



The Development of Criminal Litigation Legislation Since the Founding of P.R.C.

LE DÉVELOPPEMENT DE LA LEGISLATION CONTENTIEUX PÉNAL DEPUIS LQ FONDATION DE LA RPC

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Abstract

In the long process of China's historical development, there appeared the glorious times leading the world trends. In the field of legal system, the world famous Chinese Legal System with *Tang Lü Shu Yi* (Tang Code with authoritative annotations) is regarded as its pearl, in which the legislation of lawsuit was flourishing and over the next one thousand years, it made further progress and got more perfected. This paper mainly focuses on the development situation of criminal litigation legislation in China since the founding of the People's Republic of China (P.R.C.) in 1949. In the meantime, tentative speculations will be offered on the criminal suit legislation in the future.

Criminal suit legislation in China since 1949 could be divided into three periods. The first period is from 1949 to 1979. In this period, no common criminal suit code was made but several criminal suit regulations were passed. With the passage of all these regulations, a national unified criminal suit system had been established.

The second period is from 1979 to 1996. It was the period when the China's criminal suit legislation entered its booming stage. Lots of laws were passed, which indicated that criminal suit legislation in China had reached a rather large scale and criminal suit system had become more comprehensive and mature.

The three period is from 1996 to the present. After its putting into practice for 17 years, Criminal Procedure Law of the People's Republic of China was revised in a larger scale by the National People's Congress. new concepts were embodied in this modification.

Nowadays the State law-making legislation has

scheduled to revise the criminal procedure law. People have come to terms on the revision of criminal procedure law. Based on new concepts, the great breakthroughs of re-revised edition of criminal procedure law would be as follows:

The demands of human rights protection, justice and efficiency would be embodied in the theme of legislation of criminal procedure law. Negatory items of breaking statutory proceeding would be included in the revision, making illegal actions null. The principle of presumption of innocence would be incarnated in the criminal legislation. The principle of presumption of innocence has to be emphasized in a real sense. The principle of "Never force the self-incrimination would be adopted, totally preventing the inquisition by torture and extort confessions. The principle of protection against repeated prosecution, non bis in idem; protection against double jeopardy would be applied in China's criminal retrial system. Priority is given to the principle of public international law. The defense system should be perfected so that counsels have the right to participate in the progress of criminal lawsuit and the counsels possess rights of investigation. Criminal unlawful evidence exclusionary rules are to be established. Justifying the proceeding of questioning criminal suspect and regulate the questioning time to prevent evidence collection obtained by torture. In necessary conditions, the counsel has right to be on the spot. Renovating Chinese simplified criminal process.

Key words: Criminal litigation legislation; Evolution; Views

Résumé

Dans le long processus de développement historique de la Chine, il est apparu des temps glorieux de premier plan des tendances mondiales dans le domaine du système juridique, le monde célèbre système juridique chinois avec Tang Lu Yi Shu (Code des Tang avec des annotations

autorité) est considéré comme son. perle, dans lequel la législation de poursuite était florissante et au cours des mille prochaines années, il a encore progressé et a obtenu plus perfectionné. Ce document se concentre principalement sur la situation du développement de la législation poursuites pénales en Chine depuis la fondation de la République populaire de Chine (RPC) en 1949. En attendant, les spéculations provisoires seront offerts sur la législation poursuite pénale à l'avenir.

La législation pénale costume en Chine depuis 1949 pourrait être divisé en trois périodes. La première période est de 1949 à 1979. Dans cette période, aucun code costume criminelle commune a été faite, mais plusieurs règlements poursuite pénale étaient passés. With le passage de tous ces règlements, un système national unifié poursuite pénale avait été mis en place.

La seconde période est de 1979 à 1996. C'était la période où la législation de la Chine de poursuite pénale est entré dans sa phase de plein essor. Beaucoup de lois ont été votées, qui a indiqué que la législation poursuite pénale en Chine avait atteint une échelle assez grande et un système de poursuite pénale était devenu plus complète et mature.

La période de trois est de 1996 à nos jours. Après sa mise en pratique depuis 17 ans, la loi de procédure pénale de la République populaire de Chine a été révisé dans une plus grande échelle par le Congrès national populaire. De nouveaux concepts ont été incorporés dans cette modification.

Aujourd'hui, la loi de l'État de décisions la législation a prévu de réviser le code de procédure pénale. Les gens sont venus à s'entendre sur la révision de la procédure pénale. Basé sur de nouveaux concepts, les grandes percées de ré-édition révisée du Code de procédure pénale serait la suivante :

Les exigences de la protection des droits humains, la justice et l'efficacité, seraient incluses dans le thème de la législation du code de procédure pénale. Articles Negatory de briser la loi instance seraient inclus dans la révision, ce qui rend illégale nulle actions. Le principe de la présomption d'innocence serait incarné dans la législation pénale. Le principe de la présomption d'innocence doit être souligné dans un sens réel. Le principe de «ne jamais forcer l'auto-incrimination serait adopté, empêchant totalement l'inquisition par la torture et extorquer des aveux. Le principe de la protection contre les répétée poursuites, non bis in idem, la protection contre la double incrimination serait appliqué dans le système de la Chine un nouveau procès pénal La priorité est donnée au principe du droit international public Le système de défense doit être perfectionné afin que les conseils ont le droit de participer au progrès de la responsabilité pénale.. procès et les conseils possèdent des droits d'enquête. pénale règles de preuve illicites d'exclusion doivent être établis. Justifier la procédure d'interrogatoire suspect et

de réglementer le temps de questionnement pour éviter la collecte de preuves obtenues sous la torture. Dans des conditions nécessaires, l'avocat a le droit d'être sur le l'endroit. Rénovation Chinois simplifié procédure pénale.

Mots-clés: La législation de contentieux pénal; Evolution; Vues

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China is regarded as an ancient country with a history of 5000 years when seen from recorded history of the Xia Dynasty (C.2050 B.C.—C.1600B.C.). In the long process of historical development, there appeared the glorious times leading the world trends, for example, the Era of Han and Tang Dynasties (202B.C.-907A.D.). In the field of legal system, we have the world famous Chinese Legal System with *Tang Lü Shu Yi* (Tang Code with authoritative annotations) as its pearl. In the Tang Dynasty Legal System, the legislation of lawsuit was flourishing and over the next one thousand years, it made further progress and got more perfected. But here the author will focus on the brief introduction of the development situation of criminal litigation legislation in China since the founding of the People's Republic of China (P.R.C.) in 1949. In the meantime, tentative speculations will be offered on the criminal suit legislation in the future.

1. AN OUTLINE OF CRIMINAL LITIGATION LEGISLATION DEVELOPMENT IN CHINA

Criminal suit legislation, in my opinion, could be divided into three periods since 1949.

The first period is from 1949 to 1979. In this period, although no common criminal suit code was made, it did not mean that there was no criminal suit legislation. From the founding of the People's Republic of China (P.R.C.) in 1949 to the first National People's Congress in 1954, the organization to perform the right to make legislation was the Chinese People's Political Consultative Conference (C.P.P.C.C.). During this period, several criminal suit legislations were passed. In July 1950, "General Principles of Court Organization of the People's Republic of China" was enacted. In September 1951, "Provisional Organic Rules of the Peoples Court of P.R.C.", "Provisional Organic Rules of the Supreme People's Procuratorate and Provisional Organic Rules of the People's Procuratorate at lower levels were passed at the twelfth meeting of the Central People's Government Committee. With the passage of all these regulations, a national unified criminal suit system had been established. Some criminal suit

principles and systems had also been radicalized such as the principle of banning extortion of confession by torture, the open trial system, the challenge system and the defense system. In the criminal suit area appears the pattern of public security organs' being responsible for investigation, procuratorial organ's being in charge of prosecution and the people's court's duty of undertaking trials.

In 1954, the First National People's Congress---the state law-making body---held its sessions. As a result, several laws were passed such as Organic Rules of the Peoples' Court of P.R.C., Organic Rules of the Supreme People's Procuratorate of P.R.C. and Regulations the People's Republic of China on Arrest and Detention. At the same time, in 1954, China drew up a "P.R.C. Criminal Procedure Ordinance (draft)". In May 1957, the Supreme People's Court presided over the drafting of the "Criminal Procedure Law (draft)" with 7 chapters and 325 articles. In April, 1963, the Central Political and Legal Team presided over the completion of "Criminal Procedure Law (draft)", with a total of 200 articles, but failed to become law. Compared with those passed before, these new legislations had made such improvement as to separate Procuratorial organ from governmental system making it become an independent juridical body. These laws and regulations set up the basic framework of criminal suit system. Some specific principles and systems had become more rational. For instance, each law enforcement body performed its own power respectively: trial jurisdiction by the People's Court, procuratorial power by People's Procuratorate, and investigation power by public security organs. In the process of criminal suit, the three organs worked in cooperation and mutual condition. In the trial system remarkable progress was made that to some extent the People's Court and the People's Procuratorate could exercise their functions and powers independently. Therefore, a series of principles had taken hold such as open trial, advocacy, jury trial, final adjudication through municipal trial and high court of criminal appeals, review of death penalty, challenge system and the defense system. All these guaranteed that the criminal suit activities have rules to follow and have laws to abide by and the criminal suit activities could be conducted regularly and orderly.

The second period is from 1979 to 1996. It was the period when the China's criminal suit legislation entered its booming stage. Organic Rules of the Peoples Court and Organic Rules of the Supreme People's Procuratorate of P.R.C. were re-enacted and at the same time other laws relevant to criminal suit were constituted and enacted such as Law of the People's Republic of China on the Protection of Minors, Judges' Law of P.R.C., Public Procurators' Law of the People's Republic of China and Lawyers' Law of the People's Republic of China. Among all these, here it is worth mentioning that Criminal Procedure Law of the People's Republic of China in 1979 stipulated the principles and procedures of criminal suit systematically. All

these laws indicate that criminal suit legislation in China had reached a rather large scale and criminal suit system had become more comprehensive and mature.

The three period is from 1996 to the present. After its putting into practice for 17 years, Criminal Procedure Law of the People's Republic of China was revised in a larger scale by the National People's Congress. This revision was done when China had opened her door to the outside world for many years. Since we began to carry out the policy of reform and open up to the outside world in 1978, there were wide exchanges with the rest of the world. People knew more about the outside world. In the mean time, people deepened their understanding of the criminal law, especially began to value the criminal procedures. Therefore, new concepts were embodied in this modification. The achievements, in my opinion, were as follows:

- No one is guilty without trial and verdict by the people's court. This is regarded as the embodiment of the principle of presumption of innocence.
- Exemption from prosecution system was abolished and no-prosecution system was perfected to ensure the right of verdict by court
- The theory of "suspecting a crime without being accused" is definitely established, and suspicion cases are fitted into the principle of supposition of not guilty on the suspected.
- The defense system was improved and lawyers are involved into criminal suit in the whole process. They served as defense counsel at the prosecution stage, counselor at the investigation stage and agent to complain for the client.
- Through the reform of the ways of court trial, the practice of entity examination at the trial court was eliminated; the court investigation procedures were changed; the principle of balance between the prosecution and the defense and judge's mediation adjudication were applied.
- Compulsive measures to the suspected were standardized; required conditions and terms were definitely defined.
- The protection of the victim was valued. The victim was defined as client.

All these modifications showed great achievements had been made in China's criminal suit legislation.

2. THE PROSPECT OF CRIMINAL LITIGATION LEGISLATION IN CHINA

Nowadays the State law-making legislation has scheduled to revise the criminal procedure law. People have come to terms on the revision of criminal procedure law. The general agreements are a) that the modification should be done based on the concept of democracy, innovation, scientism, and pragmatism. The principles of controlling crimes to protect the human rights, embodying the substantial justice and procedural justice, the objective

justice and substantial justice should be applied in the re-modification. Justice and efficiency are both valued. b) adhere to the principle of learning from foreign countries' experience an putting them into China's own situation, making revisions to meet the criminal judicial code of the United Nations. c) based on the real situation, serious urgent cases should be solved in the judicial practice. Based on these new concepts, the great breakthroughs of re-revised edition of criminal procedure law would hopefully be as follows:

- The demands of human rights protection, justice and efficiency would be embodied in the theme of legislation of criminal procedure law.
- Criminal proceeding would be further perfected though it is stipulated in the existing laws, it is far from perfection. It is expected that negatory items of breaking statutory proceeding would be included in the revision, making illegal actions null.
- The principle of presumption of innocence would be incarnated in the criminal legislation. As mentioned above, the main idea of this principle already exists in the current laws, but it is not comprehensive. The principle of presumption of innocence has to be emphasized in a real sense.
- The principle of never force the self-incrimination would be adopted, totally preventing the inquisition by torture and extort confessions.
- The principle of protection against repeated prosecution, non bis in idem; protection against double jeopardy would be applied in China's criminal retrial system.
- Priority is given to the principle of public international law. There are quite a lot of criminal action standards in the UN documentation and China should put into

effect the relevant provisions signed or ratified in international treaties. (not including our salvos), realizing better internationalization of China' criminal action.

- The defense system should be perfected so that counsels have the right to participate in the progress of criminal lawsuit and the counsels possess rights of investigation
- Criminal unlawful evidence exclusionary rules are to be established. This principle is widely accepted and it is common practice in other countries. It is predicted that the specific rules would be a) unlawful testimony evidence completely exclusionary rule; b) unlawful material evidence exclusionary rule through judgment.
- Justifying the proceeding of questioning criminal suspect and regulate the questioning time to prevent evidence collection obtained by torture. In necessary conditions, the counsel has right to be on the spot.
- Renovating Chinese simplified criminal process. One aspect is to enlarge its scopes; the other is to offer the defendant the choices to use the simplified criminal process or not to use it.

REFERENCES

- Jin-fan, ZHANG (1999). *The Evolution of Chinese Legal System Civilization Law*. Beijing: China University of Political Science and Law Press.
- Xiao-hong MA (2004). *Rituals and Law: History of Law Connections*. Beijing: Peking University Press.
- Hai-yan WANG (2003). *Evolution of Criminal Litigation*. Beijing: Chinese People's Public Security University Press.
- Guang-zhong CHEN (2009). *Criminal Procedure Law*(3rd edition). Beijing: Peking University Press.