

On the Application and Perfection of the Presumption of Innocence Principle in China

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Abstract: The presumption of innocence is the presumption of innocence of any person before being conviction and conviction. This principle aims to protect the legitimate rights and interests of criminal suspects and defendants before the trial in court, and cannot be regarded as criminals only because they are criminal suspects, which is also a guarantee of human rights. Although the relevant laws and regulations have gradually implement the presumption of innocence principle of legal spirit, promote the legitimacy of the judicial process and the rule of law thought progress, but the presumption of innocence principle in our country has no clear legal provisions, therefore, how to put the presumption of innocence principle institutionalization, legalization, speed up the presumption of innocence principle of legislation and perfect judicial practice is needed to solve the problem.

Keywords: presumption of innocence; right to silence; due process; exclusion of illegal evidence.

1. Overview of the presumption of innocence principle

1.1. The conceptual connotation of the presumption of innocence principle

The principle of presumption of innocence originated from the principle of "doubt is for the benefit of the defendant" in ancient Roman litigation. In the 18th century, the Italian thinker Beccaria was the first to put forward the presumption of innocence in his book on Crime and Punishment: "Before a judge decides, a person cannot be called a criminal. As long as it cannot be concluded that he has violated the contract giving him public protection, the society cannot cancel the public protection against him."..... If the crime is not certain, an innocent person should not be tortured, because, in the eyes of the law, his crime is not proven ".0In the historical development, the principle of presumption of innocence is opposed to the presumption of guilt and extortion of confessions by torture developed in the feudal society. This legal principle appeared and developed after the bourgeois revolution, which negated the litigation system of the Middle Ages. The doctrine of presumption of innocence is now generally accepted as a principle of criminal law and proceedings, and is also a constitutional principle. At present, the principle of presumption of innocence has become a widely recognized principle of criminal law, criminal procedure, and even the constitutional principle. The main contents of the principle include: (1) the burden of proof is borne by the prosecution, and no one shall incriminate; (2) the right to silence; (3) the right to help; (4) the exclusion of illegal evidence.

1.2. Value of the doctrine of presumption of innocence

1.2.1. Promote procedural justice and enhance judicial credibility

The most important point of the presumption of innocence principle is procedural justice. This doctrine is intended to safeguard the unconvicted defendant, still subject to procedural protection, such as, until proved guilty, otherwise the defendant should be presumed to be innocent.[2]Judicial

activities should be based on facts and evidence, and should be able to accurately apply the law. Judicial activities should not only follow substantive justice but also follow procedural justice, so as to reflect the legitimacy, rationality and fairness of judicial activities. Only when people can experience fairness and justice in the judicial activities, can they help to improve the visibility of judgments and rulings, and improve the credibility of the judicial institutions. Since the status of criminal suspects and defendants is often relatively weak in criminal proceedings, it is more and more necessary to have corresponding systems and rules to adjust the litigation status of the prosecution and the defense. The principle of presumption of innocence can well balance the litigation status of both sides, which is conducive to standardizing the behavior of judicial staff, finding out the truth of the case, thus maintaining the fairness and justice of the judiciary, and finally achieving the purpose of punishing crimes and protecting human rights.

And the presumption of innocence principle can make the people more likely to accept the result of the trial, if the criminal suspect, not only conducive to maintain social harmony and stability, is not conducive to improve judicial credibility, difficult to protect the legitimate rights and interests of the defendant, more, is not conducive to improve the people of the recognition of the judicial results. The principle of presumption of innocence can improve the credibility of the judiciary, so as to increase the people's confidence in the country's rule of law and the recognition of laws and regulations, so that the people can feel fairness and justice in the judgment of every case, which is more conducive to promoting the construction of the rule of law in China.

1.2.2. The rights of criminal suspects and defendants will be protected

The presumption of innocence principle requires that the human rights of criminal suspects and defendants cannot be treated as criminals simply because they are likely to commit a crime. Although this concept will not have a great impact on the investigation, prosecution and trial of criminal suspects, these procedures must be carried out in strict accordance with the provisions of judicial procedures, and some preconceived concepts cannot protect their legitimate rights and interests

and safeguard their personal dignity. The principle of presumption of innocence requires judicial staff to investigate the facts within the legal scope and safeguard the legitimate rights of criminal suspects and defendants while ascertaining the facts of the case, which is more conducive to the protection of the basic human rights and related rights of criminal suspects and defendants.

2. The necessity of applying the principle of presumption of innocence in our country

2.1. Requirements based on the principles of due process

The principle of due process originated in British natural justice, began to develop in the United States in the 19th century and produced a series of achievements, and now its ideas has spread around the world. As an important concept of the rule of law and the constitutional principle, the principle of due process has increasingly become the common value orientation of modern countries under the rule of law. The principle of presumption of innocence is the result of the principle of due process, which not only reflects the legitimacy required by due process, but also highlights the legitimacy and rationality. Therefore, in order to implement the requirements of due process, maintain the legitimacy and rationality of the judicial process, and ensure the legitimacy of the judicial staff in law enforcement, the application of the principle of presumption of innocence needs to be further implemented and improved.

2.2. Based on the requirement to protect the basic human rights of criminal suspects and defendants

After the Second World War, in order to strengthen the protection of human rights, the United Nations and its organizations wrote the principle of presumption of innocence into the international human rights convention, and thus the principle of presumption of innocence has become an important international criminal justice code. With the continuous development of the concept of human rights protection, the principle of presumption of innocence has not only been established in the United States, Britain, France, Canada and other western developed countries under the rule of law, but also become an important constitutional principle in many countries and regions in Asia, Africa and America.[3]In order to implement the United Nations International Convention on Human Rights, China has made great efforts and contributions to the protection of human rights. In 2004, China wrote "the country respects and protects the rights of the people" into the Constitution. Based on this constitutional principle and the basic requirements of the international protection of human rights, the application of the principle of presumption of innocence should be improved in our country to strengthen the protection and respect of human rights.

3. Problems and dilemma of the principle of presumption of innocence in our country

3.1. Absence of an explicit legal provision regulating the principle of the presumption of innocence

In 2012, the Criminal Procedure Law improved the defense system, family notice, evidence access and other aspects, which more fully reflected the basic principles of respect and protection of human rights. At the same time, it also introduced some relevant provisions on the presumption of innocence, and put forward the unified conviction by the court, which is one of the specific systems of the presumption of innocence.[4]In 2012, China's criminal Procedure Law strengthened the spirit of the principle of presumption of innocence. For example, the prosecution should bear the burden of proof of guilt; although its provisions on the principle of presumption of innocence are not thorough, it clarified the provision that "no one shall be forced to prove his guilt";

At present, although China has strengthened the implementation of the principle of presumption of innocence in both legislation and practice, there is still no clear relevant legislative provisions on the principle of presumption of innocence. According to article 12 of China's Criminal Procedure Law, "No one can be found guilty without the judgment of the people's court according to law. "Although it has the spirit of the principle of presumption of innocence, it only stipulates that the court has the right of conviction, which does not mean that there is a clear provision on the presumption of innocence in our Constitution and criminal procedure law. Although China's Constitution also has relevant provisions on the principle of presumption of innocence: "Any citizen who is not subject to the approval or decision of the people's procuratorate or the people's court and is executed by the public security organ shall not be arrested. "This law has the spirit of the presumption of innocence, but the constitutional provisions does not involve specific crimes and criminal punishment, so it cannot effectively restrict the rights of the judicial organs.

3.2. The principle of the right to silence is not clearly established

The right to silence is a very important judicial system. The right to silence plays a role in protecting the legitimate rights and interests of criminal suspects and defendants, protecting human rights and safeguarding the legitimate judicial process. The right to silence is also widely used. Many countries have recognized the system of the right to silence and formulated relevant laws and regulations to strengthen the use of the right to silence in judicial activities. However, according to the provisions of Chinese laws and regulations, the principle of silence right is not clearly stipulated in the relevant laws of China. China's law only stipulates that "it is strictly prohibited to extort confessions by torture and to collect evidence by threat, lure, deception and other illegal means", and for criminal suspects and defendants, "no one shall be forced to prove his guilt". However, there are contradictory clauses in China's criminal procedure law, such as "the criminal suspect should answer the questions of the investigators truthfully", from which it can be seen that China has not established the principle of the right to silence. Therefore, in China's judicial

practice, the criminal suspect can not remain completely silent, but also required by the law to truthfully answer the questions of investigators and cooperate with the work of judicial personnel, this provision also retains part of the color of the presumption of guilt.

3.3. Related judicial practice and ideas are difficult to change

Since ancient times, the concept of the rule of law in China is contrary to the spirit of the principle of presumption of innocence. In modern times, it is more difficult to introduce the principle of presumption of innocence and its thoughts. First of all, in ancient China, there were relevant laws and regulations on the "presumption of guilt", such as "all suspected crimes, each sin by the redemption theory. "And suspected crime refers to" if three people confirm, three people prove false, is the name of 'suspected crime'. "That is, the facts proved by three people are contrary to the facts proved by three people. This regulation tells people that suspected crime is also a crime, is not equal to innocence, but for the suspect law can be lenient, and can be applied to let the suspect from the suffering of flesh and blood. However, the suspected crime is not certain that the criminal suspect is the criminal, but still punish the criminal suspect, so it can be seen that the ancient Chinese judicial concept follows the presumption of guilt, the thought of suspected crime.

Second, in the judicial practice now, for example, in the interrogation process of the public security organs, often hear investigators told the criminal suspect "from" frankly, resist strictly, it also reflects the investigators from the side in the psychological has the criminal suspect as criminals, its subconscious or maintain the idea of presumption of guilt. In addition, in terms of the exclusion of illegal evidence, although China has stipulated a lot of provisions on the exclusion of illegal evidence, there is still the phenomenon of illegal evidence collection. If the investigation organs obtain evidence unfavorable to the defendant through some illegal ways, it will be extremely unfavorable to the defendant. To sum up, it is difficult to change some judicial practices and ideas in China at present, and there are many contradictions between their thoughts and the principle of presumption of innocence, which hinder the perfection and development of the principle of presumption of innocence in our country.

4. Suggestions for the application of the presumption of innocence in China

4.1. Clarify the legal status of the doctrine of the presumption of innocence

The Constitution is the fundamental law of our country, which is in the highest position in our legal system. Therefore, we should first make clear the principle of presumption of innocence in the Constitution. The establishment of the principle of presumption of innocence is conducive to the protection of the basic human rights of criminal suspects and defendants and the legitimacy of judicial procedures. These requirements are not only the requirements of the criminal Procedure Law, but also the requirements for the protection of human rights and judicial justice at the constitutional level. In addition, in the laws of many countries, the presumption of innocence has become a universal constitutional principle. Therefore, it is feasible for China to raise the presumption of innocence principle to the constitutional level, which is

conducive to the synchronization with the thought of the rule of law in the world.

Secondly, it is necessary to clarify the relevant legislation of the principle of presumption of innocence in the criminal procedure law. Although articles 12 and 120 of China's criminal Procedure Law carry out the spirit of the principle of presumption of innocence, there is still no clear provision of the principle of presumption of innocence in China's criminal procedure law. Therefore, our country should also perfect the presumption of innocence in the criminal procedure law legislation, such as the criminal suspect and defendant right to silence, perfect the criminal suspect and defendant does not need to self-incrimination, thus to more clearly implement the principle of presumption of innocence in judicial practice, to better protect human rights and promote judicial justice.

4.2. Improve the system of the presumption of innocence

First of all, China should perfect the relevant system of the right to silence. The right to silence refers to the right of a criminal suspect and a defendant to remain silent and refuse to answer the questions when being questioned by the police or tried in court. In many Western countries, most criminal suspects are given the right to silence to protect their own rights and interests. As an important component of the principle of presumption of innocence, the right of silence should accelerate the perfection of its relevant system in China. First, the right to silence should be applied to criminal proceedings but not to civil and administrative proceedings, its purpose is not to force the criminal suspect to criminate; second, the object of the right to silence should be applied to the suspect and defendant; third, the right to silence should apply to the whole process of criminal proceedings, including investigation and prosecution stage, including the trial stage, and the suspect and defendant should be informed that they enjoy the right to silence.

Secondly, China should strengthen the practice and application of suspected crime without principle. The suspicion of innocence is also one of the requirements of the principle of presumption of innocence, which claims that if the evidence is insufficient or insufficient to prove that the suspect or defendant is guilty, he will not be prosecuted or acquitted. However, based on the judicial concept and judicial practice, suspected crime from no not thoroughly implemented in the judicial procedure in our country, difficult cases are often shelved, not for a long time, lead to a waste of judicial resources, but according to the thought of suspected crime from nothing, for insufficient evidence, unable to prove the defendant guilty, should be in accordance with the suspected crime from nothing. Therefore, in the process of investigation and trial, the idea of suspected innocence should be strengthened. If the evidence does not meet the standard of prosecution, or the prosecution standard but cannot prove the suspect or the defendant, the suspect should be made, and the suspect or defendant should not be prosecuted or declared innocent.

4.3. Strengthen the publicity of the judicial principle of due process

The principle of presumption of innocence is the achievement and embodiment of due process. Only by strengthening the publicity of the judicial principle of due process can the people benefit them to better understand the

profound connotation of the principle of presumption of innocence. Due process is an important constitutional principle of the British and American law system, and now it has increasingly become the common value orientation of modern countries ruled by law. Due process embodies the basic requirement of justice for legal process, and only trials and judgments based on due process can be considered fair.[5] Since ancient times, China has followed the idea of "presumption of guilt", and has not completely distinguished the substantive law and the procedural law. In the interrogation of criminal suspects, China directly treats the criminal suspects as criminals, which is not conducive to the protection of human rights of criminal suspects, which is also a reflection of the unreasonable judicial procedure.

Therefore, before establishing the principle of presumption of innocence, it is more necessary to strengthen the public's understanding and understanding of due process. Let people understand even the criminal suspect and defendant also enjoy human rights, even was arrested in accordance with the law, trial cannot equate with the criminal, until the court trial declared its guilty, to treat it as a prisoner in accordance with the law, this can reflect the legitimacy and rationality of due process, not in pursuit of judicial efficiency and preconceptions, ignore the protection of human rights. If there is no due process, there will be no reasonable and fair litigation results, and neither can be missing. Only by considering both, can we better safeguard the basic rights of criminal suspects and defendants, promote the application of the principle of presumption of innocence in China's judicial procedures, and make their thoughts deeply rooted in the hearts of the people.

5. Summary

Since the principle of presumption of innocence was put forward, its requirements have been continuously accepted by

the legal thoughts and judicial procedures of various countries. Based on its concept of protecting human rights, the principle of presumption of innocence has become the basic principle of the criminal procedure law and even the Constitution widely accepted by the international community. Therefore, China should also gradually improve and establish the legislation and practice of the principle of presumption of innocence, abandon the previous concept of presumption of guilt, and emphasize the importance of due process for the realization of fairness and justice and the establishment of socialist rule of law thought. For the establishment and implementation of the principle of presumption of innocence, although there are certain difficulties, but our country should focus on the constitution and the criminal procedure law, strengthen relevant judicial practice, combined with China's national conditions and draw lessons from foreign experience, efforts to promote the presumption of innocence principle of law in our country, it will promote the rule of law democratization, the construction of socialist rule of law in China is of great significance.

References

- [1] Beccaria Cesare Bonesana. On Crime and Punishment. China Legal Affairs Press, 2005, p.37.
- [2] Magnus Yuwan. Is it substantive justice, or procedural justice? ——Challenges to the principle of presumption of innocence . Research on modernization of rule of law, 2017, Vol. 4,p.159.
- [3] Chen Guangzhong, Zhang Jiahua, Xiao Peiquan. On the presumption of innocence principle and its application in China. Law Journal, 2013, Vol.10,p.2.
- [4] Xu Qiulin. The application and perfection of the presumption of innocence principle in China Qingdao University, 2016.p.6.
- [5] Lin-lin Chen. Due Process of Law — Miranda Rule, Yunnan Law, 1998,Vol.4,p.94.