

The Process of Revising “The Criminal Procedure Law of the People’s Republic of China” 1996

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The process of drafting reforms to the CPL

The Criminal Procedure Law of the PRC (“CPL”) was passed at the 2nd session of the 5th NPC in July 1979. It came into effect on 1 January 1980 and has been in operation for 16 years. Practice shows that it has been very useful in the accurate and timely investigation of the facts of criminal offences, in punishing crime, protecting the people, protecting the socialist legal system, protecting the personal, democratic and other rights of citizens and protecting socialist construction. This procedural legal code basically conforms with national spirit and is comparatively scientific. But this code was passed not long after the 3rd Plenum of the 11th Central Committee meeting. All aspects of work at that time had just commenced in implementing the change of policy, so it is unavoidable that this law is limited by historical considerations.

Even more important is that for the last 16 years with the continual deepening of reform, even wider opening up and the step by step development of the socialist market economy system, there have been large changes in the policy and economic situation in my country. Criminal activity displays new characteristics and trends and the judicial process has encountered many new situations and problems. These are all things which could not appropriately be dealt with under the old CPL and were difficult for the old CPL to address and resolve. That is also to say the needs of the current situation and the requirements of judicial practice have gradually put reforming and perfecting my country’s Criminal Procedure Law onto the agenda

Early in 1991 the Criminal Law Office of the Legal Work Committee of the NPC convened a meeting of professors at China University of Politics and Law in order to discuss issues of reform of the CPL. The academics attending this meeting unanimously agreed that reform of the CPL should take place as quickly as possible. In August 1991, the Procedure Law section of the China Law Society held its annual meeting held in Yinchuan, Ningxia province. One of the main topics of the meeting was “Reform and Perfection of the CPL”. Those attending the meeting diligently discussed the necessity for revising the CPL and put forward their ideas and strategies on how to reform the law. The Criminal Law Office of the Law Committee of the NPC published a book of collected specialist essays based on the papers given at this annual meeting entitled “Reform and Perfection of the CPL”. In 1992 and 1993 national procedure law conferences were held to continue discussing problems of reform and perfection of the CPL in Tai’an, Shandong province and Kunming, Yunnan province respectively.

At the same time as this, some NCP representatives submitted proposals at the NPC meeting that the CPL be reformed. The public security organs, people’s procuratorate and

people's courts each submitted suggestions about reform to the CPL. In autumn of 1993, a report of the China Law Society which contained the views of academics that the CPL should be reformed was included in the "Report of Important Matters" to central departments (party). We can see that leadership cadres supported suggestions that the CPL be reformed, as the deputy chairman of the Standing Committee of the NPC, comrade Wang Hanbin wrote supporting comments on the report.

The Legal Work Committee of the NPC entered amendment of the CPL onto the legislative plan of the 8th Standing Committee of the NPC. It conducted investigation and research of the practical situation and problems and also widely sought views concerning the CPL. All spheres of society were extremely concerned about this problem. The Ministry of Public Security, the Supreme People's Court, The Supreme People's Procuratorate and the Ministry of Justice as well as legal experts and scholars all actively made suggestions for amendment and formulated specific proposals for reform. A judge from Zhejiang Province drafted a complete proposal for reform of the CPL.

In October 1993, the Legal Work Committee of the NPC entrusted Professor Chen Guangzhong from China University of Politics and Law to organise a group of law professors, experts and scholars to conduct further research on revision of the CPL, to draft a specific proposal for reform and to provide this to legislative organs for reference. Professor Chen Guangzhong convened a small research group to revise the CPL. This group conducted investigation throughout China and also went overseas for study.

In July 1994 the group submitted a proposal to the Legal Work Committee of the NPC called "Criminal Procedure Law of the PRC: suggestions for revision". After thorough discussion of the suggestions made in this proposal, it was formally published by Fangzhen Press in July 1995 as a book entitled "Criminal Procedure Law of the PRC: suggestions for revision and discussions". It was hoped that this book would lead to broad ranging support for and discussion of revision of the CPL throughout society and speed up the reform and perfection of my country's criminal justice system. This book had a comparatively large influence in the process of revision of the CPL.

In June 1995 the Legal Work Committee of the NPC held a meeting on revision of the CPL. Representatives from practical departments such as the public security organs, the people's procuratorate, the people's courts and the justice department attended. Theoretical circles were represented by scholars and experts. There was deep analysis and vigorous discussion of 24 particular issues. Everyone expressed their own views. For some questions there was agreement and common understanding. The Legal Work Committee drafted a "Revision of the Criminal Procedure Law: Draft seeking comments" on the basis of the collective knowledge and discussions held at that meeting. This draft was sent to relevant departments at all levels throughout China to seek views.

In November 1995, the annual meeting of the Procedure Law section of the China Law Society held in Xiamen, Fujian province, devoted its whole meeting to discussing this draft. The Legal Work Committee of the NPC specifically sent representatives to attend this meeting to listen to the discussion. Many valuable ideas and suggestions were made.

In mid-November 1995 the Legal Work Committee held another meeting in Beijing to listen to the views about the draft of leadership cadres and experts of the Ministry of Public Security, the Supreme People's Procuratorate, the Supreme People's Court and the Ministry of Justice.

In December 1995, the 17th meeting of the Standing Committee of the NPC carried out preliminary examination and discussion of the "Amendment of the CPL of the PRC: Draft". It expressed in principle agreement with the draft and made further suggestions to perfect it.

In January 1996 the heads of committees of the Standing Committee of the NPC delegated Wang Hanbin, Ren Jianxin and Luo Gan to convene a meeting to obtain the views of the leadership cadres from the Political Committee of the Central Committee, Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of State Security, Ministry of Justice, NPC Law Committee, NPC Internal Work Committee, the NPC Legal Work Committee and the Legal System Department of the State Council on the views expressed by the Ministry of Public Security, Supreme People's Procuratorate, Supreme People's Court, Ministry of State Security, Ministry of Justice. They discussed the views one by one.

From 15 to 19 January, the Law Committee of the NPC, the Internal Judicial Work Committee of the NPC and the Legal Work Committee convened a meeting attended by representatives of people's congresses, public security organs, procuratorate, court, justice departments, State Security Bureau and other relevant departments together with some legal scholars and lawyers step by step to discuss, study and raise suggestions for revision article by article of the Revision Draft.

On the 8th and 9th of February 1996 the Law Committee of the NPC convened a meeting to carry out initial examination of the Revision Draft of the CPL. On the basis of suggestions made by the members of the Standing Committee and those from other quarters, the Legal Work Committee of the NPC made further revisions to the draft. After that it was submitted to the 18th Meeting of the 8th Standing Committee for a second examination which decided to submit the draft to the 4th meeting of the 8th National People's Congress Meeting for examination.

On the 5 March 1996 at the opening session of the 4th Meeting of the 8th NPC, examination of the Draft Amendment of the Criminal Procedure Law was made one of the important items on the agenda of the meeting. During examination of the draft, the delegates completely affirmed the Revision Draft and what's more suggested further amendments to it. After the final revisions were made, the draft was passed by a comparatively large majority of delegates on 17 March 1996. On the same day, the President of the PRC, Jiang Zeming promulgated Presidential Order #64: "Decision to Amend the "Criminal Procedure Law of the People's Republic of China" stating that the 4th Meeting of the 8th NPC had passed Amendment to the "Criminal Procedure Law of the People's Republic of China on 17 March 1996, and promulgated it to come into effect on 1 January 1997. On 24 March the national newspapers published the Presidential

Order and on 25 March they published the full text of the Amended Criminal Procedure Law. At this point the work of revising the criminal Procedure law was complete.

During the process of revision of the CPL there was development and differences in the way that many problems were understood. From the initial period of research and discussion of the draft amendment, to the time the draft became legislation, the views of the public security organs, the state security organs, the people's procuratorate the people's court and lawyers associations underwent changes. During the process of improving understanding, linking theory with practice and through discussion and study, consensus was gradually reached on many questions and many issues were clarified.

Some of the issues which were discussed a great deal were: the division of jurisdiction between the police, procuratorates and courts, the abolition of detention for investigation, reform of coercive measures, adjudication supervision by the people's procuratorate, the retention or abolition of the procuratorate power of conviction without punishment, the issue of representation and defence provided by lawyers, issues of protection of the rights of defendants and victims, reform of the system of trial, assimilation of principles and the open question of how to handle the presumption of innocence, adding a simplified procedure and enforcement of the death sentence.

In relation to the reform and perfection of these issues, the questions were divided into the following. Whether or not to revise the law? Should new experience from overseas systems be studied? How to use knowledge gained from study of overseas systems and make it useful to and adapt it to China's practical situation. In the process of revising the law and discussing these particular issues, the following principles were used as the basis for discussion.

1. That the reforms should suit the needs of development of the market economy.

The reform and perfection of the criminal procedure system must be appropriate to the development of the market economy. It must incorporate market economy principles of openness, competition on the basis of equality, *quanli benwei* (rights-orientation)¹ rights as the standard, and principles of objectivity and justice. The revisions to criminal procedure must implement and give expression to these principles. The amended CPL revised those areas where there was previously inadequate protection of the rights of the parties, lack of openness in criminal procedure, very limited capacity to defend oneself, as well as where there was a lack in impartiality in the process.

2. The principle of combining overseas experience with China's practical situation.

During the process of revising the CPL, the legislators gave comparatively full consideration to the two or three hundred years of valuable experience of the two main legal families of the world. We did our best to take into account of and bring our

¹ As opposed to the idea of *yiwu benwei* (obligation orientation)

country's views into line with, the fruits of common experience and litigation culture, as well as a number of international standards. For example, in order to protect the litigation rights of defendants, we permitted lawyers to act for the defendant at a much earlier the stage of the litigation process (during detention by the public security organs). In publicly prosecuted cases, we increased the rights of victims to obtain legal representation and legal advice. Other examples are to transplant the western presumption of innocence and the adversarial system into trial procedure.

3. Principle of making of criminal procedure appropriate to meet the needs of the fight against criminal activity.

The Criminal Procedure Law is designed to safeguard the implementation of the Criminal Law. The two must work in concert and harmony. Now, in China, criminal activity has new features and characteristics. For example, criminal activity has the following characteristics: large number of criminals moving quickly between city and country, and an increase in major cases and high levels of corruption amongst state officials. In the amendments to the Criminal Procedure Law, we have made some steps in perfecting the mechanisms for pursuit and punishment of crime. We adjusted the jurisdiction for investigating cases to make it more convenient to effectively safeguard state security and protect the security of the public.

4. Principle of promoting democracy and the development of the legal system.

Throughout the revisions of the Criminal Procedure Law, we implemented the principle of socialist democracy and legality by increasing the level of protection of human rights during litigation, by strictness of procedures, the principle of openness, democracy, adversariality and of transparency. For example, the reform of the procedure for examination of evidence and adjudication by the court has been reformed from the previous harmful method of doing things which was easy to be labelled "make a determination first, try the matter second" or "adjudicate first try the matter second". The sole power to make a determination of guilt by the people's court has assimilated the presumption of innocence. In the conduct of the trial, the legislation applies the principle that until there is sufficient evidence to positively prove the guilt of the accused, then the crime will be treated as if it hasn't been shown.

The reform and amendment of the CPL reflects development of principles of Chinese socialist democracy and socialist legality.