

## **A Study of Misjudged Cases and Mechanism of Liability Investigation**

Min CHEN<sup>1a</sup>, Wen-Ge GUANG<sup>2b</sup>

<sup>1</sup> School of Humanities & Foreign Language, Xi'an University of Technology, Xi'an, China;

<sup>1</sup> Law School, Wu Han University, Wu Han, China

Distinct addresses: 58 Yan Xiang Road, Shaanxi Xi'an 710054, China

<sup>2</sup>Third Criminal Tribunal, Shaanxi Provincial Higher Peoples Court, Xi'an, Shaanxi province

Distinct addresses: 80 Yan Nan Wu Lu, Shaanxi Xi'an 710061, China

<sup>a</sup>email: marcy666 @163.com, <sup>b</sup>email: guangwengeftz@163.com

\*Corresponding author: Min CHEN

**Keywords:** misjudged criminal cases; identification criteria; liability investigation; pattern of liability investigation

**Abstract:** To set up and perfect the mechanism of liability investigation is quite important in preventing criminal cases from being misjudged. Though the Supreme People's Court and the Supreme People's Procuratorate have issued a series of instrument of law to regulate judicial practice in order to prevent criminal cases from being misjudged, the identification of misjudged criminal cases and related liability investigation still face many difficulties. Our country should further through legislation confirm the scope of misjudged cases and decide in whichever misjudged criminal cases the judges do not have to shoulder legal liabilities, and then build up a reasonable system of investigating the responsibilities of the case-handling personnel of misjudged cases through setting up related organizations for the identification of misjudged criminal cases and organizations for liability investigation

### **Disputes and Consensus as to the Identification Criteria for Misjudged Criminal Cases**

Since the carrying out of the reform and opening up policy in the late 70's of last century, China's academia has been fervently talking over the problem of misjudged criminal cases, and put forth a lot of theories centered on such issues as substantive justice and procedural justice. The focus of debate in these arguments is that identification of misjudged criminal cases should be based on objective facts or on real standards of law; whether the identification of misjudged criminal cases could be solely based on the subjective faults of or the breach of procedural law by those case handling personnel. Generally speaking, the consensus reached as to this issue in the academia, if there is any, is that procedural justice is no less important than substantive justice, and consequently when these two types of justice are in conflict, procedural justice ought not to be neglected; in the system of liability investigation as to misjudged criminal cases, those cases should be excluded in which substantive justice are not achieved because the judges with discretionary power have adjudicated on the disputes according to law in light of the conflicts of juristal facts and objective facts.

### **Liability investigation: Separation and Integration of Power and Liability**

The conventional pattern of liability investigation in our country is characteristic of unidirectionality and superficialness, tending to adopt administrative means to start and run a program of liability investigation in locating person liable. This pattern may be named as the pattern of unidirectional and superficial liability investigation and deprivation of rights.

### **Liable Conducts & Liability Subjects in Misjudged Criminal Cases**

In the current judicial system and legal proceedings, the cognizance of facts of and the adoption

of applicable law to some major, complex and hard cases are determined by department heads, leaders-in-charge, the committee of inspection, or the review board in the sense of behavior. The decisions as to some cases are made by the commission of politics and law in coordinating opinions of all sides. However, it is somewhat unfair to attribute all faults or mistakes to the personnel handling a case.

### **Range of Misjudged Cases to Be Investigated**

It does not necessarily mean that the case handling personnel ought to shoulder any liability as to certain misjudged criminal cases in which the adjudications have indeed caused grave consequences to which, however, state compensations have already been initiated according to law. In judicial practice, some misjudged cases due to uncertainties in applying legal means are also used to evaluate the case-handling personnel's abilities and accomplishments. Such usual practice may go beyond a general investigation into misjudged cases.

### **Symptoms of Group Psychological Crisis**

Although the Ministry of Public Security has set up expert organizations for dealing with the police's psychological crisis, there are still some problems in such aspects as coverage, timeliness and scientificness of such psychological crisis prevention, e.g. many experts are quite awkward in dealing with such crisis because their methodology needs to be enriched and strengthened.

Why some case-handling personnel tend to use torture for evidence collection? On the one hand, the case handling personnel often face such pressures as crack-a-homicide-case-is-a-must and crack-a-case-within-certain-time-limit, and on the other hand, their long-term built-up psychological tensions are not effectively dispersed. All these problems are key defects in the pattern of liability investigation. Different identification standards or different investigation patterns may cause sharply different psychological crises and in turn different effects of psychological prevention. (See Table 1)

Table 1: Difference between the Two Patterns of Liability investigation

Unidirectional, Superficial & Rights-Depriving Pattern	Multi-dimensional & Dynamic Pattern
1.No differentiation between adjudication liability and intervention liability	1.Perfection of filing of leading officials' interventions resulting in misjudged cases
2.Misjudged cases requiring no liability investigation not explicitly defined	2. Misjudged cases requiring no liability investigation explicitly defined
3.Lack of Objection & Appeal mechanism, no real connection of liability with job pays and social security	3. Objection & Appeal mechanism well developed, liability, job pays and social security closely connected
4.Likely linkage with public opinion; personal and family privacy not well protected	4.Personal and family privacy well protected
5.High mental pressure on case handling personnel, easy to result in psychological crisis	5.Psychological counseling & treatment service to case handling personnel
6.Insufficient financial relief and psychological service to the victim	6. Sufficient financial relief and psychological service to the victim

### **Other Countries' Experience: Key Correction Points under Due Process of Law**

No matter in whichever country, misjudged criminal cases are inevitable. In other words, fully achieved justice is impossible under however perfect process of law. Since the very beginning of 21<sup>st</sup> century, many countries have been actively carrying out Innocent Project campaign, and many misjudged criminal cases havenbeen identified especially with the help of DNA technology.

However, liability investigations to the police, prosecutor and judges responsible for those misjudged criminal cases seldom happen. Why so? The impeachment and punishment of the judges responsible for misjudged criminal cases in other countries are similar in certain degree to but different from the liability investigation institution in China.

### **Key Correction Points under Due Process of Law**

From transplanted laws into our country, the experience and lessons worth learning focus on the following three aspects:

#### **(1) Strictly Define the Responsible Entity**

Compared with the severity of liability investigation institution in China, the two legal systems in other countries preserve in the life tenure of a judge who shall not be deposed unless he commits severe or regular fault(s). Most Common Law countries have adopted liability investigation institution stressing impeachment and punishment as to misjudged cases. In the US, a judge will not be impeached unless he commits misdemeanor or more serious crime. The premise to punish a judge is his misconduct and prejudice. In many Civil Law countries, as judges are responsible for identifying legal facts and determining the applicable law, a judge will be punished only when he commits severe subjective fault(s). In Germany, a judge will be punished only when he intentionally misjudges a case; if the judge accidentally misjudges a case because of his carelessness, then he will not be punished at all.

#### **(2) Implement the Principle of Participation in the Punishment Procedures**

Because of adherence to the hearsay rule or the principle direct verbal presentation in court, the two legal systems hold that a judge should attend the trial in person and hear the case incessantly. Both legal systems attach much importance to the principle of process participation in investigating and ascertaining the liability of the judge who misjudges a case. Different from our country's administrative attributes of the liability investigation institution, the two legal systems implement the principle of process participation, possessing some attributes of quasi-judicial proceedings. For example, the impeachment process to an American judge is as follows: the House of Representatives prosecute first, then comes the Senate's hearings and trial; the punishment process is as follows: when the Court of Appeal receives a complaint, its Justice Council will investigate and make the decision. In practice, much emphasis is put on investigation of the evidences and on the disposal of objections.

#### **(3) Tending to Deprive the Targeted Judge of his Judicial Qualifications and Discharge him from Public Employment**

In the impeachment & punishment institutions of the two legal systems, impeachment of a targeted judge aims at deprivation of his judicial qualifications and discharging him from public employment; whereas punishment of a targeted judge is relatively mild and much frequently applied. Deprivation of judicial qualifications and discharging from public employment as the consequences of legal liability are related to judicial qualifications and employment.

### **Enlightenments to the Identification of Misjudged Cases and Liability Investigation in China**

As to the readdressing mechanism of misjudged cases in other countries, some practices in liability investigation to the case handling personnel of misjudged cases are meaningful references to our country.

#### **(1) Implement the Principle of Checks & Balances to Identify Liabilities of Improper Intervention**

Rights-to-check-powers & powers-to-balance-powers is a fundamental approach to ensure the thoroughness and effectiveness of checks and balances. The author argues that in the assessment of relevant leaders of the party and government organs, liability investigation institution ought to be strengthened in identifying liabilities of improper interventions to individual cases.

#### **(2) Implement the Principle of Effective Defense to Ensure Complaints to Misjudged Case Unimpeded**

The accused should be able to exercise his right to defend himself. At the procuratorial stage, either the time or the range of assistance of the attorney is still subject to strict limits, and the

defendant has no defense attorney assigned or any legal assistance received. This problem must be settled. As to the relief mechanism at this stage, it is not enough to rely solely on procuratorial organs. The accused and his legal counsel should be endowed with more rights to ensure efficient participation in the legal process by the accused as a party in a misjudged criminal case, so as to ensure effectiveness in readdressing the misjudged case.

**(3) Implement the Principle of Process Participation to Strengthen the Exercise of Self Defense Right**

In the process of readdressing a misjudged case, the principle of process participation should be implemented to endow the case handling personnel accused of fault(s) in the misjudged case with the right of participation in the process of liability investigation and the right of self defense to make a presentation on the adjudication process and to argue against unfavorable punishment. Strengthening the exercise of self defense right is favorable to counteract any conflict and complaint in order that legality and rationality of liability investigation be safeguarded.

### **Suggestions for Improvement: Criminal Legislation Should Keep Abreast of Judicial Reform**

#### **Establish Standards of Misjudged Cases Identification to Specify those Misjudged Cases for which the Judges Are Not Liable**

Generally speaking, causes of misjudged criminal cases could be classified into two types: one is institutional and the other in non-institutional. Such institutional causes as flaws or inherent contradictions in the litigation institution and some unwritten rules of judicial practice could be dispelled through improvements of the institution. To decide that a case is misjudged should be based on the fact that the judge indeed commits fault in his adjudication and is liable for his fault. This problem could be settled through special judicial interpretation to specify that what misjudged cases for which the judges are liable and what misjudged cases for which the judges are not liable. As to those misjudged cases for which the judges are not liable, the news media should not partially publicize so-called faults of the judges by holding the concept of the rule of law, so that the victim in a misjudged case may receive fair relief.

#### **Set up Specialized Agencies of Judicial Disciplinary Committee to Normalize their Due Procedure of Readdressing Misjudged Cases**

If there are no punishments, there will be no rule of law. The punishments should also be tangible. Hamilton once asserted, "If you break the law but receive no punishment, then a seemingly legal resolution or decree will be nothing more than a kind of suggestion or counsel". State-level and provincial (or municipality-) level specialized and uniformed judicial disciplinary committees could be set up in China, taking due procedures of readdressing misjudged cases as their work center of gravity to perfect such due procedures based on the principle of process participation. As to the punishment process, the issues such as the range of these judicial disciplinary committees' extent of competence in respect to liability investigation, the constitution of adjudication organization, the prosecution standards and rules of evidence adopted in the proceedings of case, and what a valid verdict is like, are all specifically prescribed by law. The procedures should be fair and made known to the public, and the party in question should be endowed with the right to defend himself and the right to appeal. Wherein, the procuratorial organs, based on their power of legal supervision, shall have to shoulder severer responsibilities in identifying and readdressing misjudged cases. Occurrence of misjudged cases and relief programs are closely related to the proceeding stages of which one may have domino effects upon others. Thereby, the right to make suggestions to liability investigations of any misjudged cases and the right to put forth corrective recommendations to any breach of procedural law could be conferred to the people's procuratorates of provincial level and above.

## **Eliminate Unreasonable Evaluation Indicators to Confine the Liability Investigation as to a Remanded Case and Negative Evaluations**

In judicial practice, some measures and means adopted in liability investigation as to misjudged cases are intended to prevent a case from being misjudged or to reduce the occurrence of such cases. Nevertheless, some job evaluations to the case handling personnel might not only help to increase the occurrence of misjudged cases but also become obstacles to readdressing misjudged cases. Such phenomena in the practice of job evaluation as the commuted rate of first appeal cases, the remand rate of first appeal cases, the commuted rate of effective cases, and the remand rate of effective cases are ignorance of the following two issues: one is that there are many different reasons for some cases to be commuted or remanded——some are not misjudged cases but commuted and remanded for technical reasons as the parties of a case may have reached certain reconciliation; the other one is that the higher court and lower court may have different legal concepts of and/or opinions about non liquet, insufficient evidence and mistaken facts ascertained——it is difficult to decide which court is right or wrong. Therefore, if any appeal case commuted or remanded, case handling personnel of the first trial case ought not to suffer any unfavorable job evaluations. At present, China should focus her judicial resources on readdressing misjudged cases due to serious violation of the legal process or of the professional ethics or due to crimes resulted from dereliction of duty by such case handling personnel.

### **Acknowledgment**

Foundation item: Xi'an University of Technology Fund Project (No. 109-211301) and Education Department of Shaanxi Provincial Government (No. 14JK1500)

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