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Rui Li

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Introduction

- I Summary of the Criminal Law
- II Basic Principle of the Criminal Law
- III Effectiveness of the Criminal Law

Section 1

Summary of the Criminal Law



Concept of the Criminal Law

Concept of the Criminal Law

Criminal Law refers to all the stipulated legal norms including crimes and the legal consequences. The main legal consequences of the crime are penalties, so that the Criminal Law is also known as the Crime Act or the Penal Law. In China, the Criminal Law refers to a law formulated by the National People's Congress and its Standing Committee which represents the will of the people and stipulates the crimes and the legal consequences.

Form of the Criminal Law

In China, the Criminal Law has the following forms of existence (or manifestation or formal source):

1. Criminal code refers to a code with comprehensive and systematic regulations on the crime and its legal consequence. There are two "criminal code" in Chi-



na which appeared successively: (1) The first criminal code formulated in 1979, which is called “previous criminal code” or the “criminal code 1979”. (2) In 1997, after the amendment of the previous criminal code, the new one is called “revised criminal code” or the “criminal code 1997”. After the revised criminal code entering into force, the previous criminal code and its following over 20 regulations and decisions of separate criminal law shall not be applicable any more except for the retained administrative penalties and measures.

2. Separate Criminal Law refers to a law which stipulates a certain type of crime and its legal consequence or a certain matter of the Criminal Law. After the revised criminal law code, our country has also promulgated one Separate Criminal Law, namely Decision on Punishment of Fraudulent Purchase of Foreign Exchange, Evasion of Foreign Exchange and Illegal Dealings in Foreign Exchange Crime by the Standing Committee of National People’s Congress in December 1998.

3. Subsidiary Criminal Law refers to certain provisions with regard to the crime, penalty or investigation for the crime responsibility supplemented in the non-special criminal laws like economy and administrative laws, such as the provisions to investigate the criminal responsibility stipulated in the Customs Law, Environmental Law and Negotiable Instruments Law. Now, the Subsidiary Criminal Laws of our country are usually only for restating the content of the criminal code and do not establish the detailed content of new crimes and legal consequences.

The term of the Criminal Law has its broad or narrow sense. The broad Criminal Law includes all the above forms of Criminal Law and the narrow Criminal Law refers in particular to the criminal code. The criminal code is also known as the General Criminal Law, and the Separate Criminal Law and the Subsidiary Criminal Law is known collectively as the Special Criminal Law. A principle that the Special Criminal Law shall be prior to the General Criminal Law shall be applicable in the event that a crime act violates the provisions of both the General Criminal Law and the Special Criminal Law; as a principle that the new Special Criminal Law shall be prior to the old one in the event that a crime act violates the provisions of two Special Criminal Laws.



Characteristic of the Criminal Law

The characteristic refers to the features compared with other laws like Civil Law or Administrative Law, so that it may be called the legal nature (speciality). The Criminal Law has the following characteristics:

1. Universality of the adjustment scope. The Criminal Law has a board objective on the interest to protect and the object to be adjusted. It can be seen from the tasks stipulated in the Article 2 of the Criminal Law and the Article 13 of the definition of the crime, the Criminal Law protects every critical interest of our social life from the national security, public security, economy system to the right of the person and the right to property of an individual citizen, however, the other laws such as Civil Law, Economy Law, Administrative Law may only involve in the certain aspect of the society life or the interest or the relationship at a certain level. The act of serious violation of other laws (which may endanger the society) may enter into the adjustment scope of the Criminal Law, the Criminal Law provide strong support and security to other laws.

2. Specialty of the adjustment object. Tasks and the methods to accomplish the tasks of the Criminal Law are different from other legal branches. The Criminal Law mainly stipulates crimes and uses the method of penalty to fight against the crime as well as investigate the criminal responsibility of the criminal, meanwhile other laws have their own tasks and methods to accomplish the tasks.

3. Severity of the penal punishment. The Criminal Law has much more severe coerciveness than other laws. The features of the Criminal Law embody a concentrated reflection in the legal consequence of the criminal act. The severity of such legal consequence cannot be compared with other laws such as Civil Law or the Administrative Law. The consequence of any violation of the Criminal Law is penal punishment and its methods include deprivation of certain important rights such as life, freedom, property, qualification and so on.

4. Supplementary and protective nature of the initial of the Criminal Law. It is the severity of the penal punishment decides that the Criminal Law shall abide by the principles of clarity, restraining and legally-prescribed conviction and require the



premise (constitutive requirements) of the applicable penalty to be specific and explicit to restrain the applicability of the penalty. As the "final resort" to protect the society, the Criminal Law shall be used to adjust only if other laws cannot provide adequate protection to certain social relation. Therefore, the Criminal Law is the guarantee law of other laws.



Tasks and functions of the Criminal Law

The tasks of the Criminal Law of our country include two aspects:

(1) Task of punishment, that is to use the penalty to fight against any criminal acts.

(2) To protect the people, society and the nation, that is ① to safeguard the security of the nation, the political power of people's democratic dictatorship and the socialism; ② to protect the state property, the property collectively owned by working people and privately owned by citizens; ③ to protect the personal rights, democratic rights and other rights of citizens; ④ to maintain the social order and the economic order to guarantee the socialist construction to go on wheels.

The functions of the Criminal Law refer to the positive role the Criminal Law plays. In general, the Criminal Law has three functions:

(1) Normative function, refers to the function of regulating or restraining people's acting, the method of which is to prescribe the penalty of the crimes to show such acts are not tolerated by the law; or acquire the citizens to not implement such behaviors to avoid the crime.

(2) Protective function, refers to the function to protect the legal rights and interests of the nation, society and individuals.

(3) Guarantee function, refers to the function which guarantees the citizens from illegal infringement of the national penalty power and any penalty beyond the provisions of the Criminal Law.





System and interpretation of the Criminal Law

System of the Criminal Law

1. System of the Criminal Law

The system of the Criminal Law refers to the composition and structure of the Criminal Law. Our current Criminal Law adopts the code model of civil law system. The Criminal Law (criminal code, narrow Criminal Law) is divided into two parts which are the “General Provisions” and the “Specific Provisions”, in addition to one supplementary provision. The General Provision is divided into five chapters; the contents of each chapter are the aim, basic principles and scope of application of the Criminal Law, crimes, punishments, the concrete application of the punishment and other regulations respectively. The Specific Provision is divided into ten chapters and specifies crimes and legal punishments of various concrete crimes. The relationship between the General Provisions and the Specific Provisions is general and particular as well as abstract and concrete. Two parts relate closely, supplement each other and constitute the standard system of the Criminal Law.

2. Article structure of the Criminal Law

There are obvious differences between the article structure of the General Provision and the Specific Provision. The provisions of the General Provision mainly stipulate relevant rules of criminal law, the main content of which includes basic principle and applicable scope of the Criminal Law, general constitutive elements of crime, classification of criminal penalties, various specific criminal law system and general provisions for applicable conditions. In the provisions of the Specific Provision, the Criminal Law stipulate the relationship between crime and penalty into “Whoever robs public or private property by violence, coercion or other methods

