

Power checks and balances and supervision in contemporary Brazilian criminal investigation system

Liu Tianlai

Summary: The judicial police are the main executors of criminal investigation. Criminal investigation is a pre-litigation procedure of administrative nature rather than criminal nature. The initiation of criminal investigation in Brazil must meet one of the four statutory conditions. At the same time, the power of investigation is relatively broad. However, the termination of criminal investigation must be subject to judicial control. The investigative agency submits a request to the prosecutorial agency for review and approval, and then the prosecutorial agency submits a request to the court and obtains approval from the judge. The investigative power is subject to strict checks and balances by the prosecutorial power, which is also controlled by judicial power. In the process of criminal investigation, the procuratorate implements strong checks and balances on the investigative power through supervisory power. It implements legally binding "rigid" external supervision of the investigative agency, but must abide by strict boundaries. The court By exercising supervisory power over specific matters involving the basic rights of citizens, it directly implements strong checks and balances on prosecutorial power and indirectly on investigative power. However, the judicial initiative of the court has been questioned in theory. The relationship between the Brazilian police, prosecutors and law The relationship between the prosecutor and the police is a guidance, the judicial prosecutor is a unidirectional supervision and checks and balances relationship, and the police is an indirect unidirectional supervision and checks and balances relationship. Brazil has reached a theoretical consensus on the establishment of safeguard judges and has tried to put it to a vote in legislation. In the future, it will be developed around the regulation of judicial power.

Keywords: checks and balances on criminal investigation power, police agency, prosecutorial agency, court supervision
Author introduction: Liu Tianlai, Doctor of Laws, Assistant Researcher, Institute of Latin America, Chinese

Academy of Social Sciences, CLC Classification Number: D918

Document Identification Code: A Article Number: 1002 - 6649 (2023) 02 - 0113 - 21

Brazil is a civil law country, and its laws were inherited from its former suzerainty, Portugal. However, in the long process of legal history, Brazilian law has integrated elements from many foreign countries, especially common law countries, making Brazilian law unique and unique in style. Characteristics. This characteristic is also reflected in the criminal investigation system. Looking at Brazil's handling of criminal cases, we can see that the three agencies of the police, prosecutors, and law have different responsibilities. For example, whether to take preventive arrest (prisão preventiva) It is requested by the procuratorate, approved by the court, and executed by the police. From this, we can get a glimpse of the differences between Brazil's criminal investigation and China's. If we study it more closely, we will find that there are more differences between Brazilian criminal investigation and Chinese criminal investigation. This article believes that in Brazil's criminal investigation, In the contemporary criminal investigation system, based on the power of supervision, judicial power, procuratorial power, and investigation power, there are strong one-way power checks and balances and weak reverse power checks and balances in sequence. Unfortunately, Chinese academic circles currently have very little research on the Brazilian criminal investigation system. Research on the checks and balances of power is even more lacking. In fact, the criminal investigation system of Brazil, which is also a large developing country, has a lot of reference content for China's criminal investigation system, which is in the stage of development and improvement. Therefore, no matter from the perspective of From the perspective of theoretical significance to fill the gap, or from the perspective of practical significance of learning and reference, the power checks and balances and supervision of Brazil's contemporary criminal investigation system have certain research value. In view of this, this article intends to start from the basic system content, the start and end of criminal investigation, The power checks and balances in Brazilian criminal investigation are analyzed and studied from the perspectives of the process of criminal investigation, the relationship between police, prosecutors and law, and development trends.

1. Criminal investigation: main executors, connotation and characteristics

Criminal investigation in Brazil is also called criminal investigation. Many scholars in Brazil limit it to police investigation. Different from China's criminal investigation, Brazil's criminal investigation has its own unique implications.

(1) The main executor of criminal investigation The main executor of criminal investigation in Brazil is the police agency, which is also the main carrier and representative of criminal investigation power. According to Article 144 of the Brazilian Constitution ¹, the police in Brazil are divided into the federal police , There are five types of federal highway police, federal railway police, civil police and military police. Among them, civil police and military police are only established at the state level, and no distinction is made at the federal level. In the history of Brazil, criminal investigation was the responsibility of judges. In 1841, the first It was only after the promulgation of Law No. 261, especially Law No. 2033 of 1871, that the police agency was responsible for criminal investigation, while judges were only responsible for judgment, and this continues to this day.

In Brazilian jurisprudence and judicial practice, the police are divided into administrative police (or security police) and judicial police.

¹ Preventive arrest in Brazil is similar to arrest in China. The

² translations of articles in the Constitution and the subsequent Code of Criminal Procedure and other codes and laws in this article are all self-translated by the author.

Police (or investigative police). Administrative police mainly refers to military police. Their functions are preventive and aim to prevent and avoid disruption of legal order. Their actions do not require any judicial authorization, such as patrolling and patrolling in public places. Standing guard. Because the military police do not have investigative powers, when encountering criminal facts, the case should be transferred to the federal police, civil police, federal road police and federal railway police according to their jurisdiction. ¶ The judicial police mainly refers to (but is not limited

to) The federal police and the civil police are classified based on their functions and powers. Article 4 of the Brazilian Code of Criminal Procedure stipulates: "The functions of the judicial police are assumed by the police agencies within their corresponding jurisdictions, with the purpose of investigating criminal offenses and their actions. "The authority determined in this article does not exclude the authority granted by law to administrative agencies with the same functions." Therefore, in principle, criminal investigation is conducted by the judicial police, but it is not limited to the judicial police. Other agencies may also perform criminal investigation in accordance with the authorization of the law. Powers. Other Brazilian authorities with the power to conduct criminal investigations include the prosecutor's office, judges in certain circumstances, parliamentary investigative committees and military criminal investigation agencies. The function of the judicial police is restorative, investigating crimes that have occurred. Although the judicial police It also undertakes other functions (for example, the federal police also assumes the functions of border control and immigration control), but its main responsibilities are to collect evidence and investigate crimes, and for the purpose of assisting prosecutors and judicial authorities in exercising their powers (see "Criminal Procedure Code " Article 1, Article 24 of the "Procuratorate Organization Law"). Since prosecutors, judges, parliamentary investigation committees, military criminal investigation agencies, etc. have relatively independent institutional contents and theoretical foundations when exercising their criminal investigation powers, in view of this As well as the length of the paper, the main executor of criminal investigation and the carrier of investigation power studied in this article

is limited to the judicial police. (2) The connotation of criminal investigation The pre-trial stage is the "criminal prosecution" stage of Brazilian criminal proceedings. Criminal prosecution is further divided into Two stages: the pre-litigation stage (or pre-litigation stage) and the prosecution stage. The two stages are separated by time when the prosecutorial agency initiates a public prosecution. Criminal investigation is the pre-litigation stage. Criminal investigation in Brazil is administrative in nature. ¶ is the preparatory procedure for criminal proceedings, also known as preparatory administrative procedures. Therefore, criminal investigation is also administrative rather than judicial in nature, and has the preparatory feature for the purpose of initiating criminal prosecution. Criminal investigation in Brazil does not have the purpose of accusing a citizen The purpose is not to be antagonistic to

¶ "Judicial Police" Translated from Portuguese "polícia judiciária" See Rodrigo Foureaux Se garantia Publica 1 a edição Salvador: yyyyyyyyyyyyyyyy ¶ However, it is also common with federal police, civil

The investigation may be jointly conducted with the police and other judicial police, or even directly transferred completely to the federal police, civil police, etc. for investigation.

- ¶ The Brazilian Procuratorate has jurisdiction over cases of official crimes and also has certain independent investigative powers for ordinary
- ¶ crimes. The "Bankruptcy Law" stipulates that judges can carry out investigative activities during judicial
- ¶ investigations. Unlike China, the Brazilian judicial authorities refer to and only refer to various types of courts, excluding Procuratorate

Rather, it collects relevant evidence, investigates criminal acts and their perpetrators, and discovers the truth. There are no plaintiffs and defendants in the criminal investigation stage, only the person under investigation. The main purpose of criminal investigation is to provide information to the leader (titular) of criminal proceedings. In addition, there are other purposes. For example, before criminal proceedings are instituted, the judge can use it as a basis for authorizing the adoption of supervision

measures such as arrest. The evidence collected during the criminal investigation has only relative probative value, because the evidence collected at this stage is not for defense. and realized under the principle of adequate defense, the Federal Supreme Court has ruled that defects in criminal investigation shall not taint criminal proceedings. Evidence obtained in criminal investigation is not the only source of evidence for prosecutorial agencies to initiate criminal prosecutions. Evidence from civil litigation, administrative litigation, etc. can be It is the source of evidence for the procuratorate to initiate criminal prosecutions. Therefore, in Brazil, the initiation of criminal investigation is not necessary for the prosecution of criminal prosecutions.

Therefore, this article defines Brazilian criminal investigation as: Brazilian criminal investigation is a process of administrative nature. For the purpose of initiating criminal prosecution, the main body of the investigation, especially the judicial police, investigates the facts and collects evidence on whether the person under investigation is involved in criminal activities. Through this evidence, the procuratorate can exercise its powers and pursue criminal suspects.

(3) Characteristics of criminal investigation

From the perspective of procedural aspects, Brazilian criminal investigation has the following characteristics: (1) Mandatory initiation. On the one hand, Article 6 of the "Code of Criminal Procedure" stipulates that in unconditional public criminal prosecution crimes. As long as the police agency is informed of the existence of criminal facts, it should initiate a criminal investigation. The police agency has no room for discretion and falls within the scope of its ex officio investigation. On the other hand, the procuratorial agency or the court has the right to request the police agency to file a case. This requirement is also mandatory and must be implemented by the police. (2) The investigation process is both discretionary and subject to checks and balances. On the one hand, during the entire criminal investigation process, the police will not be subject to any form of initiating a criminal investigation. There are no strict procedures for restraint. Except for matters that require judicial authorization and other express provisions, the "Criminal Procedure Code" does not stipulate when and what measures the police agency should take during investigation, leaving the police agency free to do so. Discretion. On the other hand, although the police agency has discretion, matters involving the basic rights and freedoms of citizens, such as arrest and detention, must be subject to prosecutorial supervision and judicial control («Criminal

Brazil's "Code of Criminal Procedure" does not uniformly use "criminal suspect" in the context of Chinese criminal procedure law in the investigation stage, but uses "Investigado", "suspeito" and "Indici" for different stages. "ado" and other different terms can lead to conceptual confusion and For details, this article uses

The leader of criminal proceedings in Brazil is the prosecutor's office.

“responsable”

“responsable”

(Part 9 of the Code of Criminal Procedure), subject to double checks and balances of prosecutorial and judicial power. (3) The controlled nature of the termination. The police agency has no power to investigate a criminal investigation that has been initiated. Article 17 of the Code of Criminal Procedure stipulates that "the police agency has no power to "Termination of investigation". To terminate the investigation, an application must be submitted to the procuratorial organ. After review and approval by the procuratorial organ, it will be transferred to the court. The court will judge. Whether the investigation is terminated is subject to judicial control.

In addition, from the perspective of jumping out of procedures, Brazilian criminal investigation also has the following three characteristics.

(1) Documentary nature. Criminal investigation is a procedure dedicated to providing information to the leader of criminal proceedings. Article 9 of the «Criminal Procedure Code» stipulates: All details of the criminal investigation in the same proceedings must be recorded in handwritten or printed form and signed by the agency, that is, all parts of the criminal investigation must be recorded in writing. (2) Non-litigation. Brazilian Criminal The principle of defense and the principle of sufficient defense do not apply in the investigation, because the judicial police only perform administrative functions and not judicial functions. There is no conflict of interest in the investigation. There is only the person under investigation. The police do not need anyone to argue. There is no confrontation between the two parties during the criminal investigation. Situation (3) Confidentiality. Article 20 of the "Criminal Procedure Code" stipulates: During the investigation, the person in charge shall protect the necessary confidentiality for the explanation of facts or requirements for social interests. Criminal investigation is subject to confidentiality as a principle, and disclosure is an exception. However, The confidentiality requirement does not apply to judges and prosecutors. Lawyers can access case files from the date the investigation is concluded. Before the conclusion, they can only have limited intervention, such as interviews with the permission of the police.

2. Power checks and balances in the initiation and termination of criminal investigations

The initiation of criminal investigation in Brazil must meet legal conditions or forms. The investigative power has relatively broad discretion. The termination of criminal investigation must be subject to judicial control. The investigative power is strictly checked and balanced by the prosecutorial power, and the prosecutorial power is controlled by the judicial power. ̄

(1) Checks and balances of power in the initiation of

criminal investigation Article 5 of the Criminal Procedure Code stipulates: "Criminal investigations in public prosecution cases shall be initiated under the following circumstances: (1) Ex officio, (2) At the request of the judicial or procuratorate "Or the request of the victim or the person with authority to represent the victim". In fact, there are 4 situations in which Brazilian police agencies initiate criminal investigations: (1) ex officio, (2) the request of the prosecutor or judge, (3) the victim's request, (4) Immediate arrest. However, as mentioned above, criminal investigation is not a necessary condition for filing a criminal prosecution. If there is sufficient evidence and a definite suspect, there is no need to launch a criminal investigation (Article 39 of the Criminal Procedure Code) 5 styles)̄

1 Ex-officio initiation and arrest

The main method of initiating an investigation. Article 6 of the Criminal Procedure Code stipulates that the police agency is obliged to initiate a criminal investigation in accordance with its authority. If the police agency initiates a criminal investigation in accordance with its authority, it shall initiate it in the form of making a case filing document.

The case filing document is a document produced by the police agency that contains information on the facts and circumstances of the case. The case filing document consists of several parts: the place of occurrence, the nature of the crime, the date, the time of the execution, the victim. The undertaking unit should determine the measures that will be taken to fully investigate the facts. Measures. There is no uniform format for the filing of a case, but it is an indispensable formal requirement for the police agency to formally launch a criminal investigation. In-person arrest, that is, an arrest made on the spot by the administrative police or other units or individuals at the scene of the crime. After arrest Directly transferred to the judicial police, who will immediately prepare an arrest dossier accordingly. After the dossier is completed, the criminal investigation will be launched.

2 The initiation of criminal investigation by the judicial prosecutor. In Brazil's criminal investigation system, the judicial prosecutor's initiation of criminal investigation The legal prosecutor has decisive power to initiate a criminal investigation. The legal prosecutor can initiate a criminal investigation by making a "request" to the police. As far as the procuratorate is concerned, if the media, etc. display criminal information and it is known to the procuratorate, or a citizen discloses information suspected of committing a crime. After informing the procuratorate, the procuratorate is obliged to request the police to initiate a criminal investigation, or to initiate a criminal investigation on its own. Article 27 of the Criminal Procedure Code stipulates that any citizen has the right to inform the procuratorate of criminal information. Therefore, in Brazilian justice In practice, it is not uncommon for citizens to directly inform the prosecutorial agency. As far as the court is concerned, if criminal information is notified to the judge, the court has the right to directly request the police agency to launch a criminal investigation. However, in Brazilian judicial practice, generally speaking, the judge Once criminal information is obtained, it will be transferred to the procuratorate, which will analyze and determine the next step: request the police agency to initiate a criminal investigation, conduct an investigation on its own, directly initiate a criminal prosecution or take other measures. Article 40 of the Criminal Procedure Code stipulates: If the judge discovers the existence of a public criminal prosecution crime in the files or materials, he shall submit a copy of the procuratorial organ and relevant materials.

Although the police agency has no affiliation with the prosecutorial agency or the court, the requirements of the legal prosecutor must be met, unless there are reasons or procedural obstacles that do not require investigation. The "requirement" for the legal prosecutor to initiate a criminal investigation is legally mandatory for the police agency. Sexual. This is also the most important aspect and manifestation of the checks and balances between procuratorial and judicial powers on the investigation power in the

initiation of criminal investigation. 3 Victims and third parties initiate criminal investigation. The victim has the right to request the police to initiate a criminal investigation. Paragraph 1 of Article 5 of the Criminal Procedure Code stipulates that the content of the request should include facts, personal information of the accused, a list of witnesses and other information. In the judicial practice of Brazil and other countries, oral requests are more common. The police agency has the right to refuse the victim's request to initiate a criminal investigation.

Articles 301 and 310 of the "Code of Criminal Procedure" stipulate that any unit or individual has the right to arrest current criminals. There is controversy in Brazilian legal circles. For example, Edilson Mougnot Bonfim (Edilson Mougnot Bonf) believes that the police agency and prosecutorial agency are not There is no affiliation, so it is not necessary to meet the "requirements" of the prosecutor's office. Guilherme Nucci (Guilherme Nucci) holds the same view, believing that "requirements" do not have the nature of a command. See Edilson Mo

At this time, according to the provisions of Article 5, paragraph 2, of the Criminal Procedure Code, the victim can file a complaint with the superior agency that has a subordinate relationship with the police agency. For the third party, Article 5, paragraph 3, of the Criminal Procedure Code Article 11 stipulates: "Any person who is aware of the existence of a criminal offense subject to public prosecution may inform the police in writing or orally." This is the legal source for third parties to initiate criminal investigations. Other laws, such as the "Misdemeanor Law" (Article 66 of Lei de Contravenções Penais and others also expressly stipulate this.

However, unlike the legal prosecutor, requests and notifications from victims and third parties do not necessarily trigger the initiation of criminal investigation. If the police decide to initiate a criminal investigation based on this, they will prepare a case filing document in the form of ex officio initiation. Accordingly, the author believes that the initiation of criminal investigation by victims and third parties is essentially a way and manifestation of the supervision and checks and balances of civil rights on investigative power.

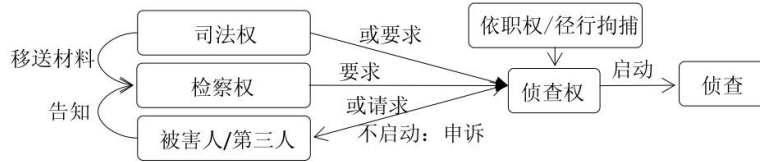


Figure 1 Checks and balances of power in the initiation of criminal investigation

Source: Drawn by the author

(2) Power checks and balances in the termination of criminal

investigations. The termination of Brazilian criminal investigations, except for the criminal investigation initiated directly by the prosecutorial agency, which can be terminated by the prosecutorial agency at its own discretion, must be achieved through the request of the prosecutorial agency and the approval of the judge. The police agency itself has no right to decide whether to terminate the investigation. Therefore, the termination of Brazilian criminal investigation is a combination of multiple wills. It depends on the request of the prosecutor's office and the court's ruling. It is the result of the check and balance of power. After the criminal investigation is completed, the undertaking unit should issue a conclusive decision. A written report records the investigation process, measures taken and other information. In many cases, this report is also an important basis for the procuratorate to initiate public prosecutions or take other measures. For a criminal investigation that is directly requested to be initiated by the procuratorate, it has the right to terminate it at its own discretion. If the prosecutor in charge considers that the case needs to be terminated, the case should be transferred: The federal prosecutor's office must transfer the case to an internal agency, namely the Review and Coordination Office. The state prosecutor's office must transfer the case to the Prosecutor General for review. If the Review and Coordination Office or the Prosecutor General agrees, if it is terminated, the criminal investigation will be terminated. If it is not agreed, it will be handed over to another prosecutor.

If the criminal investigation is completed and the files are transferred, and the conditions for filing a public prosecution are met, the procuratorial organ will immediately make a decision to initiate a public prosecution and at the same time request the judge's approval to terminate the criminal investigation. The time limit for the procuratorial organ to initiate a public prosecution is: 5 days if the person under investigation is in custody, and 5 days if the person under investigation is in custody. If the investigator has not been arrested or released on bail, it will be 15 days.

It shall be calculated from the date when the procuratorial organ receives the criminal investigation file. If it is returned to the police agency, it shall be calculated from the date when the procuratorial organ receives the file again. If the third party provides information and meets the conditions for prosecution, the time limit for initiating public prosecution shall be calculated from the date when the information is received. Or counting from the date of appeal.

The "Criminal Procedure Code" stipulates that criminal investigation should be terminated under three circumstances: (1) It does not constitute a crime; (2) No punishment is required; (3) There is a lack of conditions that must be pursued under certain legal provisions. However, the author concludes that there are more Refined standards: (1) It is not an illegal fact; (2) No punishment is required; (3) It clearly does not constitute a crime; (4) It is not punishable; (5) There is no minimum evidence to allow the criminal proceedings to continue; (6) Lack of conditions to advance the procedure; (7) There are obstacles that affect the process of criminal investigation. Among them, if there is a reason that no punishment is needed, the prosecutorial agency will not request the court to terminate the criminal investigation;

It is the judicial confirmation of the petition for immunity from punishment.

When the criminal investigation is completed and the procuratorate receives a case transferred from the police agency, it will make the following four decisions based on different circumstances: First, if it is found that it has no jurisdiction, transfer or request the judge to transfer it to the competent authority; second, if it is found that no criminal measures can be taken, regardless of any reason (such as insufficient evidence, or the inability to identify the perpetrator, etc.), the procuratorate must request the court to terminate the case. Third, initiate a public prosecution. Fourth, return it to the police agency and request that the case be taken. New measures to find out the facts, or investigate on your own.

Article 28 of the "Criminal Procedure Code" stipulates that if the procuratorate does not initiate a public prosecution but requests to terminate the criminal investigation, the judge may not agree to the request of the procuratorate and transfer the criminal investigation file to the chief prosecutor if he believes that the reasons for the termination are not sufficient. After the prosecutor general receives the file transferred by the judge, he may initiate a public prosecution, or designate another procuratorial agency to initiate a public prosecution, or agree to the closure request and return the case file to the judge. If the prosecutor general agrees to the closure request and returns the file to the judge, the judge must approve the closure. Therefore, it can be seen that the prosecutorial agency actually has the power to terminate criminal investigations. This is also a reverse check and balance between the prosecutorial power and the judicial power in the Brazilian criminal investigation system.

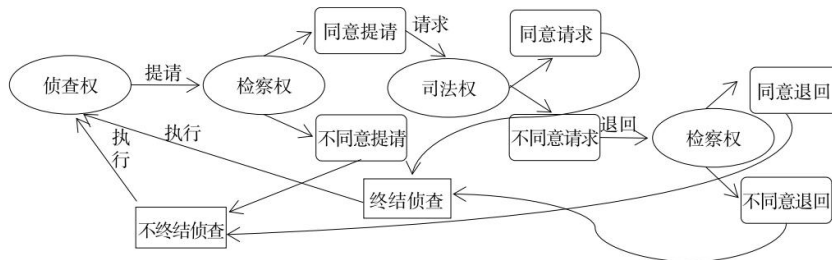


Figure 2 Checks and balances of power in the termination of criminal investigation

Source: Drawn by the author

The termination of criminal investigation in Brazil can be divided into direct termination, indirect termination and tacit termination. Direct termination means that the prosecutorial agency directly requests the judge for termination. The judge decides whether to approve or not based on the materials provided by the prosecutorial agency. Indirect termination means that when the criminal investigation file is received, the judge decides whether to approve it or not. The procuratorial organ discovers that it has no jurisdiction before initiating a public prosecution, or that its corresponding court does not have jurisdiction, and thus requests the court to transfer the file to the procuratorial organ or court with jurisdiction. For example, after a criminal investigation is initiated, it is transferred to the local procuratorial organ, but the local procuratorial organ The prosecutorial agency believes that it falls under the jurisdiction of the federal prosecutorial agency, so it does not initiate a public prosecution, but requests the court to transfer it to the federal prosecutorial agency. Implied termination means that when the prosecutorial agency only prosecutes one or a few persons under investigation in a criminal investigation, it will not prosecute other persons under investigation. The investigator or certain types of content remain silent. This situation is not uncommon in Brazilian judicial practice. Before the judge makes the final decision, the prosecutor's office has the right to supplement the prosecution at any time in accordance with Article 569 of the Criminal Procedure Code. This practice is used in It has been recognized in Brazilian judicial practice. The High Court of Justice believes that this is a manifestation of the mandatory principle of public criminal proceedings and the principle of seeking the truth.

The end of a criminal investigation can produce formal or substantive res judicata. According to Article 18 of the Criminal Procedure Code, the end of a criminal investigation generally only has formal res judicata, because if there is substantial new evidence, the criminal investigation can be restarted. However, if the termination is because there is no need for punishment or it does not constitute a crime, it has substantial res judicata.

It can be seen that during the initiation of criminal investigation, although the investigative agency is checked and balanced by procuratorial and judicial powers and even civil rights, it still retains relatively broad discretion. At the end of criminal investigation, the investigative power is decisively restricted by procuratorial power. The procuratorial power is subject to checks and balances by judicial power and reverse checks and balances on judicial power. The procuratorial power essentially has the final decision-making power.

Three checks and balances of power in the criminal investigation process: supervisory power

In order to prevent police agencies from abusing their power and infringing on citizens' rights during criminal investigations and to regulate the exercise of investigative powers, Brazil's criminal investigation system stipulates that the procuratorate strictly supervises the entire process of police agencies and the exercise of investigative powers, and clearly stipulates the supervision of arrests, etc. Acts that severely restrict citizens' personal and property rights require judicial authorization from the court. Therefore, the procuratorial organs exercise strong checks and balances on the investigative power through the power of supervision, and the courts directly exercise strong checks and balances on the procuratorial power and indirectly on the investigative power through the power of supervision.

The termination of criminal investigation in Brazil can be divided into direct termination, indirect termination and tacit termination. Direct termination means that the prosecutorial agency directly requests the judge for termination. The judge decides whether to approve or not based on the materials provided by the prosecutorial agency. Indirect termination means that when the criminal investigation file is received, the judge decides whether to approve it or not. The procuratorial organ discovers that it has no jurisdiction before initiating a public prosecution, or that its corresponding court does not have jurisdiction, and thus requests the court to transfer the file to the procuratorial organ or court with jurisdiction. For example, after a criminal investigation is initiated, it is transferred to the local procuratorial organ, but the local procuratorial organ The prosecutorial agency believes that it falls under the jurisdiction of the federal prosecutorial agency, so it does not initiate a public prosecution, but requests the court to transfer it to the federal prosecutorial agency. Implied termination means that when the prosecutorial agency only prosecutes one or a few persons under investigation in a criminal investigation, it will not prosecute other persons under investigation. The investigator or certain types of content remain silent. This situation is not uncommon in Brazilian judicial practice. Before the judge makes the final decision, the prosecutor's office has the right to supplement the prosecution at any time in accordance with Article 569 of the Criminal Procedure Code. This practice is used in It has been recognized in Brazilian judicial practice. The High Court of Justice believes that this is a manifestation of the mandatory principle of public criminal proceedings and the principle of seeking the truth.

Supervision is an indispensable and important part of the Brazilian criminal investigation system, and it is also one of the most prominent highlights of the Brazilian criminal investigation system. (1)

Procuratorial supervision in criminal investigations.

Brazil's 1988 Constitution unprecedentedly expanded the powers of the prosecutorial agency. Article 129 Paragraph 7 of Article stipulates that the procuratorial organs shall implement external supervision of police actions. Subsequently, the Brazilian federation and states have successively introduced relevant laws to develop and improve the external supervision functions of the procuratorial organs. As far as criminal investigation is concerned only, the functions of the procuratorial organs in criminal investigations It is very important. It plays the role of full supervisor, affects or even determines the process of criminal investigation, and implements strong checks and balances on the power of investigation. Prosecutorial supervision is an indispensable part of Brazilian criminal investigation.

1 The connotation of procuratorial supervision. In the Brazilian system, the supervision of police behavior is divided into two types: self-supervision and procuratorial supervision. Self-supervision, as the name implies, is the internal supervision of the police agency. Brazilian legislation also refers to procuratorial supervision as external supervision. The law is not clear It stipulates the definition of external supervision of police behavior by prosecutors. The most representative definition of external supervision in Brazilian legal circles is Professor Rodrigo Guimarães's view that "investigation of facts determined to be criminal offenses protects the police "Constitutional rights of detainees in direct custody, as well as the set of norms governing the supervision of the police by prosecutorial agencies when executing judicial decisions." Guimarães also believes that external supervision of police behavior is administrative.

Article 1 of Decree No. 20 of 2007 of the National Prosecuting Authority Council stipulates the scope of criminal police agencies subject to external supervision, including the police agencies specified in Article 144 of the Constitution and any civil or military agency with police powers. , Agencies and institutions related to public security and the fight against crime, such as the Municipal Guard (Guardas Municipal Guard), which includes all agencies with the power to conduct criminal investigations. According to Article 3 of Supplementary Law No. 75/93, External The purpose of supervision is to : (1) Respect the foundation of a democratic state under the rule of law, the basic objectives of the Federal Republic of Brazil, the principles of international relations, the rights guaranteed by the Constitution and the law; (2) Protect public order, protect the security of citizens and public property; (3) Prevent and Correct violations of laws and abuses of power. (4) Refrain from criminal prosecution (pursuance). (5) Exercise the powers of agencies responsible for public security.

The types of prosecutorial supervision can be divided into two types. The first is the statutory classification. Article 3 of Order No. 20 of the National Procuratorate Commission divides it into two categories: universal supervision and centralized supervision. Universal supervision can be exercised by all prosecutors who exercise criminal powers. Centralized supervision is exercised by prosecutors who have special authority to conduct external supervision of police behavior. The details are adjusted by each procuratorial agency. The second is academic classification.

1 关于外部监督的目的，(1) 尊重民主国家在法治下的基础，巴西联邦共和国的基本目标，国际关系的原则，宪法和法律所保障的权利；(2) 保护公共秩序，保护公民和公共财产的安全；(3) 预防和纠正违法行为和滥用权力；(4) 遵守刑法（追诉）；(5) 行使负责公共安全的机构的权力。

It is divided into two categories: general supervision and special supervision. General supervision refers to the regular supervision activities of the procuratorial organs. Special supervision is the specific inspection and supervision of a certain illegal behavior of the police agency.

2. Powers of prosecutorial supervision. Article 9 of Supplementary Law No. 75/93 stipulates the powers of prosecutorial supervision: (1) Free access to police or supervisory premises, (2) Access to any information related to the core business of the police (3) Request the competent authorities to take measures to correct inappropriate omissions, or prevent or correct illegal or abusive acts; (4) Request the competent authorities to initiate investigations into omissions or illegal acts during the exercise of police activities; (5) File abuse cases. Article 10 of the criminal procedure ex officio states: The arrest of any citizen, whether federal, special or territorial, shall be immediately notified to the competent prosecuting authority and copies of evidentiary documents showing the legality of the arrest shall be submitted. In addition, Brazil On the basis of the powers stipulated in Supplementary Law No. 75/93, each procuratorial agency will make fine adjustments through internal regulations and other means. In fact, in judicial practice, the supervisory powers of each Brazilian procuratorial agency have exceeded the above five types.

It should be pointed out that the external supervision of the procuratorial organs is "rigid", which is mainly reflected in its power to "request". The "requirements" of the Brazilian procuratorial organs are far different from requests and applications. The latter two do not have the mandatory guarantee of sanctions. The "request" has a rigid effect, and in the Brazilian legal system, refusing the "request" of the prosecutorial agency may constitute a crime of malfeasance. «Criminal Procedure Code» «Organic Law of the Procuratorate» «Minor Protection Law» «Public Civil Affairs The Procedural Law, etc. all stipulate the "request" power of the prosecutorial agency. It is this "rigid" "request" power that allows the prosecutorial power in the Brazilian criminal investigation system to carry out strong checks and balances on the entire exercise of the investigation power and standardize the investigation. The agency's investigative actions

In order to better exercise its external supervision powers, the Brazilian Procuratorate has also established internal institutions dedicated to external supervision, such as the Department of External Supervision of Police Behavior in the General Prosecutor's Office, the External Supervision of Police Behavior and Criminal Investigation Center in the Federal District, etc.

3. Limits of procuratorial supervision. There is no subordinate relationship between the Brazilian police and prosecutorial agencies. Therefore, Brazilian jurisprudence and judicial practice recognize the external supervision of the police agencies by the prosecutorial agencies, but the prosecutorial agencies are not allowed to intervene in their activities. However, the law was initially established in Among all the functions and powers of the procuratorial organs, it does not clearly stipulate that the procuratorial organs participate in criminal investigations. This caused a fierce controversy between the prosecutors and the police, and was strongly resisted by the police. The police believed that the intervention of the procuratorial organs violated the law. The police Criminal investigations should have independent, autonomous, and complete powers. The prosecutor and the police have also had several confrontations with the court for this purpose. In fact, the external supervision power of the prosecutor's office in criminal investigations has been gradually improved and improved through a series of judgments by the Brazilian courts. It's confirmed

yyyyyy y y yyy/yyyy yy yyyyyy yy yyy yyyyyy yyy yyy: y
yy yy yy yy yyyyy yy

1. Theoretical basis and powers. Article 5 of the Brazilian Constitution stipulates that "the law shall not exclude judicial organs from remedying infringements or threats of rights." Using the method of legal doctrine, the concept of "judicial reservation" can be derived from this constitutional article: any person All citizens have the right to seek relief from the courts. Certain matters must be subject to the supervision of the courts. This principle is reflected in judicial practice, that is, any agency that wants to take measures to impose restrictions on the basic rights of citizens must accept the supervision of the courts and obtain court supervision. Specific to criminal investigation, although the law does not explicitly stipulate the natural attributes of the court in criminal investigation, the court is a guarantee in criminal investigation. The role of the court in criminal investigation is the supervisor of legality and basic rights. It is also a kind of compensation for the lack of a tripartite litigation structure in criminal investigation. This role of the judge is reflected in criminal investigation by conducting searches, seizures, sealings, arrests, and communication interceptions involving citizens' personal and property rights and other basic rights. When waiting for restrictive measures, you must accept the supervision of the court and obtain judicial authorization. This supervision power is the authority or function of the courts in Brazilian criminal investigations. It is also a strong check and balance of judicial power on the investigation power and prosecutorial power. It restricts the investigation power on core matters. and the exercise of prosecutorial power, the final word is final.

Take arrest as an example. There are three types of arrests in Brazilian criminal justice: proceeding arrest, provisional arrest, and preventive arrest. All three types of arrest can be applied in criminal investigations. In addition to proceeding arrest, provisional arrest and preventive arrest can only be used in criminal investigations. It is up to the judge to approve the authorization or decide whether to apply it. Police agencies, prosecutorial agencies, etc. have no right to authorize themselves. According to Article 311 of the Criminal Procedure Code, the court can approve preventive arrest upon application during the criminal investigation stage, and can approve preventive arrest upon application during the litigation stage. Decisions made ex officio and approval of preventive arrest upon request.

2. Judicial agency and its controversies. In fact, in Brazil's criminal investigation system, in addition to supervising specific matters as guardians and performing "defensive" functions, judges also have a certain degree of active agency. However, this activeness Agency has triggered a long-lasting debate in Brazil. For example, Article 5, paragraph II, of the Criminal Procedure Code stipulates that the court may request the police to initiate a criminal investigation ex officio. Article 242 stipulates that the court may decide to conduct a search ex officio. Article 282 It stipulates that the court can take supervisory measures ex officio for those who fail to perform any stipulated obligations. In addition to the Criminal Procedure Code, other laws also stipulate the ex officio powers of the court. For example, the Drug Law (Lei de Drogas) stipulates that the court The power to order the seizure or take other measures ex officio against movable and immovable property or proceeds of crime provided for in this Act before the filing of a public prosecution. «Lei da Intercepção Telefôn» (Lei da Intercepção Telefôn) ica) Article 3 provides that the court may ex officio It is decided to intercept communications during the criminal investigation or criminal proceedings. Article 20 of the "Maria da Penha Law" (Lei Maria da Penha) stipulates that the court may, ex officio, order preventive arrests, etc. during the criminal investigation or criminal prosecution stage.

Judicial power should be in a neutral and detached position, but it has shown a tendency to be proactive in criminal investigations. Some Brazilian scholars believe that this is incompatible with the nature of Brazil's criminal prosecution system, and believe that the court has no power to prosecute without the prosecution's application. take the initiative to take investigative measures against the person under investigation, the court shall not exercise prosecution

There are checks and balances. The judicial power directly checks and balances the prosecutorial power and indirectly the investigative power. This check and balance between powers is also reflected in the relationship between the police, prosecutors and the law.

(1) Prosecution-police

relationship In Brazil's contemporary criminal investigation system, the prosecutor-police relationship is the core. The procuratorate and the police are independent of each other in terms of personnel and finance. There is no subordinate relationship between the two. Although the procuratorate has not reached the level of leading the police, degree, but it undoubtedly has a strong position relative to the police agency.

1. The procuratorial organ has substantial power to check and balance the police agency. The procuratorial organ's substantial power to check and balance the police agency in criminal investigations is concentrated in: (1) The procuratorial organ has the right to request the police agency to initiate a criminal investigation. (2) The termination of the police agency Criminal investigation requires the permission of the procuratorial organ. (3) Security measures taken by the police must be obtained by the procuratorial organ. Naturally, the police agency can initiate criminal investigation ex officio. However, when the police agency and the procuratorial organ disagree on whether a criminal investigation should be initiated, The opinions of the procuratorate are final and must be followed by the police. Moreover, once a criminal investigation is initiated in compliance with the opinions of the procuratorate, the police have no right to terminate the criminal investigation on their own. If the police want to terminate the criminal investigation, they still need to obtain the permission of the procuratorate. This avoids the situation where the police agency is lazy to exercise its criminal investigation power and formally withdraws the case and ends the criminal investigation after formally filing the case. Moreover, if the police agency wants to take security measures, it needs to apply to the court through the prosecutor's office, which means that it must first obtain the prosecutor's approval. Therefore, the procuratorial organ essentially checks and balances the power of the police agency.

2. The procuratorate maintains strong and rigid external supervision of the police. The Brazilian procuratorate's supervision of the police during criminal investigations does not stop at the vague general provisions of the law. Instead, it clearly and specifically lists the supervisory powers of the procuratorate. It is highly operable. As mentioned above, Article 9 of Supplementary Law No. 75/93 stipulates the authority of the prosecutorial agency to conduct external supervision of the police agency: (1) Free access to police or supervision premises, (2) Access any information related to the core business of the police; (3) Request the competent authorities to take measures to correct inappropriate omissions, or prevent or correct illegal or abusive behavior; (4) Request the competent authorities to review the process of exercising police activities File a case for investigation of omissions or illegal acts. (5) File a criminal prosecution for abuse of power. The above five powers are guaranteed by legal compulsory authority. In addition, if the police agency does not comply with the requirements of the prosecutorial agency, it may be This constitutes the crime of dereliction of duty. This legal mandatory guarantee constitutes the "rigidity" of the procuratorate's external supervision of the police agency.

Therefore, the Brazilian Procuratorate and the Police form a guiding relationship. The Procuratorate maintains a strong position relative to the Police. The Procuratorate can issue unilateral instructions to the Police. However, since the two do not have a subordinate relationship and are not restricted by the boundaries of supervision, the Procuratorate The agency cannot constitute a leadership position, but it can constitute a guiding position with the connotation of unidirectional supervision and checks and balances. The relationship between prosecutors and police is a guidance relationship. Procuratorate

The strong checks and balances and superior position of the government agencies over the police agencies have been supported by the courts. It is the series of court cases over the years that have gradually established the existing status of the prosecutorial agencies relative to the police agencies and the guiding

relationship between prosecutors

and police. (2) Law In the Brazilian judicial system, the court has a detached and independent status. This is also reflected in Brazil's contemporary criminal investigation system. Based on its detached and independent status, the court carries out one-way supervision and checks and balances on the prosecutorial agency.

1 The court supervises the procuratorial organs. In criminal investigations, the court's supervision of the procuratorial organs is mainly reflected in Regarding the termination of criminal investigation, the termination of criminal investigation in Brazil, except for the procuratorial agency requesting to initiate it on its own, requires the procuratorial agency to apply to the court, and the court will review whether to approve the termination. The procuratorial agency does not have the right to decide on its own to directly terminate the case. This is This means that the court maintains judicial control over the criminal investigation. Of course, the procuratorate can apply for judicial review of the court's decision not to terminate the case, which will ultimately lead to the termination of the criminal investigation. This procedural control is essentially the court's supervision of the power of the procuratorate. This is a manifestation of allowing the procuratorate to exercise its prosecutorial power more prudently. After all, when the procuratorate has the power to conduct its own investigations and has a strong position over the police, without external supervision, it is difficult to ensure that the power of the procuratorate will not be undermined. Self-inflation and expansion. In addition, for the initiation of criminal investigation, the court can transfer information materials and hand them over to the procuratorate for review ex officio. This is also a kind of soft supervision of the procuratorate. 2. The court checks and balances the procuratorate.

Brazilian

criminal investigation The court's checks and balances on the procuratorial organs are mainly reflected in the judicial authorization of security measures. If the procuratorial organs want to take security measures such as arrest, seizure, sealing, freezing, etc., they must, without exception, apply to the court and obtain judicial authorization from the court. Otherwise, None of them are allowed to be taken. As we all know, for criminal investigations, security measures are the core power, which largely determines the direction, cost and even success or failure of criminal investigations. The court's possession of this power undoubtedly essentially checks and balances the procuratorial organs. It grasps the "vital gate" of the power of the procuratorate in criminal investigations and limits the possible abuse of power of the procuratorate as a prosecutor. It can also be seen that in order to protect the legal rights of the parties and ensure the fairness and fairness of criminal proceedings, Brazil

Fairness, in the absence of confrontation between the prosecution and defense during the criminal investigation stage, trusting, relying on, and empowering the court has formed the institutional reality of the court's unidirectional checks and balances on the prosecutorial agency. Therefore, the relationship between the prosecutor and the prosecutor in Brazilian criminal investigations It is a relationship of unidirectional supervision and checks and balances between the court and the procuratorial organ.

(3) Police-judicial relations:

Except for the court's transfer of criminal information or materials to the police agency, there is no direct communication between the police and the judiciary in the criminal investigation process. Even if the court transfers criminal information or materials, in Brazilian judicial practice

In practice, the court directly transfers criminal information or materials to the procuratorate for review rather than to the police. Taking a step back, even if the court directly transfers criminal information or materials to the police, the court will not follow up on the case in the same way as if the procuratorate transfers it to the police. , but only stops at transfer. Therefore, in Brazil's contemporary criminal investigation system, there is no direct relationship between police law. However, the lack of direct relationship does not mean that there is no relationship between police law. There is no direct relationship between Brazilian courts and police agencies. In fact, there is an indirect one-way supervision and checks and balances relationship. This indirect one-way supervision and checks and balances relationship between the police and the law is realized through the court's supervision and checks and balances on the procuratorial organs. For example, evidence of security sanctions applied to the procuratorial organs Since it is the police agency that assumes the duty of investigation, it ultimately forces the police agency to pay more attention to evidence, shaping the police agency's concept of evidence, etc.

To sum up, the relationship between the prosecutor and the police is the closest and has a certain degree of confrontation. Among the three relationships among the prosecutor, the judicial prosecutor, and the police in contemporary criminal investigations in Brazil, the core relationship is the prosecutor-police relationship. Generally speaking, the prosecutor-police relationship There is a guidance relationship between them, there is a one-way supervision and checks-and-balances relationship between law enforcement and prosecutors, and there is an indirect one-way supervision and checks-and-balances relationship between police and law (see Figure 3). At the same time, we can see that in Brazil's criminal investigation system Among them, the supervision of the procuratorate effectively regulates the behavior of the investigative agency, and the supervision of the court effectively protects the basic rights of the person under investigation. When the police implements criminal investigation, the procuratorate performs external supervision and checks and balances, and the court The review of specific judicial reservations serves as a check and balance on the actions of the police and prosecutorial agencies.

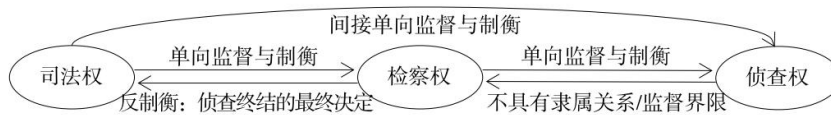


Figure 3 Checks and balances of power in the relationship between police, prosecutors and law

Source: Drawn by the authority

5. The development trend of checks and balances in the Brazilian criminal investigation system: improvement of the exercise of judicial power

Brazil's "Code of Criminal Procedure" has experienced several major revisions in history, and the revisions involving the Police Prosecution Law have been concentrated in the past ten years or so. In 2008, Professor Ada Pellegrini Grinover led The committee's review of cases involving relations between prosecutors and police The content has been overhauled, but this revision does not involve judges.

⁵The most important major revisions to the Criminal Procedure Code in Brazil are: Law No. 5 349767 of 1972 (Lei n° 5 349767), Law No. 11 689 of 2008, Law No. 11690, Law No. 11719 (Lei n° 11 689) n° 11 690) n° 11 719), Law No. 11 900 of 2009 (Lei n°11 900), Law No. 12 40 of 2011 Law No. 3 (Lei n°12 403)

When it comes to judges, the regulations from 1941 still apply. With the development of theory and practice, issues such as the role and function of judges in criminal investigations have become increasingly the focus of attention, and have become the focus and deliberation of the Brazilian legislature. It is foreseeable that the future development of Brazil's criminal investigation system will revolve around the status and role of judges in investigations, with "juiz de garantias" (juiz de garantias) as the core. The system of

safeguard judges in Brazilian criminal investigations originated from the judges of the High Judicial Court. Cavalido (Hamilton Carvalhido) proposal. In 2008, the "Criminal Procedure Code Reform Commission" chaired and coordinated by Cavalhido sought to make fundamental changes to the structure of Brazilian criminal investigations. The proposed amendments to the "Criminal Procedure Code" proposed by the commission Create safeguard judges to distinguish them from judges responsible for trials. Guarantee judges exercise their powers in criminal investigations, but do not hear cases or make judgments on substantive issues in cases. Guarantee judges are responsible for supervising the legality of criminal investigations and the basic fundamentals of the persons being prosecuted. The protection of rights, for example, is responsible for approving the application of measures to restrict rights such as arrest, property freezing, search, and seizure, and ensuring that the participation of judges is limited to cases involving the basic rights of the person under investigation.

The most basic reason for creating a system to protect judges is impartiality. The theoretical basis is the questionable but essential judicial initiative mentioned above. Supporters believe that during the investigation stage, if the judge agrees to the procuratorial organ's application for supervisory measures, it means that It means that the person under investigation is guilty. If the judge who hears the case does not participate in the investigation stage, he is a more qualified and fair judge. The presumption of innocence is a requirement for the judge to maintain impartiality. Therefore, the judge responsible for the trial should not participate in the trial. At any previous stage, more strictly speaking, the trial judge should be distinguished from the judge who decides to accept prosecution. In addition, the view of the European Court of Human Rights that a judge exercising powers in an investigation shall not be responsible for the trial is also a strong reason to support it. The safeguard judge or the investigating judge It only assumes the role of guardian of basic rights and does not assume the role of investigator or supervisor. Aury Celso Lima Lopez Junior, a professor at the Catholic University of Rio Grande do Sul, is a representative of this point of view. Bizzotto (Alexandre Bizzotto and Rodriguez (Andreia de Brito Rodrigues) believe that the protection judge is only responsible for approving the application of basic rights in criminal investigations. Measures, whether involving the person under investigation, the victim or a third party.

However, the idea of establishing safeguard judges has been mainly opposed by the judges themselves.

... yāy yyyyyyy yyyyy y yyyyy yyyyyyyçōy y yyyyy yyy y yyyyyyy yyy yyyyy"yy yyy yyyyyyy y y yyyyy y yyy y yyyyy yyy y yyyyy yyyyyyy" A yyyiy yyyyyyy y y yyyyyyy y ytion yyy y yyyyyyy yyyyyyy y yyyyy y yyy yyyyyyy yyy yyyyyyy yyy yyyyyyy yyy: yy

Therefore, only 40% of the criminal courts in Brazil have two judges. What is more serious is that in many cities there is only one judge. This will undoubtedly force civil judges to assume the duties of criminal judges. If the establishment of safeguard judges is implemented, there will undoubtedly be When encountering difficulties in financial and material resources, it is indeed unnecessary in some places. Therefore, there is a compromise view in Brazilian academic circles, which regards the situation where there is only one criminal judge as an exception and is not bound by the clauses to protect judges, but it is up to him. Undertake the responsibilities of both security judges and trial judges at the same time, or leave the position of security judges to the adjustment of internal court rules, or only set up security judges in larger areas, or recommend that security judges use the Internet and video systems, so that there is no need The judges themselves are in local courts. However, there are obvious problems with this compromise view, because the exceptional approach will lead to the formation of two obviously different systems in Brazil. There is undoubtedly a legality issue. And the large-scale construction of Internet and video systems for courts is currently It is not in line with the actual situation in Brazil, and may lead to an increase in the number of complaints and other unpredictable situations.

The above-mentioned controversy is also clearly reflected in the tortuous experience of the amendment to the "Code of Criminal Procedure". The amendment proposed by Cavalido became Senate Law No. 156/2009, successfully entered the legislative planning, and became Law No. 8045/2010 The draft was forwarded to the House of Representatives for review the next year, in 2011. However, the draft's protection of the creation of judges caused huge controversy. Various political factions took advantage of the opportunity to amend the Criminal Procedure Code to submit hundreds of bills. In 2011 After entering the House of Representatives for deliberation in 2010, Draft Law No. 8045/2010 has been stuck in the discussion process and unable to be submitted for a vote. On April 20, 2021, after reaching a basic consensus on the need to create safeguard judges, the Presidency of the House of Representatives decided to A special committee will be convened from now on to conduct two rounds of discussions and votes on the draft law No. 8045/2010, which has been revised many times, to decide whether to finally submit it to the plenary session of the House of Representatives for a vote. However, until June 2, 2021, it was clear that the special committee could not complete it. According to the established agenda, Representative João Campos, the speaker of the bill, also announced his resignation. More than ten years have passed since 2009 to June 2022, and the draft law No.

8 045 / 2010 is still under discussion. Although There are many controversies over the creation of a system of safeguard judges. However, Brazil's views on the creation of safeguard judges are gradually becoming unified. The necessity of creating a safeguard judge system has been increasingly recognized, and this has also been reflected in the legislative process. Just as Cavalcanti (Danielle Souza de Andrade e Silva Cavalcanti) As said, the creation of guaranteed judges will undoubtedly move Brazil's criminal procedure laws in a mor

y yyyyyy yyy y yyyyyy y yyy yyyyyyy "y y yyy yyy yyyyyyy y yyyyyyyca yyyyyy yy
 yy y yyyyyyy yy yy yyy y yy
 y yyyyy yy yyy y". yyy: / / yy yyy yy yy/ yyyyyyy
 [yyy y yy y yy]

This is especially true for improving the fairness of judicial organs. From the perspective of power checks and balances, according to the above legislative process, it can be seen that in the Brazilian criminal investigation system, the exercise of judicial power is constantly being improved, so that it can be used in the Brazilian criminal investigation system. The checks and balances on investigative and prosecutorial powers can be more fair, professional, efficient and powerful.

Thanks to more than ten years of efforts by Brazilian theoretical and practical circles, the discussion on safeguarding judges has transitioned from whether it should be established to how to establish it. While a consensus has been reached in theory, legislative attempts have been made to put it to a vote. It is foreseeable that in the future, Brazil will The development trend of the criminal investigation system will be to establish protection judges and build related systems, focusing on the improvement of the exercise of judicial power.

Six Conclusions

To sum up, we can see that the power checks and balances of the contemporary Brazilian criminal investigation system are based on the power of supervision and are a strong one-way power check and a weak reverse power check and balance relationship. Judicial power, prosecutorial power, There are strong one-way power checks and balances and weak reverse power checks and balances on the investigative power in sequence, that is: judicial power has strong one-way power checks and balances on procuratorial power and investigation power, and procuratorial power has strong one-way power checks and balances on judicial power and investigation power. Civil rights have a weak reverse power check on the power of investigation. This is reflected in the initiation, process, and termination of criminal investigation, the relationship between police, prosecutors, and law, as well as the development trend of the Brazilian criminal investigation system. In the Brazilian criminal investigation system, prosecutors The supervision of judicial powers guides and effectively regulates the conduct of investigative powers. The supervision of judicial powers not only effectively protects the basic rights of citizens, but also prevents the self-flooding and expansion of prosecutorial powers.

Throughout the history of the development of human criminal litigation, based on the nature of self-expansion of power and the strength of monarchy and administrative power, how to check, balance and supervise the power of investigation has always been one of the core issues in the development of the criminal litigation system. In today's era of the rule of law, although The strength is different. It is self-evident common sense that the judicial power or/and procuratorial power in various countries maintain supervision and checks and balances on the investigative power. There is no situation where the investigative power reversely checks and balances the judicial power or/and procuratorial power. The difference between countries lies in these three types. There are differences in issues such as the way of checks and balances between powers and the strength of checks and balances. For Brazil, Brazil's criminal investigation system also keeps pace with the development trend of the world. Especially after experiencing the dark military government era in the second half of the 20th century, Coupled with the influence of Western countries, Brazil's criminal investigation system has turned to trust and rely on judicial power to protect citizens' fundamental rights.

—————
“ ”
—— —

This right, while strengthening prosecutorial power to achieve supervision and checks and balances on the once overflowing investigative power. This idea and method was absorbed by Brazil's 1988 Constitution and was strictly implemented into the Brazilian Criminal Procedure Code and other criminal laws. Brazil The development direction of power checks, balances and supervision in the criminal investigation system is still to implement the ideas of the 1988 Constitution, and is closely centered on the improvement of the exercise of judicial power, in order to better protect citizens' rights, standardize procuratorial power and check and balance investigation power. From then on In the ups and downs of Brazil's rule of law history and the theoretical and institutional development of Brazilian criminal law, we can also feel Brazil's arduous exploration and tireless efforts to protect citizens' rights.

With the development of Brazil's criminal investigation system to this day, there has not been a strong controversy in the country like South Korea that believes that the prosecutorial power is too powerful and erodes other powers such as investigative powers. Nor does it think that the judicial power's supervision and control of prosecutorial and investigative powers is unacceptable or unacceptable. The consensus view is too weak. There is no fundamental difference between academic circles and the public on the arrangement and construction of power checks and balances and supervision in the current criminal investigation system. However, the discussion is more about detailed issues such as whether the prosecutorial agency has the right to access certain files of the police agency. It can be seen that the power checks and balances and supervision of the Brazilian criminal investigation system are in line with the current reality in Brazil to a certain extent, and have been recognized by the theoretical and practical circles. be accepted and play its due role in Brazil's criminal legal system.

Finally, this article ends with a passage from Manuel Santos: "The real laws of a country are those that are formed based on the people's customs, habits, and traditions, are consistent with the people's education level, and are in line with the people's interests."

(Editor Huang Nian)