

**INVESTIGATING AND PROSECUTING OFFICIAL CORRUPTION
IN CHINA: THE MINJIANG CASE ***

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1. Introduction

China's procuratorial organs were given power in relation to corruption cases in 1979. The procuratorate has been given power directly to investigate certain matters itself by the *Notice Concerning Carrying out the Jurisdiction of Cases Provided by the Criminal Procedure Law*, issued on 15 December 1979 by the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security, and other regulations of the Standing Committee of the National People's Congress. These matters include:

- (1) corruption (Art.155 *Criminal Law*);
- (2) offering or accepting bribes (Art.185 *Criminal Law*);
- (3) speculating in money or goods for disasters and emergencies (Art.126 *Criminal Law*);
- (4) speculating using public money (Art.126 and *the Supplementary Regulations* of the People's Congress);
- (5) tax evasion, refusal to pay taxes, and defrauding tax rebate (Art.121 and *the Supplementary Regulations* of the People's Congress in 1994);
- (6) counterfeiting trademarks (Art.127);
- (7) being in possession of an immense amount of property and being unable to explain its sources (*the Supplementary Regulations* of the People's Congress, 22 October 1988);
- (8) concealing overseas accounts (*the Supplementary Regulations* of the People's Congress, 22 October 1988).

Specialist anticorruption departments have been set up at all the different levels of the people's procuratorate organs to investigate and prosecute corruption which arises in the types of cases listed above. However in my own experience of investigating and

prosecuting corruption, the power of the procuratorate is restricted in practice because the defendants in such cases usually have some power and influence.

In February 1993, I was, assigned to the Procuratorate College of China to be a teacher after graduating from the China University of Political Science and Law. In September 1993, Jiang Zemin, the general secretary of the Central Committee of the Communist Party, announced the commencement of a struggle against corruption. As part of the struggle, he required the procuratorate at all levels to investigate and prosecute official bribery and corruption. In early October I was temporarily transferred to the Anticorruption Department of the Supreme Procuratorate to participate in investigating and prosecuting big and important cases¹. In this paper I discuss one of them.

On 22 October, Huang Xianmo, the Deputy Secretary of Fujian Provincial Commission for Discipline Inspection, and Bi Zhendong, the deputy chief procurator of the Fujian Provincial Procuratorate, came to Beijing to report to the Central Commission for Inspecting Discipline and the Supreme Procuratorate respectively, on the case of the cadres of the Minjiang Hydroelectric Engineering Board accepting bribes. They asked the central authorities to send personnel to carry out investigation and prosecution of this case. The head of the Anticorruption Department decided that I should be assigned to Fujian Province to take part in investigating and prosecuting this case.

¹ The big and important cases are, based on the consequences of a criminal case or the status of the accused, defined by the judicial authority. The big case refers to the case with a large amount of economic crime or with other great influence, and the important case refers to the case which involves important officials. According to the current judicial interpretation, the big case is the case with an amount over 10,000 to 30,000 yuan of economic crime, and the important case is the case which involves the officials at the level of county or department and above.

From 25 October 1993 to May 1994, I went to Minjiang twice to participate in a series of investigation activities including; interrogation, search and guarded residence. At the same time, I met the accused, and the officials who were dealing with the case, in order to inquire into the cause of the case, determine the relevant procuratorial systems to be applied and the anticrime preventive measures which should be adopted. In this paper I will use this case as an example to analyse the character and function of China's procuratorate, especially in the way it carries out its duties against official corruption.

2. A Brief Description of the Minjiang Case

Minjiang Hydroelectric Engineering Board is a state-owned enterprise, which is under the control of the China Hydroelectric Engineering Corporation. It has about 6,000 staff and workers, who are mainly engaged in engineering construction works of hydroelectric power stations in the Minjiang valley of Fujian Province.

In 1988, Minjiang Hydroelectric Engineering Board entered the construction market. It successively tendered for construction of the Changle airport in Fujian, Gaoqi airport in Xiamen, freeways, and municipal construction in Quanzhou. It is a leader in construction equipment and technology, and has a good reputation for high quality of construction.

As the enterprise involves hydroelectric engineering construction, the living conditions and surroundings of the staff and workers of Minjiang Hydroelectric Engineering Board are very poor and their lives hard. Most of the management cadres at board level or at department level were promoted from the ranks of technical staff. In the early period of China's reform, there have been a number of problems involving practices for contracting for engineering construction in the domestic market. The phenomenon of unfair competition, such as offering and accepting bribes, has become a common practice. The major cadres of the Board treated this irregular market

activity as normal, or as reasonable behaviour of market economy. They therefore took advantage of their position and power to accept or even ask for bribes in subcontracting construction works.

There were more than 60 cadres of the Board who had accepted bribes according to the investigations conducted by the procuratorate. Of them, about 20 were prosecuted by the procuratorate. After trial the court sentenced Lin Anhua, the head of the Fourth Engineering Department, to death. He has been executed by shooting. Cai Huirong, a deputy head of the Board, was sentenced to death with a two-year reprieve. Qiao Yanling, the secretary of the Party Committee of the Board, and Zhang Chunbao, the head of the Board, were both sentenced to three years imprisonment with a three-year suspension. Zeng Guorun, another deputy head of the Board, was sentenced to two years' imprisonment with a two-year suspension and the other accused all received different sentences.

3. Exposure of the Cadres Accepting Bribes

The first evidence that cadres of Minjiang Hydroelectric Engineering Board were accepting bribes came from public tip-off. The masses at the time reported to the department for discipline inspection and not the procuratorate.

In China, apart from the procuratorate, the main organ involved in investigating official bribery and corruption is the Communist Party Committee for Discipline Inspection. According to law, the Committee for Discipline Inspection has no power to investigate criminal cases of official bribery and corruption. The Party Committee for Discipline Inspection works jointly with the state's supervisory organ, the Ministry of Supervision. As a consequence, it usually investigates cases in the name of the Ministry of Supervision and its departments at the local level. However, both the departments for discipline inspection and the supervisory organs only have power to investigate ordinary breaches of the law. Generally, if the case of official bribery and

corruption is sufficiently serious to constitute a crime, the case must be transferred to the procuratorate.

The first report of a cadre accepting bribes in this case was made by the masses to the department for discipline inspection about Lin Anhua, the head of the Fourth Engineering Department. Whilst the Nanping Department for Discipline Inspection was investigating the case, Lin attempted suicide by cutting the artery in his wrist. The Department felt that it was too difficult for it to handle the case and so transferred it to the Nanping Procuratorate.

Through preliminary investigation, the Procuratorate got evidence that Lin Anhua had accepted bribes of several hundred thousand *yuan*. On 26 September 1993, after referring the matter to the Party Committee of Nanping Prefecture, the procuratorate decided to put the case on file for investigation and prosecution.¹ From then until October 1993, the Fujian provincial procuratorial organ successively put cases on file for investigation and prosecution in relation to 5 cadres at the level of the board, and 14 at the level of the department of the head and deputy heads. They included the secretary of the Party Committee, and the heads of major Engineering Departments of Minjiang Hydroelectric Engineering Board.

4. Procedures: *Measures and Means of Investigation and Interrogation*

a) Guarded residence

The first coercive measure, which was taken while conducting the investigation by the Fujian provincial procuratorial organ, which proved effective was guarded residence. In practice, the measure of guarded residence is applied flexibly and can be adapted to the circumstances of the case. It can include control of the suspect within a certain

¹ that is to commence formal investigation of the case.

room of a hotel, who cannot then go home, or have contact with anyone including family members.

The main reason why the procuratorate took the measure of guarded residence was that the public security organs refused to cooperate with the procuratorate in exercising its power of investigation. As the Fujian provincial procuratorial organ had once investigated and prosecuted a case of the provincial level public security organ bending the law for the benefit of their relatives and friends, the public security organs were dissatisfied with them. So the Provincial Public Security Department issued a document which forbade the public security organs at the level of county and municipality from detaining any suspect whom the procuratorate decided should be placed in detention, on the ground that *the Criminal Procedure Law* did not give the procuratorate powers of detention. Under these circumstances, the provincial procuratorial organ adapted the coercive measure of guarded residence for the purposes of its investigation. This has been, both in theory and in practice, a controversial issue.

b) search

After putting the case on file for investigation and prosecution, the procuratorate must then search the office and home of the suspect. Generally, search is considered to be an effective measure for finding out the facts.² During the investigation of the case of the cadres of Minjiang Hydroelectric Engineering Board accepting bribes, the local procuratorial organ searched over and over the offices and homes of those cadres who were suspects, and seized bribes of over 3,300,000 *yuan*.

c) interrogation

² facts as opposed to evidence. As the Chinese criminal justice system requires the case to be proven on the basis of facts, the primary objective of search is to find the facts of the case on the principle of seek truth from facts.

A lot of work in investigating the case was carried out by interrogation of the cadres of Minjiang Hydroelectric Engineering Board. Interrogation was usually conducted in the place where the suspect was temporarily detained. Considering the evidential importance of an oral confession in a criminal trial and in order to get a true confession, the procurators often interrogated the suspect concentratedly and continuously. Procurators at different levels have basically eliminated the use of inquisition by torture, however, trickery has been sometimes used to secure confessions.

5. Prosecution and Adjudication Supervision

After gathering evidence from witnesses and obtaining material evidence which had been repeatedly checked and verified, the criminal department of the procuratorate drew up a statement of charges. The statement of charges was examined and approved by the chief procurator or the procuratorial committee, and then submitted to the court.

During the trial, the procurator read out the statement of charges in the court. In this case it was to accuse the defendants of the crime of accepting bribes. that is followed by the debate, and the counterplead for the defence. The procuratorate should not interfere with the court exercising its judicial power independently. If the procuratorate believes that the judgment is erroneous it can lodge a protest against the judgment and have the matter retried. But, even if the procuratoratae disagrees with the decision at retrial, the procuratorate must not obstruct the execution of the judgment, if the court insists on upholding the original judgment.

6. Special Procuratorial Systems relevant to the case

In investigating and prosecuting the Minjiang Hydroelectric Engineering Board case the procuratorate employed a number of special procedures. these are also called the "special procuratorial systems".

(1) Reporting big and important cases.

The Supreme People's Procuratorate has prescribed, by way of judicial interpretation, that the investigation and prosecution of big and important cases must be reported to the Supreme People's Procuratorate and to the chief cadres of the local Party and government organs. The people investigated as part of this case were Lin Anhua, the head of the Fourth Engineering Department, Cai Huirong, Zeng Guorun and Chen Kongzong, the deputy heads of the Board, Zhang Chunbao, the head of the Board, and Qiao Yanling, the secretary of the Party Committee of the Board. During investigation of this case, the procuratorial organ not only made a written report to the Supreme People's Procuratorate, but also made a special report to both the Party Committees of Nanping Prefecture and Fujian Province. On the basis of these reports, Zhang Siqing, the chief procurator of the Supreme People's Procuratorate made the case public at the National People's Congress in February 1994.

(2) The Party committee examining and approving cases.

After investigation of bribe taking by cadres in the Minjiang Hydroelectric Engineering Board was commenced, the procuratorial organs at different levels all reported to the local Party committee to ask for instructions at different stages of the investigation and prosecution. For example, putting the case of Lin Anhua on file for investigation and prosecution had to be reported to the Party Committee of Nanping Prefecture for examination and approval. Another example is, in investigating the case of Cai Huirong, a deputy head of the Board, Zheng Yizheng, the chief procurator of Fujian Provincial Procuratorate, made a special report to the Party Committee of Fujian Province at the same time as reporting to the Party Committee of Nanping Prefecture,.

(3) Taking the responsibility for a corresponding case.

This is a special jurisdictional system established within the procuratorial organs, where the case is handled by the procuratorial organ at the level which accords with the level of cadre to be investigated. In investigating and prosecuting the case of the

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cadres of Minjiang Hydroelectric Engineering Board accepting bribes, the prefectural or municipal procuratorate took the responsibility for the case of the cadres at department level, and the provincial procuratorate had responsibility for the case of the cadres at board level. Generally, the procuratorial organ at a higher level has jurisdiction over the leading cadres at one administrative level lower. It is possible, however, for a temporary authorisation to be given to the inferior procuratorial organ to investigate and prosecute the cadres at the same level. For example, Fujian Provincial Procuratorate authorised Nanping Procuratorate to investigate the case of Cai Huirong, a deputy head of the Board.

(4) The Party group and the procuratorial committee of the procuratorate jointly deciding the important cases.

The Party group within the procuratorial organ will discuss those important cases in order to decide whether the case should be put on file for investigation and prosecution. While investigating and prosecuting the case of the cadres of Minjiang Hydroelectric Engineering Board accepting bribes, I attended these meetings as a representative from the the Supreme People's Procuratorate. Generally, the Party group and the procuratorial committee will jointly hold these meetings. Most members of the Party group are usually also the members of the procuratorial committee.

7. Problems Discovered in Investigating and Prosecuting the Minjiang Case

The procedures used by the Fujian provincial procuratorial organ in investigating and prosecuting the Minjiang Hydroelectric Engineering Board case were:

1. conducting preliminary investigation;
2. putting the case on file for investigation and prosecution;
3. employing coercive measures;
4. collecting and checking the evidence; and
5. prosecuting the case.

In addition to these procedures, the special systems which affect the work of the procuratorate discussed above, such as the party committee examining and approving cases, and the obligation to report the big and important cases, were applicable in handling this case. Both the procedures and systems played an important role in the investigation and prosecution, but still had some problems.

(1) The system of the Party committee examining and approving cases does not accord with the principles set out in the *Constitution* and other laws that the procuratorial organs exercise their power independently and free from interference by any organs and groups. However, the *Constitution* also provides for the leadership of the Communist Party as one of the Four Cardinal Principles. Thus, examination and approval of cases by the Party committee has been regarded as an embodiment of a Constitutional principle.

In practice, examination and approval of cases by the Party committee may cause uncertainty in the execution of justice. If the members of the Party committee have no common interests with the accused and are fair-minded and honest, the Party committee examining and approving cases might support and assist basic principles of criminal justice. In China's current situation, this kind of support and assistance seems quite necessary. But if the members of the Party Committee are not fair-minded and honest, or have some common interests with the accused, the Party committee examining and approving cases may interfere, such as postponing the case, leaking information, or the procuratorial organ's investigation and prosecution of the case. In my teaching, I often hear students, who are chief procurators from local procuratorial organs, complaining about this problem.

While investigating and prosecuting the case of the cadres of Minjiang Hydroelectric Engineering Board accepting bribes, the procuratorate at different levels all reported to the Party committee. As the Minjiang Hydroelectric Engineering Board, which was under the control of the China Hydroelectric Engineering Corporation, had no close connections with the local Fujian Party committees, the Party committee examined and approved the case without delay. The local party committees supported the procuratorial organs in their investigation and prosecution with a quite clear attitude.

(2) Both the procuratorate and the committee for discipline inspection /the supervisory organ have the power to investigate cases of official bribery and corruption. According to the law, only the procuratorate has the power to investigate criminal cases and the committee for discipline inspection or the supervisory organ has the power to investigate the ordinary offences. However, the division between ordinary and criminal matters is not well defined in practice. There is no definite restriction placed upon the committee for discipline inspection or the supervisory organ handling cases and no mechanisms for supervision of the transfer of criminal cases to the procuratorate.

The case of the cadres of Minjiang Hydroelectric Engineering Board accepting bribes was first investigated by the discipline inspection committee. It was only because Lin Anhua, the head of the Fourth Engineering Department, attempting suicide that the discipline inspection committee then transferred the case to the procuratorate to save it the trouble. If the discipline inspection committee had not transferred the case to the procuratorate, the procuratorate could not have actively taken it up.

According to the law, an accused person who is investigated by the discipline inspection committee could only be given party disciplinary punishment, or if investigated by the state supervisory organ, would be only given an administrative disciplinary punishment. However, with matters investigated by the procuratorate, it must decide whether to commence criminal prosecution. The two situations are strictly distinguished. When the discipline inspection committee or the state supervisory organ has carriage of the case, the procuratorate cannot actively get involved in investigation. In this situation the procuratorate will find it very hard to fully play its role in safeguarding the authority and independence of the legal system.

When the case is transferred from the discipline inspection committee or the state supervisory organ, if the procuratorate proves the crime through its investigation, the conflicts between the procuratorate and the discipline inspection committee might become acute, especially when it involves sharing credit for handling the case. After the case of the cadres of Minjiang Hydroelectric Engineering Board accepting bribes was exposed, the central authorities proposed to commend the relevant investigating units. Fujian Provincial Commission for Inspecting Discipline gained, suggested by the Central Commission for Discipline Inspection, a Collective Award of Merit, First Class. The Supreme Procuratorate asked for the Fujian provincial procuratorial organ

to be cited for its meritorious deeds a little later, but that recommendation was not approved because it was considered necessary to avoid the impression of fighting for the Award. This compromise made the procurators, who took part in investigating and prosecuting the case, dissatisfied.

(3) In investigating and prosecuting the Minjiang Hydroelectric Engineering Board case, the contradiction between policy and law, which was brought about by the changes in criminal policies, made the procuratorial organ feel at a loss as to what to do.

In China's construction market, accepting bribes while subcontracting, like the cadres of Minjiang Hydroelectric Engineering Board did, is a common practice. This phenomenon reached its peak in 1992, and was directly caused by the Supreme Court amending the judgment in Li Fuxing's case of accepting bribes from guilty to not guilty.² In the latter half of 1992, the Supreme Court held a judicial working meeting in Shanghai to discuss the issue of accepting commissions and favour fees in economic activities. The meeting determined that accepting commissions and favour fee should not be considered to be a crime if no harm was caused to the state or collective interests.

After this decision of the Supreme Court was published, the procuratorial organs discontinued investigation and prosecution of cases involving accepting bribes, so that accepting bribes in economic activities became a prevailing practice. Influenced by this, the cadres of Minjiang Hydroelectric Engineering Board accepted bribes in subcontracting construction works. In September 1993, when the Party Central Committee declared the struggle against corruption and required punishment of official bribery and corruption. After that, the cadres of the Board accepting bribes was investigated and prosecuted. This case demonstrates the sharp contradiction between policy and law which is a typical occurrence. The local procurators who participated in

² Li Fuxing, a manager of a state-owned enterprise in Hubei Province, accepted bribes of US\$ 3,000, offered by Hong Kong businessmen, in subcontracting construction works in Shenzhen, and prosecuted by the procuratorate. Both the first and second (final) judgments were guilty, but the judgment of the Supreme Court was not guilty. It was given enormous publicity by the media.

investigating and prosecuting this case felt that the policy was inconsistent and unreasonable, and seemed to contrive a criminal offence.

(4) In investigating and prosecuting cases, China's procuratorial organs are not permitted to give the defendant the benefit of the doubt (or presume innocence) and take appropriate measures. According to my own experience in investigating and prosecuting the cases, the function and task of the procuratorial organ is just to prove the accused guilty. So generally, the procuratorate is not encouraged to collect evidence which may show the innocence of the defendant.

8. Conclusion

The procedures and special systems discussed in this paper which were used in investigating and prosecuting the case of the cadres of Minjiang Hydroelectric Engineering Board accepting bribes is typical of the measures used by China's procuratorial organ in investigating and prosecuting official bribery and corruption. The establishment of these procuratorial procedures and systems is an improvement, especially when compared with the situation before the reform.³

Under the specific conditions of China today, the role of the procuratorial organ is very limited. There is still a long way to go for the procuratorial organ to fully exercise its power and play its functions. Therefore, the procuratorial system against corruption necessarily must be further developed along with the reform process, in order to realise ideals of justice provided by the legal system.

³ From 1949 to 1978, China's procuratorial organ was excluded by the Party. In 1951, the local procuratorial organ was merged into the public security organ; in 1957, the power of the procuratorial organ was weakened; in 1960, the staff of the procuratorial organ was reduced; in 1967, the procuratorial organ was abolished, and in 1975, discarded by the Constitution. See Zhang Peitian, *The Changes of the Procuratorial and Trial System of P.R.China*, Procuratorial Press of China, Beijing, 1995.

In order to realise justice, first it is necessary to establish judicial independence by abolishing the system where the Party committee examines and approves cases, so that the procuratorial organs can exercise their powers independently. Second, it is necessary to carry out the principle that judicial officials cannot be the Party members, so that they could investigate and prosecute the cases impartially and not be affected by the Party's view. Third and fundamentally, it is necessary to complete the transformation from a system where the Party controls the state judicial organs to a system of judicial independence. Only when legal system justice is realised will the increasingly serious corruption in China able to be controlled. Then Chinese people will not take radically damaging action, which is in part caused by official corruption and lawlessness, and China's economy and society will be able to develop in the environment of ruling by the law.