

Research on the Modification of Chinese Death Penalty Review Proceedings: Comments on Chinese Criminal Procedure Amendment on the Death Penalty Review Procedure

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Abstract

The death penalty review procedure should be a specific and distinctive procedure of Chinese death penalty. According to the modification of the new Criminal Procedure Law, the litigation factor has been strengthened, the program participation enhanced and the supervision of the prosecution developed. Hence, the process of death penalty review has become gradually reliable and scientific. However, the following aspects, on which this paper focuses, should be improved: firstly, providing the necessary protection to the realization of participatory, secondly, the participation of victims on the program option should be the creation, thirdly, the scale of judicial organization should be properly increased, finally, the trial period should be explicitly fit in.

Key words: Death penalty review; Supervision; Litigation rights

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INTRODUCTION

As the most severe criminal penalties, the death penalty is concerned as the “capital punishment.” With the development of humanitarian and rethinking of punishment, the death penalty control has been highlighted by countries and regions around the globe. In some of the

countries the death penalty has been abolished; or strictly controlled by the applicable procedures in criminal justice on the substantive law. Generally, the standard of proofing the death penalty cases should be stringent, while in some countries the defendant of the death penalty cases would be gifted relief according to the constitutional rights of the defendant¹ in order to minimize the application of death penalty. United Nations *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty* (E.S.C. res. 1984/50, annex, 1984 U.N. ESCOR Supp.) Article 4 stipulates: “Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.” So the death penalty case is required to achieve a very high standard of conceivable proof. This provision combines the conviction and sentencing of the civil law and common law standard of proof, but it is more specific than the standard of proof that the two legal systems, reflected in it requires proof of death penalty cases must be met “for the fact that there is no other room for interpretation “The subjective state requirements, but also it contains the evidence must be” compelling “The combination of subjective and objective requirements (Yang, 2012).

In the United States, death penalty cases by the jury² of the “two” ruling system, that is, not only to the jury to rule on the facts of the case, should be ruled, which are related to a jury verdict on sentencing exception. According to the

¹ Mainly related to the system of habeas corpus, the death penalty pardon system and other common law countries.

² Common-law jury, does not have the legal expertise by the people according to certain rules produce selection, they have not concluded through plea bargaining in cases of conviction issue rulings that guilt of the accused, innocent question to deliberate, vote eventually forming a consensus. Jury trial, the judge giving the jury instructions about procedural rules, rules of evidence, no problem ruling conviction, be based solely on the jury’s verdict sentencing the relevant parts of the referee. Jury trial has been called “the voice from heaven.”

US proceedings, sentencing is generally carried out by a judge, but in the control of the death penalty, the abolition of judges are “above the jury” (jury override) rules, (the judge under special circumstances can override the jury on the death penalty sentencing make a final decision). (La Tour, 1996) For sentencing in capital cases also requires the jury verdict, that is, after the conviction in question ruled that the death penalty to the jury’s verdict by the double (Yang, 2011). This is a special procedure for the control of the death penalty.

Thus, under the guidance of human rights, the rule of law concept, in some countries people continue to explore the control mechanism of the death process to appropriate to their act. Capital cases the controlling mechanism of PRC in the criminal procedure is mainly reflected in the death penalty review proceedings. In the PRC the death penalty has been retained, but explores a road with Chinese characteristics - in particular the death penalty review procedures.

1. BEFORE THE REVISED DEATH PENALTY REVIEW PROCEDURES OF THE 2012 “CHINESE CRIMINAL PROCEDURE LAW”

Death penalty review process refers to the People’s Court review of death penalty cases and approve by the approval process (Chen, 2012). Death penalty cases is the ordinary trial procedures after a special trial procedures, it is an exception of the two tiered System. Death penalty review process requires a comprehensive review of death penalty cases, the legitimacy of including criminal facts of the case and sentencing of identification, as well as proceedings. The characteristics of the program is a manifestation of the “Cautious Punishment” of PRC, as well as control the number of death penalty procedures, it is to prevent the “victimizes” the effective barrier. On the one hand, the Criminal Procedure Law of PRC has a clear local characteristics in the design of the death penalty review procedures; on the other hand, the rule of law under the guidance of thinking guarantees of human rights, the death penalty review procedures towards a more scientific direction.

1.1 Death Penalty Is the Exceptional of the Two-Tiered System

The two-tier trial system has been adopted by the juristic system of PRC, which is

one case up to two courts will come to the end of a trial of the system, the final judgment of the court of second instance ruling party and so no further appeal, the Prosecutors shall follow the second trial procedures to lodge a protest. (Liu, 2013)

Death penalty review process is the case after a two-stage review process hearing later. On the whole proceedings system, individual settings, and the principles and

concepts of the program followed has obvious “special” features of the program: Results from the effectiveness of the referee, two trial judgment does not occur immediately after the force of law, pending approval after finally was able to perform; judge the results from the case, the review results may revert to the ordinary procedure of trial-level re-trial, which is the “final” exception performance.

1.2 The Nature of the Trial Proceedings Under “Administrative” Factor

The High Court or the Supreme Court reviews the substantive and procedural issues of the death penalty. The Court reviews the contents of facts and procedures, the results of reviewing are the form of the highest verdict.³ Higher People’s Court ruled that results of the review may be published or direct commuted. This procedure is to exercise jurisdiction of civil courts the right to life of significant judicial decisions with finality. Thus, the content either from the nature of the power or the ruling point of view, the death penalty review process should belong to the trial proceedings. Although the death penalty review process with attributes trial proceedings, the program settings but clearly is a “trial procedure”, which provides a space for improvement of the procedure.

1.2.1 Reflected in the Program Start Mode, the Death Penalty Start Spontaneously and Without Departing From the Principle of Complaint Trial

In criminal proceedings, on the one hand in order to prevent state power to pursue endless crime, on the other hand also accused of preparing for litigation defense more targeted, and the rights guaranteed clearer. Because of prosecution and trial of the separation of powers, functions exercised by different authorities in the proceedings. Court neutral arbiters, not take the initiative to hold perpetrators, and the scope of the trial are prosecuted range constraints. In short, no prosecution, no trial proceedings, which is the principle of modern universal adherence. According

³ Changes in the 2012 Code of Chinese Criminal Procedure, the referee, the original ruling by the Supreme Court approved the death penalty or direct commuted after review. The modification of the ruling is approve or not to approve. Supreme People’s Court applicable “People’s Republic of China Criminal Procedure Law,” the interpretation on the provisions of Article 350, Article 350 Supreme Court for review of death penalty cases should be dealt: (a) according to the following facts and circumstances applicable to each verdict the law is correct, appropriate sentencing, legal proceedings shall order approval; (b) a specific reference to the fact that the original verdict or legal terms, etc., but there is no inappropriate sentenced the defendant to death, can be made after the correct approved the decision or ruling; (c) the fact that the original sentence is unclear, evidence insufficient, it shall decide to reject the approval and cassation, sent back for retrial; the fact that the impact of the new conviction and sentencing occurred during (d) review evidence shall decide to reject the approval and cassation, sent back for retrial; (e) the original verdict finds that the facts correct, but should not be sentenced to death according to the law, should not be approved by the ruling, and cassation, sent back for retrial ; (f) the trial in violation of due process, which may affect a fair trial, should not be approved by the ruling, and cassation, sent back for retrial.

to the “Criminal Procedure Code” provisions of PRC, “Intermediate People’s Court sentenced to death in the first instance cases, the defendant does not appeal, the latter should be reviewed by the Supreme People’s Court, submitted to the Supreme People’s Court,” “Higher People’s Court sentenced to death cases of first instance the defendant does not appeal, and the death penalty cases of second instance, should be submitted to the Supreme People’s Court.” Thus, the start-up mode death penalty review process was “submitted to” that is subordinate judiciary to submit a higher court, which is submitted to mandatory legal procedures, death penalty cases are a necessary procedure. From this perspective, the death penalty review process started with a spontaneity. This start-up mode, similar to the executive on referrals between different levels. Intermediate People’s Court sentenced to death for the case by the High Court after the review submitted to the Supreme People’s Court. The approval mechanism is very similar to layer executive escalation. Therefore, the start of death penalty review procedures, has the significant characteristics of administrative. The death penalty review process startup is very similar to the relationship of executive authority in initiating the membership and leadership subordinate between the characteristics of social management and executive authorities.

1.2.2 The Particularity of the Review, and the Contradiction Between the Principle of Written Materials and Direct Word of Review

Death penalty review process is mainly written examination, which is reviewing the judge to review the case file and rely mainly as a decision basis. Although the claim must interrogate the defendant, defense counsel requested⁴, it shall hear the views of the defense, which is based on a simple review of the case file on the facts of the case to identify the need for consideration of the case the real emphasis on the accuracy of judgment. Direct verbal review of the cases pursued by civil law countries, the Anglo-American cross-examination of all the requirements of law in this confrontation, rhetoric, and direct perception to identify ways finalized. This case file provides indirect information, the judge of evidence of a more resembles an administrative officer of the administrative matters of the review. Review process reflects the obvious tendency of trial proceedings leading written doctrine.

1.2.3 Closed Tendency and Trial Proceedings Participation Gap in the Openness of the Procedure

⁴ During the Supreme People’s Court on the application of “People’s Republic of China Criminal Procedure Law”, the interpretation of the provisions of Article 356, “the death penalty review, the defense counsel requested to express their views face to face, the Supreme Court should hear their views about the Full Court in the workplace, and make a written record; defense lawyers to submit written comments, shall be attached to.”

Death penalty review procedures, although the Criminal Procedure Law to modify its program to strengthen participatory, based on a review of the judge to review the case file, interrogating the defendant and increased listen to the defense counsel. However, compared to ordinary litigation proceedings in the form of the Quartet to participate in the Chinese characteristics⁵, it still has the characteristics of closed, participation is not high. Interrogate the defendant, identified only need the truth, insufficient protection of the rights of action, especially to identify the merits of this defense confrontational, as the defense counsel can only offer advice. At the same time victims of participatory processes is not set, the closure tendency is quite obvious.

2. HISTORICAL FOUNDATION AND SOIL OF THE DEATH PENALTY REVIEW PROCEDURE ESTABLISHED

2.1 Repeat Petitioned of Death Penalty System Under the Idea of “Cautious Punishment”

“Cautious Punishment” of the Ancient China pursued for penalties applicable careful not punishing the innocent, not indiscriminate killing of innocent people. From Zhou Dynasty (Time XXX-XXX), the ideology of Confucianism, “Exposes the virtues and cautious punishment” as a guide of punishment. As society changes, although the content varies, but on behalf of the dynasty after careful thought punishment in further reflected. In the handling of death penalty cases, the repeat petition of the death penalty is more representative of the Sui and Tang, and the death penalty review system similar to autumn trial.

The repeat petition system means death for death penalty cases, were reported to the highest executive decision-makers - the ancient emperor. The emperor considers and decides whether to apply the death penalty in the form of a petitioned. Tang Dynasty (Time) repeat petition system developed more perfect, depending on the location of the case incident, divided into “three-petition” and “five-petition.” That provision for death penalty cases reported after repeated several times before implementation. On the one hand, there is a clear distinction between the repeat petition system and the current death penalty review process. The repeat petition system is reviewed by administrative power. It is a death sentence after the execution of the procedure. But death penalty review process is a kind of exercise judicial power, a judicial activity, it is a judgment decision procedure in capital cases. On the other hand, it has a

⁵ Quartet is accused, defense, the trial and the victim, the trial is a trial in China with the participation of this quartet performed. The parties have the opportunity to statements in court.

close connection between them, the two programs are reviewing and processing power of the central authority, and are for careful consideration of the death penalty, are particularly set in after ordinary proceedings, both in the death penalty the applicable number of cases identified and safeguards, have played an important role.

2.2 “Autumn Trial” System of the Qing Dynasty

Autumn trial is a trial system of the Qing Dynasty. It is targeted at local provincial inmates reported death penalty cases. The judge, who composed of the central ministries executive, reviews the reported death penalty cases. Autumn trial as a trial program, submit to the organization and the way of trial, which is the same nature of current death penalty review process. With the guidance of the ancient Chinese thought -Cautious Punishment, the administrative authority decided to review the death penalty applicable to the development of the highest judicial death penalty review process under the executive-led administration of justice. So formed the death penalty review process of the prototype stage. This tradition originated in ancient China the death penalty review process under the “Cautious Punishment” Thought, has deep historical foundation and the unique development context.

One of the objectives of autumn trial system is set up to exercise effective judicial oversight to prevent miscarriages of justice, but after the fall of the trial is for the purpose of maintaining the feudal imperial power, the reins must be in the hands of the emperor, and the autumn trial followed the judicial system in ancient China judicial and administrative regardless of tradition, so the Qing dynasty autumn trial system cannot achieve real judicial supervision (Fang, 2014).

2.3 The Effect on the Death Penalty Process Control of the Criminal Policy of “Less Kill” and “Cautious Kill”

Practical guidance criminal policy is the product of the criminal justice Chinese characteristics under the criminal policy has played a guiding role in the macro. Within the framework of the law, for the national focus on the protection and the goal of guidance. Our criminal policy aimed at maintaining social stability, and achieves a fair and just society. Including crime prevention, and the treatment of attention punishes suspects and victims and other aspects. Depending on the period and the social status of a criminal offense, policies targeted. “Less kill”, “cautious kill” prevent victimizes moderate apply the death penalty, is China’s policy on the death penalty in criminal cases. This policy is reflected in the criminal proceedings, that is, for a more stringent process control and certification standards in death penalty cases, the most concentrated expression is specifically for the death penalty and review procedures.

3. THE NEW CODE OF CRIMINAL PROCEDURE, ON THE DEATH PENALTY REVIEW PROCEEDINGS TRANSFORMATION PROGRAM

The new *Code of Criminal Procedure* to modify the death penalty review procedures, mainly in terms of enhancing participation of both enhanced and prosecution of legal supervision. This is China’s death penalty review procedure litigation direction toward improvement. Review ways to improve and enhance the litigation factor, both in the protection and respect for the rights of, or in fully functional death penalty review procedures, they have played a positive role.

3.1 Increase the Participation of the Procedure

Although the court review of death penalty cases in the specific program is not sitting still, written hearing of the way, but the changes made in the form of a unilateral review by the judge reviewing the case file written material, into a defense counsel and the Supreme People’s Procuratorate involved in intervention. While the defense participation is limited to defense counsel, the Supreme People’s Procuratorate also participate only in his capacity as legal supervisor collective participation, but in a fundamental review of the program to participate in tripartite litigation, litigation of this improvement is worthy of recognition. By applying the defense counsel may submit comments to defend, although this is the direct words of the trial the defense has a certain gap, but after all, can exercise the right to defense, to a certain extent influence the judge in the form of evidence to change the original “Partial listen” into “and listen to”, thus contributing to the formation of the correct ruling.

3.2 Enhanced Supervision of Procuratorial Organs

(a) In the Modification of the Death Penalty Review Process, Set the Appropriate Program Oversight Function in Prosecution.

The new “*Code of Criminal Procedure*,” Article 240 stipulates: “In the course of reviewing death penalty cases, the Supreme People’s Procuratorate may submit comments to the Supreme People’s Court Supreme People’s Court review of death sentences should be informed of the results of the Supreme People’s Procuratorate.” Clear the Supreme People’s Procuratorate embodiment supervision of the Supreme Court death penalty review process, namely advice, and for the outcome of the review of communications, reinforced the prosecutorial powers of supervision and better ensure the quality of death penalty review of the award.

(b) Exercise in the Death Penalty Review Process of Prosecutorial Oversight of November 22, 2012 Announced the *People’s Procuratorate Rules of Criminal*

Procedure (Trial) (hereinafter referred to as the *Rules*) Further Clarified.

Rules are clearly the Supreme People's Procuratorate to the death penalty review procedures assume oversight responsibilities of departments, and put forward the views of their time: "Deems it necessary, it shall submit comments before the Supreme Court judgment documents issued under." Procuratorial content views supervised entities circumstances, including cases relating wanted to also include the supervision of the legality of the proceedings.

Supervision and in accordance with the views of the source material: one is from the provincial People's Procuratorate reported related materials, on the other hand is obtained by the following review, including a review of the case file and appeal materials, listen and interrogate the defendant and other means. This provides a practical source of material and evidence for the supervision of the prosecution, procuratorial opinions put forward as possible. Attorney for specific advice by a long way is determined by the Attorney General or prosecuting Committee.

Procuratorial supervision for comments made after the Supreme People's Court shall not be accepted, requiring the Supreme Court to submit Judicial Committee decision, the Supreme People's Procuratorate or the Deputy Attorney General to attend the meeting. This is for the effectiveness of the death penalty review procedures for procuratorial opinions of explicit, clear its effectiveness, and then supervise security legislation expected results.

Rules will implement procedures and monitoring the effectiveness of specific legal advice to further refine the supervision of Supreme Procuratorate. The Supreme People's Procuratorate implement the death penalty review process of oversight is advantageous to protect the quality of death penalty review process award.

(c) Supreme People's Court on the Application of *People's Republic of China Criminal Procedure Law Explanation (the Supreme Court Interpretation)*, to Protect the Effectiveness of the Provisions on Oversight.

Supreme Court Interpretation of Article 357, "During the review of death sentences, the Supreme People's Procuratorate putting advice, the Supreme Court should review the case and the reasons for adopting feedback and Supreme People's Procuratorate". Article 358, "Supreme People's Court should be based on relevant to the provisions of the supreme People's Procuratorate Bulletin outcome of the review of death penalty cases." The Supreme Court interpretation above procuratorial supervision of safeguards, including the outcome of the case in order to promptly inform oversight, as well as for the supervision of the adoption of the views of the prosecution case back, these are effective supervision implementation provides a guarantee.

3.3 Review Decisions More Scientific Approach

The *Code of Criminal Procedure* to modify the new provisions was provided for the Supreme Court for the death penalty review process of adjudication, "it should be made to approve or not approve the ruling" cannot be approved for revision or remand. This is the original judge the results of more scientific improvements. For the outcome of the review process can only choose between two approved and not approved, cannot make other decisions that cannot be directly commuted. After the review if it is not approved then further processed, you can remand or commuted. This is because the death penalty review process is different from the ordinary trial procedures, to review the way in significantly different from the ordinary trial procedures, if so be commuted sentence in the form of the entity, with back to the principles of a fair trial, although participation in the review process has increased, but the prosecution and the defense in the lawsuit against the equal rights of security and so on is far different from the ordinary trial procedure. After further review of the way otherwise disposed of can be a good deal with this problem, and more reflect the fairness of the proceedings.

3.4 Comment on the Transformation of Death Penalty Review of the New Code of Criminal Procedure

According to the announcement of Mr. Chen Guangzhong at the stage of the lawyer forum:

The Code of Criminal Procedure revised death penalty review process also made certain achievements or accomplishments, is that lawyers are able to participate in accordance with the revised Code of Criminal Procedure. Death penalty review process has been largely achieved litigation reform, but how lawyers involved in the death penalty review process, what rights litigation enjoyed in death penalty review cases? Such questions also need to be studied in depth.

In the new Code of Criminal Procedure, the participation of the death penalty review process has been enhanced, also play a role in the construction of procuratorial supervision of program implementation, strengthen the transformation of litigation in the review process, improve the supervision mechanism, in order to provide a quality review program a favorable environment protection. The death penalty review process has been further improved, but the participation, the "judicial interpretation of the provisions simply means macro-oriented changes in the judicial practice, lawyers involved in the death penalty review process has not obtained a relatively smooth passage to institutionalize defense lawyer right to participate" (Yao, 2012). The security of source material and participatory rights of the victims to consider are also not involved. Provided on the trial of the organizational, review of decision-making, the review period and other issues are not involved.

4. CONSTRUCTION OF CHINESE CHARACTERISTICS DEATH PENALTY REVIEW PROCEDURES

4.1 Keep the Original Start-Up Mode: Spontaneous Start

The death penalty review process is to carry out the criminal policy of caution to death, to prevent victimization and manslaughter. On start-up mode, you should maintain the original way, which is submitted to the spontaneous form. This is because, with particular attention to the special nature of the right to life and in death penalty cases, after hearing the ordinary procedure, and then adding special review procedures. For the average criminal case after two tier trials by limiting the effectiveness of post-judgment can occur. The ordinary procedure before the relevant rights litigation including the fight against defense review, relief has been claimed in full procedural safeguards. Death penalty review process is played in a high-level judicial functions emphasis ascertain the truth, report to take spontaneous way, we can guarantee the efficiency of the proceedings.

This is the start-up mode with Chinese characteristics needs and reflect. The formation of the death penalty review process has deep historical basis and foundation programs. China has formed a set of effective mechanisms layers newspaper, China's courts are not independent collective leadership superiors, but the mechanism of this escalation has been clearly defined operation. The provisions of Article 2 provides for safeguard measures to protect the supplementary rights of those facing, "provides a mandatory death penalty appeal in all criminal cases and reduce the time to review or consider ex amnesty", regardless of whether the defendant is guilty, it agreed to review whether, mandatory and automatic review of the transfer system and there is nothing wrong per se, it is cautious in capital cases, be reflected in the program control (Shao, 2013).

This automatically reported to the way, on the one hand, cases of death sentences without special screening or request review all entered the review process, give full play to the death penalty control; on the other hand, automatically submitted to the realization of the right of way is without prejudice to proceedings, may be on the efficiency of the proceedings to provide some protection.

4.2 Continue to Enhance the Litigation of the Proceedings: The Quartet to Participate Fully Built

4.2.1 Guarantee the Right to Defense Counsel to Participate

Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Article 5 states that

Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at

least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

While on the death penalty review stage court-appointed defense obligations not clearly defined, but in the death penalty review stage if there is no lawyer, the court shall apply the continuation of the relevant provisions of death penalty cases designated counsel. That review has not appointed a court is obliged to appoint a defense counsel of the accused lawyers.

Lawyers involved in death penalty review process to be operable, it should not only establish a series of simple slogans and declarations, but should be some basic elements of the rule after defense lawyers filed, the judge should listen carefully to the defense counsel, this allows defense lawyers to participate in the review procedure being (Chen, 2010). Provide appropriate information safeguards for the defense counsel opinions source material. That is expressly guaranteed the right to a lawyer and the right to meet the marking, that the death penalty review proceedings, counsel shall have the right to access to case materials, knows the progress of the case, the courts and related obligations or inform the relevant authorities should provide within the necessary time information. This in time and operating procedures between the gain associated with the supervision of the Supreme People's Procuratorate, the material for the proposed opinion of counsel, and asked to participate in the death penalty review process to provide procedural safeguards.

4.2.2 Victims Participation Selectively

As parties to the criminal proceedings, the results of the case and the victim are closely linked. In review proceeding, heard of victims should be respected and given the opportunity to express some, this could make more in-depth review of judges to fully understand the situation and reality of harm cases. Since the victim is a direct infringement by crime, in some cases, victims may be reluctant to participate again to injury restatement or secondary victimization in the proceedings, may not be willing to participate in the review procedure being. Out of respect for the protection of the rights and wishes of the individual victim, the victim should be given the right to choose to participate in the death penalty review procedures, the victim can apply to the court for review, and then participate.

4.2.3 Explicitly Set the Time Limit

Setting the death penalty review procedures is a choice between action and the real truth efficiency, but as a kind of proceeding conducted or should be clear and specific review period. Defect formation limitation provisions, completeness affect procedural law. Code of Criminal Procedure of aging made a series of criminal cases clearly defined, but the deadline for review of death sentences has not made provision, which is undoubtedly of Criminal

Procedure Legislation a defect affecting it as a law of science and integrity. Set time limit, on the one hand, you can make the proceedings participants issued the results of the review is expected to have a clear ruling for the implementation of the results, and the victim is an important spiritual comfort. On the other hand, for the defendant, the audit results of early decision, you can make him get rid of the fear and worry about the long-term mental state, it can also make the relevant authorities to do detention and execution process is expected to prepare the appropriate program, carried out work arrangements. "Justice delayer is justice denied", the judgment of the timeliness and predictability can reduce the impact on innocent defendant rights, reduce adverse social impact, while avoiding the dignity of law and the judicial authority damage.

As the last pass procedure of the death sentence, the prosecution value of the death penalty review process should be prior to the efficiency of it. In terms of setting the specific deadline, we should consider the actual review of the need to protect. A deadline unified standard should be set, and then regulated in book form, but as a supplement to the special case of the period, so as to ensure the integrity of scientific litigation system. The bottom line of the Deadline should be six months, limitation should be twelve months. Such deadline set mainly focus on the prudently reviewing death penalty cases. Considering the extension of the program approved by the Judicial Committee, the prevention of arbitrary extension period, and in order to regulate the review, the reviewing time compared with other general provisions of the program should be prolonged.

CONCLUSION

Death penalty review process is the special procedures of handling death penalty cases. On the one hand, the Criminal Procedure Law of China has a clear local characteristics in the design of the death penalty review

procedures; on the other hand, the rule of law under the guidance of thinking guarantees of human rights, the death penalty review procedures towards a more scientific direction. However, under current law, the death penalty review process, however, inadequate in terms of participation and protection of the rights litigation. Death penalty review process should build towards a more scientific direction: Spontaneous start should be retained in the form of a program to increase participation, so that the effective participation of victims and counsel to the proceedings; the number of judicial organization should be 5-7 people, set clear during the review. So the Death penalty review process can achieve the control and protection of the rights of the death penalty functions, and ensure judicial justice.

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