

Admissibility of indirect evidence in Chinese cases of torture

Abstract

Admissibility of indirect evidence is related to the “Fruit of the Poisonous Tree” theory. In analyzing its admissibility, this article demonstrates that China’s criminal procedure law fails to prescribe legal requirements for its applicable scope. The abuse of human rights is common in cases of torture, detrimental to international human rights standards. Most notably, a lack of remedies for violations of exclusionary rules is the primary form of abusing such rights. Prevention of such abuses will entail the achievement of gradual shift from crime control to human rights protection in order to mend flaws and meet requirements of international standards.

Keywords: admissibility of indirect evidence, fruit of the poisonous tree, chinese cases, torture

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Introduction

China’s criminal procedure law fails to prescribe legal requirements for admitting indirect evidence. This is against international standards and detrimental to justice. Most notably, a lack of remedies for violations of exclusionary rules is the primary form of abusing human rights. Prevention of such abuses may entail China’s gradual ideological shift to human rights protection in cases of torture. So far, the problems of admitting indirect evidence have been insufficiently explored in theory or in practice. Addressing this lack, this article gives a preliminary analysis of legislation concerning the admissibility of indirect evidence. The first part interprets the grounds for a lack of the admissibility of indirect evidence in China’s current legislation. The second part introduces the legal effect of international human rights law on China’s criminal procedural law, as the reasons for its bringing the admissibility in line with international human rights treaties. The third part shows that a primary form of the relevant human rights abuses is a lack of remedies for violations of exclusionary rules. The fourth part gives explanations for and suggestions on how to prevent such abuses.

Legislation

China’s criminal justice system does address the problem of indirect evidence gained from torture, but not acknowledge a “fruit of the poisonous tree” doctrine in statutory rules. In practice, there is no way to apply such rules that have no legal basis and clearly go against the law enforcement authorities’ common goal of crime control. Justifications for the non-application of “fruit of the poisonous tree” in China include both very complex situation of evidence collection and many difficulties of excluding typical involuntary confession in the current judicial environment of the PRC.¹ This seems to well interpret the grounds for a lack of the admissibility of indirect evidence in China’s current legislation. But unfortunately, compared with international human rights standards, the above lack clearly deviates from them a lot.

¹See GAO Jie, An Empirical Study on the Exclusionary Rule of Illegally Obtained Evidences (*feifa zhengju paichu guize shiyong de shizheng yanjiu: cong 'zhongguo caipan wenshu wang' de yibai fen caipan wenshu tanqi*), 1 Journal of Jiangsu Police Officer Academy (*jiangsu jingguan xueyuan xuebao*) 2016, 32; also see LIN Guoqiang, On the Applicable Scope of Fruits from the Poisonous Tree in Chinese Criminal Procedure Law (*lun dushu zhiguo zai woguo xingshi susong fazhong de shiyong kongjia*), 10 Hebei Law Science (*hebei faxue*) 2013;182-183.

Effect of international human rights law

Both the Convention against Torture, Degrading or Inhuman Treatment (CAT) and the International Convention on Civil and Political Rights (ICCPR) have an impact with regard to the ban on “torture evidence” in China. The both are major international human rights treaties that China has signed about two decades ago. Particularly after ratifying the CAT, China has taken diverse measures to reform the evidence system of prohibiting or preventing torture. Following its signing the ICCPR, China further improves its human rights protection in procedure. All of efforts to revisions on Chinese criminal law and criminal procedures are mainly based on such international standards as the effect of international law on China. Even so, China has not yet satisfied international human rights standards on prohibition of torture. Without introducing the doctrine of “fruit of the poisonous tree”, China’s justice reforms cannot suffice its actual needs of fulfilling international obligations.

Remedies following violations of exclusionary rules

Given the legal effect of international human rights law on China’s criminal procedural law, it is necessary for China to examine whether legal remedies on violating exclusionary rules are adequate or not in order to fill in the potential gap. In fact, there are special procedures for initiating the application for excluding illegally obtained evidence concerning possible violations of the ban on torture, and no remedy for a violation of exclusionary rules safeguarding the ban on torture in the PRC. In PRC’s criminal justice system, there is a standard procedure for testing confessions or other statements for “torture stains” or trace. As showed in Arts. 55-58 of the 2012 CPL, the procedure for excluding the evidence involves five steps: the first is to initiate the procedure in court examination; the second is courts’ preliminary examination; the third is the prosecution’s testifying in court; the fourth is cross-examination of both the accused and the prosecution; the fifth is courts’ decision-making on the evidence. Under the CPL, prosecutors also have the burden to prove whether torture has been used when a confession or other statement was obtained by illegal means, which is similar to the police’ or courts’ burden of proof.

Conclusion

In conclusion, a lack of remedies for violations of exclusionary rules is the primary form of abusing such rights. Given the problems that

China's criminal procedure law fails to prescribe legal requirements for its applicable scope, the abuse of human rights is common in Chinese cases of torture, seriously detrimental to international human rights standards. Thus, prevention of such abuses needs to entail the achievement of a gradual shift from the mode of crime control to human rights protection. In order to mend fundamental flaws of justice and meet requirements of international standards concerned, it is essential for China to introduce the Fruit of the Poisonous Tree and to better apply exclusionary rules in admitting indirect evidence.

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Conflicts of interest

The author declares that there are no conflicts of interest.