

Implementation of Respecting and Safeguarding Human Rights Provisions at the Criminal Justice

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Received 19 October 2012; accepted 25 December 2012

Abstract

The amended “Code of Criminal Procedure” in 2012 has written “respecting and safeguarding human rights” into the Article 2 of this provision. This is a tremendous progress in our criminal justice. Essentially, the fundamental purpose of criminal justice system is to safeguard citizens, especially the human rights of criminal suspects and criminal defendants. Currently, although the criminal justice system in China has made significantly progress in the protection of human rights in recent years, there are still many problems. By the occasion of the amendment to the “Code of Criminal Procedure”, it should further improve human rights protection mechanisms of criminal justice in China and raise the legalization level of criminal justice in China.

Key words: Human rights protection; Criminal justice; Code of criminal procedure

WANG Jing, YAO Weiliang (2012). Implementation of Respecting and Safeguarding Human Rights Provisions at the Criminal Justice. *Cross-Cultural Communication*, 8(6), 121-124. Available from: <http://www.cscanada.net/index.php/ccc/article/view/j.ccc.1923670020120806.2353> DOI: <http://dx.doi.org/10.3968/j.ccc.1923670020120806.2353>.

INTRODUCTION

The undertaking of human rights protection in New China has made considerable development since the reform and opening up, legalization level of human rights is continuous upgrading. Especially the constitutional amendment in 2004, “respecting and safeguarding human

rights” is written into the Article 33 of “Constitution of the People’s Republic of China” (Hereinafter referred to as “Constitution”), which marks the human rights protection in China has obtained the basis for fundamental law. The significance of human rights written into the constitution is that, through the programmatic declaration for human rights in the Constitution, which can drive the national legislation towards the goal of human rights protection and achieve institutionalized integration and implementation of human rights. For the purpose of this article, the adopted amendment of “PRC Criminal Procedure Law”(Hereinafter referred to as “CPL”) in 2012, the terms of the protection of human rights first write into “CPL” articles, scholars believe that this is the biggest highlight of “CPL” amendment. Then, how to understand this highlight of status and value in the whole process of criminal justice, and how it should make this term converting from “programmatic human rights” to “institutional human rights” in real via the system design? This is the answer described in this thesis.

1. RESPECTING AND SAFEGUARDING HUMAN RIGHTS IS THE ULTIMATE GOAL OF CRIMINAL JUSTICE

Criminal suit is essentially a kind of judicial activities, which is the activity of “achieving the judicial procedure of the purpose as ‘State Power of Punishment’”. Its trial is beginning from prosecution, the prosecution must carry out investigation till the dawn of the judgment becomes final, yet to perform it before the referee execution content can be achieved.” Author does not deny the State Power of Punishment that is the criminal suit purpose of prosecution of criminal and punishment of offenders. However, how we should interpret the true meaning of this term, “prosecution of criminal and punishment of offenders”?

1.1 Sweeping Interpretation of Punishing Crimes for the Purpose of “Prosecution of Criminal and Punishment of Offenders”

For a long time, we have always used punishing crimes as the interpretation of these criminal justice purposes of “prosecution of criminal and punishment of offenders”. For example, in 1979 the first “Code of criminal procedure” of New China stated at the outset in Article 2 that, “the role of PRC Criminal Procedure Law is that guaranteeing the accurately and timely identification of the facts of the crime, correct application of the law, punishment of criminals, protection of the innocent people from criminal liability, education for citizens to voluntarily abide by the law, actively struggle against criminal acts, in order to safeguard the socialist legal system, protect citizens’ personal rights, democratic rights and other rights, safeguard the smooth progress of socialist revolution and the cause of building socialism.” Addition to slogan style declaration of this article, the purpose of criminal proceedings is positioned as “punishing criminals and protecting innocent people from criminal liability”, the purpose among seems to imply the concept of human rights protection. But unfortunately, due to the current theoretical and practical circles have no purpose of being able to highlight human rights protection from due process, but rather believes that being able to punish crimes accurately is the same as achieving the purpose of “protecting innocent people from criminal liability.” This sweeping interpretation of criminal proceedings purpose, and its essence is the “consequences” of Chinese state standard or that collective standard legal culture.

1.2 Original Intent Regression of “Prosecution of Criminal and Punishment of Offenders”

The author believes that the meaning of “prosecution of criminal and punishment of offenders” not only is as simple as that punishment of crime, but should be the unified “dual purpose” of crime punishment and human rights protection. To be precise, the purpose of criminal justice should be the “dual purpose” of “human rights protection” priority as the prerequisite.

The purpose of criminal justice should be through the investigated for criminal to achieve the human rights protection for citizens especially the criminal suspects and defendants, that is respecting and safeguarding human rights should be the fundamental purpose of criminal suit, while the so-called punishment of crime is just a means to achieve this purpose. This regard complies with modern law requirements of right standard, “in terms of the law according to their true meaning, instead of calling restrictions as it is the guidance of a freedom and wisdom man to pursue his legitimate interests, the purpose of the law is not repealed or restricts free, but rather protects and expands freedom.” (Locke, 1993) On the other regard also conforms to the trend of modern democratic politics. “From the perspective of analyzing the interests, people’s

pursuit of a democratic system because of democratic system able to achieve the interests of everyone for most of the time” (HUANG, 1990, p. 382), however “right size and social status of criminal suspects and defendants granted from countries, which is an important yardstick to measure a country’s degree of democratization (CHANG, 2012).

2. CURRENT SITUATION AND PROBLEM ANALYSIS OF CRIMINAL JUSTICE HUMAN RIGHTS PROTECTION IN CHINA

The definition of criminal proceedings purpose from theoretical circles has experienced many debates and reflections, ultimately it positions the fundamental purpose of criminal suit into the respecting and safeguarding human rights. This has a positive impact on the legislation and judicial practice of the criminal proceedings. The amendments to “Code of criminal procedure” adopted by Fourth Session of the Eighth National People’s Congress in 1997 has highlighted the rights and interests of citizens, especially the protection of fundamental rights for criminal suspects and defendants, it made clear the value of rights protection. For example, the provisions of Article 12 of this law related to the presumption of innocence, the provisions of Article 34 of this law related to appointed defense, the provisions of Article 57 of this law related to residential surveillance but no detention, the provisions of Article 58 of this law related to residential surveillance period, the provisions of Article 92 of this law related to prohibition of detained under the disguise and other articles has embodied the rich “humanized” concept of criminal proceedings system. However, under the impact of strong obligations of standard legal culture in China, there are still some problems about the criminal proceedings legislation and criminal justice practice in China.

At first, the 97’s “Code of Criminal Procedure” still exists many provisions that deviate from the basic direction of human rights protection. For example, the Article 71 of the 97’s “Code of Criminal Procedure”, “during public security organs arresting people, they must show any arrest warrant. After arrest, excepts the situation of impeding the investigation or unable to give notice, it should inform arrested person’s family or his unit with the reason for the arrest and detention of the premises within 24 hours.” The “impeding the investigation” in the article can be broadly interpreted easily by criminal justice agencies due to the provisions are too abstract, so that it results in the phenomenon of secret arrested. For another example, the Article 43 of the 97’s “Code of Criminal Procedure”, “torture and collect evidence by threat, enticement, deceit or other unlawful methods is strictly prohibited.” Although this article stipulates the torture is strictly prohibited, due to the insufficient of related

ancillary provisions and the uncertainty of “other unlawful methods”, the situation of extorting confessions by torture in judicial practice still despite repeated prohibitions.

Secondly, the trust degree of criminal justice from citizen is still low. Currently, although the building of legalization of criminal proceedings in China is gradually push forward, the trust degree of criminal justice from public is still relatively low. For example, scholars statistics show that, currently nearly 2/3 of the people are not quite trust in public security and judicial organs in China, and it believes that the proportion of good image of the judiciary of public security and judicial organs is also less than 30%. (HU, 2008) This public opinion degree reflects that the dissatisfaction on current criminal justice system from general public.

Thirdly, the event of violating the basic human rights of citizens in criminal justice practice still occurs from time. Although the introduction of 97’s “code of criminal procedure” marks the human rights protection has become the basic idea of criminal justice in China, concepts of human rights and the institutionalization of human rights is different after all. In the criminal justice practice, the phenomenon of neglect and even human rights abuses still occurs from time. Moreover, the event of violating the human rights during in the current criminal justice practice in China presents a trend of multisectoral “close coordination”, this is particularly worth for us to vigilant and reflect. For example, 1998 in Kunming, Yunnan of “Du Peiwu intentional murder case”, during the course of the investigation of the case, in order to obtain the so-called “murder” evidence, public security organs applied extorting confessions by torture to Du Peiwu, while the court is not even excluding these evidences of unlawful. (CHEN, 2008, pp. 128-130) Actually, extorting confessions by torture only is a microcosm of the phenomenon of violating human rights during criminal justice in China, however it results in a very negative impact on the building of criminal justice legalization in China.

3. IMPROVEMENT OF PATH ANALYSIS OF CRIMINAL JUSTICE HUMAN RIGHTS PROTECTION MECHANISMS IN CHINA

Criminal proceedings mode in China is a typical authority principle mode. Although, this kind of litigation mode is conducive to find out the truth of crime and protect public interest, this authority principle mode also overemphasizes on the obedience of the personal interests to national interest. Then, how to implement better articles of respecting and safeguarding human rights within the frame of authority principle proceedings mode? The author believes that, by means of this opportunity of revising the “code of criminal procedure”, we should strengthen the system construction in the following aspects, so that it can

protect the rights and interests of citizens better during criminal Justice, especially the legitimate rights and interests of criminal suspects and defendants.

At first, it should use the term of “respecting and safeguarding human rights” in the Articles 2 of “code of criminal procedure” as the “fallback provision” of criminal justice administration. Due to Chinese “Constitution” does not have the directly applicable validity, the Articles 33 in “Constitution” related provision of “the State shall respect and safeguard human rights” is more of a kind of declaration, its political significance is much greater than legal significance. However, “code of criminal procedure” as the criminal procedure basic law, it directly regulates the operation of criminal justice process. Also, it adjusts the relationship of rights and obligations between procedural participants, all its articles can be directly applied to the administration of justice. Therefore, the terms of the human rights protection naturally can be applied to criminal justice practice. Specifically, during the administration of criminal justice, the court should broadly interpret through the Articles 2 of the revised “code of criminal procedure” to make it a fallback provision to fix the loopholes in the code of criminal procedure and build up a densely human rights protection net.

Secondly, it should improve and construct specific mechanism of human rights protection in criminal justice. No matter how mature legislation technically, how meticulous on regulations, if it cannot put into practice, then it is just a dead letter. “As long as the law exists in the society, realization of the law has always been and will always be a special way existed social relationship. Realization of the law is the law existence, role and execution of special way of main social functions. If the provision of the law cannot be achieved in the activities and social relations of people and their organization, then it would be nothing.” (Ya, 1986, p. 170) The revised “code of criminal procedure” provides a new opportunity for criminal justice construction in China. However, the amendment of criminal procedural law is just a starting point. Next, we must improve the mechanism and promote the empirical process of “code of criminal procedure”. This paper takes illegal evidence exclusion system and arrestment system as example for a brief description.

3.1 Improvement of Illegal Evidence Exclusion System

Illegal evidence exclusion system is main weapon of modern criminal justice against extorting confessions by torture. The regulations of article 49 of revised “code of criminal procedure” stipulated that, “the judicial officers, prosecutors, investigators must be in accordance with legal procedures to collect various kinds of evidence that can verify guilty of criminal suspects and the defendant or the innocence and the gravity of their crime. Torture and other illegal means to gather evidence is strictly

prohibited, forcing anyone to prove their guilty themselves is not allowed.” This is the legal basis of illegal evidence exclusion system in China. Comparing with “code of criminal procedure” before the amendment, this code of criminal procedure has directly added the provision of “forcing anyone to prove their guilty themselves is not allowed”. For the implementation of this provision, the author thinks that it should start from two aspects: The first one is expanding interpretation of the term of “respecting and safeguarding human rights” of Article 2 in “code of criminal procedure”, to endow criminal suspects and criminal defendants the right of silence; The second one is requesting the court to strengthen the scrutiny of evidence during the trial process. It should resolutely exclude the evidence obtained from the illegal means.

3.2 Improvement of Arrestment System

For the improvement of arrestment system, it should start from two aspects: The first one is prohibiting secret arrests. The provisions of Article 92 in new revised “code of criminal procedure”: “during public security organs arresting people, they must show any arrest warrant. After arrest, excepts the situation of unable to give notice or suspected of endangering national security crime, terrorist crimes and other serious crime, notification may impede the investigation, it should inform arrested person’s family with the reason for the arrest and detention of the premises within 24 hours.” (SUN, 2003) Although this provision is not fully established to prohibit secret arrest system, it greatly limits the scope of the secret arrest. That is, only suspected of endangering national security crime, terrorist crimes and other serious crime can apply “secret arrests.” The author believes that, for prohibiting secret arrest system, it should request the legislature and the administration of criminal justice to have a narrowing explanation for allowing secret arrests condition, strictly limit the scope of secret arrests, and gradual abolish of the system of secret arrests for future judicial practice. The second one is establishing the habeas corpus system. According to the provisions of United Nations Criminal Justice Standards, “persons deprived of liberty who have been arrested or detained due to any criminal charges are eligible to access to the courts, so that the courts can determine the lawfulness of their detention without delay as well as release them when the detention is not lawful.” The aim of habeas corpus system is that solving the extended detention after arrest, which can prevent the criminal justice agencies by means of the arrest to limit the personal rights of citizens.

CONCLUSION

“Code of criminal procedure” is hailed as the “Mini-constitution”, which directly practices the constitution to protect the basic procedure act of civic life, dignity, liberty and basic property rights. Chinese criminal justice has been working to practice the value concept of “human rights protection” after the reform and opening up. However, we must admit that, the current Chinese criminal justice sets aside human rights protection, especially the phenomenon of disregarding the human rights of criminal defendants and criminal suspects still occurs from time. This results in a very negative impact on the legal construction in China. The author sincerely hopes that, by occasion of the revised “criminal procedural law”, criminal justice agencies at all levels in China can rethink the current problems existed in the Chinese criminal justice work. Therefore, it can implement and enforce the new “code of criminal procedure” as the opportunity to truly implement the terms of human rights protection, ensure the phenomena such as She Xianglin, Nie Shubin and Zhao Zuohai can truly become the lessons of history and reflection materials in China, rather than an ongoing interpretation.

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