

Achievements of China's Criminal Law and Challenges of China's Anti-Corruption

Zhang Lei

College for Criminal Law Science, Beijing Normal University, Beijing, China

Email address:

zhanglei@bnu.edu.cn

To cite this article:

Zhang Lei. Achievements of China's Criminal Law and Challenges of China's Anti-Corruption. *Social Sciences*. Vol. 5, No. 3, 2016, pp. 50-53.

doi: 10.11648/j.ss.20160503.12

Received: June 9, 2016; **Accepted:** July 21, 2016; **Published:** July 25, 2016

Abstract: China's criminal law legislation started since China (PRC) was founded in 1949, and has experienced 3 distinctive periods. 1997 criminal law set the foundational framework for Chinese criminal justice, which still being utilized. In order to accommodate drastic development of Chinese society and economy, China's National People's Congress (NPC) has made nine amendments to criminal law so far. Since 2012, China carried out the anti-corruption strategies targeted personnel at all levels of the Chinese government and Communist Party of China (CPC), which has made great achievements, but China still confronts many challenges in international anti-corruption cooperation.

Keywords: China, Criminal Law, Anti-Corruption, International Judicial Cooperation

1. Introduction

China has made great achievement in the development of criminal justice, and started new anti-corruption strategies in recent years, the number of the corruption cases prosecuted and sentenced remain high every year [1]. This article will discuss the history of Chinese criminal law, the achievements and challenges of China's counter-corruption Strategies under the context of globalization. The first section of the article review the history of Chinese criminal law and 1997 Criminal Law, the second section talk about the anti-corruption strategies of China, and the third section summarize the international cooperation of Chinese anti-corruption, then point out the challenges of Chinese international judicial cooperation in anti-corruption struggle.

2. History of China's Criminal Law

The People's Republic of China (PRC) was founded on 1 October 1949. Chinese criminal law legislation was also started at that time. Chinese criminal law legislation has been divided into 3 distinctive periods.

2.1. 1949 - 1979

This is the preparation period for China's criminal law

legislation. No country can survive without law, China is no exception. It is difficult to make a new criminal law from scratch, especially in a country as large and complicated as China. The development of criminal law took great effort time, while it was being developed, the government created many criminal regulations to handle illegal conduct, which include: "Interim Regulations on punishment for violation of the national currency", and "Anti-corruption Ordinance of the People's Republic of China". In September 1954, the National People's Congress (NPC) passed the first constitution of China, which established a solid foundation for the legislative development of the criminal law code. In October 1954, organized by the NPC, China started the draft of a criminal law code. From 1954 to 1963, the NPC had made 33 drafts of the criminal law code. But from 1964 to 1978, the legislation was suspended for political reasons, there was a recess of people's congress.

2.2. 1979 - 1997

This period saw the birth and application of the first Chinese Criminal law code. After 1978, China implemented a new policy of "Reform and Open Up to the World", which starts a new chapter of China (restoring social, political and constitutional order). The legislation of Chinese criminal law was also restarted. On July 1, 1979, the NPC approved China's

first criminal law code, which included 13 chapters, 192 articles and 129 crimes. The 1979 Criminal law code is a great contribution to the progress of Chinese legal development.

As time went on, the Reform and Open Up policy removed many administrative obstacles for economy sectors. This liberation created many new areas without sufficient regulation, and new social issues that the 1979 Criminal law code couldn't address, so the NPC passed an additional 24 criminal law regulations, which focus on special criminal problems, and stipulated criminal law articles in other laws, so as to make supplements to the 1979 Criminal law code.

2.3. 1997 - Present

This period saw the implementation of the 1997 Criminal law code. On March 14, 1997, the NPC approved the 1997 Criminal law code, which is a complete overhaul of 1979 criminal code and the summary of all the criminal law regulations and criminal law articles in other laws so far. The 1997 Criminal law code is the corner stone of China's modern criminal law, it included 15 chapters, 452 articles and 412 crimes. Since then, Chinese society has never stopped developing, with the development of globalization and Chinese economy, China criminal law has faced a growing need to fight more complex and more intricate social issues. Criminal Law Amendments are the most important means in responding those problems. In August 2015, the National People's Congress approved the 9th amendment to the 1997 criminal law code, which attracted the attention of China and the criminal law field of the world.

2.4. China's 1997 Criminal Law and Amendments

China's 1997 criminal law set the foundational framework for the criminal justice, and is still effective. 1997 criminal law includes two parts: (1) General Rules. The General Rules consist of 5 chapters, which define the aim, principal rules of criminal law, and what is crime and penalty; (2) Special Rules. Chinese criminal law divides the crimes into 10 types according to the interest that the crime against, such as Crimes of Endangering National Security, Crimes of Endangering Public Security, and so on. There has been drastic development of Chinese society and economy since 1997, in order to accommodate this development, the Stand Committee of NPC has approved 9 amendments to criminal law, add new crimes and revise elements of some crimes.

3. Anti-Corruption Strategy Inside China

Currently, corruption is a common problem shared by the global community. It happens in almost every country in the world, and China is no exception. As time went on, corruption in China became more and more troubling, which is why the Chinese government formed new strategy to wage war against corruption, aiming to improve the integrity of the Communist Party of China (CPC) and the Chinese government. The most powerful undercurrent in China now is on corruption: Can the Chinese leadership overcome this hurdle [2]. The new fight

against corruption began in China after the conclusion of the 18th National Congress of the CPC, which was held in November 2012. This Congress, also saw the elevation of Xi Jinping to the General Secretary of the Communist Party of China, and he became the president of China in 2013.

Under the leadership of Xi Jinping since 2012, the anti-corruption strategies targeted personnel at all levels of the Chinese government and CPC. To fight corruption, the CPC developed an important policy "Shutting power in the cage of system", a move that emphasized the importance of rule of law and discipline in regard to illegal conduct. Xi Jinping emphasized that the CPC needs to strengthen controls and monitoring of public power, prevent public power from falling into the corruption and abuse. In practice, the CPC carried out new anti-corruption strategy, which targeted all levels officials.

For the past few years more than 100 high level officials (above the vice minister level official) were arrested and accused of corruption crimes, includes 1 national level officials, and 4 deputy national level officials. The rank of these high government officials shows how progressive the anti-corruption strategy is. Unlike high level officials, low level officials are in charge of local administration and civil matters. These officials greatly affect the daily lives of ordinary Chinese people. While the national government was investigating the high level officials, the local governments carried out their own anticorruption investigations. According to the media, there were about 100 thousand low level officials were investigated under suspicion of corruption. Ending corruption amongst low level officials contributed greatly to the improvement of everyday people's happiness.

4. Anti-Corruption International Cooperation of China

4.1. Legislation

With the rapid advancement of globalization, corrupt officials absconding with money became a frequent occurrence in China. Corrupt officials emitting vast amounts of capital abroad through a money-laundering strategy, preparing passports, moving family members abroad, and then fleeing China for their new country. Confronted with this situation, China need to carry out anti-corruption international criminal justice cooperation with other countries. Anti-corruption international criminal justice cooperation includes two aspects: Fugitive Repatriation, which aims to take the corrupt criminal fugitives back, and Asset Recovery, which aims to take the stolen money (criminal proceeds) back.

4.1.1. International Convention

The expansion of corruption has triggered a climax in the prevention of corruption around the world, the international community has approves a series of international conventions against corruption. For instance, United Nations Convention against Transnational Organized Crime (UNTOC, November 15, 2000) and United Nations Convention against Corruption

(UNCAC, October 31, 2003). China had approved UNTOC on August 27, 2003, and UNCAC on October 27, 2005. It worth mention that China was not passively accept UNCAC, it remained an active role in the process of creation through providing opinion and assistants in creating international norms in fighting corruption. China has become the member of *Financial Action Task Force on Money Laundering (FATF)* in 2007 [3], which focus on the counter money laundry cooperation.

4.1.2. *Bilateral Treaty*

Although there are detailed provisions on judicial assistance specified in UNCAC and UNTOC, some countries still follows Treaty Pretage Principle strictly when conducting criminal judicial assistance, that is, judicial assistance shall not be implemented unless a bilateral treaty is concluded. Chinese government started to negotiate and conclude bilateral treaty on criminal judicial assistance with other countries since the 1980s: China signed the first treaty on criminal judicial assistance with Poland in 1987, the first extradition treaty with Thailand in 1993, and the first treaty on transfer of sentenced criminals with Ukraine in 2001. China has concluded bilateral extradition treaties with 41 countries and criminal judicial assistance treaties with 54 countries by April 2016 [4], These bilateral treaties have become a major base for China to carry out international criminal judicial assistance.

4.1.3. *Domestic Legislation*

i. Criminal law

Regulations on corruption crime are mainly specified in Chapter VIII "Crimes of Embezzlement and Bribery" (Article 328-396) of 1997 Criminal Law.

ii. Extradition Law

As to extradition, in addition to bilateral extradition treaty, the Standing Committee of the National People's Congress of China approved the Extradition Law On December 28, 2000, the law is a summary of the development of the extradition system of China, especially bilateral extradition treaties between China and other countries. The Extradition Law builds a unique judicial review system and administrative review system against extradition.

iii. Antimoney Laundering Law

The flight of corruption offenders always companied by the outflow of proceed of the crime. Therefore, strengthen the combat against money is very important. China's National People Congress approved the *Antimoney laundering Law* on October 31, 2006. The Law is set up specially for the regulation on international cooperation against laundering acts.

iv. Amendments of the Criminal Procedure Law

The Amendment of the Criminal Procedure Law was approved on March 14, 2012, the Amendment includes a special chapter of forfeiture procedure for the corruption crime proceed. According to the chapter, if criminal suspects or defendants of serious criminal cases such as bribery and corruption, escaped to other countries and did not present after being wanted for one year, or the criminal suspects or defendants died, where the Criminal Law requires the illegal

proceeds and other property involved in the case to be recovered, the procuratorate shall submit application of confiscating all the proceeds to the Court.

4.2. *Fugitive Repatriation and Asset Recovery*

China has been developing its overseas fugitive repatriation and asset recovery program in last ten years, and had made great achievements. Since 2014, China have initiated an unprecedented overseas fugitive repatriation and asset recovery storm:(1) The Ministry of Public Security Launched the its overseas fugitive repatriation and asset recovery special action on July 22, 2014, which aims to bring back oversea fugitive to China, and it continue in 2015 [5]. (2) The Supreme Procuratorate launched its overseas fugitive repatriation and asset recovery special action On September 26, 2014, this program concentrated on finding corrupt fugitives abroad. (3) The Center Discipline and Inspection Committee of CPC started a comprehensive fugitive repatriation and asset recovery program on 26 March 2015, which units judicial system, police, foreign affairs, bank and other departments to arrest overseas fugitives and recover asset from April 2015. The united efforts of various departments were quite successful. In 2015, the Skynet Operation arrested 1023 fugitives abroad, and recovered more 3 billion yuan (¥) [6].

4.3. *Challenges in International Cooperation*

4.3.1. *Image of China's Criminal Justice Needs to Be Improved*

One of the grave concerns of international communities when it comes to anti-corruption collaboration, is the reputation of China's criminal justice system. Foreign countries don't trust China's judicial system to carry out fair and humane trials as they say they will. For example, the main reason that some fugitives can stayed in other countries for many years is western government had its doubts regarding the fairness of China's criminal justice system. In other words, western government doubted that whether the fugitive would receive fair and human treatment if he were to be repatriated to China. And the main reason that some fugitives was repatriated to China successfully, is China convinced western government that its criminal justice system complied with international human rights standards.

4.3.2. *Corruption Crimes in China Are Still Eligible for the Death Penalty*

Death penalty is another critical factor that influences the overseas fugitive repatriation and asset recovery program. Currently, most western countries don't have death penalty, and adhere to the principle of no-extradition in cases of the death penalty. Therefore, the death penalty has become an obstacle to China's overseas fugitive repatriation and asset recovery efforts. The non-extradition of death penalty principle is a product of the modern extradition system and was developed as a result of the acknowledgement of the concept of basic human rights [7]. As time go on, the principle has spread at an alarming rate throughout the world, it was not only reflected in national legislation (Such as *Swiss Federal*

International Criminal Assistance Law 1981, Federal Germany international judicial assistance in criminal law 1982, British Fugitive Law 1967, etc.), but also in bilateral extradition treaties (Such as *Extradition Treaty Between American and Mexico in 1988*). But China's crimes of corruption (such as crimes of embezzlement) are still eligible for the death penalty. So the western countries don't want to send the criminal fugitives back, because they worry that the fugitives will be sentenced to death.

4.3.3. Few Bilateral Extradition Treaties with Major Developed Countries

China has extradition treaties with many undeveloped countries (41), but it does not have an extradition treaty with some of the major developed countries such as: the US, Canada, and Australia. Chinese criminals escape to these 3 countries and there is no way for China to get them back through extradition. Take the United States as an example, United States strict adherence to the Treaty Prestage Principle on extradition, the Principle requires that the country requesting extradition must have concluded bilateral extradition treaty with the United States, only those charged with a violent crime that was committed overseas against an American may be exempt [8], although several court indicated that this requirement was one of congressional choice rather than constitutional requirement Michael John [9].

4.3.4. High Costs and Little Experience in Fugitive Repatriation and Asset Recovery

International judicial assistance of anti-corruption faces a number of technical dilemmas:

- i. High costs. Overseas fugitive repatriation and asset recovery is an expensive process, because it is conducted in another country, will inevitably involve high costs, which includes travel expenses for government officials and witnesses, expenses related to investigation and evidence collection, costs associated with the translations of documents, salaries for necessary professionals, etc. In some cases, the costs may exceed the actual amount embezzled money as a result of the crime.
- ii. Little experience. As overseas fugitive repatriation and asset recovery began only a few years ago, most departments and case-handling personnel are not fluent in foreign languages, know little about the legal systems of other countries or about international cooperation, do not understand the rules and mechanisms of judicial assistance or the other facets required by the provisions of the conventions, do not know how to collect, sort and translate evidentiary materials, etc. [10]. As a result, they are unable to comprehend the key points of providing evidence to support the request for overseas fugitive repatriation and asset recovery.

5. Conclusion

In the past decades, China had made great improvement in the development of criminal law, 1997 criminal law and its

amendments are the foundation of China's criminal justice. Currently, corruption is public nuisance on a global scale, as they seriously endanger political, economic and social development. In many countries and for many stakeholders, it causes considerable hardship and financial loss [11]. Chinese government attaches great significance to the role of criminal law in fight corruption, practice indicates that China's efforts in this area have received great attention and support from national senior leaders. If China can improve its mechanisms, intensify its study of the legal issues involved, and strengthen its international criminal justice cooperation with other countries, it will be successful in implementing an efficient method of fugitive repatriation and asset recovery, which contribute to promoting a comprehensive program for the fight against corruption.

References

- [1] Yong Guo, (2010). Political culture, administrative system reform and anticorruption in China: taking the official car management institution reform as an example. *Crime Law Soc Change*, 53, 493–508
- [2] Check-Teck Foo & Weiwei Wu (2014), Governance for China: a multi-method research in corruption studies *Chinese Management Studies*, Vol. 8 No. 3, pp. 288-312
- [3] Tang Zheng, (2007). China Became the Member of Financial Action Task Force on Money Laundering, Available at <http://finance.sina.com.cn/roll/20070630/12471510668.shtml> (visited 17 Nov 2015).
- [4] Website of Ministry of Foreign Affairs of People's Republic of China, http://www.fmprc.gov.cn/web/ziliao_674904/tytj_674911/wgdwdjdsfhzty_674917/t1215630.shtml
- [5] Yuan Guoli, (2015)." Fox Hunt 2015"focus on 4 Catetory Criminals, *Jing Hua Shi Bao*, April 1, p 3.
- [6] Gui Tiantian, (2016). Skynet Operation Arrested 1023 Fugitives Abroad, and Recovered More 3 Billion Yuan (¥), *Beijing Youth Daily*, January 25, pA 13.
- [7] Zhao Bingzhi, (2005). Principle of Non Extradition of Death Penalty -- Discussion from China's legislation and practice, *Politics and Law*, Vol. 1, pp. 65.
- [8] Huang Feng, (2008), *Rules and Practices of International Criminal Justice Cooperation*, Beijing University Press, Beijing, pp. 6.
- [9] Michael John Garcia & Charles Doyle, (2010). *Extradition To and From the United States: Overview of the Law and Recent Treaties*. Congressional Research Service Report for Congress. March, 17.
- [10] Zhao Yang, (2012). The "Most Favorite" Countries of Corrupted Officials Fleeing the Country and Multiple 'Division' Illicit money Disposal", *Legal Daily*, December 6, p 5.
- [11] Catherine Stansbury, (2009). The Global Infrastructure Anticorruption Centre, *Leadership and Management in Engineering*, 9: 119-122.