongjubao/>

<sup>537</sup> Available at <http://news.163.com/06/1030/05/2ULIMG6T0001124J.html>

*7.4.1.2. For financial corrupt interests*

Unlike in the circumstance where an anti-corruption investigator conducts an investigation as a personal revenge against the victim, when an anti-corruption investigator conducts an investigation for private financial benefits, they will have to engage someone, who can gain from the conduct of the investigator and hence is willing to provide the benefits to the investigator accordingly. This is exactly the rationale of the conspiracy between Wang Liwei, former deputy manager of the state-owned Xinhua bookstore, and Liu Guoqing, former director of the AEBB of Guizhou Province Procuratorate. Wang had a lasting personal grudge with the chief manager of the same bookstore, whom Wang considered as a career rival and whom Wang believed was corrupt. Wang sought for help from Liu Guoqing to launch an anti-corruption investigation against his rival. Upon Liu's instruction, Wang wrote a citizen's report letter (*jubaoxin*), enlisting his allegations against the chief manager. After having received the letter, Liu, however, did not immediately launch the investigation. Instead, Liu said to Wang, "There are some problems. The allegation lacks evidence". When Wang started to worry, Liu mentioned in passing, "Recently, I bought a new apartment but I am short of money for interior decoration. Do you have some money?" Afterwards, Wang gave Liu a bank card, which had 179,000 *yuan* in the current account. Only then, Liu personally instructed his subordinate to proceed with the investigation.<sup>538</sup>

In this case, it seems that the AEBB director was able to control the progress of the investigation, either the launching or the suspension, simply by giving orders to his subordinates. The director's capacity to exploit the decision-making process was well-understood by the deputy bookstore manager, which is why he solicited the corrupt "service". However, what the deputy manager was not aware of is that his antagonist, the chief bookstore manager, is better connected than he had thought. This gave the case an interesting twist - the investigation backfired. It turned out that before the investigation against the chief manager could produce any fruit, the chief manager had managed to mobilize the provincial DIC, which has a higher rank and hence higher authority than the AEBB, to initiate an investigation about the investigation. Out-powered, the conspiracy between the AEBB director and the deputy manager was exposed. The AEBB director was convicted and sentenced to a term of imprisonment of 13 years. Meanwhile, the allegations against the bookstore chief were "forgotten" and never investigated again.<sup>539</sup> It seems that when power game has taken over the investigation, law and truth recedes to the background.

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<sup>538</sup> Court Judgment, 1<sup>st</sup> instance, Criminal Division, Guiyang Intermediate Court [2003] No.117

<sup>539</sup> Court Judgment, 1<sup>st</sup> instance, Criminal Division, Guiyang Intermediate Court [2003] No.117. The judgment does not mention the result of the corruption investigation against the bookstore chief manager Gong.

The capacity of anti-corruption agents to exploit the decision-making process does not only allow them to gain corrupt interests by launching ungrounded investigations but also by carrying out investigations that are within their duty to carry out. In the following case, Zhang Zihai, a corruption victim, was left no choice but to “buy” from the local AEBB director the evidence in order to prove his loss from corruption.

Zhang Zihan, a peasant from a county in Anhui Province, used to run a restaurant close to the county council, who was Zhang’s main patron. The county council kept a tally at the restaurant but never fully paid its bills. Zhang was soon driven to bankruptcy. In 1996 he brought an action against the county council at the county court. The court was instructed by the county council not to take the case. Zhang was then forced to bring the case to the appellant court - Fuyang Intermediate Court, where the case was registered. In two years’ time after the registration, the presiding judge had solicited countless banquet-treats from Zhang before the judge eventually facilitated a settlement between Zhang and the county council. In the settlement, both litigants agreed that the county council would pay back Zhang half of his claim, 270,000 *yuan*. Zhang received 30,000 *yuan* immediately but the rest 240,000 *yuan* had never come. Only three years later Zhang was told that the rest of the settlement had already been paid to and embezzled by the Fuyang Intermediate Court. However, the court denied having received the payment. Zhang had no power to request the city council to provide evidence of the payment either. Then Zhang sought for help from the AEBB director of the local procuratorate. The director promised to help Zhang to secure the payment slips from the county council. Meanwhile, the director indicated that the endeavor would entail costs. With appreciation and understanding, Zhang immediately said that once his court award being realized, he would make a contribution to the procuratorate for the construction of the new office building. The director said, “Nonsense. The procuratorate has money. How come the procuratorate needs money?” Then the director requested for 40,000 *yuan*, paid up front in cash.<sup>540</sup> In this case, for the corruption victim Zhang Zihan, the decision-making process of anti-corruption investigation seemed so precarious that the only way suggested to him to engage the anti-corruption institutions in order to protect his right and interests is to provide private incentive to the investigator.

#### *7.4.2. Scenario II – corruption by NOT carrying out investigation*

In this scenario, “no investigation” refers to the cover-up of a corrupt practice so as not to trigger an investigation. It also includes suspension of an on-going investigation as well as a premature conclusion of the investigation. The most recent example is the corrupt

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<sup>540</sup> See <http://www.cctv.com/news/china/20050524/101742.shtml>.

conduct of Ding Xinfu, former president of Jianxi Provincial Procuratorate, the procuratorate of the highest rank, who is convicted of corruption. According to his verdict, Ding had dropped a charge of bribe-taking against a suspect after having taken a bribe of 300,000 HK\$. Ding also granted probation to a suspect of tax evasion in exchange for 1,450,000 *yuan*, which was handed to his son.<sup>541</sup> Similar practices are found in the case of Wu Xing'an, former AEBB director of Fushun Procuratorate, Liaoning Province.<sup>542</sup>

Among all the corrupt anti-corruption investigators, the most notorious for abusing of power is Zeng Jinchun, who was ranked as the “No. 1 corrupt DIC chief secretary”. In 2008 Zeng was sentenced to death for having collected illicit income of 60 million *yuan* during his nine years in office as the chief secretary of the DIC of Chenzhou City, Hunan Province. According to the related reports, the decision-making process was so easily exploitable that once Zeng firstly instructed a subordinate to detain a corrupt official. Then upon the receipt of 100,000 *yuan* from the official, Zeng instructed to have the official released. However, soon after the release, Zeng instructed to detain the official again until an additional 1000 US\$ was paid.<sup>543</sup>

Since the most immediate monitor of corrupt activities is the head of each public institution, the covering-up may start there already before it reaches specialized anti-corruption institutions. For example, When Jia Yongxiang, former president of Shenyang Intermediate Court received a letter reporting corrupt conduct of his subordinate, Liang Fuquan, a vice-president of the same court, Jia handed the letter directly to Liang. Afterwards, Liang gave Jia 20,000 *yuan* and 2,000 US dollars as a gesture of appreciation for “being taken care”.<sup>544</sup> The cover-up may not have been exposed were it not because Jia’s involvement in a much grander corrupt scandal involving criminal activities of a local mafia.<sup>545</sup>

Sometimes when the evidence of corrupt conduct of the suspect is too strong and too risky for the anti-corruption investigator to cover, the investigator can render a lenient sanction to close the case. For example, Peng Jinyong, former Secretary of the DIC of Changde City, Jiangsu Province, had rendered a lenient sanction to a corrupt police captain after having received 5,000 British pounds and 8,000 HK dollars from the latter. Peng also instructed the police bureau to make sure the captain “properly” reinstated.<sup>546</sup>

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<sup>541</sup> See <http://news.sina.com.cn/c/2006-02-13/10019086114.shtml>.

<sup>542</sup> See [http://news.xinhuanet.com/legal/2007-01/31/content\\_5680165.htm](http://news.xinhuanet.com/legal/2007-01/31/content_5680165.htm).

<sup>543</sup> Procuratorate’s Claim, Changsha People’s Procuratorate [2008] No.2

<sup>544</sup> China Inspection Editorial Team, *Shenyang 'Mu Suixin, Ma Xiangdong' an Chachu Jishi [a Documented Report of the Investigation of Mu Suixin and Ma Xiangdong]* (China Fang Zheng Press, 2002), p.152.

<sup>545</sup> For more about the scandal, see *Ibid.*

<sup>546</sup> Available at <http://bm.jxxdxy.com/qlzf/details.asp?classid=11&newsid=190&page=1>.

Sun Xiaohong, former president of Kunming Intermediate Court and later Yunnan High Court, was removed from office for smuggling and unlawful public spending in 1999 but reinstated to the Director of Bureau of Commerce of Yunnan Province three years later.<sup>547</sup>

Understandably, a leader would have stronger incentive to help his subordinate to cover corruption from investigation if the leader was also a participant of the corrupt conduct. Fuyang Intermediate Court in Anhui Province was one such court, where corruption was operated like an enterprise, featured by collusion from the court leaders down to the rank and file judges. A local procuratorator revealed that a drug trafficker once bribed two judges in the Fuyang Intermediate Court through a county court judge. The procuratorate had to abort the investigation because of obstruction from the leader of Fuyang Intermediate Court, who stated that the alleged bribe was not a bribe but a fee charged by the court.<sup>548</sup>

Sometimes, a corruption offender can not only succeed in having his case dropped by the investigating body but also obtaining confidential information about the informant of the crime so as to seek revenge. For example, when Pan Yile, former vice-president of Guangxi High Court, was forwarded a report letter with corruption allegation against him by a “friendly” party leader, Pan threatened the informant and read out the letter to the informant in defiance.<sup>549</sup> Leakage of confidential information by anti-corruption investigators not only provides the corruption offenders a chance to destroy evidence but also put the corruption informants in perils. The case of Li Wenjuan is a typical example. As a tax accountant in Anshan State Taxation Bureau, Li detected irregular practices of the bureau and reported it to the National State Taxation Bureau in 2000. The national bureau then forwarded her report back to the Anshan Bureau, where Li worked. Li was firstly transferred to a post in a remote location, then fired, arrested and detained in a labor education camp for one year as an administrative punishment. After having served the administrative punishment, Li was still out of job and her family was continuously threatened by thugs. It was only until her story was picked up by a news program run by the national television network CCTV, the CCDIC intervened and reinstated Li in a region away from her foes. During the TV interview, Li lamented that she was too naive to think that she could correct mal-practices just because she was on the side of justice.<sup>550</sup>

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<sup>547</sup> Available at <http://www.people.com.cn/GB/wenhua/22226/31113/31114/2266503.html>.

<sup>548</sup> Available at [http://www.cnict.gov.cn/info\\_disp.php?id=2373](http://www.cnict.gov.cn/info_disp.php?id=2373).

<sup>549</sup> Available at <http://www.people.com.cn/9807/16/current/newfiles/c1010.html>.

<sup>550</sup> Available at <http://news.sina.com.cn/c/2006-03-28/12009463503.shtml>. A video clip of the CCTV interview can be accessed at <http://cctv.sina.com.cn/news/2006-03-28/13094.html>. Lü Jingyi was another whistle-blowers who was imprisoned by Li Changhe, former secretary of the political commission of Pingdingshan party committee. Lü was heavily injured and survived his wife in an assassination ordered by Li. CCDI, *Ban'an Shijian Yu Yanjiu [Experience and Research on Case Investigations]* (Beijing: China

Lacking of effective institutional support, corruption informants, especially whistle-blowers, who report the crime not out of private but public interests, are sometimes tragically exposed to persecution by the corrupt suspects because of the protection of corruption offenders by the anti-corruption investigators.<sup>551</sup>

Anti-corruption institutions become such powerful institutions that some corrupt leaders of these institutions can exert influence in other public affairs, such as the approval of land use, commission of public procurement contracts and promotion of cadres. In fact, many corrupt leaders in anti-corruption institutions were initially investigated not because the corrupt exchange they had conducted during anti-corruption investigation but in other public affairs mentioned above. For example, the aforementioned notoriously corrupt DIC leader Zeng Jinchun was initially investigated for his monopolistic control of coalmine exploitation in Chenzhou City, which had led to accidents and physical conflicts among various interests group. The investigation showed that a great part of his corrupt profit was derived from racketeering in the local mine operation.<sup>552</sup> Similar practices were found in the cases of Mu Xincheng, former director of AEBB of Fanzhi County Procuratorate in Shanxi Province,<sup>553</sup> and Xiong Jinxiang, former secretary of the DIC office in Tongguan Police Bureau, Shannxi Province.<sup>554</sup> Zheng Wei, former DIC leader of Chongqing Yuzhong District, was initially investigated for his peddling in a profitable real estate construction project.<sup>555</sup> In Changde City, Hunan Province, Peng Jinyong, former DIC Secretary of Changde City, had such a reputation that he could instill fear in his subordinates when they failed to deliver a “favor”.<sup>556</sup> So is Li Baojin, former president of Tianjin People’s Procuratorate, who was one of the most influential figures in the circle of Tianjin real estate developers. Li once told his followers in private, “I did not know the power of the procuratorate was so great until I took the office. I can investigate against anyone whom I want to investigate.”<sup>557</sup>

In general, the particular institutional design of anti-corruption institutions that governs the decision-making process creates the same environment as that of other public institutions, where corruption pervades and persists. The cases introduced in this chapter only represent a small portion of corrupt activities in today’s anti-corruption institutions. Nonetheless, it demonstrates that the occurrence of these activities is not only the result

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Fang Zheng Press, 2003). p.193. More stories about whistle-blowers in China, see <http://news.tom.com/zhuizong/jubaoren/>.

<sup>551</sup> For more about the persecution of whistle-blowers, see a feature column at <http://news.tom.com/zhuizong/jubaoren/>

<sup>552</sup> Available at <http://www.zgjr.com/News/2009814/index/043257618200.shtml>

<sup>553</sup> Available at <http://www.chinanews.com.cn/gn/news/2009/06-26/1750063.shtml>

<sup>554</sup> See [http://news.xinhuanet.com/legal/2008-04/25/content\\_8049844.htm](http://news.xinhuanet.com/legal/2008-04/25/content_8049844.htm).

<sup>555</sup> Chongqing No. 5 Procuratorate vs. Zheng Wei, Chongqing No. 5 Intermediate Court [2007] No. 195

<sup>556</sup> Available at <http://bm.jxxdxy.com/qlzf/details.asp?classid=11&newsid=190&page=1>.

<sup>557</sup> Available at <http://news.sina.com.cn/c/2008-03-04/120515072604.shtml>.

of moral decadence of individual corruption offenders but also an outcome of the institutional defect in decision-making, assisted by the discriminative practices of “rank jurisdiction”, based on which anti-corruption investigations are carried out.

### 7.5. Conclusion

This chapter intends to demonstrate and explain how corruption occurs in anti-corruption institutions. By showing how decisions are made in anti-corruption institutions, this Chapter intends to identify the deeper root of corruption in anti-corruption institutions. This chapter concludes that the fact that decisions of applications of investigative measures are largely exempted from judicial examination provides the investigators greater opportunities to abuse their power in exchange for private interests of great value. The disciplined superior-subordinate relationship, which is originally designed to induce unconditional compliance and top-down political control, guarantees the effective implementation of decisions, which are reached to serve private interests of those, who enjoy the unconstrained decision-making power. Under this condition, corruption offenders can effectively deploy a much greater volume of human and institutional resources to fulfill their corrupt objectives. Corruption proliferates.

In the meantime, the “rank jurisdiction” stratifies the power of anti-corruption institutions at various levels as well as their related corrupt interests. In doing that, it preserves the current power structure and allows the powerful and resourceful to continue to conduct corruption with impunity. It also raises doubt on the sincerity of the anti-corruption measures, impairs its trustworthiness, weakens its deterrent effect and enhances the common belief in power rather in law. It is not surprising that when high-rank politicians, such as Wang Huaizhong, former deputy chief party secretary of Anhui province, fell out of power and was put under investigation for his corrupt activities, his first attempt was to seek for protection from “above”. He readily fell in a scam set up by a few “guanxi swindlers”, who claimed to have strong connections in the CCDIC in Beijing. Wang paid the swindlers over one million *yuan* as the “operating fee”. Upon receiving the money, the swindlers disappeared.<sup>558</sup> It is neither surprising that when an offender is exposed and punished, the offender and the observers are more inclined to attribute the punishment to the offender’s falling out of protection of power rather than his breach of law. Consequently, it encourages the potential corruption offenders to invest more in power as a counter strategy rather than refraining themselves from abusing power. The effects of the anti-corruption measures are therefore greatly mitigated.

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<sup>558</sup> See related report at <http://www.people.com.cn/GB/paper2086/11500/1037374.html>.

In conclusion, by analyzing corruption in anti-corruption institutions and associating its occurrence with the institutional design of these institutions, this chapter addresses a more fundamental cause of the ineffectiveness of anti-corruption measures and practices in China that has been dispersedly observed and discussed in the previous studies. The chapter adds to our understanding of the complexity of the scene of corruption in which power consolidates private interests and private interests guide the exercise of power. The findings of this chapter also suggest that “the tendency to exploit power” and “the desire to preserve power” seems two pivotal drives and original sources to which various forms of dysfunctional governing, in this case, corruption control, can be traced back. How to contain these drives is a more fundamental issue that any good/clean-governance program has to be confronted with. And to solve this issue requires a change of perception of power, which is a more daunting task in a country with 2000 years’ history of authoritarianism.



