

The Chinese model of the rule of excluding repetitive confessions

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Keywords: repetitive confessions; illegal evidence; exclusion rules

Abstract: China's rules on the exclusion of repetitive confessions establish general principles for the exclusion of repetitive confessions and two exceptions for "subject change" and "stage change". The "general plus exceptions" legislative model can ensure the effectiveness of the exclusion of illegal evidence rule and help balance the contradiction between crime fighting and human rights protection, but the exclusion of repetitive confessions in China still suffers from a narrow scope of general exclusion and overly broad exceptions, which may prevent the rule from performing its proper function. This may lead to the rule not performing its proper function. In this regard, we can further improve the rule of excluding repetitive confessions in China by broadening the scope of "illegal evidence collection methods" and limiting the exceptions.

1. Introduction

"The so-called 'repetitive confession,' also known as 'repetitive confession,' refers to a criminal suspect or defendant who, after being interrogated by investigators by illegal methods to make a guilty confession, makes the same confession again during subsequent questioning by investigators, prosecutors, and trial personnel in the process of interrogation, again made the same guilty confession as the previous confession." [1] On this basis, the general principle of the rule of exclusion of repetitive confessions means that the court declares this category of repetitive confessions as illegal evidence and denies them access to the court, and no longer uses them as a basis for the determination of the case.

The issue of repetitive confessions was first regulated in the Provisions on Several Issues Concerning the Strict Exclusion of Illegal Evidence in Handling Criminal Cases (hereinafter referred to as the 2017 Provisions on Exclusion of Illegal Evidence) issued by the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security on June 20, 2017. Its Article 5 stipulates the general principles and exceptions to the rule of excluding repetitive confessions: "A repetitive confession made by a criminal suspect or defendant using the method of extorting a confession under torture, and a subsequent confession made by the suspect under the influence of such torture shall be excluded, except in the following cases: (a) during the investigation, based on accusations, reports or their own Discovery, etc., the investigative authorities to confirm or can not exclude the collection of evidence by illegal methods and replace the investigator, other investigators again when interrogated to inform the litigation rights and legal consequences of confession, the suspect voluntarily confessed; (b) review of the arrest, review and prosecution and trial, the prosecutor, trial personnel interrogation to inform the litigation rights and legal consequences of confession, the suspect, the defendant voluntarily confessed. " This provision, some scholars call it the "principles plus exceptions" exclusion model. [2] This provision for the first time established China's repetitive confession exclusion rules, to further improve the content and system of the rules for the exclusion of illegal evidence, with significant and far-reaching theoretical and practical value. However, this provision still has some urgent theoretical issues to be clarified, and its practical effect also needs further investigation. In this paper, based on the previous research on repetitive confessions and their exclusion rules, we analyze the rules for excluding repetitive confessions in China, clarify the connotation and problems of the legal provisions, and propose corresponding legislative countermeasures.

2. Second, the problem and function positioning

(1) Presentation of the problem of repetitive confessions

The question of whether repetitive confessions should be excluded is actually based on the in-depth discussion of the rules for the exclusion of illegal evidence, and it can be said that the establishment and development of the rules for the exclusion of illegal evidence is the basis for the issue of repetitive confessions and their exclusion rules. Before the establishment of the exclusion of illegal evidence rule, it was impossible to exclude guilty confessions collected by illegal methods such as torture, and it was impossible to exclude duplicate confessions. Specifically in the Chinese context, since the introduction of the "two evidence regulations" in 2010 and the new "Criminal Procedure Law" in 2012, China's illegal evidence exclusion rules have been formally established, on the basis of which repetitive confessions have become an important issue in the system of illegal evidence exclusion rules, and their exclusion or non-exclusion is directly related to the effect of the application of illegal evidence exclusion rules. If the rule of exclusion of repetitive confessions is not established, even if the first time to exclude the confession of guilt obtained under torture, the investigating authorities can also conduct a legitimate second interrogation to obtain the same confession as the previous guilty confession, and for the apparently legal second confession, it is difficult to say that it was not affected by the previous torture. As Professor Long Zongzhi points out, "the two evidentiary provisions' do not provide for the issue of 'repeated confessions,' making the conviction by 'repeated confessions' is not prohibited and is an omission whereby the investigative authorities can completely circumvent the application of the exclusionary rule, and the courts lack legal norms to curb such circumvention." [3]

(2) The functional position of the rule of excluding repetitive confessions

Any legal rule or system should have its unique function. Some scholars point out that "the exclusion of repetitive confessions belongs to the ipso facto content of the exclusion of confessions, so the theoretical basis of the rule of exclusion of confessions must also be the justification for the exclusion of repetitive confessions." [4] The author agrees with this view, and believes that since the rule of excluding repetitive confessions is based on the need for the rule of excluding illegal evidence, and is an important part of the system of illegal evidence exclusion rules, it should naturally have similar functions as the rule of excluding illegal evidence, mainly including the "protection of human rights and deterrence of illegal acts of judicial organs". [5] Two points. At the same time, as an extension of the illegal evidence exclusion rules, it should also have the important function of guaranteeing that the illegal evidence exclusion rules will not be hollowed out.

3. Third, the specific development of China's repetitive confession exclusion rules

(1) Overview of the study

After the new Criminal Procedure Law formally established the rule of excluding illegal evidence in 2012 and before the promulgation of the exclusion rule in 2017, the academic community mainly explored whether repetitive confessions should be excluded, the scope of exclusion, theoretical basis, and application models, and formed the following two types of studies. The mainstream views and various theoretical models on the exclusion of repetitive confessions have been developed, including the "fruit of the poisonous tree" model in the United States [6], the illegal evidence exclusion rule model [7] in Taiwan, the radioactive effect model of the prohibition of evidence use, [8] and the continuing effect exclusion model [9], which is a critical inheritance of these three models. After the promulgation of the Evidence Exclusion Regulation in 2017, the main purpose is to analyze the textual norms or explore the legislative perspective of the repetitive confession exclusion rule established in Article 5 of the Regulation, so as to interpret the existing regulation or propose the shortcomings of the existing repetitive confession exclusion rule.

(2) Interpretation of the text of the rule of excluding repetitive confessions in China

1. The provisions of the general principles

The general conditions for the exclusion of repetitive confessions include two: one is that the investigator has obtained a guilty confession from the suspect or defendant by means of torture, and

the other is that the suspect or defendant has been influenced by the above-mentioned torture to make the same confession. Guilty confessions.

Specifically, first, the illegal method of obtaining a confession here is limited to the method of extorting a confession by torture, and does not include other illegal methods, regardless of whether the degree of harm of other methods is comparable to that of extorting a confession by torture. Secondly, repeated incriminating statements made by the suspect or defendant must be influenced by previous acts of torture to extract a confession. It can be seen that the standard for the exclusion of repetitive confessions lies in the degree of influence of previous torture on the confession, theoretically, the influence of more than a certain limit, the repetitive confessions should be excluded, not more than a certain limit, repetitive confessions are not excluded. But here "by the influence of previous acts of torture" is obviously a subjective standard, it is difficult to judge from an objective point of view of the suspect, the defendant's repetitive confessions by the degree of influence of previous torture. Then how to determine the degree of influence of the exclusion limit? In this regard, China's legislation in the form of exceptions to the exclusion of confessions from the opposite side of the standard.

2. exceptions to the provisions

The exceptions to the rule of excluding repetitive confessions in China include two kinds: first, during the investigation, based on complaints, reports or their own discovery, the investigative authorities to confirm or not to exclude the collection of evidence by illegal methods and change the investigator, other investigators again when interrogated to inform the litigation rights and legal consequences of confession, the suspect voluntarily confessed; second, during the review and arrest, review and prosecution and trial, the procuratorial staff The second is the review of the arrest, prosecution and trial, the procuratorial staff, the trial staff interrogation to inform the procedural rights and legal consequences of confession, the suspect, the defendant confessed voluntarily. Repeated confessions that meet any of the above circumstances are not excluded.

The two exceptions can be learned, first of all, not to exclude the repetitive confession of the subject of interrogation should be in addition to the aforementioned implementation of torture to obtain a confession of investigators, prosecutors or judges, some scholars believe that this provision is the adoption of the academic community proposed "subject change" and "The "stage change", that is, as long as the subject or stage of obtaining a repetitive confession has a change, the confession is not excluded. As mentioned above, the standard for exclusion of repetitive confessions is the degree of impact of previous torture on the confession, and the legislation of China's repetitive confession exclusion rules for exceptions to the adoption of the "subject change" and "stage change", the abstract The "impact of the standard" concrete, artificial provisions of the degree of impact of the previous torture on the confession of judgment standards. This provision in fact implies the view that: the subject and stage of any change, the impact of the previous act of torture on the subsequent repetitive confession has been reduced to a certain extent, the legislature will adopt the negative impact of the confession and the positive effect of the measure, that the value of taking this confession is greater. The rationale is that the three stages of criminal proceedings have different subjects, and the relationship between the three is one of "division of labor and mutual restraint". The interrogation is usually able to block the influence of the investigation stage of torture to obtain a confession." [10] Secondly, in addition to the aforementioned acts of extracting confessions through torture, the investigator, prosecutor or judge must again inform the suspect or defendant of his or her procedural rights and the legal consequences of confessing guilt. Finally, the suspect or defendant must make the confession voluntarily, which is the rightful meaning of the rule of excluding repetitive confessions as part of the system of rules for the exclusion of illegal evidence.

China's repetitive confession exclusion rules on whether repetitive confessions should be excluded and the scope of exclusion, adopted the mainstream view of the academic community "relative exclusion", that is, in principle for the exclusion of repetitive confessions, but the exceptions still affirm their evidentiary capacity. In the context of China's judicial philosophy of combating and controlling crime, this legislative model of repetitive confessions is in line with China's judicial reality and can balance the contradiction between the judicial authorities' pursuit of crime and the protection of human rights of criminal suspects and defendants.

(3) The dilemma facing the rule of excluding repetitive confessions in China

The author attempts to use normative analysis to explore the problems faced by our repetitive confession exclusion rules, and to measure the deficiencies of our current regulations by the functions that repetitive confession exclusion rules should perform. Specifically, the part of our repetitive confession exclusion rule that is not conducive to its function of protecting human rights and deterrence is the part that needs to be improved.

1. Problems with the general principles

In the interpretation of the general conditions, it can be seen that China's rule on the exclusion of repetitive confessions is unduly limited, the "illegal method of obtaining evidence" is limited to the method of torture to obtain a confession, and does not take into account the circumstances of other illegal methods. Theoretically, other unlawful methods, alongside torture, should be unlawful means of obtaining evidence with a roughly similar degree of harm as torture. Since this is the case, the evidence obtained through such means naturally belongs to illegal evidence, and should be given similar legal effects to the illegal confessions obtained under torture. For example, threats, inducements, deceptions, illegal detentions, audio and video recordings, and interrogations not conducted in the legal premises, which are comparable to the harmfulness of confessions extracted by torture. Moreover, since these illegal methods may be no less harmful than torture, there is no reason to exclude them from the scope of exclusion. Professor He Jiahong therefore points out that "the illegal confessions of repeated confession exclusion rules are limited to confessions extracted under torture is unduly limited, which is not conducive to safeguarding the arbitrariness of the suspect's confession and deterring the illegal confessions of the investigating authorities." [11] The author agrees with this view of Professor He Jiahong, and believes that this problem of undue restriction also weakens the function of human rights protection and deterrence of this rule of evidence.

2. Deficiencies of the exception provisions

The exceptions to the rule of excluding repetitive confessions in China also have certain defects. First of all, the author believes that in just changing the investigator and get the repetitive confessions are not excluded, not very reasonable. As mentioned above, the three stages of criminal proceedings are the investigation organs, the procuratorial organs, the judiciary, based on the relationship between the three have constraints, and their interests are not always the same, so the different stages of the lawsuit to make the repetitive confessions are not excluded with a certain degree of reasonableness. But only in the investigation stage to change different investigators, without restricting different investigators should belong to different investigative organs, it is possible that different investigators belong to the same investigative organ. Generally speaking, the same investigative organ is closely connected, and there is no mutual restraint relationship, and the interests are likely to be the same, the suspect may think that he is still under the control of the investigative organ based on this common perception, so that he dare not change his confession. Secondly, for the litigation stage change this exception, China also has scholars, "public, prosecution, law three organs of high homogeneity, even if the change in the procedural stage, it is difficult to block the negative impact of the previous illegal act of obtaining confessions on the subsequent repetitive confessions." [12]

The above two, it can be seen that changing the subject of interrogation or the stage of litigation, it may be difficult to block the previous act of torture to coerce confessions on the existence of repetitive confessions, such repetitive confessions are not excluded, improperly narrowing the scope of application of the rule on the exclusion of repetitive confessions, is not conducive to the deterrent function of the rule on the exclusion of repetitive confessions and the protection of human rights function.

4. Reconstruction of the rule of excluding repetitive confessions

(1) broaden the scope of "illegal forensic methods"

In the previous article, the author proposed that there is a problem with the restriction of "illegal methods" by the rule of excluding repetitive confessions established by the Provisions on Exclusion of Evidence in 2017, which is mainly based on the consideration of systemic interpretation, and the

rule of excluding illegal evidence in China has recognized the illegal methods with the same degree of harm as the confessions extracted by torture and given them the same The rules for the exclusion of illegal evidence, then the rules for the exclusion of repetitive confessions, which are an extension of the rules for the exclusion of illegal evidence and have the same function as the rules for the exclusion of illegal evidence, take a different approach is not in line with the systemic interpretation, which is not conducive to the unity of the legal order. Specifically, Article 56 of China's current Criminal Procedure Law provides that "confessions of criminal suspects and defendants collected by torture and other illegal methods shall be excluded," while Article 1 of the 2017 "Provisions on the Exclusion of Non-Evidence" provides that "the use of torture to extract confessions and the use of threats, inducements, deceptions, and other illegal methods to collect evidence shall be strictly prohibited. The first article of the 2017 Evidence Exclusion Regulations also stipulates that "the collection of evidence by torture, threats, inducement, deception and other illegal methods is strictly prohibited. These two provisions indicate that China's legislature has recognized that threats, inducements, deceptions and other illegal methods have the same degree of harm as torture to extract confessions, and has given these illegal methods the same legal consequences as torture to extract confessions. Therefore, for the exclusion of repetitive confessions, which is actually a "second exclusion rule," the legislature should not improperly restrict illegal methods of evidence collection to methods of extorting confessions under torture, but should provide for the same scope of exclusion as the exclusion of illegal evidence rules, adding threats, inducement, deception, illegal detention, failure to In addition, the exclusion of repetitive confessions in China should be improved by adding the threat, inducement, deception, illegal detention, failure to record and videotape, and failure to conduct interrogations in legal venues.

(2) Limitations exceptions

It has already been pointed out that the exceptions to the rule of excluding repetitive confessions in China are too broad and may hollow out the rule of excluding illegal evidence.

First, the change of the subject of interrogation may be difficult to eliminate the influence of the previous investigator of the same investigative organ on repetitive confessions. Second, although from the doctrine of public, prosecutorial and legal organs have a mutually restraining relationship, but the public, prosecutorial and legal organs in China's practice have a certain homogeneity, and the change of the litigation stage may not necessarily eliminate the influence of previous confessions extracted by torture. Compared to the relationship between the internal interrogators of the investigative organs, prosecutors and judges are more independent, while the trial is also in a neutral position, the possibility of illegal motivation to obtain a confession is small, the two obtained repetitive confessions compared to the investigative organs to obtain repetitive confessions, the possibility of being affected by the first torture confession is smaller and more admissible. Therefore, the adoption of the "litigation stage change" is more appropriate, the subject of change in our legislation of this exception, should be re-examined.

As mentioned earlier, some scholars believe that the public, prosecution and law are homogeneous, and it is difficult to eliminate the influence of repetitive confessions extracted under torture even if the litigation stage is changed. Considering the actual situation in China, under the exception of "during the review of arrest, prosecution and trial, the prosecutors and judges inform the suspect or defendant of his or her procedural rights and the legal consequences of confessing guilt during interrogation, and the suspect or defendant voluntarily confesses," the legislative model of not excluding all confessions can be changed to discretionary exclusion, giving the judge a certain degree of discretion to The government's decision to exclude repetitive confessions in this case is based on the discretionary power of the judge, which is based on the factors of the whole case, such as the degree of influence of previous acts of torture on repetitive confessions, which should be taken into account "the replacement of interrogators, the advancement of the procedural stages, the length of the interval, the degree of illegality, the degree of dilution[13]. This is also in consideration of the fact that, compared to the procuratorial authorities, the judiciary is more independent and neutral, and the impact of torture on repetitive confessions is judged more objectively. Thus, the legislative model of not excluding all for discretionary exclusion, giving judges some discretionary space to narrow the broad exceptions to the

rule of excluding repetitive confessions in China, is conducive to the improvement of the rule of excluding repetitive confessions and its function.

5. Conclusion

The rule on the exclusion of repetitive confessions is a product of the development of the rule on the exclusion of illegal evidence. 2010 "Two Evidence Provisions" and the new "Criminal Procedure Law" in 2012 formally established the rule on the exclusion of illegal evidence in China, on the basis of which the academic community launched a lively discussion on the issue of repetitive confessions and their exclusion rules. 2017 "Exclusion of Illegal Evidence" marked the birth of the rule on the exclusion of repetitive confessions in China. The introduction of the Evidence Provisions marked the birth of the rule on the exclusion of repetitive confessions in China. As an emerging rule of evidence in China's criminal evidence law, the development of the rule on the exclusion of repetitive confessions is not mature enough and is in urgent need of practical exploration and theoretical improvement. Generally speaking, China's repetitive confession exclusion rule can guarantee the effectiveness of the illegal evidence exclusion rule, help deter illegal evidence collection by state authorities and protect the human rights of criminal suspects and defendants, but a series of problems exist to make it ineffective, which can be improved by broadening the scope of illegal evidence collection methods and limiting the exceptions. The rule of excluding repetitive confessions can be shaped with Chinese characteristics and give full play to its function.

Acknowledgements

Research and innovation Team Construction Project of "Central Universities Fundamental Research Funds" of Lanzhou University in 2020; Fund (Project) No: 2020JBKYTD001.

Phase results of the project "Research on comprehensive Social Governance Under the Background of the New Era" funded by "Social Governance Innovation Research Center", a key research base of Sichuan Province and Luzhou City.

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