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From National Human Rights Action Plan 2009-2010 to read Chinese government’s attitude toward the new criminal procedure reform

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Abstract: On April 13, 2009, China issued National Human Rights Action Plan 2009-2010 for the first time, which reflected Chinese government’s attitude toward the new criminal procedure reform. This plan brought some procedural rights of criminal procedure into human rights scope, emphasizing the importance of procedural justice in criminal procedure, and this plan paid more attention to the concept foundation of criminal procedure reform, making special human rights education plan. Moreover, this plan showed that China respected the obligation of international treaties. Those new movements will undoubtedly promote criminal procedure reform in China. However, it’s more important to start coordinating different organs to advance law-making process, to integrate judicial resource, and to accelerate the education and popularization of advanced criminal procedure concept. Only through those steps can the plan avoid to be empty talk and be actually realized.

On April 13, 2009, authorized by the Chinese State Council, the State Council Information Office issued a “National Human Rights Action Plan (2009-2010)” (hereinafter referred to as “the plan”). This is the first time for China to develop national action plan on the theme of human rights. The plan makes Chinese government’s objectives and specific measures in the promotion and protection of human rights clear for the next two years. In the plan, there are some content related to new criminal procedure reform in China, which, aiming at some problems in the implementation of the Code of Criminal Procedure, makes plan to strengthen and improve the protection of human rights. The plan also reflects the lastest Chinese academic and practical research results in the difficult amendment process of the code of criminal procedure.

Although the plan is issued by Chinese State Council, the highest administrative department of China, it undoubtedly reflects Chinese government’s general attitude toward criminal procedure reform and human rights protection. Therefore, this paper will make a preliminary introduction of the content related to the trend of China's new criminal procedure reform in the plan, and offer primary opinion about how to implement those content.

Content related to criminal procedure reform in the plan
In the plan, content related to criminal procedure reform mainly concentrated in the second part, “Civil and Political Rights protection”, and there are still related content in other parts, as follows.

Personal rights protection in criminal procedure
The first part of “Civil and Political Rights protection” is titled as “Personal rights”, and the first sentence points out the main field where need strengthen personal rights protection: Improve the prevention and relief measures, protect personal rights in the whole process of law enforcement and judicature in accordance with the law, so that is mainly against illegal violation to personal rights in the law enforcement and judicature. However, from the below, It is mainly aimed at illegal violation to personal rights in criminal procedure. For example, in the plan, law enforcement personnel is...
strictly prohibited of torture and illegal detention, or they will be punished according to law, and the plan also requires to improve the relief measures for victims. The plan proposes to strictly control verdict and implementation of death penalty, justly carry out the death penalty trial, and perfect the death penalty review procedures. The plan requires that the principles of open trial, statutory procedures and so on should be kept in death penalty cases. Procedural justice and substantiality justice should be paid equal attention to. Defendant’s procedural rights, such as defending rights, must be faithfully protected. The appellate cases of death penalty should be open to ensure the legitimacy of trial and judgement.

This has actually broken through the traditional sense of the scope of personal rights, which shows the plan attaches more importance of procedural justice to death penalty cases and that kind of importance will be upgraded to a high level. Finally, this part requires to construct and perfect supervision mechanism in law enforcement and judicature to punish national staff who have torture and other illegal activity.

The protection of detainee’s rights

In China, detainee include suspects and defendants who are detained because of being taken coercive measures, termers, detainees who receive administrative penalty and the administrative penalty of re-education through labor, but read from the word of the plan, the rights of suspects and defendants is focus. The plan requires improving the supervision legislation and taking effective measures to protect detainee’s rights and humane treatment. The main procedural rights of detainee in the plan includes the right of enjoying procedural justice, personal rights, the right to get reasonable treatment, and the right to know. The plan stipulates that imprisoning, commutation, parole, probation, releasing should be strictly enforced in accordance with the law. Effective measures must be taken to prevent torture, corporal punishment and abuse. Specific new measures, such as mandatory physical isolation in hearing rooms and physical examination before and after questioning, are proposed.

The plan requires to increase detainee’s convenience to communicate, meet, get entertainment and visit their relatives. It also requires to perfect health management system and medical care system for detainees, and promote the psychological counseling and mental health education. The plan demands to improve open system of prison law enforcement, publicly announce the rights of detainees, law enforcement standard and procedure to detainee’s relatives, themselves and the public. Those rights are very important to detainees, and belong to basic human rights. At the same time, the plan expresses to take prosecutor-monitoring measures to strengthen real-time supervision of prison law enforcement.

The right to get a fair trial

This part requires to ensure people’s right to get a fair trial in civil, criminal procedure and administrative litigation, but emphasizes to ensure this right of those who are charged with a criminal offense. The plan stresses the need to take effective measures to carry out timely and fair trial of cases. It must be ensured that the facts are clear and evidences are adequate, and the procedures are legal. The plan demands fully public trial, open cross-examination, debate, case hearing and evidence verification to protect the rights of citizens to attend trial. Important trial can be recorded, and effectual juridical judgment must be open. For the people’s jury system, juries must exercise independent vote in fact-finding and law application process in the trial. What is remarkable is that, to the problem that amended Lawyer Law is inconsistent with the Code of Criminal

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2 Many Chinese scholars raised doubts about the legitimacy of this administrative penalty.
Procedure, the plan demands to amend or repeal laws inconsistent with Lawyer Law to ensure lawyer’s right to meet and communicate with the suspect, read files and collect evidence. Lawyer’s other rights, such as personal rights, the right of debating and defending, should also be protected.

To ensure that people get real fair trial, the plan requires to expand the scope of people who can receive judicial assistance, and requests the government to strengthen the legal aid system to provide timely aid to people who need it.

In the "supervisory power" part of "Civil and Political Rights protection", the plan points out it’s necessary to strengthen people’s supervision toward administrative organs, judicial organs and prosecuting agencies, which is an indispensable part to make people get fair trial. In order to protect minor’s rights in criminal procedure, the third part of the plan, “the protection of rights of minorities, women, children, the elderly and persons with disabilities”, specially points out to strengthen protection of minor’s rights in criminal procedure, and establish different judicial organ according to minor’s characteristics. Minor criminals should mainly be educated and saved.

**Strengthen human rights education**
The fourth part of the plan specifically makes plan to strengthen human rights education. It says this education must rely on all kinds of education system, such as compulsory education, secondary education, higher education, vocational education, training institutions in governments and all kinds of media to popularize and spread knowledge of law and human rights. In primary and secondary schools, high schools and colleges, various measures should be taken to cultivate student’s conscious awareness of human rights and the rule of law. Colleges and universities are encouraged to start human rights research and education, or human rights curriculum. To civil servants and judicial personnels, especially public security, procurators, judges, human rights education and training is necessary. Various law enforcement agencies should make their own programs of human rights education according to their characteristics. There must be plans to carry out human rights education, and improve the human rights awareness for the public. The strengthening of human rights education in the plan will undoubtedly popularize the concept of human rights and the rule of law, creating a sound social basis and ideological foundation for China’s new criminal procedure reform.

**International human rights obligations**
The plan says, China has participated in 25 international human rights treaties. China will fulfill its treaty obligations seriously and promptly, and submit performance reports to the relevant treaty bodies as soon as possible, such as International Covenant on Economic, Social and Cultural Rights, and The Convention on the Rights of the Child. Otherwise, China has signed the International Covenant on Civil and Political Rights, and will carry on legislative and judicial, administrative reform to create a better harmony between domestic law and the Covenant, producing the conditions for approval as soon as possible. In the International Covenant on Civil and Political Rights, there are a large number of provisions related to the protection of human rights in the criminal justice, and some of them are internationally accepted criteria of criminal justice. Therefore, China’s effort will make the National People’s Congress ratify the Covenant soon or later, and accelerate China’s criminal procedure reform to make it modernized.

**Chinese government’s attitude toward the new criminal procedure reform read from the plan**

Bring procedural rights of criminal procedure into the scope of human rights

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3 In China, police are called public security.

An eye-catching bright spot in the plan is that it brings some procedural rights of criminal procedure into the scope of human rights. For example, it strictly forbids torture and illegal detention. Although the main intention is to protect people’s personal and health rights, it also means people enjoy the rights of being free from torture and illegal detention, which is the basic human rights. In death penalty cases, statutory procedures should be kept, and procedural justice and substantiality justice should be paid equal attention to. That means defendants in death penalty cases should enjoy the real right to get fair trial and defend themselves, which belong to basic human rights, too. For custody issues, procedures must be normative, and people have the right to be free from illegal detention. Detainees can get physical examination before and after questioning. They are free from torture or corporal punishment, abuse, insult, and they enjoy the right to receive good treatment. Detainees and their families enjoy the rights to know detainee’s rights and standard of prison law enforcement, and then they can supervise the process of prison law enforcement. Litigants, especially who are charged with a criminal offense, have the right to get a fair trial. The procedure of cases should be legal. Parties have the right to get timely and open, fair trial of cases in accordance with the law. Eligible people should have access to legal aid and legal measure to seek relief.

The plan brings those procedural rights of criminal procedure into the category of human rights, finding a location for the criminal procedural rights in China’s human rights system. This is a significant breakthrough in China's past understanding of the scope of human rights, and that shows Chinese government has realized the important role of procedural rights to the protection of the right of life, health, freedom and other basic human rights. Undoubtedly, this is a great step forward, and is extremely important for heightening the status of procedural rights and promoting the reform of criminal proceedings.

**Emphasis on procedural justice**

Another prominent feature of the plan is it strengthens the emphasis on procedural justice in criminal proceedings. For example, it requires to collect evidence in accordance with the law. Custody, the extension of custody must be in accordance with the law, too. Death penalty review procedures should be improved, and the power of death penalty review should be taken back to the hands of the Supreme People's Court. During the trial, it must be ensured people who are charged with a criminal offense have the right to get fair trial. In addition to facts and evidence, legitimate judicial proceeding is another important issue in the trial. Trial should be open, and juries should exercise independent vote in fact-finding and law application process in the trial. Laws inconsistent with Lawyer Law should be amended or repealed to ensure lawyer’s right to meet and communicate with the suspect, read files and collect evidence. Through judicial assistance and legal aid system, parties are ensured to be able to make full use of judicial resources to realize justice through judicial approach. The plan also requires to strengthen people’s supervision toward judicature.

Although the plan just makes specific implementation plan for a few field of human rights protection in criminal procedure, mainly protection of personal rights, detainee’s rights and the right of fair trial, it reflects that China attaches more importance to procedural justice than before, and has a deeper understanding of the fair procedure’s function to protect human rights. This is a welcome sign of advancement.

**Recognition to the function of concept**

What is surprising is that the entire length of the fourth part of the plan requires to strengthen human rights education to popularize and spread the law knowledge and human rights knowledge, and it makes concrete and feasible plan to do it. This shows that Chinese government has already fully
realized that the concept of reform must go ahead in law reform. The same is true of criminal procedure reform. Only the majority of people accept advanced concept of criminal procedure, can some advanced procedural principle or system be implemented in practice. For example, some Chinese scholars put forward a viewpoint about pre-trial detention, that detention is exception and release is normal. This is absolutely right, because detention, as a deprivation of physical liberty in the coercive measures, should be strictly limited. In pre-trial phase suspects or the accused should not be punished in advance. Pre-trial detention is just an interim measure government takes in necessary circumstances. To protect people’s human rights, detention should not be applied as much as possible. However, if governent wants this viewpoint incorporated in China’s Criminal Procedure Code and implemented in practice, it must let people realize the principle behind this viewpoint, and accept this viewpoint from the heart. By contraries, now most Chinese think that suspects and defendents are already criminals, and there is nothing wrong to detain them before trial. Another example is the issure of judicial review against investigation proceedings most scholars agree with. People must recognize the human rights protection function and power restriction function of this judicial review, or they may have some doubt about it.

It’s necessary to repeat popularizing and promoting those advanced concept to make the masses accept them. The fourth part of the plan just plays such a role. If China's human rights education gets actual effect, then it can offer ideological and cultural support to China’s criminal procedure reform.

[1] Respect to international treaty obligations

The fifth part of the plan, “The implementation of international human rights obligations and international intercommunion and cooperation in the field of human rights”, fully reflects that China, being a responsible country, is actively preparing to assume its international treaty obligations. For example, the plan says China will complete performance reports of the International Covenant on Economic, Social and Cultural Rights, The Convention on the Rights of the Child and Elimination of All Forms of Discrimination against Women Convention, and submit them to relevant international bodies to review. What is remarkable is that the plan clearly expresses China will continue to reform legislative and judicial, administrative system to make domestic law and the International Covenant on Civil and Political Rights consistent, creating conditions to approve the Covenant as soon as possible. China has signed the Convention 11 years ago, but hasn’t approved this Convention until now. The reason is that China hasn’t well prepared for the Convention in legislation and judicial mechanism. In criminal procedure, there are still incompatibilities between domestic law and the above-mentioned international criteria of criminal justice. Therefore, the plan designs China’s next step for this problem, which is actively carrying out relevant legislation and judicial reform to make the Convention approved as soon as possible. This shows the determination of Chinese government to reform criminal procedure and approve the Convention, and also reflects Chinese government’s respect to the obligations of human rights protection in criminal proceedings in the the Convention.

How to implement content related to criminal procedure reform in the plan

As mentioned above, the plan reflects some consensus about China’s criminal procedure reform after more than ten years of consideration, discussion, controversy, and Chinese government’s attitude toward new reform. However, if the content related to criminal procedure reform was really implemented and practiced, further efforts of all aspects of nation was needed. The plan has a general requirement about how to implement the plan and supervise the implementation of the plan, which is requiring government at all levels, as well as various government departments should carry
out their own duties, and be responsible for their own work to implement the plan seriously and actively. Various types of enterprises, institutions, social organizations, non-governmental organizations, the media and the public should be actively involved in the popularization of this plan and promote the implementation of this plan. At the same time, the joint meeting mechanism of national human rights plan is established, which is responsible for co-ordination of the implementation, monitoring and evaluation of the plan. Limited by the major idea, this paper raises a few points about how to implement the content related to criminal procedure reform in the plan from the aspects of resource, law and concept.

**Speed up co-ordination to promote the legislative process**

The plan is issued by State Council, the highest administrative department of China. Therefore State Council must coordinate with the legislature, the judiciary and other administrative organs to promote the amendment and improvement of the Code of Criminal Procedure and related laws and regulations. For instance, the plan requires to improve prevention and relief measures to prevent torture and illegal detention in criminal procedure. However, there is scarcely no provision of procedural relief measure against torture and illegal detention in the present Code of Criminal Procedure. Article 43 of the Code just makes principle provision of torture and other illegal evidence collection, it stipulates extorting confessions by torture and threats, enticement, deceit or other illegal methods to gather evidence is strictly forbidden. However, people subjected to torture does not have any specific procedural remedies, which causes this article can’t play the role of inhibiting torture at all. To illegal detention, article 75 stipulates criminal suspects, defendants and their legal representatives, or near relatives of the suspect, the entrusted lawyers and other advocates have the right to request suspending coercive measures, if this coercive measures is beyond statutory deadline. But if courts, police or procurators don’t suspend them, people don’t have any legal means of relief, not to mention the usual situation people are detained without performing any legal procedures. Therefore at least there must be articles giving people effective relief measures to counter those illegal violation from government.

Another example is the plan advocates mandatory physical isolation in hearing rooms and physical examination before and after questioning. To achieve those goals, the Criminal Procedure Code and related laws and regulations must be amended to construct those system and facilities. The revised Lawyer Law gives a wider range of rights to lawyers to participate in criminal procedure, including meeting with the suspect without being monitored, the right to apply for evidence investigation and the right to collect evidence. These rights are inconsistent with the existing provisions of the Code of Criminal Procedure. Consequently, the plan puts forward clearly to amend or repeal laws, rules and regulations, regulatory documents inconsistent with the new Lawyer Law, which is bound to eventually lead to amendments of the Code of Criminal Procedure. Moreover, articles in the Code of Criminal Procedure inconsistent with the International Covenant on Civil and Political Rights must be modified or repealed to make the Code approach to the Covenant. Therefore, State organs have to make fully effective coordination to accelerate legislation process and lay a law basis for the realization of the plan.

**Integration of judicial resources**

Sections of criminal procedure reform are closely interconnected, and it’s essential to integrate some judicial resources to meet the need of reform. According to the plan, China must make a great deal of judicial resources integration to realize content related to criminal procedure reform in the plan. For example, the plan requests the Supreme People’s Court to take back the death penalty review
power, which means the Supreme People's Court must be equipped with the appropriate human resources to carry out the work of death penalty review, and reapportion staff in the Higher People's Court undertaking death penalty review before. The physical isolation in hearing rooms and physical examination before and after questioning, and improving detainee’s treatment proposed in the plan also needs large-scale investment and reconstruction. Prosecutor-monitoring measures in prison law enforcement needs necessary adjustments to the existing prison management system and more personnel, resources. Strengthening judicial relief and legal aid needs integration of judicial resources and the construction of relief and aid regulation, which allocates limited judicial assistance resource to those who really need it. Therefore, implementation of the requirements about criminal procedure reform in the plan is a very complex system work, by no means a simple amendment of the law. Difficult system reform and resource integration is necessary. In a large population and relatively poor country like China, judicial resources is very limited, and personnel, finance, management system are complicated. So it’s a great challenge China faces how to integrate judicial resource effectively and exert judicature’s max function of promoting social justice, social efficiency.

**Speed up the education and spread of advanced criminal procedural concept**

In judicial reform, the concept must go first. As mentioned above, the plan makes it clear to strengthen human rights education and popularize and spread konwledge of law and human rights. Advanced criminal procedural concept, such as the presumption of innocence, statutory procedures, belongs to knowledge of law, and human rights as well. At the same time, because criminal procedure code is seismograph to the Constitution of one country, and is most closely related to protection of human rights and power restrictions. Therefore country should first carry out the education and spread of advanced criminal procedural concept. In the plan, China plans to bring human rights konwledge into the scope of law popularization activities, and utilize existing compulsory education, secondary education, higher education and vocational education system to develop a full range of education and awareness training project of democracy and the rule of law, human rights. Of course, this education should include advanced criminal concept, such as the mentioned presumption of innocence. This education should be flexible and diverse, lively and interesting. China’s next generation then can accept these advanced concept from heart when they are students, which lays a long-term concept foundation for China’s judicial reform and the modernization of law. The plan requires human rights education program for public security, procurators, courts, prisons and other departments. They must learn the importance of just criminal procedure to the protection of human rights, and they must raise their human rights awareness.

The plan says China plans to strengthen human rights education for the public. In this education, all kinds of media should be utilized to change some unenlightened criminal procedural concept, such as presumption of guilt and heavy penalty. People need to know and accept advanced concepts to constitute reliable demos support and concept foundation for China’s criminal procedure reform, or some good criminal procedure may die after being introduced into China, and can’t be practiced.

At last, though the plan makes great progress in the objective of China’s new criminal procedure reform, and reflects Chinese government’s progressive attitude to the reform, the content of plan seems scattered and not systematic enough. Therefore content about criminal procedure reform in the future plans should be edited more systematically to make it easy to be implemented. In addition, besides general implementation plan in the introduction of the plan, more specific and feasible plan about how to practice criminal procedure reform content in the plan should be made to let it actually come true in China.
Reference: