

On Procedural Justice and Substantive Justice in Criminal Law

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Abstract: In recent years, with the promulgation of the Criminal Procedure Law Amendment in 2012, procedural justice has attracted more and more attention. Our country from the first criminal procedure law was born in 1979 to 2018, after a long period of forty years, although there are twists and turns, on the whole, it still shows the significant development and improvement of the rule of law in criminal procedure in our country. From the single purpose of "punishing crime" to the legislative purpose of "punishing crime and guaranteeing human rights", the issue of procedural justice in judicial practice has been paid attention to, and the principle of presumption of innocence has been deeply implemented in recent years. This article will discuss the development of criminal procedure law from the analysis of procedural justice and substantive justice.

1. Introduction

With the development of democracy and rule of law in our country, criminal procedure has been revised three times to emphasize the importance of procedural justice. This is a great progress of our criminal procedure law, and it also reflects that Chinese criminal justice system is closer to the international level and in line with the international level. This article analyses the relationship between procedural justice and substantive justice from the development of our criminal procedure law, and then considers the reasons why our criminal procedure attaches importance to procedural justice, puts forward existing problems, and puts forward suggestions, and finally draws a conclusion.

2. Historical Development of Criminal Procedure Law

2.1 The birth of the first Criminal Procedure Law in 1979

After the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China, with the acceleration of the construction of democracy and the rule of law, the task of formulating the Civil Procedure Law has also been put on the agenda. A law must be compatible with the social situation at that time. The Criminal Procedure Law of 1979 is adapted to the political, economic and cultural conditions that should be "put an end to chaos", and the society needs stability and unity. It is a milestone in the construction of democracy and the rule of law in our country. The specific content of the law does not need to be elaborated. It mainly shows that the first Criminal Procedure Law basically adopts the authoritarian litigation structure of the continental law system, absorbs the principles and systems of criminal procedure established in the early days of the founding of New China, and highlights the functions and powers of state organs. Under the historical conditions at that time, the law inevitably had some shortcomings, but it also laid a solid foundation for the further development of criminal procedure legislation.

2.2 The First Amendment of the Criminal Procedure Law in 1993

This revision mainly includes the following aspects: abolishing the system of exemption from prosecution to non-prosecution, establishing the principle of "no suspected crime", strengthening the

legal supervision power of the People's Procuratorate, lawyers' early participation in litigation, strengthening the protection of the right of defense of criminal suspects and defendants, perfecting compulsory measures and abolishing admission review, and adding summary trials in order to realize the diversion of cases. Procedures and methods of execution of the death penalty have also been reformed.

For this reform, whether it is the lawyer's intervention in the investigation stage or the adversarial trial mode, it can be fully responded to by practice. In the case of Du Peiwu, extorting confessions by torture and being forced to testify guilty all reflected the neglect of procedural justice and the human rights of the defendants at that time. The essential reason was that the purpose of formulating the criminal procedure law at that time was only a single punishment crime. This leads to the difficulty of effectively protecting the rights of the accused in criminal justice trials, the trampling of procedures and the difficulty of realizing substantive justice.

2.3 The Second Amendment of the Criminal Procedure Law in 2012

This revision of the Criminal Procedure Law is the need to further strengthen the punishment of crime and the protection of the people, to further strengthen and innovate social management, to further deepen the reform of the judicial system and working mechanism, and to promote the progress of democracy and the legal system in China. There are eight highlights in this revision: first, to incorporate "respect and guarantee human rights" into the law, which is in line with the mainstream value orientation of the society, and also highlights the progress of the cause of human rights protection in China; second, to improve the evidence system and establish the exclusion rules of illegal evidence; third, major measures of compulsory measures have made great adjustments to arrest, residential surveillance and bail pending trial; and fourth, to strengthen the protection of the right to defend. Fifth is to improve the investigation measures; sixth is to rebuild and improve the trial procedure; seventh is to build a special criminal procedure with Chinese characteristics; eighth is to improve the execution system. In the case of Nie Bin Drug Delivery in Fuzhou, nearly 10 years of trial time was finally released innocent because of insufficient evidence. This is the judicial practice of conscientiously implementing the legislative purpose of "punishing criminals and safeguarding human rights".

2.4 The Third Amendment of the Criminal Procedure Law in 2018

Since the Eighteenth National Congress of the Communist Party of China, great efforts have been made to comprehensively administer the country according to law and comprehensively deepen the reform of judicial system, especially in the reform of criminal prosecution. Among them, the most important reform measures are trial-centered, lenient confession of guilt and punishment, and quick criminal adjudication procedure. The three items are advancing at the same time, blending with each other and restricting each other to a certain extent. Although they have different standpoints, they all play an irreplaceable role.

3. The Reasons of Procedural Justice in Chinese Criminal Procedure

3.1 Reducing subjective arbitrariness

Whether it is the procuratorate, the court or the public security reconnaissance organ, the most basic component is the natural person, which leads to the human being unable to work mechanically without any personal subjective feelings like a machine. However, the work involving personal subjective feelings will inevitably be biased, which leads to the loss of fairness and does not conform to the substantive connotation of justice. By perfecting the criminal procedure and strictly following the procedure, the influence of judicial staff's subjective feelings on the case can be reduced to a certain extent, so as to achieve justice.

3.2 Guarantee the equality of both sides

With the procuratorates representing the state, which can use the state's finance and the state's compulsory force, the individual strength is undoubtedly inherently weak. The unequal status of rights between the two sides of the court will inevitably lead to the difficulty of finding out the facts of the case and guaranteeing the rights of citizens. In Chinese Criminal Procedure Law, measures such as strengthening the right of defense have strengthened the protection of lawyers for criminal suspects and defendants, perfecting the evidence system and investigative measures are restrictions on the power of investigative organs, effectively curbing illegal evidence-gathering activities such as extorting confessions by torture. These two protective and restrictive measures make both citizens and state organs relatively equal in the whole criminal investigation and trial procedures. Guaranteeing equality means guaranteeing fairness.

3.3 Independent Value of Procedural Justice

Compared with the hard-to-grasp justice, substantive justice, people make up for the deficiency of substantive law through visible justice, procedural justice. Moreover, through fair litigation procedures, to enhance the rational image of litigation is conducive to the dissemination of the concept of democracy, equality and the rule of law.[1]

3.4 Harmfulness of Injustice, Falsity and Mistake Cases Caused by Lack of Procedure

If the procedure is not rigorous enough, the wrongs and wrongs will bring serious harm. Firstly, for the parties concerned, it seriously infringes on the legal rights of the suspects and defendants and causes pain to their family members; secondly, it seriously affects the fairness and authority of the judiciary; lastly, it destroys people's belief in the law. [2]

Table 1 Investigation of the influence of wrongful or false cases on the parties (only life imprisonment)

	A term of imprisonment of less than one year	One to ten years' imprisonment	Fixed-term imprisonment of more than ten years
depressed	3	16	26
Low standard of living	65	77	87
Character change	54	69	53
Difficult to integrate into society	37	59	64
Great mental stress	15	34	54
Family disruption	2	14	22
Family members are left unattended	2	42	65

4. Problem

4.1 Social Public Opinion Affects Procedural Justice

With the development of Internet technology, people can quickly and conveniently understand the current hot cases. While the judicial openness and transparency, the network public opinion also brings a hard-to-ignore impact on the judiciary. The Internet conveys information to the public. People express their views on the internet, and even form a strong voice of some kind of judgment. Inevitably, judges will receive the influence of network public opinion and its oppression, and it is difficult to achieve independent trial, resulting in the lack of some procedural justice.

4.2 The Organizational System of Judicial Organs Affects Procedural Justice

According to the law of our country, the relationship between superiors and subordinates in the people's court system is the relationship of trial supervision in the judicial business, and the

relationship between leadership and being led in the administrative business. In theory, because people's courts at all levels have independent jurisdiction, in the trial of specific cases, the higher people's courts cannot issue orders or instructions to the lower people's courts. However, due to the subordinate relationship of administration, the court assessment system, and the trial system of our country, there are some suggestions in the process of retrial by the higher people's court of our country. This affects the right of independent trial of lower courts and does not conform to the principle of procedural justice.

5. Proposal

5.1 Adhering to the Equality of Procedure and Substantive Justice

Looking back on the process of rule of law in China, there is no real organic unity between procedural justice and substantive justice. In the previous criminal procedure law, results are often valued over means, but the lack of procedural justice is not true justice. Procedural justice and substantive justice are mutually reinforcing relations. Without procedural justice, substantive justice can be achieved. But this is the lack of normative substantive justice, but the harm of "substantive injustice" has a great impact on society. Similarly, procedural justice lacking substantive justice also lacks the core content of judicial results. So in the whole case, put the two in the same important position.[3]

5.2 Procedural Rule of Law Concurrently with the Public

Faced with the influence of Internet public opinion, for judicial workers, it is necessary to balance the relationship between legal norms and social work, which requires legal workers to have a solid legal foundation, extensive practical experience and flexible social adjustment ability. A good judge should integrate procedural justice and substantive justice into the public so that they can be recognized and approved by the public. This is also the excellent result that we are pursuing.

5.3 Pay more attention to the fairness and justice of individual cases

General Secretary Xi said that the localization and administration of justice not only have an impact on the functions of rights relief and restriction of public power within the judicial system, but also affect the realization of social fairness and justice. Therefore, we should adhere to the implementation of judicial independence, and the lower people's courts should have the ability to judge independently and strictly try cases. At the same time, we must firmly implement the judicial responsibility system, which is the necessary guarantee for the correctness of the people's judges in the trial of cases. While paying more attention to the fairness of individual cases, it naturally achieves the unity of procedural justice and substantive justice.

6. Conclusion

In recent years, Chinese Criminal Procedure Law has made great progress, while emphasizing procedural justice and substantive justice, which provides a theoretical basis for the handling of criminal cases in China. This is the conclusion drawn from historical experience and the trend of world development. We should adhere to the correct theory and viewpoint, and at the same time constantly revise the existing legal and practical issues, so that our criminal law can develop continuously on the basis of substantive justice and procedural justice.

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