

# The Development and Main Reform of Criminal Procedure Law in China

Wang Zhenhui<sup>1,2</sup>

<sup>1</sup>Collaborative Innovation Center of Judicial Civilization, Beijing, China

<sup>2</sup>Procedural Law Research Institute, China University of Political Science and Law, Beijing, China

Email: [wzh423@sina.com](mailto:wzh423@sina.com)

Received 14 January 2015; accepted 3 February 2015; published 6 February 2015

Copyright © 2015 by author and Scientific Research Publishing Inc.

This work is licensed under the Creative Commons Attribution International License (CC BY).

<http://creativecommons.org/licenses/by/4.0/>



Open Access

---

## Abstract

China's current "Criminal Procedure Law" was enacted in 1979, and the law established the basic framework of socialist criminal justice system with Chinese characteristics. The amendments in 1996 and 2012 to the "Criminal Procedure Law", involving the basic principles, procedures, rules and many other aspects of criminal procedure, emphasized balance on punishment of crime and protection of human rights, entity justice and procedure justice. From the development and main reform of China's Criminal Procedure Law, we can see that China's Criminal Procedure Law effectively connected with the international justice standards gradually, promoted China's criminal procedure legal system going to be more scientific, democratic and rational, and reflected the great progress of China's democracy and legal system construction having been made in the field of criminal justice (Chen Guangzhong 2012; Bian Jianlin, 2012).

## Keywords

The Criminal Procedure Law of China, 1996 Year's Amendment, 2012 Year's Amendment, Punishment of Crimes, Protection of Human Rights

---

## 1. Introduction

The 1979 year's Criminal Procedure Law opened a new process of criminal procedure litigation after the founding of the People's Republic of China. In 1996, China's legislative organ revised the 1979 year's Criminal Procedure Law, and made China's criminal procedure systems walk a big step forward to scientification and democratization. The 1996 year's revision became a milestone in the development history of China's criminal justice and human rights protection (Huang Taiyun, 1996). The second revision of China's Criminal Procedure Law has started at the end of 2010. This time, both of the scholars and judicial practitioners put great hope on the second amendment of China's Criminal Procedure Law, and tried to break through in more aspects (Chen Guangzhong,

2012). The 2012 year's revision of China's Criminal Procedure Law revised on many aspects, including the compulsory measures, the evidence system, the criminal advocacy system, the investigation measures, the court trial procedures, etc.

## 2. The Main Reform and Contents

View the whole development process, the reform of Criminal Procedure Law in China shows some main features as followed.

### 2.1. Stick to Unifying Crime Control and Human Rights Protection; and Pay More Attention to Human Rights Protection

The 1979 year's Criminal Procedure Law established the concept of unifying crime control and human rights protection, and emphasized the importance of protecting human's basic rights. Due to the historical circumstance at that time, the 1979 year's Criminal Procedure Law mainly focused on fighting against crimes and ignored the importance of protecting human rights to some extent (Song Yinghui, 2014).

The 1996 year's Amendment of Criminal Procedure Law reflected the legal values of democracy, rule of law and human rights protection. Including: 1) absorbed the basic spirits of presumption of innocence into the Criminal Procedure Law of China; 2) abolished the procuratorate's power of exempting from prosecution, only the court has the power to decide a person is guilty; 3) reformed the criminal advocacy system, the defense lawyer can participate in the criminal procedure at the beginning of the investigation stage; 4) added the summary procedure; extended the scope of private prosecution cases; 5) perfected compulsory measures; abolished sheltering for investigation; 6) weakened the trial procedure's court control color; strengthened the confrontation between the accuser and the defender on court.

The 2012 year's Amendment of Criminal Procedure Law further implemented the idea of human rights protection in many articles.

1) Protection of the criminal suspect or defendant's rights. Including: a) bring forward the criminal suspect's right of entrusting defender to the investigation stage; b) extend the scope of legal aid; c) add the provision of not forcing anybody to incriminate himself; d) establish exclusionary rule. Statements and exculpations of criminal suspects or defendants that collected by extort confessions by torture or other unlawful means and testimony of witness or statements of victims that collected by threat, enticement, deceit or other unlawful means shall be excluded. In violation of law to collect material evidence and documentary evidence, which seriously influence justice, shall be excluded (Zang Tiewei, 2012); e) perfect compulsory measure system. Such as, to confirm application conditions of undertaking recognizance upon bail, residential surveillance and arrest; the judicial organs must send detained person to house of detention as soon as possible not more than 24 hours after detention; the judicial organs must give notice custody reason and location to criminal suspect's families not more than 24hours after detention or arrest; cases of criminal suspect or defendant in custody cannot finished within limited time of investigation custody, examination and prosecution, trial of the first instance, trial of the second instance, the criminal suspect or defendant should be released; to interrogate the criminal suspect and hearing defense lawyer's advice at stage of investigating and approval of arrest; and so on; f) extend the scope of summary procedure (Lang Sheng, 2012); g) establish community correction system, and so on.

2) Protection of the victim's rights. Including: a) add public prosecution case parties' reconciliation procedure. If the parties of certain types of public prosecution cases reach a settlement agreement, organs taking charge of the case may give a lighter punishment; b) stipulate the victim has the right to complain or take charge of judicial organ and its worker's illegal action.

3) Protection of the defense lawyer's rights. Including: a) lawyer can intervene in proceedings as defender at investigation stage; b) lawyer bring lawyer's practice certificate, law firm proof and a power of attorney or legal aid official letter to meet criminal suspect or defendant in custody; c) lawyer meet criminal suspect or defendant in custody should not be monitored; d) perfect the regulation of lawyer reading files; e) add confidentiality provisions of lawyer's practice.

4) Protection of the witness and other participants' rights. On one hand, add the witness or close relatives' personal protection. On the other hand, add testifying subsidies of witness.

But in China's Criminal Procedure Law, blindly emphasizing the protection of human rights is not allowed,

the crime control is also the fundamental purpose of the criminal procedure, ought to pay attention to the balance (Sun Pinghua, 2013). The 2012 year's revision of Criminal Procedure Law also put more emphasis on realizing the basic goal of controlling crimes. Criminal Procedure Law also set strict scope of application and conditions for these provisions to balance crime control and human rights protection (Lang Sheng, 2012; Zang Tiewei, 2012). Including: 1) to regulate categories of electric evidence; 2) add technical investigation and secret investigation measures to some special cases; 3) living at appointed residence under surveillance under special situation; 4) in some cases, to determine the victim or criminal suspect's characters injury or physiological condition, the judicial organs can examine person, collect fingerprint, blood and other biological samples; 5) in important cases like murder case that public security organs investigated, procuratorate may offer opinions and suggestions to investigation.

## **2.2. Stick to Paying Equal Attention to Substance and Procedure Justice, Focus on Pursuing the Justice Value of Criminal Procedure Itself**

The 1979 year's Criminal Procedure Law emphasizes its implemental value, mainly to guarantee criminal law's proper implement.

The 1996 year's Amendment of Criminal Procedure Law laid emphasis on pursuing procedure justice when designing system and regulated results of violating law procedure. Such as, on the second instance of trial stage, the court of second instance shall reverse the original judgment and remand to original court for retrial if the court of first instance had any situation of violating ruled procedure.

The 2012 year's Amendment of Criminal Procedure Law further normalizes procedure design, which reflects procedure justice. Including: 1) normalize the interrogation. If called or summoned criminal suspect by force, shall provide the necessary time of eating food, drinking water and resting; Synchronous sound and video recording during whole interrogation; 2) perfect procedure of sealing up and attaching; 3) perfect procedure of trial; to confirm condition of opening the court session. After reviewing case of public prosecution, the court shall decide to open the court session for trial the case if the indictment attached explicit accused criminal facts and evidence; 4) distinguish issues of conviction and measurement of penalty, the prosecution and defendant can express opinions and argue individually (Chen Guoqing, 2012); 5) perfect the second instance procedure; add provisions of opening second court instance for trial, reform and perfect remanding for retrial system; 6) perfect procedure for review of death sentence. The supreme people's court reviewing death sentence case shall interrogate defendant and listen to defender's opinion; during the process of reviewing death sentence case, the supreme people's procuratorate can propose to the supreme people's court; 7) the procuratorial organs should supervise the procedure of putting a case on file, investigation, trial and penal execution (Chen Guoqing, 2012); 8) set special criminal proceedings. Including: juvenile criminal procedure; reconciliation procedure for specific scope of case of public prosecution; criminal suspect, defendant escaping and hiding or dead case, illegal gains confiscated procedure; forced medical procedures for violence mental patients.

## **2.3. Stick to Prioritizing Justice and Giving Consideration to Efficiency; Constantly Improve the Value of the Criminal Procedure's Efficiency**

The 1979 year's Criminal Procedure Law divided criminal procedure into public prosecution procedure and private prosecution procedure, and divided public prosecution procedure into independent stages: filling a case, investigation, initiation of public prosecution, trial and execution (Song Yinghui, 2014).

The 1996 year's Amendment of Criminal Procedure Law introduced some of new procedure mechanisms, expanding the scope of private prosecution, setting up the summary procedure, which diverted a lot of minor cases and improved the efficiency of the criminal procedure.

Efficiency value being more and more reflected in the 2012 year's Amendment of Criminal Procedure Law. Such as, 1) divided criminal case into the defendant guilty plea case and the defendant not guilty case; 2) further expand summary procedure's scope of application; the defendant guilty plea case all can apply summary procedure; 3) add provision of suspended trial. In trial, one of the following conditions made the case cannot continue hearing in a long time, may suspend the trial: defendant or private procurator suffered from serious illness can not appear in court; defendant escaped; force majeure reasons; 4) a criminal procedure system that suit to different cases, different standards, and integrity and ordered is fundamentally formed.

## 2.4. Respect Litigation Law; Reflect Criminal Procedure's Human Feelings

As judicial practical experience's accumulation after the 1979 year's Criminal Procedure Law established, people are familiar with litigation law more clear and profound day by day, which is reflected in Criminal Procedure Law modifications.

The 1996 year's Amendment of Criminal Procedure Law absorbed the reasonable factors of adversary system to strengthen debates between two adversarial sides and strengthen the right of defendant (Huang Taiyun, 1996).

The 2012 year's Amendment of Criminal Procedure Law further enhances Criminal Procedure Law's scientific, democracy and rationality. Including: 1) confirm prosecution bears the burden the responsibility of proving defendant guilty; 2) perfect defense lawyer system; strengthen prosecution and defender's equality; 3) perfect various kinds of evidence rules. Such as the evidence referee principle; prohibit to incriminate himself rule; disclosure of evidence before opening a court session; special circumstances forced the witnesses to appear in court and testify; the investigators' obligations of testifying; witness protection system; 4) pay more attention to humanity care in criminal procedure as well (Quanguo Renda Changweihui Fazhigongzuo Weiyuanhui Xingfashi, 2012). Such as the spouse, parents, children of the defendant enjoy the right of refusing to testify. The judicial organs shall provide legal aid to criminal suspect or defendants who are blind, deaf or dumb, or may be sentenced to life imprisonment or death in all litigant stages. For criminal suspects who conform to arrest conditions but suffering from serious illness and cannot take care of himself, and who is pregnant or breast-feeding her own baby can live at home under surveillance. It could be permitted to temporarily serve his sentence outside prison if the criminal is seriously ill and needs to be released on parole for medical treatment, or who is pregnant or is breast-feeding her own baby. Appropriate adult appears juvenile interrogation, conditional non-prosecution, non-detention measures as more as applicable and criminal record abolition.

## 2.5. Pay More Attention to the Operability of the Criminal Procedure Law

The 1979 year's Criminal Procedure Law solved the mass of "no law according to", built basic framework of Chinese criminal procedure system, and enabled criminal procedure fit to litigation track. However, lots of provisions were too principle and lack of operability.

The 1996 year's Amendment of Criminal Procedure Law on the basis of referencing foreign experiences and combining with China's own situation refined and perfected many content which strengthened the Criminal Procedure Law's operability in judicial practice.

The 2012 year's Amendment of Criminal Procedure Law pays attention to its operability extremely. Including: 1) refine detention applicable condition, perfect scope and mode of execution of residential surveillance; 2) lots of suggestions were raised after intensive and deep going survey even experiment, for example synchronous sound and video recording during whole interrogation, party reconciliation in public prosecution cases, which are more operability.

## 3. Conclusions

Through a historical analysis on the development of China's Criminal Procedure Law, we can see that in general the development of China's Criminal Procedure Law always sticks to a main line of unifying the punishment of crime and protection of human rights, procedural justice and substantive justice, justice and efficiency, and gradually increases the democratic and humanistic factors of the criminal procedure.

However, China's Criminal Procedure Law is not perfect; many judicial systems and rules need further amendment. In the long run, further to strengthen the Criminal Procedure Law's values of procedural justice and human rights protection, paying equal attention to procedural justice and substantive justice, crime punishment and human rights protection, and constantly improving the democratic and humanistic care in criminal procedure, are still the basic directions of the perfection of China's Criminal Procedure Law (Song Yinghui, 2014). Specifically, further standardizing and perfecting the criminal procedure to achieve effective protection of human rights, improving the efficiency of the proceedings while ensuring the fair value, rational allocation of the judicial power, making the judicial power under the effective supervision, strengthening procedural consequences and procedural sanctions to normalize the exercise of the judicial power, further straightening out the relationship between the public security and judicial organs in criminal procedure, further refinement of the relevant provisions of the Criminal Procedure Law, and enhancing the operability of the law, will be the main points of the Criminal Procedure Law's next amendment.

## References

- Bian Jianlin 卞建林 (2012). *Zhongguo tese xingshi susong zhidu de zhongda fazhan* 中国特色刑事诉讼制度的重大发展. *Faxue Zazhi*, 5, 1-8.
- Chen Guangzhong 陈光中 (2012). *Zhonghua Renmin Gongheguo xingshi susongfa xiugai tiaowen shiyi yu dianping* 中华人民共和国刑事诉讼法修改条文释义与点评. Beijing: Renmin Fayuan Chubanshe.
- Chen Guoqing 陈国庆 (2012). *Zhonghua Renmin Gongheguo xingshi susongfa zuixin shiyi* 中华人民共和国刑事诉讼法最新释义. Beijing: Zhongguo Renmin Gongan Daxue Chubanshe.
- Huang Taiyun 黄太云 (1996). Xingshi susong zhidu de zhongda gaige—Xingshi susongfa xiugai de jige zhongda wenti 刑事诉讼制度的重大改革——刑事诉讼法修改的几个重大问题. *Zhongguo Faxue*, 2, 29-39.
- Lang Sheng 郎胜 (2012). *Zhonghua Renmin Gongheguo xingshi susongfa xiugai yu shiyong* 《中华人民共和国刑事诉讼法》修改与适用. Beijing: Xinhua Chubanshe.
- Quanguo Renda Changweihui Fazhi Gongzuo Weiyuanhui Xingfashi 全国人大常委会法制工作委员会刑法室 (2012). *Guanyu xiugai Zhonghua Renmin Gongheguo xingshi susongfa de jueding: Tiaowen shuoming, lifa liyou ji xiangguan guiding* 关于修改中华人民共和国刑事诉讼法的决定: 条文说明、立法理由及相关规定. Beijing: Beijing Daxue Chubanshe.
- Song Yinghui 宋英辉 (2014). *Xingshi susongfa xiugai de lishi shuli yu chanshi* 刑事诉讼法修改的历史梳理与阐释. Beijing: Beijing Daxue Chubanshe.
- Sun Pinghua (2013). *Human Rights Protection System in China*. Berlin: Springer.
- Zang Tiewei 臧铁伟 (2012). *Zhonghua Renmin Gongheguo xingshi susongfa jiedu (zuixinban)* 中华人民共和国刑事诉讼法解读(最新版). Beijing: Zhongguo Fazhi Chubanshe.

Scientific Research Publishing (SCIRP) is one of the largest Open Access journal publishers. It is currently publishing more than 200 open access, online, peer-reviewed journals covering a wide range of academic disciplines. SCIRP serves the worldwide academic communities and contributes to the progress and application of science with its publication.

Other selected journals from SCIRP are listed as below. Submit your manuscript to us via either [submit@scirp.org](mailto:submit@scirp.org) or **Online Submission Portal**.

