

Research article

УДК: 343

DOI:10.17323/2072-8166.2024.1.246.263

Influence of the Soviet (Russian) Law on the Chinese Criminal Procedure Laws



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Abstract

The first Criminal Procedure Law (CPL) of China issued in 1979 was greatly influenced by the Soviet Criminal Procedure Law in multiple dimensions including the framework, concepts, principles, and specific institutions. Although the Chinese CPL has changed a lot after three amendments in 1996, 2012 and 2018 respectively, the influence of the Soviet Law can still be noticed in many aspects of the current law. The paper explores how the Soviet Law has shaped Chinese Criminal Procedure Law into the way it is. Part I explores the historical development of Chinese CPL, indicating the close relationship between the Chinese Law and the Soviet Law. Part II compares Chinese CPLs with the Soviet (and its successor Russia) CPLs, trying to identify their similarities and differences. In the Part III the author draws tentative conclusions from the comparison and predicts the continuing influence of the Russian law model on Chinese CPLs in the future. The paper primarily relies on comparative study and historical analysis. The legal framework, legal terms, theories, principles, and specific institutions will be examined to illustrate the great influence of the Soviet Law on Chinese Criminal Procedure Law. The study will help to better understand the evolution of Chinese criminal procedure law and to predict more accurately its further development.



Keywords

Criminal Procedure Law; Soviet Law Model; Chinese Law; Socialist Legal System; Amendment; Influence.

For citation: Guo Zh. (2024) Influence of the Soviet (Russian) Law on the Chinese Criminal Procedure Laws. *Pravo. Zhurnal Vysshey shkoly ekonomiki*=Law. Journal of the Higher School of Economics, vol. 17, no. 1, pp. 246–263 (in English). DOI: 10.17323/2072-8166.2024.1.246.263

Introduction

Over the past century, the evolution of China's criminal justice system was always accompanied with societal reforms, ideological impact, and other changes. Influenced by various factors such as political regimes, cultural traditions, and social value, the criminal justice system of contemporary China embodies typical Chinese and socialist characteristics. Under the guidance of democratic principle, the Criminal Procedure Laws (CPLs) of contemporary China focus on the true practical issues and respond to the genuine needs of the public. Centered around the Criminal Procedure Code, China possesses a comprehensive and high-quality criminal justice system to regulate criminal proceedings. This system includes *The Organization Law of the People's Courts*, *The Organization Law of the People's Procuratorates*, *The Law on Judges*, *The Law on Procurators*, *The Law on Lawyers*, *The Supervision Law of the People's Republic of China*, and more. Before attaining its current accomplishments, China underwent several rounds of explorations and institutional experiments from the early 20th century. Numerous scholars have contributed their intellectual power and research outcomes to the resulting criminal procedure law reforms. Before delving into the specific shaping influence of the Soviet law model on Chinese criminal procedure law, it's crucial to gain insight into the historical processes of China's criminal justice system.

The legal system in ancient China did not differentiate civil matters from criminal ones, and often combined substantive and procedural norms, with a greater emphasis on substantive norms [Li S., Bian J., 2010: 54–55]. In 653 A.D., the Tang Dynasty enacted a comprehensive legislation, known as *The Tang Code* (唐律疏议, Tang Lü Shu Yi), which consists of 12 sections. Among these, the sections titled “Arrest and Flight” (捕亡律, Bu Wang Lü) and “Judgement and Prison” (断狱律, Duan Yu Lü) contained provisions relating to the procedural matters.¹ The former governed the pursuit and capture of fugitives, while the latter addressed trial procedures, execution, and prison management [Johnson W., 1972: 42]. It is noteworthy that the main purpose behind these two sections was to ensure the orderly execution of punishments, rather than to protect the rights of individuals accused of crimes. Strictly speaking, feudal-era China did not embrace the modern criminal procedural law that prioritizes the values of liberty and rationality.

In 1902, during the late Qing Dynasty, under the guidance of Shen Jiaben, Minister of legal affairs, China initiated a journey of legal reform.² During this

¹ *The Tang Code* is the earliest and most complete ancient legal code that currently exists in China. It has had a far-reaching impact on the development of China's legal system and is regarded as one of the representative works of ancient Chinese law. The legal codes that followed in the post-Tang Dynasty period largely continued the content and structure of *The Tang Code*.

² In 1840, the commencement of the First Opium War between China and Britain marked the beginning of China's transformation into a semi-colonial and semi-feudal

period, they translated several criminal procedure codes from various countries, including Japanese Criminal Procedure Law, the United States' Criminal Procedure Law, the Prussian judicial system, and the French Criminal Procedure Law, etc. [Zhang Z., 2019: 475]. These translations provided the groundwork for the eventual establishment of China's initial procedural code, *Criminal and Civil Procedure Law* and the completion of *the 1911 Draft of Criminal Procedure Law* [Chen R., 1997: 3]. Although *The 1911 Draft of Criminal Procedure Law* was not put into practice due to the swift decline of the Qing Dynasty, it was referenced by the subsequent government of the Republic of China (ROC government). It is safe to say that *the 1911 Draft of Criminal Procedure Law* initiated the modernization process of Chinese criminal procedure law. Following the transition from the old regime to the new one, i.e., the ROC government was overthrown by the Communist Party, the People's Republic of China was founded. In February 1949, the Central Committee of the Chinese Communist Party issued legal document to invalidate the six codes previously utilized by the ROC government. Starting from the 1950s, China's criminal procedure law underwent a significant transformation period, as the country began learning from the Soviet law model comprehensively.

Thus, the following sections of the article will delve into a detailed analysis of how the Soviet legal model shaped Chinese CPLs specifically. The third part will encompass a comparative analysis between Soviet or Russian CPLs and the three amendments to Chinese CPLs, it will further scrutinize the current Chinese CPLs in comparison to Russian counterparts, with the aim of pinpointing both commonalities and disparities. The concluding section, leveraging the insights from our prior analysis, will draw trend-based conclusions and endeavor to forecast the influence of the Russian legal model on the future trajectory of Chinese CPLs.

1. The Molding Role of Soviet Legal System on Chinese CPLs

In the 1950s, Soviet law has began exerting a substantial influence on China. For the newly established socialist China, the Soviet Union served as a valuable guiding example. This is not only because the two countries both pursued a socialist path, but also because the Soviet Union was one of the

society. Subsequently, the Second Opium War, the Sino-Japanese War, and the Siege of the International Settlements had followed. After China's defeats in these conflicts, a series of unequal treaties were imposed, compelling the Qing government to embark on a path of reform and strengthening. Shen Jiaben believed, that foreign strengths resided in their political and legal systems, therefore advocated learning from advanced Western political and legal systems to compensate China's shortcomings.

few countries being friendly to China at that time. Due to the dominance of capitalist nations in global discourse, China confronted significant challenges and lacked international recognition. Domestically, China was amid post-war recovery, and there was a pressing need to establish a socialist legal system. China's situation at that time was very similar to that of the Soviet Union when it was first established. Liu Shaoqi, the Chairman of the Standing Committee of the National People's Congress, emphasized in his report on the 1954 Constitution Draft that "the path we have taken is the path Soviet Union has taken" [Liu S., 1954].

In 1954, China enacted its first Constitution, and enacted *The Organization Law of the People's Courts* and *The Organization Law of the People's Procuratorates* in the same year. These three legal documents were formulated with a strong reference to the Soviet legal system. They stipulated some basic principles and institutions of criminal proceedings. For example, they outlined distinct roles for the People's Courts, People's Procuratorates, and public security organs in the exercise of adjudication, prosecution, and investigation powers. They emphasized that the people's courts shall adjudicate cases independently and are subject only to the law; all citizens are treated equally in the application of the law; trials should be open to the public; the accused has the right for defense; and citizens of all ethnicities have the right to use their own languages and scripts in legal proceedings. Furthermore, these three legal documents encompassed guidelines for processes such as people's assessor, collegial bench, final judgment after two trials, as well as arrest and detention [Chen G. et al., 2021: 66].

At the meantime, Chinese scholars specializing in criminal procedural law traveled to the Soviet Union to study legal theory, translating Soviet criminal procedural laws, academic articles, and textbooks into Chinese. Renown Soviet legal professors were also dispatched to China to teach legal courses [Chen G. et al., 1999: 5]. Under the extensive influence of Soviet law, China formulated *the 1957 Draft of Criminal Procedure Law* and *the 1963 Draft of Criminal Procedure Law*. Both of those two drafts largely preserved the fundamental structure and principles of Soviet criminal procedural law. Unfortunately, due to historical reasons, the two drafts were not officially promulgated.³ Subsequently, the Legislative Affairs Commission of the National People's Congress Standing Committee revisited *the 1963 Draft of Criminal Procedure Law* and formulated *the 1979 Chinese Criminal Procedure Law* on the basis of it. The first Chinese CPL was passed on July 1, 1979, and took effect on January 1,

³ During years from 1966 to 1976, the Great Proletarian Cultural Revolution erupted. Throughout this time, judicial activities in China came to a complete standstill, resulting in extensive damage to the judicial system and culture. Legislative processes of criminal procedure law were entirely suspended.

1980 [Song Y., 2014: 1–2]. *The 1979 Chinese Criminal Procedure Law* incorporated a significant portion of the Soviet legal system and shared an inseparable connection with Soviet criminal procedural law. The following sections will use the Soviet criminal procedural law and *the 1979 Chinese Criminal Procedure Law* as a basis for textual analysis to explore how the Soviet legal model profoundly and comprehensively shaped China's criminal procedural law.

During the first three decades after its founding, China learned extensively from the Soviet Union in various aspects, such as theories, principles, and institutions, prior to enacting its formal Criminal Procedure Law. The embryonic form of China's criminal justice system had already taken shape during this period, bearing a distinct imprint of the Soviet Union. Although China has made three revisions to the Criminal Procedure Law since the 1979 CPL was enacted, the initial Soviet legal heritage has persisted within the Chinese criminal procedural legal system, profoundly influencing contemporary practices in Chinese criminal procedure.

1.1 Criminal Procedure Theories

In the 1950s a work *Soviet Criminal Procedure* translated from the Russian by the Criminal Law Research Office of Renmin University of China had a significant impact on the academic field of Chinese criminal procedural law. The book contained a discussion on Soviet criminal procedural theory that stated: "The worldview of the Communist Party has a decisive significance for the development of the entire ideological system and culture of Soviet society. This worldview should be the foundation for all research departments." According to the viewpoints presented in the book, the concept of a classless and non-partisan science is nonexistent and has never existed. Soviet criminal procedural science is characterized as a science with a party character. This science is rooted in communist principles, as well as the theories of Lenin and Stalin regarding the dictatorship of the proletariat, the functions of the Soviet state, and its tasks during that period [Cheltsov M.A., 1955: 40-42]. Furthermore, Soviet criminal procedural science, along with any kinds of science of law, is considered part of the superstructure upon the socialist foundation. Based on this perspective, Soviet criminal procedural law stipulates that its fundamental task is to ensure fair trials in criminal cases, and to protect the socialist state, the citizens' rights and safety, maintain socialist legal order, and prevent conspiracies that threaten social stability. Additionally, it is expected that criminal judgments will have an educational impact on the whole society [Durmanov H.D., 1951: 7]. In accordance with the socialist nature of the Soviet Union, the essence of criminal procedural law is also with a class character. The formulation of Soviet criminal procedural law serves the realization of the state's will and the promotion of social stability and unity.

Soviet criminal procedural theories had a substantial influence on *the 1979 Chinese Criminal Procedure Law*. Under the 1979 CPL, the guiding ideology for the formulation of China's Criminal Procedure Law is based on Marxism-Leninism, Mao Zedong Thought, the Constitution, and the practical experiences of implementing the people's democratic dictatorship led by the proletariat.⁴ The purposes of the Chinese CPL include ensuring accurate and timely determination of criminal facts and the correct application of the law to punish criminals and protect the innocent from criminal prosecution. These objectives are conducive to upholding the socialist legal system, protecting the personal and democratic rights of citizens, and ensuring the smooth progress of the socialist revolution and construction.⁵ Although the textual expressions may differ, the essence of both the Chinese and Soviet CPLs is to protect proletarian dictatorship, maintain social order, and uphold the socialist system through crime control. Their commonality is to regard criminals who disrupt social stability and system as underminers, so it's justifiable to impose sanctions on them through crime control measures. It explains the potential risk of neglecting human rights protections in some of the criminal procedural institutions in both China and the Soviet Union. They tend to prioritize crime control to achieve the goal of criminal proceedings, often making the protection of citizens' rights a secondary consideration during the prosecution of crimes.

1.2. Criminal Procedure Principles

In a valuable Chinese translation of a lecture manuscript, delivered by the Soviet criminal procedural law scholar B.E. Chugunov to the faculty and students at China University of Political Science and Law (CUPL) in 1957,⁶ was analysis of the following principles of Soviet criminal procedure:

1. Adherence to socialist legality.
2. Participation of people's assessors in all trials.
3. Selection of judges.
4. Citizens of all ethnicities have the right to use their own languages and scripts in legal proceedings.
5. Open court hearings.
6. Guarantee the accused person's right to defense.
7. Independence of judges, who are subjected to the law only.
8. Investigative agencies, adjudicative authorities, and procuratorates exercise their powers in accordance with the national public interests.

⁴ Criminal Procedure Law of the People's Republic of China 1979, Art. 1.

⁵ Criminal Procedure Law of the People's Republic of China 1979, Art. 2.

⁶ At that time, CUPL was known as Beijing University of Political Science and Law.

9. The principle of directness (the judge hears the case directly), and verbalism (hearings are conducted orally, and are not based on case files only).
10. Continuous court hearings.
11. The adversarial principle.
12. Presumption of innocence.
13. The principle of ascertaining the objective truth.
14. Judges evaluate the evidence based on inner belief.
15. Equality of citizens in the application of law.
16. Ensuring the rights of participants in legal proceedings [Chugunov B.E., 1957: 42–65].

Also he has pointed out that all principles mentioned except for principles 11, 12, and 13, which had some controversies, are considered in academic community as fundamental principles of the Soviet criminal procedure. Regarding the adversarial principle, there were some doubts whether it should be applied in the investigative and prosecutorial stages. Some scholars denied its function as a fundamental principle at first, but acknowledged it later [Cheltsov M.A., 1955: 124]. Similarly, Soviet scholars had conflicting views on the presumption of innocence and the principle of ascertaining the objective truth. M.A. Cheltsov, for instance, wrote, “From the perspective of the main purpose of criminal proceedings, we must admit that the most important task is to make sure the court establishes the true circumstances of crime so as to punish criminals”. His statement suggests that the presumption of innocence, that safeguards the rights of the accused, may not have been considered the most important principle in achieving the litigation objective, although he later acknowledged its significance. As for the principle of ascertaining the objective truth, some Soviet scholars argued that it was a litigation aim rather than a procedural principle [Chugunov B.E., 1957: 57, 60, 61], while others thought it a nearly impossible task for the court to render judgments consistent with the objective truth [Vyshinsky A. Ya., 1954: 226].

Compared with the extensive system of criminal procedural principles established in the Soviet Union, the fundamental principles set forth in *the 1979 Chinese Criminal Procedure Law* were more concise and refined ones. Articles 3 to 10 establish the following principles:

1. Division of exclusive authority among public security organs, procuratorates, and courts;
2. Public authorities must rely on the masses;
3. Basing judgments on facts and take law as the criterion;
4. Equality before the law;
5. Divided responsibilities, mutual cooperation and restraint among public security organs, procuratorates, and courts;
6. Use of ethnic languages and scripts in legal proceedings;

7. Cases in the People's Courts shall be heard in public;
8. The accused has the right for defense;
9. Protection of the litigation rights of participants.⁷

Among these, the criminal procedural principles with Chinese characteristics are 2, 3, and 5. Other principles are more or less influenced by the Soviet Union. Mao Zedong Thought is the guiding ideology of the Chinese Communist Party, including principles of upholding the people's democratic dictatorship and the mass line. This ideology was reflected in China's first Criminal Procedure Law as the principle of relying on the masses in handling criminal cases. Moreover, *the 1979 Chinese Criminal Procedure Law* was formulated in the context of China emerging from the shadow and low point of the Cultural Revolution. The legislators, having learned from the lessons of the past, included the principle of basing judgments on facts and adhering to the law to avoid the disasters that occurred during the Cultural Revolution [Wu H., Zhong S., 2012: 863]. With regards to the principle of dividing responsibilities, cooperation and restraint, it presents a specific way to balance and supervise the operation of powers among the public security organs, procuratorates, and courts, but it differs significantly from the separation of powers in the United States. This is because China's criminal procedural principle mainly emphasizes the checks and balances among the three organs. This principle is about the internal division of judicial powers, rather than the external separation of executive, judicial, and legislative powers.

1.3. Criminal Procedural Institutions

Firstly, the Soviet Union divided the criminal proceedings into different phases, and China's Criminal Procedure Law largely inherited this feature. According to the Soviet Criminal Procedure Code, the criminal proceedings are roughly divided into seven stages: initiation of criminal cases, investigation, prosecution [Cheltsov M.A., 1955: 8–11], court trial, appeal of non-final judgments, review of final judgments, and execution. China's 1979 Criminal Procedure Law, on the other hand, specifies the following stages: case filing, investigation, prosecution, first and second instance of trials, death penalty review, retrial, and execution.⁸ Among these, both of them took the case filing as a separate phrase [Lan V., 2019: 146],⁹ but the death sentence review procedure is unique to China and was not present in the Soviet Criminal Procedure

⁷ Criminal Procedure Law of the People's Republic of China 1979, Articles 3 to 10.

⁸ Criminal Procedure Law of the People's of Republic of China 1979, Table of Contents.

⁹ It's not usual for most countries to stipulate the case filing as a separate phrase. "Case filing" was formulated as the first phrase of criminal proceedings in the 1979 Chinese CPL, instead of "initiation of criminal cases" that was stipulated in the Soviet CPL.

Law. It originates from China's historical legal tradition, where extreme caution was exercised in cases involving the death penalty. In ancient China, the execution of the death penalty required multiple levels of approval and had to be reported to the highest ruler. Modern Chinese criminal procedural law retained this tradition by stipulating the death penalty review procedure.

Secondly, both China and the Soviet Union had a similar structure of strong state power-oriented criminal procedural systems. As was mentioned earlier, in terms of the purpose of criminal proceedings, China and the Soviet Union are fundamentally aligned-maintaining socialist order through crime control. Crime is seen as the most extreme activity that disrupts social order and is not tolerated. The structure of criminal proceedings is designed to serve the purpose, while the purpose defines the structure of criminal procedures. Therefore, both China and the Soviet Union inevitably exhibit a structure that emphasizes the crackdown on crime. Even nowadays when China's criminal procedural law has gradually transformed towards adversary system after three amendments, the strong state power-oriented factors continue to affect the effectiveness of the implementation of specific institutions. However, it is currently at a changing crossroads, with the arrival of "misdemeanor era" in China and the increasing awareness of human rights among the public. The future direction of Chinese criminal proceedings remains uncertain.

Third, the Soviet Union had a significant influence on China's views on evidence. Soviet criminal procedure adhered to the principle of objective truth. Although China did not explicitly include this principle in its 1979 Criminal Procedure Law, the principle of objective truth had a substantial impact on China's theories of evidence law. The theoretical foundation of the principle of objective truth is materialist epistemology. Since the 1950s, Chinese scholars have consistently applied materialist epistemology to interpret the process of proving facts in criminal proceedings. Mainstream viewpoints argued: "...Case facts exist as objective truth independent of the will of public security and judicial personnel; they can only be recognized and ascertained but not altered. It should be emphasized that the objective practice is not only the basis for public security and judicial personnel to collect and apply evidence to determine facts but also the sole criterion for examining whether the facts is correctly identified" [Chen G., Chen H., Wei X., 2001: 38]. This reflects that China's criminal procedural law has always adhered to the inherited principle of objective truth learned from the Soviet Union.

Fourth, China's prosecutorial system bears significant similarities to that of the Soviet Union. *The 1954 Organization Law of the People's Procuratorates* defined the functions of the People's Procuratorates as follows: initiating public prosecutions in criminal cases, supervising the legality of investigations and judicial activities, supervising the execution of criminal judgments, ini-

tiating litigation in important civil cases related to state and public interests, and supervising whether state officials and citizens comply with the law.¹⁰ When drafting this law, lawmakers explicitly applied Lenin's guiding thought about the powers of prosecutorial organs, emphasizing that the prosecutorial powers in China aimed at maintaining the unity of the state's legal system. This defined China's procuratorates as state legal supervision organs [Wu H., Zhong S., 2012: 864]. Soviet scholars once wrote, "the activities of general supervision, which the procurator carries out by overseeing the work of all agencies and the behavior of all citizens for compliance with the law, are closely related to his activities in the judicial sphere—pursuing criminal liability against anyone who meets the criminal elements for breaching the law" [Cheltsov M.A., 1955: 135]. China's procuratorates, like their Soviet counterparts, are entitled to both legal supervision and public prosecution. Many issues with China's prosecutorial system derived from the its dual functions, sometimes creating internal tensions.

2. Three Revisions to the Chinese CPLs in Comparison with Soviet (Russia) CPLs

As time passes, the 1979 Chinese CPL has become outdated and unable to keep pace with the development of the society. After the reform and opening-up policy was issued, China's economy began to take off. The country has gradually shifted its focus towards economic development, and this led to the fading of ideological discourse in the whole Chinese society. Especially since 1992, following the collapse of the Soviet Union, the trend of emulating the Soviet Union is no longer mainstream. Instead, learning from common law jurisdiction and keeping up with international standards have become a major task of Chinese CPL. Driven by various demands, China underwent its first amendment to CPL in 1996 after a gap of 16 years. Subsequently, two amendments were made in 2012 and 2018 respectively. While the 1979 CPL was essentially a replica of the Soviet criminal procedure law, these three amendments gradually freed Chinese CPL from Soviet influence and enabled China to develop her criminal procedure law in a more distinctively and typically Chinese way.

2.1. The First Amendment of 1996

The 1996 Amendment to the Chinese CPL was formulated and implemented under the leadership of scholars. Professor Chen Guangzhong, a renowned Chinese CPL scholar and then-president of the CUPL, led a small group of

¹⁰ Organic Law of the People's Procuratorates of the People's Republic of China 1954, Art. 4.

outstanding experts and professors in drafting the amendment, two-thirds of it were ultimately adopted by the authorities. The revision was primarily based on research on comparative law. The expert drafting team, through overseas visits and the study of foreign literature and documentation, incorporated good institutions from abroad into the Chinese legal system. The revision covered various aspects of the 1979 CPL, and article presented will primarily focus on the following key modifications.

Firstly, the 1996 Amendment stipulated a new principle: “No one shall be declared guilty without the lawful judgment of the people’s court”.¹¹ The principle has sparked debates among Chinese scholars. Some argued that it was consistent with the relevant Soviet provision¹² in terms of its content and logic; it could be considered as the principle of presumption of innocence. Others believed that it should be interpreted based on the original meaning of the presumption of innocence, that implies that everyone should be presumed innocent until proven guilty. From this perspective, the wording of the principle, which states “shall not be deemed guilty”, might not be equivalent to “presumed innocent”. Therefore, this principle only emphasizes the exclusive authority of the court to convict, while the presumption of innocence was not established in China [Zhang Z., 1983: 14-15]. Through textual interpretation, it can be discovered that Chinese and Soviet legal texts expressed the same meaning, but scholars in China and the Soviet Union had different understandings. Soviet scholars believed that as long as the defendant has not been judged guilty by the court, they should not be considered guilty but presumed innocent [Tatsuhiko V., Kang S., 1980: 59]. And Soviet scholars acknowledged that the presumption of innocence was a fundamental principle in Soviet CPL. Even today, this issue is still controversial in China. A more authoritative conclusion is that China does not strictly adhere to either the presumption of guilt or the presumption of innocence, but operates on the principle “guilt is determined by evidence”. In other words, a defendant is deemed guilty based on existing and sufficient evidence of guilt; otherwise, the defendant is innocent [Zhou G., 1991: 20]. This conclusion is reasonable and in line with the practical circumstances in China. Although the definition of the presumption of innocence may not be entirely clear, Article 12 of the 1996 Amendment can be seen as a step forward in protecting the rights of defendants compared to the absence of such provisions in the 1979 CPL.

Furthermore, the Amendment of 1996 introduced innovations in the areas of defense and the trial system. In the field of defense, compared to the 1979

¹¹ Criminal Procedure Law of the People’s Republic of China 1996, Art. 12.

¹² The resolution of the Plenum of the Supreme Soviet Court in 1946: “The accused shall not be considered a criminal until his guilt is proven according to the established legal procedure.”

CPL where lawyers did not appear during the investigation stage, the 1996 Amendment of 1996 has allowed to lawyers to provide legal assistance to defendants during the investigation. The timing of when defense could begin was similar in China and the Soviet Union, as both countries experienced a reform process that shifted lawyer involvement timing from the prosecution stage to investigation stage [Yuan Y., 2014: 98]. In the trial system, there were three main innovations. Firstly, the pretrial substantive examination of cases by judges was replaced with procedural and formal reviews. It was made to prevent judges from making prejudgments prior to the actual trial. Secondly, it enhanced the adversarial nature of the proceedings by weakening the dominant role of judges in the court. Previously, influenced by Soviet law, Chinese judges had the authority to investigate facts both inside and outside the court. Under the judge's command, the prosecution and defense acted as cooperators in the trial, with limited autonomy. In a result the pre-1996 Chinese criminal procedure structure was evaluated as an "inquisitorial", even "super-inquisitorial" model by scholars [Guo Z., 2021: 16]. Thirdly, to protect the defendant's right to an expedited trial, a simplified trial procedure was introduced, allowing single-judge trials in cases where: the facts are clear and the evidence is sufficient in public prosecutions that could result in a sentence of three years or less of imprisonment, detention, supervision, or a single fine, where the People's Procuratorate recommends or agrees to the use of the simplified procedure; cases are accepted at complaint only; misdemeanor cases are initiated by victims with evidence.¹³

2.2. The Second Amendment in 2012

Between 1996 and 2012, Chinese society underwent significant changes so that the 1996 CPL could no longer keep pace with the social development. For instance, China made two important amendments to the Constitution in 1999 and 2004 emphasizing the construction of rule of law with a socialist character. "The state shall respect and safeguard human rights" was incorporated into the Constitution. For another instance, China signed and ratified a series of international conventions, necessitating alignment between the Chinese CPL and international criminal justice standards. Meanwhile, China's judicial reform theory and practice were deepening, with many successful experiences and valuable insights [Bian J., Xie S., 2019: 3]. Therefore, a revision of the CPL was put on the agenda again in 2012. The amendment process of this round differed from the previous round where scholars played an important role. The 2012 amendment was drafted by the Legislative Affairs Commission of

¹³ Criminal Procedure Law of the People's Republic of China 1996, Art. 174.

the National People's Congress Standing Committee, and involved various state institutions, including the Supreme People's Court, the Supreme People's Procuratorate, Public Security Ministry, State Security Ministry, and Justice Ministry. It also incorporated the opinions of Congress representatives, lawyers, and professors. This amendment touched on various aspects, including evidence rules, the right to defense, and so on.

Most importantly, this amendment introduced the principle against self-incrimination and the exclusionary rule for illegally obtained evidence into the CPL of China. Since the 1996 amendment, numerous wrongful convictions were exposed in China, many of which resulted from extorting confession by torture during the investigation process.¹⁴ Wrongful convictions affected the purity and authority of China's judiciary and did not align with the requirements of procedural justice. Article 50 of the 2012 CPL stipulates: *It is strictly prohibited to extort confessions by torture or to collect evidence by threat, enticement, deception, or other unlawful means. No one shall be forced to prove his own guilt.*¹⁵ In the past, Chinese legal practice was influenced by the Soviet legal theory, emphasizing the objective truth while neglecting human rights protection. To enhance procedural justice, the 2012 CPL has prohibited collecting evidence through illegal means or forcing anyone to incriminate himself/herself. By this time, Russia had already taken a completely different path from China. Due to the collapse of the Soviet Union, Russia embraced fully the capitalist system. Correspondingly, Russian criminal procedure law began to establish an adversary system centered around presumption of innocence [Yuan Y., 2012: 48]. The current Russian Criminal Procedure Code, Article 7-3, establishes the exclusionary rule for illegally obtained evidence: "Violation of the norms of the present Code by the court, by the prosecutor, by the investigative bodies or by the investigator in the course of the criminal court proceedings shall entail recognizing the proof obtained in this way as being inadmissible."¹⁶

Significant changes were introduced in the 2012 CPL around the right to defense. Before 2012, defense lawyers could only access key materials related to the facts of the case during the prosecution and trial stages, and they are not allowed to review all litigation materials. After the 2012 amendment, there were no longer any restrictions on the scope of document review, and defense lawyers could access all case materials.¹⁷ It's worth noting that as early as 1960s,

¹⁴ The cases of She Xianglin in Hubei's Jingmen County, Zhao Zuohai case in Shangqiu, Henan, and the Zhang's uncle and nephew case in Zhejiang, involving forced confessions through torture, have drawn significant attention.

¹⁵ Criminal Procedure Law of the People's Republic of China 2012, Art. 50.

¹⁶ Criminal Procedural Code of the Russian Federation 2001 (Amended 2021), Art. 7 (3).

¹⁷ Criminal Procedure Law of the People's Republic of China 1996, Art. 36; Criminal Procedure Law of the People's Republic of China 2012, Art. 38.

Soviet CPLs already explicitly granted not only defense lawyers but also defendants the right to review case files.¹⁸ However, China has not granted defendants the direct right to review case files. In other aspects, the 2012 CPL also introduced a reconciliation procedure for public prosecution cases,¹⁹ marking the rise of restorative justice practices in China [Chen R., 2006: 15]. The 2001 Russian Criminal Procedure Code also provides for a criminal reconciliation procedure. If a suspect or defendant in a criminal case reaches a settlement with the victim and compensates for the harm caused, the victim can apply to terminate criminal proceedings for minor or moderate crimes.²⁰ Additionally, the 2012 CPL expanded the simplified trial procedure to a wider scope of criminal cases. Previously, the simplified procedure only applied to cases that could result in sentences of up to three years of imprisonment. In 2012, this limitation was removed and all the cases under the basic-level people's court are eligible for summary procedure.²¹

2.3 The Third Amendment in 2018

Unlike previous revisions, the main motivation for the 2018 amendment is to incorporate reforms of state institutions and successful pilot projects. In 2018, during the first session of the 13th National People's Congress of China, *The Supervision Law of People's Republic of China* was enacted. This law established a new state authority, the Supervisory Commission, which is responsible for supervising illegal activities and crimes of state officials and has the authority to conduct criminal investigations based on illegal conduct. The establishment of the Supervisory Commission has reduced significantly the authority of China's procuratorates. Although the 2018 amendment has retained the principle that the procuratorate is the legal supervision authority in China, any cases involving the illegal conducts and crimes of state officials were placed under the jurisdiction of the Supervisory Commission. As a result, the procuratorate substantially lost its investigative power in these cases, retaining only the authority to investigate certain crimes involving violations of the law by judicial personnel in criminal proceedings. To address the issue of coordinating the investigation procedures led by the Supervisory Commission and the pre-trial procedures of criminal proceedings, China revised the Criminal Procedure Law for the third time in 2018. China conducted pilot

¹⁸ The Penal Code of the Soviet Union 1960, Art. 46, 201.

¹⁹ Criminal Procedure Law of the People's Republic of China 2012, Art. 277.

²⁰ Criminal Procedural Code of the Russian Federation 2001 (Amended 2021), Art. 25.

²¹ Criminal Procedure Law of the People's Republic of China 1996, Art. 174; Criminal Procedure Law of the People's Republic of China 2012, Art. 208.

projects of the expedited trial procedure and the leniency system for pleading guilty and acceptance of punishment in 2014 and 2016, respectively. Another objective of the 2018 amendment was to formalize the successful experiences of these two pilot projects and incorporate them into CPL. This explains why the previous two revisions had an interval of roughly 15 years, while this revision occurred only 6 years after the previous one.

Regarding the leniency system for pleading guilty and acceptance of punishment, Article 15 of the 2018 CPL stipulates: “*If a criminal suspect or defendant voluntarily and truthfully admits to their own crimes, acknowledges the criminal facts as charged, and is willing to accept punishment, they may be treated leniently in accordance with the law.*”²² In terms of procedural design, the application of the plea leniency procedure primarily occurs during the prosecution phase. If a criminal suspect voluntarily confesses and agrees with the sentencing recommendations put forth by the prosecutor, a written acknowledgment of guilt and agreement to punishment (leniency plea) should be signed in the presence of a defense attorney or duty lawyer.²³ During the trial phase, the law specifies that the people’s court should generally adopt the sentencing recommendations proposed by the prosecutor to preserve the negotiated outcome between the prosecution and defense.²⁴ Additionally, for cases that may result in a sentence of less than three years of imprisonment, and where the defendant pleads guilty and agrees with the sentence recommendations, the expedited trial procedure may be applied.²⁵ Compared to the previously established simplified trial procedure, the expedited trial procedure is even more simplified, and the courtroom investigation procedures can be omitted. These provisions collectively ensure procedural and substantive benefits for defendants who plead guilty. While China’s focus has mainly been on the confession and behavior of the accused, Russia’s “waiver of trial” system contains more detailed provisions. First, Article 316-7 of the Russian Criminal Procedure Code places certain limitations on the discretion of judges. After rendering a guilty verdict the imposed sentence must not exceed two-thirds of the maximum statutory penalty for the most severe type of punishment specified by law for the committed crime.²⁶ Chinese CPLs do not include such a specific limitation, but restricts judicial discretion through the sentencing recommendations presented by prosecutors. Second, Article 316-8 stipulates narrative and reasoning sections of a judgment should include a description

²² Criminal Procedure Law of the People’s Republic of China 2012, Art 15.

²³ Ibid. Art 174.

²⁴ Ibid. Art 201.

²⁵ Ibid. Art 222.

²⁶ Criminal Procedural Code of the Russian Federation 2001(Amended 2021) Art. 316(7).

of the criminal behavior already admitted by the defendant and the court's conclusion regarding the criminal case. The judge's analysis and evaluation of evidence are not reflected in the judgment.²⁷ China does not have similar legal provisions concerning the reasoning of judgments. Despite the different provisions, the waiver of trial system is widely applied in both China and Russia. In China, the application rate of the leniency procedure for pleading guilty and acceptance of punishments exceeds 90%,²⁸ while in Russia the proportion of criminal cases handled through the "waiver of trial" system increased from 37% in 2008 to 64% in 2014 [Xiong Q., 2019: 82].

Conclusion

Based on the analysis presented earlier, it is possible to observe trends in the relationship between China's criminal procedure law and the Soviet legal model: From 1950 to 1980, China's criminal procedure law extensively borrowed from the Soviet legal system, and the influence of Soviet law model was prevalent during this period. After 1980, China's criminal procedure law started to be influenced by Western countries, especially the U.S., and the impact of the Soviet law model gradually faded. To be more specific: in the 1996 revision, China's criminal procedure law strengthened equal dialogue and communication between the prosecution and defense, leading to an increase of adversarial elements in the judicial process. In the 2012 revision, China introduced the exclusion of illegal evidence and the privilege against self-incrimination, signaling a shift towards a more scientific and rational direction. In 2018, China's criminal procedure law has responded to the need for negotiated justice by establishing plea leniency system. Both adversarial and negotiated elements coexist in China's criminal justice system. It's important to note that while China's criminal procedure law has been evolving in new directions, the initial institutional framework inspired by the Soviet model still plays a role. For example, the authority of China's procuratorate continues to encompass both legal supervision and public prosecution functions. On the other hand, while China has inherited many aspects from the Soviet legal system, such as the principle of seeking objective truth and the stage-based approach to litigation, there are differences in the interpretation of certain legal institutions, as seen in the case of presumption of innocence.

In the future, two prominent trends are expected to shape China's criminal justice system:

²⁷ Ibid. Art 316 (8).

²⁸ Work Report of the Supreme People's Procuratorate 2023. Available at: https://www.spp.gov.cn/spp/gzbg/202303/t20230317_608767.shtml (accessed: 10.12.2023)

Continued development of negotiated justice: China's negotiated justice system is likely to continue to deepen and gain prominence in criminal justice practice. Balancing the coexistence of traditional adversarial proceedings and negotiated justice within the same criminal justice system may become a topic worthy further exploration for Chinese scholars. The relationship between these two approaches will need careful consideration.

The arrival of the era of misdemeanor: with rapid technological advancements, the connotation of crime prevention and human rights protection in China's criminal procedure law is evolving. As technology progresses, the scope of crime control extends from physical to virtual spaces, posing increased challenges in combating cybercrime while safeguarding human rights. On one hand, technological development enhances a state's crime-controlling capabilities, leading to a reduction in serious crimes but an increase in misdemeanors. How to ease the pressure of the criminal justice system while protecting human rights is another research topic worth exploring. These emerging issues are not unique to China. They present challenges to global criminal justice. China's practical experiences, institutional solutions, and theoretical methods, while not universally applicable, can at least contribute Chinese insights to the global discourse on the development history of criminal procedure law.



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The article was submitted to editorial office 11.12.2023; approved after reviewing 18.01.01.2024; accepted for publication 13.02.2024.