(2024) 34(2) JUUM 177 – 189
https://doi.org/10.17576/juum-2024-3402-12

THE PERFECTION OF THE CHINESE-STYLE SYSTEM OF THE RIGHT TO SILENCE

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ABSTRACT

For nearly half a century, China's criminal procedure law has been developing in the direction of human rights protection, but it still has not established a perfect human rights judicial protection system. On the occasion of the fourth revision of the Criminal Procedure Law, it is proposed to establish a human rights protection system with the right to silence as the focus. The reason for this is that the premise of the right to silence is the principle of presumption of innocence, the right to silence is expressed the privilege against self-incrimination in the law of criminal procedure, the right to silence requires the cooperation of the right to defend by a lawyer, and the legal consequence of violating the right to silence is to exclude illegal access to evidence, and these systems in China's Criminal Procedure Law are not perfect. Therefore, the construction of a Chinese-style right to silence is conducive to improving the human rights protection system in China's Criminal Procedure Law. The Chinese-style right to silence system should add the principle of presumption of innocence, abolish the existing "truthful answers", improve the right of lawyers to defend, introduce the right of lawyers to be present, and improve the rules for the exclusion of illegal evidence. It is necessary to use comparative methods to introduce mature experience from other countries to eliminate contradictions in the criminal justice system, and to find and improve the deficiencies in judicial practice, so as to achieve the goal of protecting human rights.

Keywords: China-style; right to silence; protecting human rights; system; perfection

INTRODUCTION

After the founding of the People's Republic of China, the "Six Laws Encyclopedia" during the Kuomintang government was abolished and a new legal system of criminal procedure was established. After the Criminal Procedure Law of the People's Republic of China was enacted in 1979, it was amended for the first time in 1996, the second time in 2012, and the third time in 2018. Although the Law of Criminal Procedure has undergone three revisions, the overall structure of the Law of Criminal Procedure remains the framework established by the 1979 Law of Criminal Procedure. On September 7, 2023, the Standing Committee of the National People's Congress (NPC) announced the legislative plan for the 14th NPC term of office, of which the first category of items is "draft laws that are relatively mature and to be submitted for deliberation during the term of office", with the Criminal Procedure Law among them. In other words, the fourth revision of the Criminal Procedure Law of the People's Republic of China is about to start. Issues such as the presumption of innocence for the protection of human rights, the prohibition of forced self-incrimination, the right to silence, and the right to a lawyer have attracted the attention of scholars. The right to silence is at the heart of the issue.

THE RIGHT TO SILENCE IN THE UK

The silence principle is sometimes defined as a right or a rule. The basic meaning of silence is: criminal suspects or defendants may remain silent or refuse to answer questions from relevant officials in accordance with the law, and will not be held accountable for this;

[Received: 30 June 2024; Accepted: 3 September 2024; Published: 14 November 2024]

The relevant officials are obliged to inform the criminal suspect or defendant of this right before asking questions. The right to silence is based on a liberal philosophy that asserts the supremacy of the individual vis-à-vis the state, and that the state must not interfere with or derogate from the fundamental rights of the individual on utilitarian grounds.

The origin of the right to silence is England, and in the Middle Ages, in the criminal proceedings of the ecclesiastical courts, the Constellation courts, and the Inquisition, the defendant was subjected to torture or punishment if he refused to answer. This procedure aroused strong opposition from the people, and the idea arose that it was illegal to force citizens to be questioned, and it was also illegal to force citizens to reply. The history of the development of the right to silence in England can be divided into two phases, the first of which was from the 12th to the 16th centuries, when the right to silence arose in the struggle against the use of forced oath procedures by ecclesiastical courts as a tool to obtain evidence of self-incrimination. The second phase began in the 16th century, when defendants began to assert the right to silence in the ordinary courts against the inquisitive questions of the judges. William Tyndale declared in his book that anyone could refuse to take an oath to answer any question from a judge, the right to silence. In 1641, the Parliament issued a decree establishing "Privilege Against Compulsory Self-incrimination." This system is the prototype of the modern right to silence in the face of an unfair trial. In 1688, England introduced a rule for informing the right to silence.

THE RIGHT TO SILENCE IN THE UNITED STATES

North American immigrants had a tradition of opposing feudal kingship and a strong sense of personal protection, so the Americans, after freeing themselves from the rule of the British king, established a series of principles for protecting the rights of individual citizens in the form of constitutional amendments. The amendment to the Constitution was called the Bill of Rights, and the Fifth Amendment of it stated: "No person……shall be compelled in any criminal case to be a witness against himself."

The "Fourteenth Amendment" to the U.S. Constitution, ratified in 1868, further states: Law enforcement officials are prohibited from "depriving any person of his life, liberty, or property without due process of law." According to the court's interpretation, forcing criminal suspects and defendants to "incriminate themselves" is a violation of "due process". As a result, "voluntariness" has become the basic criterion for the US judicial authorities to judge whether the defendant's confession can be admissible as evidence, and the suspect naturally enjoys the right to remain silent when interrogated by investigators.

Prior to 1966, officers could bring pressure to bear on a person in custody to tell police the facts in criminal cases, and arrestees often confessed due to overwhelming mental, and sometimes physical, pressure.

The U.S. Supreme Court's decision in the Miranda case in 1966 was a landmark in the history of U.S. law. It was the culmination of a due process revolution by liberal justices led by Earl Warren to expand the rights of those prosecuted. The landmark significance of Miranda's judgment is not only that it grants suspects who are interrogated in custody two vital procedural rights -- the right to silence and the right to counsel – on basis of the Fifth Amendment's privilege of not compelling self-incrimination, but also establishes a series of human rights protection rules that regulate police interrogation in custody, such as the right to be informed, the right to be waived and the confession exclusion is excluded. However, the Miranda verdict "must be the most critically criticized, controversial, and

[Received: 30 June 2024; Accepted: 3 September 2024; Published: 14 November 2024]

multifaceted criminal procedural verdict ever handed down by the Warren courts."

The defendant's constitutional rights have been violated if his conviction is based, in whole or in part, on an involuntary confession, regardless of its truth or falsity. Miranda v. Arizona is the most well-known criminal justice decision - arguably the most well-known legal decision - in American history. As in many TV dramas in the United States, before a police officer interrogates a suspect, make it clear that the suspect has the right to remain silent. "Miranda has become embedded in routine police practice to the point where the warnings have become part of our national culture."

In the history of American constitutional government, the Miranda Rule is a "pioneering" creation of the Supreme Court, which provides a procedural guarantee for the legal right of the person being prosecuted in a criminal case, and becomes a concrete measure to implement the rights of the Fifth Amendment. The mainstream voices in American academic circles tend to believe that the Miranda judgment, as a model of the Warren court's judicial activism, is nothing more than an "imperfect rule" in an imperfect world, and since its scope of application can be readjusted and limited through precedents, there is no need for later courts to overturn the Miranda judgment.

THE RIGHT TO SILENCE IN OTHER COUNTRIES

France's system of the right to silence. As a major country on the European continent, France's legal system had a great influence on Europe at that time. The 1789 Declaration of the Rights of Man laid down the "principle of presumption of innocence" and the "principle of procedural legality", and under the influence of the idea of protecting the rights of the persons being prosecuted in criminal cases, a series of legal provisions were promulgated, abolishing the oath system before interrogation, and formulating some procedural rules, which laid the foundation for the establishment of the right to silence. In the 1993 revision of the Code of Criminal Procedure, article 116 stipulates that "the examining magistrate shall inform the person under examination that he shall not be questioned without his consent." "This law shows that no one is obliged to prove his guilt or to provide evidence against him."

Germany's right to silence system. The German Code of Criminal Procedure of 1877 stipulated that the judge could hear the defendant on the facts prosecuted by the prosecuting authority, and that the respondent has opportunity to make a favorable statement to him during the trial. This provision does not explicitly stipulate the content of the right to silence, but it can be interpreted from the legal provisions that the defendant has the right to silence. The Criminal Procedure Law prohibits the use of any means to compel criminal suspects and defendants to decide and affirm their freedom of will, and confessions obtained in violation of this provision may not be used as evidence. This laid the foundation for Germany's right to silence.

Japan's Criminal Procedure Code gives criminal suspects the right to remain silent. Article 198 of the Code of Criminal Procedure stipulates that "a public prosecutor, prosecutor or member of the judicial police may request the presence of the suspect for the investigation of a crime when it is necessary for the investigation of a crime". However, except on occasions of arrest or detention, suspects may refuse to appear at the scene or withdraw at any time after they have arrived. "When conducting the investigation in the preceding paragraph, the suspect shall be informed in advance of the intention that there is no need to make a confession against his own will." Since the Meiji Restoration, Japan law has gradually shaken off the influence of the ancient Chinese legal system and began to study the laws of France and Germany, and from

[Received: 30 June 2024; Accepted: 3 September 2024; Published: 14 November 2024]

World War II, Japan law has been heavily influenced by United States law. In Japan's Criminal Procedure Law, the provisions on the right to silence also reflect the dual characteristics of civil law and common law systems.

The right to silence has been recognized in many United Nations documents as the United Nations continues to establish and promote the internationalization of criminal justice, particularly in the field of criminal justice, minimum human rights guarantee. Article 14, paragraph 3, of the Convention, adopted by the 21st session of the United Nations General Assembly in 1966, states: "No one shall be compelled to testify against himself or to confess a crime. This includes the implied right to silence. There are two levels: First, they must not be tortured to extract confessions, and second, they must not be forced to confess truthfully. The former is the minimum standard and the latter is a further requirement. States generally consider the right to silence to be included in the scope of the United Nations Convention's provision for "non-compelled self-incrimination".

COMPARISON OF THE RIGHT TO SILENCE BETWEEN THE TWO LEGAL SYSTEMS

The common law system focuses on the protection of human rights, and the civil law system focuses on fighting crime. Common law countries provide for the right to silence in constitutional laws and criminal procedure laws, such as Article 5 of the Amendment to the U.S. Constitution. There are also cases in which the right to silence is restricted. Civil law systems usually regulate the right to silence directly in criminal procedure codes, such as the German and French codes of criminal procedure. The subject of the right to silence in the common law system includes criminal suspects and defendants, and witnesses and persons with knowledge of the case also have the right to silence. The subject of the right to silence in civil law countries is limited to criminal suspects and defendants. In the common law system, criminal suspects and defendants are converted into witnesses after waiving the right to silence, and the law requires them to have the obligation to answer truthfully, otherwise they will bear the corresponding criminal responsibility, and the defendants in the civil law system will not bear adverse consequences if they make false confessions after they have waived their right to silence.

In the aftermath of Miranda's ruling, some textualist and originalist scholars criticized the Warren court's constitutional interpretation for "going too far." The reaction in the political arena was even more violent, with President Nixon criticizing Supreme Court justices for being soft and benevolent to criminal behavior. In the later years of the Berg Court and the Renquist Court, the Miranda Rules were limited and amended by congressional legislation and Supreme Court precedents, and the speed of the revolution in criminal procedure was reduced, but the Miranda Rules were not overturned, but survived and became the basic norm for police interrogation and law enforcement.

DISCUSSION ON THE RIGHT TO SILENCE IN CHINA

Since 20 years ago, the media has revealed a series of shocking criminal injustices. Li Jiuming of Hebei Province was sentenced to a suspended death sentence by the Tangshan Intermediate People's Court on suspicion of intentional homicide, and two years later, the real murderer Cai Mingxin was arrested in Wenzhou. Nie Shubin of Hebei Province was sentenced to death by the Shijiazhuang Intermediate People's Court on suspicion of rape and murder and handed over for execution, and 10 years later, Wang Shujin, a suspect in another case, confessed that the victim in the case was actually killed by him. She Xianglin of Hubei Province was sentenced to 15 years in prison by the Jingshan County People's Court for

[Received: 30 June 2024; Accepted: 3 September 2024; Published: 14 November 2024]

intentional homicide because of his wife's disappearance, and after serving 11 years in prison, his wife returned to his hometown from Shandong.

In all of the above-mentioned unjust cases, the phenomenon of extorting confessions by torture existed without exception. None of them were corrected by the judicial system on its own initiative. All cases were corrected by extremely fortuitous factors. Some were corrected because of the appearance of the real murderer, and some were corrected because of the "resurrection" of the victim in an intentional homicide case. This shows that the criminal justice system has a low capacity to correct errors. People are reflecting on how to curb the occurrence of torture to extract confessions, reduce unjust, false and wrongly decided cases, and protect human rights. The right to silence has attracted the attention of scholars.

DOES CHINA'S CRIMINAL PROCEDURE LAW HAVE THE RIGHT TO SILENCE?

China's Criminal Procedure Law was amended in 2012 to include provisions prohibiting forced self-incrimination.

One view is that there is no difference between the right to silence and the right not to be compelled to incriminate oneself. For example, some scholars have argued that "in English evidence law, the right to silence is also known as the privilege against self-incrimination." From this point of view, the two are the same, just different names. Some scholars say: "In evidentiary theory, the right to silence is closely linked to evidence against self-incrimination, so the right to silence is also called the privilege against self-incrimination."

There was also a view that the right to silence and the opposition to forced self-incrimination were two different concepts and could not be conflated. For example, some scholars believe that the right to refuse to compel self-incrimination and the right to silence are two different rights, "the former is one of the contents of the presumption of innocence, and the latter is a prominent and complementary content of the former."

Throughout the history of litigation in the world, the right to silence comes first without being forced to incriminate oneself. In some countries, the principle of non-coercion of self-incrimination is enshrined in the criminal procedure laws of some countries, as well as the principle of the right to silence. This is the case, for example, in the German Code of Criminal Procedure and in the Japanese Code of Criminal Procedure. In the United States, the Fifth Amendment to the Constitution of 1789 states: "No self-incrimination shall be compelled in any criminal case." However, the constitution does not provide for the right to silence. The U.S. Supreme Court clearly defined the right to silence of criminal suspects in the Miranda case. Section 58(b) of the United States Federal Rules of Criminal Evidence provides that: "The accused has the right to remain silent. The prohibition of forced self-incrimination and the right to silence overlap in content and are different in form. It can therefore be concluded that self-incrimination must not be compelled to contain elements of the right to silence. From the general rule of legal sources, all international treaties to which China is a party are part of our law. So far, when we signed international treaties dealing with human rights, we have never declared reservations to the provisions on the right to silence. This shows that the right to silence does not conflict with the laws and policies of criminal procedure in China. For China's Criminal Procedure Law, there is a content on the right to silence, but due to the "obligation to confess truthfully" and "leniency in confession", China's right to silence is not perfect.

[Received: 30 June 2024; Accepted: 3 September 2024; Published: 14 November 2024]

DOES CHINA NEED TO SET UP A RIGHT TO SILENCE?

The right to silence is conducive to the administration of justice. Judicial justice includes substantive justice and procedural justice. Procedural justice can also be referred to as formal justice, which is different from substantive justice in that it mainly refers to the rules of conduct that should be followed to achieve a certain judicial goal. As a fundamental value pursued by the criminal procedure system, the judicial process must be conducted in accordance with orders and steps to ensure the uniformity, legitimacy and reasonableness of the procedure. Its main purpose is to prevent the abuse of judicial power and then to protect the personal and personal rights of citizens involved in the proceedings. Procedural justice guarantees human dignity.

The right to silence is a defensive measure that reduces the incidence of torture, which, as mentioned above, is the leading cause of unjust convictions. In many countries, the right to silence has been gradually established, and the use of torture to extract confessions is expressly prohibited by law, and confessions and evidence obtained in this way are excluded. When the right to silence becomes a legal right, criminal suspects have the right to remain silent when coercive measures are taken, and interrogators will not use torture to extract confessions. Thus, the right to silence can be a powerful way to prevent torture from extracting confessions.

The United Nations International Covenant on Civil and Political Rights and "the Beijing Rules" both stipulate the right to silence, and China, as a signatory to the international conventions, should undertake international obligations. Although these conventions are not our domestic laws, they are part of our legal sources and have the same legal effect as domestic laws. Moreover, China's Hong Kong, Macao and Taiwan regions have also established a system of the right to silence. Since we recognize and support the existence of the right to silence in international judicial practice, the right to silence system should not be denied in the national criminal justice system.

THE PERFECTION OF THE CHINESE-STYLE RIGHT TO SILENCE

The system of the right to silence is a system based on the concept of human rights protection, the premise of the presumption of innocence, the support of non-forced self-incrimination, and the system of lawyers. China's criminal justice system is different from that of other countries, and the right to silence can only be improved on the basis of the existing system.

THE PRINCIPLE OF PRESUMPTION OF INNOCENCE IS CLEARLY STIPULATED

Presumption of innocence is an important criminal justice principle in a modern country governed by the rule of law, and is known as a crown jewel in the field of criminal rule of law. Although China's Criminal Procedure Law incorporates the basic spirit of the principle of presumption of innocence, it does not explicitly stipulate this principle.

The origin of the principle of presumption of innocence can be traced back to the two well-known principles of ancient Roman law: "in doubt, in favor of the accused" and "all claims are presumed to be unfounded until they are proven". Article 9 of the French Declaration of the Rights of Man of 1789 states: "No one shall be presumed innocent until convicted." In the United States, in 1895, the Federal Supreme Court clearly declared the principle of presumption of innocence in criminal justice through a case that reads: "The presumption of innocence is the conclusion made in favor of the citizen in accordance with the law at

[Received: 30 June 2024; Accepted: 3 September 2024; Published: 14 November 2024]

the time of a criminal trial if the defendant cannot be proven guilty."

After the Second World War, the presumption of innocence was enshrined in international human rights conventions and became an important international norm of criminal justice, under the impetus of the United Nations and its affiliated organizations. Article 11, paragraph 1, of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948, states: "Whoever is charged with a criminal case shall be presumed innocent until proven guilty in public in accordance with the law, and shall be given all the safeguards necessary for the exercise of the right to a defence at trial." Article 14, paragraph 2, of the United Nations International Covenant on Civil and Political Rights states: "Whoever is charged with a criminal offence shall have the right to be presumed innocent until proven guilty in accordance with the law."

The principle of presumption of innocence has not only been established in the United States, Britain, France, Canada and other developed countries under the rule of law in the West, but has also become an important constitutional principle in many countries and regions in Asia, Africa and Latin America. An examination of the constitutional provisions of various countries shows that the principle of presumption of innocence is mainly expressed in a way consistent with the United Nations Convention in the specific expression of the constitutional provisions of various countries, which clearly stipulates that any person shall have the right to be presumed innocent until proven guilty in accordance with the law. There are also individual countries that adopt a model that is different from that expressed in the United Nations Convention. Article 27, paragraph 2, of the Constitution of the Italian Republic states: "The accused shall not be presumed guilty until a final judgement has been rendered."

Although the two legal systems have different understandings of the connotation of the principle of presumption of innocence, they agree on one point, that is, the burden of proof for the determination of the crime lies with the prosecution on behalf of the State, which is the proper meaning of the principle of presumption of innocence. The prosecution can only rebut the presumption of innocence through credible and sufficient evidence, so as to achieve the goal of pursuing the crime. General Provision No. 32, adopted by the UN Human Rights Committee in 2007, states that "the presumption of innocence is an essential element of the protection of human rights, requiring the prosecution to provide evidence of the complaint, guaranteeing that guilt shall be presumed innocent until proven beyond all reasonable doubt, and ensuring that the principle of presumption of innocence applies to the accused."

There has been a lively debate in Chinese academics about whether the principle of presumption of innocence should be absorbed, and most scholars are positive about the principle of presumption of innocence. Finally, article 12 of the 1996 Code of Criminal Procedure stipulates: "No one shall be convicted without a judgment rendered by a people's court in accordance with law." But this is not the same principle as the presumption of innocence, which should be further established in criminal legislation and judicial practice, and the protection of human rights in criminal justice should be raised to a higher level.

THE PROHIBITION OF COMPELLED SELF-INCRIMINATION IS A SEPARATE BASIC PRINCIPLE

The principle of non-compelled self-incrimination is rich in content. It contains at least the following meanings. The person being prosecuted has the right to refuse to answer questions of incrimination, the right to a lawyer, the prosecuting organ must not use coercive interrogation rules for the

[Received: 30 June 2024; Accepted: 3 September 2024; Published: 14 November 2024]

exclusion of illegal evidence and refusal to make adverse inferences or evaluations. These contents have been concretized into all stages and levels of the entire criminal procedure investigation, prosecution, and trial, and their spirit has penetrated into the entire structure and system of the Criminal Procedure Law.

Whether it is the right of the prosecuted person to refuse to answer imputable questions, the right to obtain the help of a lawyer, the prohibition of forced interrogation by the prosecuting organ, or the rule of exclusion of illegal evidence and the refusal to make adverse inferences or evaluations of self-incrimination, these contents have been concretized into all stages and levels of the entire criminal procedure investigation, prosecution and trial, and its spirit has penetrated into the structural system of the entire Criminal Procedure Law.

China's 2012 Amendment to the Criminal Procedure Law stipulates that self-incrimination shall not be compelled in Article 50 of the Evidence, rather than in the first part of the "Tasks and Basic Principles". The non-compelling incrimination of oneself is a legal principle that is highly generalized and of general application and often oversees one or more sectoral laws and is not exclusive to the system within a particular legal system. Judging from the existing legislative texts in other countries and regions of the world, many stipulate that the prohibition of self-incrimination is a legal principle, and at the same time elevate it to a constitutional right of citizens. In summary, the provision on the prohibition of compelled self-incrimination should be established separately as a basic principle of the Criminal Procedure Law.

ABOLISH THE OBLIGATION TO ANSWER TRUTHFULLY

Article 93 of China's Criminal Procedure Law stipulates that "criminal suspects shall truthfully answer questions raised by investigators". In a fair procedure, the parties to the prosecution and defense should be equal of arms, which is an inherent requirement of equality between the parties to the confrontation. The person concerned should be armed himself, and he is not obliged to help his opponent obtain weapons against him. The essence of imposing an obligation to truthfully confess in law is to turn a person against himself, which is logically self-contradictory and morally stifling. A criminal suspect or defendant has the right to make statements in his or her favour or against himself on the facts of the case, provided that such statements are made of his or her genuine will and with awareness of the consequences of his actions, and the court may not base a verdict on statements made by them not voluntarily but under external pressure.

In the United States, in line with the right to silence rule, there is also the rule of exclusion of confessional evidence. According to the rules of criminal procedure in the United States, confessional evidence obtained by coercion cannot be used as the basis for a verdict in court, that is, the so-called exclusionary rule of confessional evidence. It is precisely because in China's criminal proceedings the obligation to truthfully confess is stipulated, and there is no real rule for the exclusion of evidence for confessions, torture to extract confessions as an inevitable result naturally arises.

When the State passes a law giving criminal suspects or defendants the right to silence, this not only provides them with an effective means of defense, but also protects the right to freedom of expression. The State is not only a prosecutor in litigation, but also a protector of the rights of citizens. Therefore, in order to give full play to the function of the right to silence, the requirement of "truthful confession" must be abolished.

[Received: 30 June 2024; Accepted: 3 September 2024; Published: 14 November 2024]

INCREASE THE RIGHT OF A LAWYER TO BE PRESENT DURING INTERROGATION

According to the experience of the United States, the right to silence includes the right of a lawyer to be present. Although China's Criminal Procedure Law has been amended three times, the rights of lawyers have been continuously enriched, developed, and improved. However, the right of the lawyer to be present is not specified. The lawyer's right to be present, as a subordinate concept of the right of defense and defense, runs through the entire process of investigation, prosecution and trial. The right of the lawyer to be present at the trial stage has been widely established and recognized in various countries, and it is mainly manifested in the participation of the defender in the trial process. However, the right of the lawyer to be present during the investigation stage has gone through a lengthy process of establishment.

The United Kingdom, as a traditional party-oriented country, the spirit of prosecution and defense confrontation is reflected in the regulation of every link of the litigation, which is a more typical type of active adversarial right, while most of the countries in continental Europe are still based on the position of prosecuting crimes, and do not give lawyers the right to interrupt questions at any time during the interrogation, which reflects the role of passive supervisors. Countries with a tradition of judicial review during the investigation phase, such as France and the Netherlands, usually have a relatively weak right to defence during the investigation phase.

For example, in most European countries, such as France and Austria, lawyers are only allowed to ask questions or submit observation reports after interrogation, and are not allowed to interrupt the interrogation activities of investigators during the interrogation. While the directive texts of the European Court of Human Rights and the European Union provide the basic legal framework for the adoption of positive protection models by allies, the function of defending the rights of criminal suspects must be carried out by defence lawyers in their day-to-day practice. The function of the negalistic right of presence is mainly to protect the suspect's basic procedural rights (including the right to silence) and to supervise the interrogation behavior of investigators.

In China, investigations are conducted independently by the investigating authorities and are not subject to judicial review. At the same time, it is not the integration of the procuratorial and investigative organs, and the degree of involvement of the procuratorial organs is very limited. This means that China's investigative power is operated in an almost closed mode. In the end, it led to a strong position of the investigative agency. The excessive concentration of investigative power has directly caused the dilemma of criminal suspects in the investigation stage. To this end, it is necessary to break the closed nature of investigative activities, introduce external supervision by lawyers, and standardize the methods and contents of police interrogations.

Where there are rights, there must be remedies. Remedies for lawyers' right to be present are mainly remedies that lawyers can claim for investigators' failure to perform their duty to inform and infringement of lawyers' right to be present. Strictly stipulate rules for confessions and the exclusion of illegal evidence, improve and refine sanctions for procedural violations, and strictly exclude confessions obtained by violating lawyers' right to be present, and must not be used as the basis for a verdict, so as to protect criminal suspects' bottom-line freedom to receive help from lawyers at the scene.

[Received: 30 June 2024; Accepted: 3 September 2024; Published: 14 November 2024]

LEGISLATIVE APPROACH RECOMMENDATIONS

Historically, since the founding of the People's Republic of China, China's economy has been developing rapidly, society is constantly changing, and a tradition of policy and law-based governance has been formed in the way the country is governed. The law is characterized by stability and rigidity, and the policy is characterized by flexibility and flexibility. Policies are more adaptable than laws. Since the 18th National Congress of the Communist Party of China, China has entered a new era of comprehensive rule of law with an increasingly mature way of governing the country and rapid economic and social development, which requires a relatively stable political and legal environment. As Aristotle said, the rule of law is, first of all, the rule of good law, and there must be good law, and secondly, good law must be strictly observed. Although China has established a complete legal system since the reform and opening up in 1978, most of these laws are relatively crude and lack the characteristics of finesse. Since the enactment of the Civil Code in 2018, China's legislation has entered the era of codification. It marks a new stage in the evolution of China's legislative ideal and legislative technology.

The Criminal Procedure Law is the basic law for the protection of human rights, and as a procedural law, it should be highly operable and avoid ambiguity and internal conflicts. China's current Criminal Procedure Law contains 308 articles, but the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security have formulated more than 1,000 judicial interpretations, and in some cases the judicial interpretations have changed the original meaning of the Criminal Procedure Law. Judging from the experience and lessons learned from the previous three revisions to the Criminal Procedure Law, minor revisions have not achieved the desired results. As a result, scholars have called for the development of a code of criminal procedure.

Since the enactment of the Criminal Procedure Law of the People's Republic of China in 1979, China has formed a legislative model that after the Criminal Procedure Law of the former Soviet Union. For a long time, investigation-centrism has prevailed, and the duties of the procuratorate and the courts are mainly to cooperate with the public security to accomplish common tasks. The power of investigation has not been restricted or constrained, and a series of unjust cases have been produced. In 2018, it was proposed to weaken the powers of investigative agencies by focusing on trials. However, in the past few years, the system of leniency for those who admit guilt and accept punishment has become popular, and the procuratorate has controlled the decision-making power of more than 90 percent of criminal cases, and the idea of centering on trial has once again been frustrated. For China, it is difficult to put the center of criminal proceedings on the trial stage. There are many reasons for this, but the main reason is that it is necessary to establish the concept of protecting human rights and to set up a judicial system to protect human rights, rather than just emphasizing the fight against crime. Through the enactment of a new Code of Criminal Procedure, a system of principles based on the protection of human rights has been formed, with the presumption of innocence, the non-compelling self-incrimination, the right to silence and the right to a defence as the pillars. Abolish the obligation of the prosecuted person to truthfully confess, and improve the Chinese-style system of the right to silence.

CONCLUSION

In order to protect human rights and prevent torture from extorting confessions, China should learn from the experience of other countries and establish the right to silence, which is also an obligation under

[Received: 30 June 2024; Accepted: 3 September 2024; Published: 14 November 2024]

international conventions. China's establishment of the right to silence should have its own characteristics, which should be matched with the existing criminal justice system to build a Chinese-style right to silence. No system is perfect, and the right to silence, as in other countries, needs to be constantly reformed and improved in judicial practice.

ACKNOWLEDGEMENT

This article is a paper presented at Bangi International Conference on Law and Society 2024 (Bangi-ICoLaS 2024).

CONFLICT OF INTEREST

The author has no conflicts of interest to declare in this paper.

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