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硕 士 学 位 论 文

当前侦查监督机制的不足与对策

The Deficiency and Countermeasures of the  
Current Supervision Mechanism over Investigation

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## 内容摘要

侦查活动是刑事诉讼的基础性活动，侦查权既是打击犯罪的有力武器又是自由的可能侵害者，它一旦被滥用就会侵害公民权利。我国侦查程序封闭性过强，侦查机关采取大量限制、剥夺公民合法权利的刑事强制措施及强制性侦查手段的自由裁量权过大，无须经过司法审查。侦查权的积极主动特征决定对侦查权的行使必须进行有效制约。

我国由法律监督机关检察机关承担侦查活动监督职责，然而由于当前我国侦检关系的不合理、侦查监督范围受限、侦查监督方式及监督保障手段上的不足，当前的侦查监督机制未能起到有效监督侦查机关侦查活动合法性的作用，侦查活动监督工作面临着许多问题和困难，这对刑事诉讼中公民合法权利的保护极为不利。本文便首先从现行法律规定及司法实践出发，从上述几方面分析了当前侦查监督机制的现状与不足。

在此基础上，本文提出强化侦查监督职能的相应对策，强调应从当前司法实践出发，建立高效务实的侦查监督机制。首先认为应理顺侦检关系，完善立法、提高认识，确保检察机关作为法律监督者的权威性；其次建议须强化侦查监督保障权，明确监督与制约的法律后果，切实保障检察机关履行好侦查监督职责。最后本文针对侦查程序过于封闭及侦查监督范围过窄的弊端，认为应加强对侦查活动的外部控制，提出在当前法律框架内建立切合实践的适时介入、引导侦查机制及与派出所的联系监督机制，并就实践操作的具体问题提出自己的看法，认为这是解决

侦查监督方式滞后性、被动性的有效方法，有助于更好地监督侦查活动的合法性、有效性。

**关键词：**侦查监督；现状不足；对策

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## ABSTRACT

Investigation is a basic activity in criminal proceeding; power of investigation is both a powerful weapon to fight against crime and possible infringement of freedom. It will infringe civil rights when it is abused. Our investigation procedures are so encapsulated that the investigation organs have too much discretion when adopting a lot of criminal compulsory measures and coercive investigation means to restrict or deprive of citizens' legitimate rights without a judicial review. The positive and active features of investigation power require effective restrictions on the exercises of it.

In our country it is the legal supervision organs and procuratorial organs to be responsible for supervisory duties of investigation activities. However, due to the reasons such as irrational relationship between investigation and prosecutorial systems, the limited scope of supervision over investigation, the insufficiency of supervision methods over investigation as well as lack of guarantee measures on supervision, the current mechanism of supervision over investigation fails to effectively monitor the legitimacy of investigation activities. The supervision work over investigation is facing many problems and difficulties which is rather adverse to the protection of citizen's legitimate rights in a criminal suit . So this article begins with the current legal regulations and juridical practice to

analyze the status quo and deficiency of current supervision mechanism over investigation.

On this basis, the article proposes countermeasures to strengthen the functions of supervision over investigation; it emphasizes the establishment of high effective and pragmatic mechanism of supervision over investigation from the judicial practice. First, we should straighten the relationship between investigation and procuratorial organs, perfect the legislation and heighten our awareness to guarantee the authority of the procuratorial organs as supervisor of law; second , it proposes strengthening the guarantee right of supervision over investigation and making clear the law effects of supervision and restriction in order to practically safeguard procuratorial authority to perform supervisory duties over investigation. Finally, in allusion to the disadvantages that investigation procedures are too closed and the scope of supervision over investigation is too narrow, we should strengthen the external control of investigation activities and the article proposes establishing a mechanism of timely intervention, a mechanism of investigation guidance as well as a contact and monitor mechanism with the police station which are suitable to the practice in the current legal framework; in addition, it puts forward its own opinions as for the specific questions in practice and regards it an effective way to solve the hysteresis quality and passivity of supervision methods over investigation

which can contribute to better monitor the legitimacy and effectiveness of investigation activities.

**Key Words:** supervision over investigation; deficiency of status quo; countermeasures

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## 前 言

自2000年9月全国第一次侦查监督工作会议明确将审查逮捕部门更名为侦查监督部门以来，侦查监督部门的三大职责得以确认，即审查逮捕、立案监督、侦查监督，2009年6月的全国检察机关第三次侦查监督工作会议再次强调侦查监督工作“一体两翼”的工作格局。“一体”是指审查逮捕，“两翼”是指立案监督和侦查活动监督。可见，侦查监督从广义上讲指的是对侦查机关处理刑事案件一切活动的监督，包括审查逮捕、立案监督和侦查活动监督，而狭义的侦查监督则仅指对侦查机关的侦查活动是否合法进行的监督，本文所要探讨及所指的侦查监督是狭义的侦查监督，即侦查活动监督。

侦查活动，是刑事诉讼活动中的基础性环节，以打击犯罪为根本目的，以国家强制力为后盾，它的价值在于查明案件事实，追查真正的罪犯，因此为了查明犯罪的需要，侦查无法转换为严格程序的平衡控制。<sup>①</sup>在中国这个有着深厚的国家治理传统的国度，侦查程序往往被当成实体性政策之工具，重实体而轻程序，且受传统法律文化影响，侦查程序处于所有程序的中心，侦查结果对所有犯罪嫌疑人的影响甚至超过了审判程序。但侦查机关如果权力过大，又缺乏有效监督，那么在打击犯罪和保障人权刑事诉讼两大目标之间就难以保持平衡。按照我国刑事诉讼法的规定，侦查机关为了调查犯罪，有权采取专门的调查工作和有关的强

<sup>①</sup>杨立新. 刑事诉讼平衡论[M] 北京: 中国人民公安大学出版社, 2006. 13

制性措施，包括刑事强制措施和强制性侦查手段。而对于限制或者剥夺公民人身自由、财产或者其他权利的强制性侦查行为，侦查机关却拥有相当大程度的自由裁量权。除了逮捕措施须由检察机关批准外，其余都依照行政权力的运行模式，由侦查机关负责人自行决定或者批准实施。在当前中国的刑事诉讼活动中，侦查程序过于封闭、侦查权又是如此广泛，然而没有人会满足于现状的，权力总是趋向扩张，失去监督和制约的权力却必然导致专制和腐败，这是权力运作的基本规律，权力的监督和制约因而也成为亘古不变的重要课题。<sup>①</sup> 因此，为了防止“惩罚犯罪”光环下侦查权的滥用而侵害公民权利，保障刑事诉讼法律程序得到切实遵守，需要建立健全有效的诉讼监督制约机制，需要在刑事诉讼程序中通过不同诉讼主体间行为互动而实现，从而在保障人权的基础上实现打击犯罪的目的。我们国家在 1996 年修改刑事诉讼法时便专门增加了人民检察院依法对刑事诉讼实行法律监督的基本原则，当然也包括对侦查活动及侦查权的监督，要求检察机关监督、保障侦查行为在法律规定的范围内按程序运作，以实现侦查活动的正当性和有效性。然而，修改后的刑事诉讼法实施的情况表明，现行对侦查活动的监督机制存在严重不足，相对于如此广泛的侦查权，检察机关对侦查活动的监督和控制却显得苍白无力，对侦查程序中出现的违法问题往往无从知晓，知晓了也无从下手，存在着依据现有法律难以开展监督活动，缺乏有效可操作的工作机制予以保障的问题。为了使法律程序得到尊重和遵守，为了使公

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<sup>①</sup> 卞建林. 刑事诉讼制度改革论要 [j]. 法学杂志. 2008, (6) :15

民的合法权益得到保障，检察机关的侦查监督职能必须得到强化。然要使这种法律监督达到理想化状态，需从立法及司法体制上做根本性变革，任重而道远。然而当前侦查监督工作所面临的困难和障碍亟待解决，当事人合法诉讼权利亟待保护，只着眼于通过立法及司法制度的根本变革来全面解决问题是不现实的，而立足于现行法律规定及相关制度，探索务实可行的做法来解决侦查活动监督工作中所存在的具体问题更具有现实意义，笔者将结合在实践工作中的认识及相关经验谈谈自己的看法。

## 第一章 当前侦查监督机制的现状与不足

对侦查活动的监督应贯穿从刑事立案到侦查终结的全过程，侦查活动监督的重点要纠正刑讯逼供、违法取证、非法采取搜查、扣押、冻结等强制性侦查手段以及违法适用刑事强制措施等其他违法办案、严重侵犯当事人人身和财产权利等突出问题上。近几年来，检察机关强化了侦查监督职能，充分发挥了侦查监督在维护稳定，体现司法公正等方面的积极作用，但在司法实践中，侦查监督工作的运行仍面临着许多障碍，成效不如人意。

### 第一节 当前侦检关系的现状影响了侦查监督的权威性

#### 一、刑事诉讼法对侦检平行关系的定位弱化了检察机关的权威性

外在监督能否成功取决于监督者是否拥有更优越的地位，如果没有地位差别，监督者就没有监督的权威，而没有权威的监督者是很难被监督者接受的，这必然会影响监督及其质量。这种地位上的差别是由宪法、法律及其他规范性文件明确规定的，是监督者权威地位的效力来源<sup>①</sup>，也就是说监督者的权威性来自于据以监督的规范的权威性，即据以监督的规范必须是凌驾于监督者和被监督者之上的，是二者都必须严格恪守的。因此，法律监督者要依照法定职权和程序，对侦查活动的合法

<sup>①</sup>蒋德海.为什么法律监督要有更优越的地位[J].学习与探讨杂志,2009,(6):101



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