

**TENDENCY OF PUNISHMENT OF TRAFFICKING
OFFENCES IN CHINA****TENDANCE DE LA SANCTION PÉNALE DES INFRACTIONS LIÉES AUX
TRAFFICS**

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ABSTRACT

The Chinese Criminal Law of 1997 has stipulated all trafficking offenses related to firearms, antiquities, wildlife, human beings and drugs, and included aggravated penalties allowing for the death penalty for all of these offenses. In the more than 20 years since then, ten Amendments have been instituted to reform and to readjust the Criminal Law in the spirit of safeguarding social harmony, assuring human rights, and carrying out a policy of severity tempered with gentleness, in accordance with emerging world trends. The Supreme Court of China has tried to guide and unify the implementation of Criminal Law and criminal policy under its jurisdiction by publishing judiciary explanations.

Keywords: Offences related to illicit trafficking; Amendment of criminal law; Mitigation of punishment; Capital punishment.

RÉSUMÉ

La Loi pénale chinoise de 1997 a prévu toutes les infractions de trafic illicite concernant les armes, les antiquités, la faune recherchée, le drogue, et de traite des êtres humains, avec des peines aggravées allant jusqu'à la peine capitale. Depuis plus de 20 années, 10 amendements ont été adoptés pour réformer et réajuster la Loi pénale dans l'esprit de sauvegarder l'harmonie sociale, de garantir les droits de l'homme, d'assurer la mise en œuvre de la politique criminelle de combinaison de sévérité avec indulgence, et d'être en concordance avec l'émergence de la tendance pénale dans le monde. La Cour populaire suprême chinoise a essayé de guider et d'unifier l'application de la Loi pénale et de la politique criminelle dans tout le pays par publication des explications judiciaires.

Mots-clés: Infractions liées aux trafics illicites; Amendement de la loi pénale; Mitigation de punition; Peine capitale.

INTRODUCTION

The trafficking offences in this paper mean crimes of illegal transaction, illicit trading, smuggling, abduction and trafficking which are punished by the criminal law.

The first Criminal Law of the People's Republic of China was promulgated in 1979 in context of the establishment of reform and opening-up policies in China. The Criminal Law of 1979 contained provisions for penalties related to trafficking of firearms, antiquities, human beings and drugs, but not of wildlife, (only article 130 provides penalties for the destruction of wildlife resources). The penalties for these offenses were mainly fixed-term imprisonment and might go up to life imprisonment for the trafficking of firearms and antiquities in the most serious cases.

With increased economic development and globalization, criminal activity in China became more diversified and cross-border in nature. Chinese legislature had to take a series of severe measures to stem growing crime by stipulating new provisions and harsher punishments. These measures were codified in the Criminal Law of 1997, which covered all trafficking offenses related to firearms, antiquities, wildlife¹, human beings and drugs, and included aggravated penalties allowing for the death penalty for all of these offenses.

In the more than 20 years since then, ten Amendments have been instituted to reform and to readjust the Criminal Law in the spirit of safeguarding social harmony, assuring human rights, and carrying out a policy of severity tempered with gentleness, in accordance with emerging world trends. The Supreme Court of China has tried to guide and unify the implementation of Criminal Law and criminal policy under its jurisdiction by publishing judiciary explanations.

¹ In this paper, the word of "wildlife" refers "precious animals and their products" in Chinese Criminal Law. This Law provides also offences related to precious plants and their products, but with less severe punishments.

I. MITIGATION OF PUNISHMENT FOR TRAFFICKING OFFENCES AT LEGISLATIVE LEVEL

I.1 Abolishment of death penalty for smuggling wildlife, firearms, antiquities by recent Amendments to criminal law

The 8th Amendment to the Criminal Law of 2011 was the first text to diminish the incidence of the death penalty in criminal law and canceled the death penalty for 13 crimes, including the smuggling of wildlife and antiquities (art. 151).

The 9th Amendment to criminal law of 2015 sought to further diminish the use of the death penalty for 9 crimes, including the smuggling of firearms (art. 151). Most death sentences were replaced by convictions of life imprisonment.

Smuggling offences were classified as economic and nonviolent crimes and in judicial practice in China, capital punishment has rarely been applied to the smuggling crimes. Punishments related to loss of liberty and property have generally been enough to respond and to prevent to these kinds of offences in China.

I.2 Adjustment of the magnitude of penalties for smuggling wildlife and antiquities by recent Amendment to criminal law.

Before the reform, the penalty for smuggling wildlife and antiquities was a fixed-term imprisonment between 5 and 15 years, with fines. In the most serious cases, the sentence could be life imprisonment or the death penalty with confiscation of property.

Besides the abolishment of the death penalty, the 8th Amendment of criminal Law adjusted the magnitude of penalties for the smuggling of wildlife and antiquities to fixed-term imprisonment between 5 and 10 years with fines. In the most serious circumstances, the sentence was adjusted to fixed-term imprisonment of a minimum of 10 years or life imprisonment, including the confiscation of property.

The reform reflected the implementation of a policy of severity tempered with gentleness and responded to trends of lighter punishments seen in the international context.

I.3 Death penalty for the extremely serious crimes.

According to Chinese Criminal Law, the death penalty shall only be applied to criminals who have committed extremely serious crimes. The Criminal Law maintains the application of the death penalty for crimes of firearm, human or drug trafficking.

Although the 9th Amendment abolished the death penalty for firearms smuggling (art.151), illegal trade, the transport or mailing of any guns, ammunition or explosives are subject to the death penalty according to article 125 of the criminal law, as these crimes are seen as an endangerment to public security. The smuggling of firearms is characterized as harmful to the socio-economic order. Therefore, the main difference between the two crimes is the impact of the crime on the social interest, which is protected by criminal law.

Chinese criminal law punishes the abduction and trafficking of women and children and carries penalties up to the death penalty if the circumstances are considered "grievous". Serious circumstances include the rape of abducted women, enticing or forcing the abducted or trafficked women into prostitution, selling women to a person(s) that would force her into prostitution, causing serious injury or death to abducted and trafficked women and children, selling women or children to a territory outside of China, etc.

The smuggling, trafficking, transportation or manufacture of drugs are all punishable offences by Chinese Criminal Law (art.347), with sentences up to death penalty. With the increase in drug-related crimes and the gravity of damages caused by such crimes in recent years, the application of the death penalty to drug-related offences represents an important percentage among nonviolent crimes.

Historically, China has been victimized by opium trafficking and wars, which has led to a profound hatred of drugs on the part of the population, who count on the justice system to apply severe punishments to drug-related crimes. Although drug-related crimes are non-violent economic offences, recent Amendments to criminal law have remained silent in this respect. A death sentence maybe applied when drug possession reaches quantities defined by law (opium of not less than 1000 grams, heroin of not less than 50 grams, or other narcotic drugs of large quantities are involved).

The use of arms or violence to cover up drug trafficking crimes or to resist arrest or detention is also punishable by death. Participants in international drug smuggling organizations, leaders of smuggling operations, traffickers, transporting and manufacturing groups, may also be punished by death.

2. CONTINUED MITIGATION OF PUNISHMENT FOR TRAFFICKING OFFENCES AT JURIDICAL LEVEL

Since January 1st, 2007, the Chinese Supreme Court has reclaimed the right to review death sentences applied by Superior Courts at the provincial level and unified the exercise of approval rights of capital punishment throughout the country, in an effort to reduce the incidence of execution.

China has further reduced its application by taking a series of important measures to improve and perfect the evidence system in death penalty cases. For exam-

ple, the Supreme People's Court and other organs of the Central Government jointly issued regulations to exclude confessions extracted through torture.

In China, there is also a system of reprieve in death penalty cases, for which the execution is suspended during a two-year period and includes the automatic launch of a clemency process. Any person who is sentenced to death with a suspension of execution and who commits no intentional offence during the period of suspension will have their punishment commuted to life imprisonment or 25 years if "meritorious service" is demonstrated upon the expiration of the two-year period. In juridical practice, the execution of the death penalty with reprieve is applied to reduce the incidence of the death penalty if an immediate execution is not necessary according to the case. The 9th Amendment to Criminal Law has also raised the standards for applying the death penalty to criminals sentenced to death with reprieve and established a system for recounting the period of reprieve, in order to reduce the number of executions.

All these legal and judicial measures are a reflection of positive trends and efforts for China's reform of death penalty. The death penalty concerns 4 drug-related crimes: smuggling, trafficking, transporting or manufacture of drugs.

According to many Chinese criminal scholars, the death penalty should be abolished immediately in offences related to the transport of drugs. These criminal scholars view the transport of drugs as an "intermediate" step in drug crimes whereas smuggling, trafficking or manufacturing are seen as the source for the spread of drug crimes and carry more danger than transporting. In juridical practice, many offenders of transporting drugs have less importance in the chain of drug crimes and present less danger to society.

In addition, the offenders of transporting drugs are often people living in poverty or without employment; they are hired as workers for little money in drug crimes. They are not generally the owners, sellers or buyers of the drugs and play a secondary role in comparison with the organizers, instructors or employers in drug crimes. Their culpability and danger to society is therefore relatively minor. It follows that the application of the death penalty for offences of transporting drugs does not conform to the principle of proportionality, nor is it efficient to prevent drug crimes or act as a deterrent for drug lords or traffickers.

The Chinese People's Supreme Court has realized this situation and taken the position to reduce the application of the death penalty to first offences or occasional offences related to transporting drugs if the offender is instructed or employed to transport drugs.

It is desirable to abolish the death penalty for transporting drugs at the legislative level in the future.

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