

Codification of Criminal Law

-- Guided by Xi Jinpings thought on the Rule of Law

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ABSTRACT

Under the background of the new era, the problem of codification of criminal law in China is becoming increasingly prominent. The legislative concept and legislative mode of the codification of criminal law are also further put forward higher requirements. Under the guidance of Xi Jinpings thought on the rule of law, a series of issues such as whether the codification should be carried out and how still need to be deeply studied. Therefore, from the significance of criminal law codification, realistic basis, influence on society and legislative concept of research.

KEYWORDS

Criminal Law; Codification; Xi Jinping's thought on the Rule of Law; Legislation.

1. THE SIGNIFICANCE OF CODIFICATION OF CRIMINAL LAW

The code is the inevitable trend of the development and evolution of the law itself, and also a sign of the gradual maturity and perfection of a countrys legal system. Since the 18th CPC National Congress, the CPC Central Committee with Comrade Xi Jinping at its core has been advancing the comprehensive rule of law as the basic strategy for the Party to lead the people in governing the country and the four-pronged comprehensive strategy. More importantly, the Civil Code of the Peoples Republic of China is the first departmental law named after the "code" in China, which is an achievement of the excellent construction of the rule of law. The success of the civil code provides a reference for other departmental laws to compile codes, therefore, the academic response to whether the criminal law is codified. The author believes that the codification of criminal law is of great significance and plays a decisive role in the modernization of national governance system and governance capacity.

1.1. The Codification of Criminal Law is the Requirement of The Times to Promote the Comprehensive Rule of Law

Criminal law is a law that regulates what behavior is a crime, whether it needs to bear criminal responsibility and whether it should be given penalty punishment, that is, it stipulates crime, criminal responsibility and penalty law. The criminal law in 1997, which was a response to the specific era of socialist construction and development, could not fully meet the needs of the development of the current era, so it used the form of amendments to amend it. Thus, Chinas criminal law is many and miscellaneous, which is not conducive to Chinas judicial staff to handle cases efficiently. In order to echo the comprehensive promotion of the rule of law, it is still worth thinking whether the definition of crimes and non-crimes in the criminal law will move, whether the criminal circle needs to be restricted, and whether the separate criminal law and the affiliated criminal law need to be

unified."Governing the country without its law chaos, law-abiding and the same will decline."The author thinks that, under the background of the new era, the criminal law codification will revise the current criminal law system and perfect, and will comprehensively and systematically summarize the practical experience of criminal legislation and criminal justice work, compiled, it will be a key to perfect the legal system of socialism with Chinese characteristics, will make it more scientific and complete, unified authority.

1.2. Codification of Criminal Law is an Important Way to Promote the Development of a Sound Legal System

Criminal law is the last line of defense to protect social relations. Only when it has considerable social harm and the law of other departments can not be effectively stopped, will the punishment be started. Moreover, the criminal law has the characteristics of modesty and final guarantee. Therefore, the criminal law is only a key link of a countrys legal system, which solves the most serious and the most bad social events. From the point of view of criminal law amendment, the criminal law after more than 20 years of change, echo the requirements of the era, the extension of the content of derivative, there are some inconsistent, inconsistent problems will be exposed, the implementation of the crime of legal principle, should be the criminal law, more conducive to the judicial personnel to handle cases, better with civil and commercial law, administrative law, economic law and other departments law cohesion, reveal the scientific legal system in our country, legal system timeliness, systematic and effectiveness, better maintain our order unity, provide the basic basis for the rule of law.

1.3. Codification of Criminal Law is an Important Means to Protect Human Rights

The purpose of criminal law is to protect human rights and punish crimes. The rights and interests of the state and the collective, the legitimate rights and interests of the people are protected, and the social order and economic order are maintained. Therefore, for the criminal legislation, only when Chinas criminal law is more and more scientific and complete, the peoples legitimate rights and interests can be more fully and reasonably guaranteed. The Partys 20th Congress clearly stated that "we must stand firm with the people and grasp the aspirations of their people" and "promote the rule of law in all aspects of national work."In the context of the new era, the criminal law has added many new charges, some charges are deleted or changed because they are not needed, which all depends on the way of amendment, which is a great challenge to the integrity of the penalty system. Therefore, in order to respond to the requirements of the criminal law system, the author thinks, can draw lessons from the form of the civil code, the criminal law codified, including its principles, ideas, policy requirements to fully, meet the requirements of the state and the people, at the same time also can be able to better meet peoples demand for the rule of law.

2. THE REALISTIC BASIS OF THE CODIFICATION OF CRIMINAL LAW

2.1. The Basic Situation of Chinas Current Criminal Law

So far, China has issued two criminal laws of the Peoples Republic of China, namely, the 1979 Criminal Law and the 1997 Criminal Law respectively. In 1979, there were only more than 100 criminal law charges, and the punishment was relatively lenient and slow. However, with the change of The Times, the criminal law in 1979 gradually did not match the development of The Times. Therefore, 23 separate criminal laws and more than 130 affiliated criminal laws were issued successively (as in 1997). Because of its flexibility, the special criminal law has the effect of revising and supplementing the criminal law. However, due to its flexibility, the criminal legislation has been changed at will, and the tendency of heavy punishment appears. More than 40 death sentences have been added, lack of scientific planning, and some even go against the criminal law.

Therefore, the criminal Law of 1997 comprehensively revised the criminal Law in 1979, set the provisions more clearly, clarified the principle of legal punishment, reflected the international trend of thought of restricting the death penalty, and formed a scientific crime system. So far, the only existing separate criminal law in China is the Decision of the Standing Committee of the National Peoples Congress on Punishing the Crimes of cheating Foreign Exchange Purchase and Illegal Foreign Exchange Trading promulgated on December 29,1998. In addition, Chinas criminal law amended the criminal law by promulgating amendments to the criminal law. This is a major change in Chinas criminal legislation, which fully reflects the stability and sustainability of Chinas criminal legislation. However, the following question is that, since 1997, China has announced 12 amendments and the "Criminal Law Amendment (12)" will also follow, whether the content of Chinas criminal law is not very comprehensive in the legislative level?

2.2. Whether Chinas Criminal Law Has the Characteristics of Codification

Does Chinas criminal law have the characteristics of a code? A code refers to a system of legislative documents codified by a current departmental law. Therefore, the basic characteristics that can be formulated into a "code" are: first, the position of the law in the national legal system is very important; second, the large legal system, the large scale of the legal system, the legal provisions are the most in the society at that time; third, the legislators should highlight the system of the law. The law that can be called a code should arrange a large number of provisions in a certain department law in a certain logical way, and the specific content should be summarized and arranged systematically in a systematic way, and finally form an organic whole of the system. On the contrary, in the process of Chinas criminal law in the legislation of criminal law in 1979, its structure is to use the arrangement and combination of general provisions, special provisions and supplementary provisions. General provisions guidance points, points is the specific embodiment of the general provisions. The two complement each other and complement each other. In 1997, the criminal law was also written in this way, which reflected the characteristics of codification in its logical structure., the author believes that although Chinas criminal law does not specify the form of the code (taking the civil code as the judgment standard), Chinas criminal law has the characteristics of codification in essence, and its similarities with the code in logical structure.

However, with the change of The Times, the amendments of criminal law and the emergence of judicial interpretations have a continuous impact on the stability, continuity and authority of the current criminal law. Therefore, the author believes that although the current criminal law has the characteristics of codification, a code similar to the civil code should be compiled to maintain the authority and stability of the criminal law, maintain the stability of the credibility of the criminal law, and carry out the comprehensive rule of law, so that the whole people can abide by the law and constantly improve the legal literacy.

3. UNDER THE GUIDANCE OF XI JINPINGS RULE OF LAW, THE INFLUENCE OF CRIMINAL LAW CODIFICATION ON TODAYS SOCIETY

3.1. Codification of Criminal Law Contributes to the Development of Criminal Law Theory

The codification of criminal law can promote the systematization of Chinas criminal law theory. Chinas criminal law theory is developed from the combination of Chinas traditional culture and the Soviet criminal law theory. Therefore, although the current Chinese criminal law theory is constantly developing and improving, it is decentralized due to the various legislative forms, complex contents and decentralized theoretical research. Therefore, our country can be guided by the rule of law thought to build the criminal law, provide a unified, systematic research object, will be around the code to

build more rigorous theoretical framework, promote the system research crime system, further explore the core theory, promote the further development of criminal law theory, comprehensive promotion of criminal law discipline status and academic influence.

At the same time, the codification of criminal law will promote the innovation and development of criminal law theory, during the process of code, will emerge does not apply to new era, and many other new problems, such as the definition of new crime, the boundaries of different legal terms and the new problems, so the new era should be xi jinpings, the thought of socialism with Chinese characteristics as a guide, combined with the excellent traditional culture and the actual national conditions, the law is not suitable for innovation, can also draw lessons from foreign criminal law theory, to review the criminal law system of our country, provide a more scientific legal system for judicial practice.

3.2. Codification of Criminal Law Contributes to the Effective Implementation of Criminal Policy

The criminal policy is summarized under the guidance of Xi Jinpings thought on the rule of law to firmly grasp the specific national conditions of China, and the criminal policy can be steadily reflected through the general specific legal provisions. Criminal policy has a long-term and guiding significance. Codification of criminal law can fix the mature criminal policy in the form of legal provisions and make it play a role for a long time. For example, Chinas criminal policy of tempering justice with mercy, It can be clearly reflected in the uniform code through the sentencing provisions for different criminal acts and the special treatment of special circumstances, For the criminal policy to play a stable role, To guide the orderly conduct of criminal legislation and criminal justice, Can ensure the consistency of criminal policy in judicial practice, Enabling judicial activities to follow the guidance of criminal policy, at the same time, The codification of criminal law can guarantee the precise implementation of criminal policies, The unified criminal code can avoid the gap in the implementation of criminal policies caused by the separate criminal law and subsidiary criminal law, Therefore, the criminal justice personnel can more accurately grasp the criminal policy orientation when applying the law, Make reasonable and impartial judgments according to the specific circumstances of the case, Improve the fairness and timeliness of criminal justice.

3.3. Codification of Criminal Law is Conducive to the Coordination of Chinese Criminal Law and International Law

The field of international penalty contains a series of advanced concepts, such as human rights protection, balance of guilt, procedural justice, etc. These concepts and principles have gradually become the consensus of the international community. Codification of criminal law can further absorb and integrate the international advanced ideas and principles for China. Through the codification of criminal law, can systematically to the current criminal law and single criminal law, the human rights protection throughout the legal system of the criminal law, from the determination of the behavior to the execution of punishment, comprehensive process to protect the legitimate rights and interests of criminal suspects and defendants and criminals, make it coordinate with the requirements of the international human rights protection. At the same time, the safeguard measures should be further improved for juvenile crimes and crimes of vulnerable groups, and a more humanized treatment mechanism should be set up by drawing on the practices of other countries.

On the contrary, the codification of Chinas criminal law will be constructed on the basis of Xi Jinpings thought on the rule of law, which will also contribute Chinese experience and wisdom to the international criminal law system. Codification of criminal law can be conducive to the international understanding of the characteristics and excellence of Chinas criminal law.

4. THE LEGISLATIVE VIEW OF CRIMINAL LAW CODIFICATION UNDER THE GUIDANCE OF XI JINPINGS THOUGHT OF RULE OF LAW

For Chinas criminal law, legislation is always an important link, and for the codification is also the top priority. Whether the legislation is reasonable and reasonable determines the treatment quality and operation ability of the whole law to a large extent. Therefore, under the guidance of Xi Jinpings thought of the rule of law, Chinas criminal legislation has made great efforts.

4.1. The Transformation of the Legislative Concept Guided by Xi Jinpings thought on the Rule of Law

The core of Xi Jinpings thought on the rule of law lies in putting the people first, and the people with the broadest and deepest foundation for comprehensively advancing the rule of law is the people. Criminal law is the last line of defense to maintain the society, therefore, Chinas criminal legislation for the importance of the protection of human rights. In recent years, China has gradually reduced the charges of applying the death penalty. As the most cruel penalty, the death penalty is irreversible, contrary to the function of human rights protection, and it must be further restricted. In November 2013, the Decision of the Central Committee of the Communist Party of China on Some Major Issues concerning Comprehensively Deepening Reform clearly stated to "gradually reduce the application of death penalty", which is undoubtedly a major influence of Xi Jinpings thought on the rule of law on the criminal law.

Xi jinning stressed "the current national security connotation and extension than at any time in history, space and space than at any time in history, internal and external factors are complex than at any time in history, must adhere to the overall national security concept, for the purpose of peoples security, with political security as the fundamental, on the basis of economic security, military, cultural, social security as security, in order to promote international security, out of a national security road with Chinese characteristics". Therefore, national security has also become a hot topic, Chinas criminal legislation must be the protection of national security into it. In the existing criminal law in China, the first chapter of the special rules is the crime of endangering national security, which is placed in the most important position and gives the most serious punishment for the charges. In addition, the Amendment to the Criminal Law (VIII) also increases the regulation means of political prisoners.

It can be seen that the concept of criminal legislation in China has undergone great changes in recent years. The criminal law in 1997 may include some concepts, but the new concept is not in them, and the unified concept of criminal law has not been formed. The author believes that Chinas criminal law should be guided by Xi Jinpings thought of rule of law and compile it into a criminal code, which is conducive to the implementation of the concept of criminal legislation in China.

4.2. A Unified Legislative Model Guided by Xi Jinpings thought on the Rule of Law

Under the guidance of Xi Jinpings thought on the rule of law, Chinas criminal law should build a unified criminal code to improve the unity and seriousness of criminal justice. At present, although Chinas criminal law has substantial criminal code, it lacks formal criminal code and adopts a variety of criminal law modes, including criminal code, separate criminal law and subsidiary criminal law. The author thinks that it should be unified and compiled by the criminal code.

First of all, the only existing separate criminal law in China should be summarized into the criminal code to modify and supplement the contents of the criminal code. Secondly, for the 11 existing amendments to the criminal law and relevant judicial interpretations, they can be integrated to form a unified code if conditions permit. Finally, Chinas criminal law is more comprehensive in content and comprehensive in system. However, due to the early formulation time, some of the content has been inappropriate and should be deleted. Previously, it was amended through the amendment to the

criminal law. The author believes that a comprehensive revision should be carried out to delete some inappropriate contents, implement Xi Jinpings thought on the rule of law, and comprehensively improve the modernization of Chinas national governance system and governance capacity.

At the same time, we should also take into account the connection between our criminal law and civil law and administrative law. Therefore, in the Amendment to the Criminal Law of the Peoples Republic of China (11), more than 10 additional charges were added, which fully considered the connection with other departments, in order to maintain the unity of legal order. On this basis, Chinas criminal law should also be changed, drawing on the compilation experience of the Civil Code, forming a unified criminal code, to promote Chinas criminal law into a new situation, so as to better realize the science and completeness of Chinas legal system.

5. SUMMARY

To sum up, the codification of criminal law has great practical significance, which can help promote the comprehensive rule of law and bring the criminal law to a new height; improve the legal system and coordinate laws with other departments; further protect human rights, meet the requirements of the state and the people, and better meet the needs of the people for the rule of law, and further practice the people-centered thought of Xi Jinping on the rule of law.

It can be seen that both the criminal law in 1979 and the criminal law in 1997 are characterized by the characteristics of substantive criminal code, but the formal code, resulting in the application of separate criminal law and criminal law amendment to supplement the criminal law, which may be inconsistent. Under the background of the new era, we should adhere to the thinking of codification and strengthen the consciousness of codification of criminal law.

Use the Civil Code to reform the codification, and strive to make Chinas criminal law enter a new stage, so as to modernize the national governance system and governance capacity. Therefore, the codification of criminal law should be improved and developed under the guidance of Xi Jinpings thought on the rule of law, which is conducive to the further improvement and development of Chinas criminal law system, and makes the criminal policy further play its due role.

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