

Theory and Practice of Procedural Defense — With Illegal Evidence Exclusion Rule as Core

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Abstract. Procedural defense is a form of defense proposed by defense counsel based on criminal procedural law, aiming to safeguard litigation rights and supervise the legality of procedures. It is an important component of criminal defense. The illegal evidence exclusion rule is the core content of procedural defense and an important means to achieve judicial justice in criminal cases. This paper, taking the illegal evidence exclusion rule as its core, explores procedural defense from both theoretical and practical perspectives. Firstly, it defines the concept of procedural defense and reviews the development of the illegal evidence exclusion rule, elucidating its current status. Secondly, it categorizes four types of procedural defense: request-based, demand-based, defensive, and remedial, elaborating on their characteristics, application conditions, operational methods, and practical effects. Through a case analysis of the “Zhang Guoxi Bribery Case,” it demonstrates the specific application of procedural defense in practice. Thirdly, it discusses the value significance of procedural defense, pointing out that procedural defense not only embodies the value of procedural justice but also contributes to achieving the goal of substantive justice. It is of significant theoretical and practical value for safeguarding the litigation rights of defendants, supervising the procedural legality of prosecuting authorities, and promoting the efficiency and fairness of criminal proceedings. Finally, it analyzes the challenges and dilemmas faced by procedural defense in China’s criminal procedural practice, mainly manifested in the lack of clear and perfect legal basis, the unfair and undemocratic practice environment, and the insufficiently significant and stable practical effects of procedural defense. Some improvement strategies and suggestions are proposed in order to provide reference for the healthy development and wide application of procedural defense.

Keywords: Procedural defense, Illegal evidence exclusion rule, Criminal procedure, Judicial justice

1. Introduction

Article 37¹ of the Criminal Procedure Law stipulates the ultimate purpose of defense, which is to completely overturn the substantive accusations of the prosecution, persuade judicial authorities to make decisions of innocence, or weaken the litigation claims of the prosecution, prompting judicial authorities to conclude with leniency, mitigation, or exemption from punishment. In criminal proceedings, lawyers must present defense opinions favorable to their clients, challenging various facts or legal applications unfavorable to the defendant, and persuading adjudicators to accept their litigation claims. However, regardless of the defense strategy employed, lawyers must base their arguments on legal grounds and conduct defense activities accordingly. Generally speaking, the legal basis relied upon by lawyers for defense falls into two main categories: substantive criminal law and criminal procedural law. Based on this differentiation in legal sources, criminal defense is divided into two types: substantive defense and procedural defense. ²Traditional criminal defense is primarily a form of defense based on substantive criminal law, aimed at upholding the accurate and fair implementation of substantive criminal law, which represents the ideal outcome that lawyers aim to achieve in defense. However, with the gradual progress and extensive exploration of criminal justice reforms in China, the forms of criminal defense practice have become diversified. Criminal defense has gradually shifted from simply reading defense opinions to the courtroom investigation phase, where the prosecution’s witnesses are questioned on the spot and its evidence is effectively cross-examined to argue that the prosecution’s proof of the alleged facts fails to exclude reasonable doubt.

¹ In accordance with Article 37 of the Criminal Procedure Law, the responsibility of defense counsel is to present materials and opinions based on facts and laws to assert the innocence, lightness of guilt, or mitigation of punishment, or to exempt the criminal responsibility of the suspect or defendant, thus safeguarding their litigation rights and other legitimate interests.

² Chen, R. H. (2016). A theoretical classification of criminal defense. *Law*, (07), 57-70.

Defense strategies based on the criminal offense are evolving to include litigation claims related to issues such as the exclusion of illegal evidence and changes in jurisdiction, leading to a variety of procedural defense claims. Procedural defense not only embodies the value of procedural justice but also contributes to the realization of substantive justice objectives. It holds significant theoretical and practical value in safeguarding the litigation rights of defendants, supervising the procedural legality of law enforcement agencies, and promoting the efficiency and fairness of criminal proceedings.

2. Conceptual Definition of Procedural Defense and Development of the Exclusionary Rule of Illegal Evidence

2.1. Conceptual Definition of Procedural Defense

The conceptual definition of procedural defense is the foundation of procedural defense theory and the premise of procedural defense practice. Different conceptual definitions lead to different theoretical frameworks and practical paths. Therefore, there should be a clear and accurate understanding of the conceptual definition of procedural defense to avoid ambiguity and confusion.

The concept of procedural defense was first proposed by Professor Wang Minyuan 22 years ago, who keenly pointed out that “besides substantive defense, there exists another type of procedural defense in criminal defense.” Procedural defense refers to “a method of defense in criminal defense, based on the illegal procedures of relevant departments’ investigation, prosecution, and trial activities, arguing for the innocence, leniency, or non-liability of criminal suspects or defendants, as well as requesting supplementation or re-conducting of legal procedures not conducted in accordance with the law, and the exclusion of illegally obtained evidence from a procedural perspective.”³ This is the pioneering work in China’s theoretical circle on the concept of procedural defense. However, due to historical reasons, this concept has been influenced by the concept of substantive defense, interpreting procedural defense as a defense tactic or method, i.e., “arguing for the innocence, leniency, or non-liability of criminal suspects or defendants based on illegal procedures,” thus bringing the purpose and function of procedural defense back to substantive defense. However, procedural defense and substantive defense are two branches of criminal defense. Procedural defense may have an impact on substantive defense, but in terms of the basis, content, purpose, and function of defense, they are independent of each other. Taking the typical procedural defense of requesting the exclusion of illegal evidence by the defense as an example, it is based on the violation of procedural law in obtaining the incriminating evidence, “which should be excluded.” The direct purpose is to negate the probative value of the evidence rather than its persuasive power. As some scholars have pointed out, “unlike substantive defense, procedural defense is generally not conducted to urge the court to render a verdict of innocence or leniency for the defendant, but rather to prompt the court to initiate a specific hearing procedure, to implement a certain litigation procedure, or to safeguard the defendant’s litigation rights.”⁴ Of course, Professor Wang Minyuan’s definition of the concept of procedural defense also does not exclude the relative independence of procedural defense, namely, “requesting supplementation or re-conducting of legal procedures not conducted in accordance with the law, and the exclusion of illegally obtained evidence.”

Professor Chen Ruihua’s two research achievements on procedural defense in 2005⁵ provided a detailed exposition of the concept and related issues of procedural defense, effectively promoting the research on procedural defense. He believes that “procedural defense” can be broadly or narrowly defined. **Broadly** speaking, procedural defense can refer to all defense activities based on criminal procedural law. He also illustrates examples such as defense requests for judge recusal, objections to the jurisdiction of the trial court, and requests for rescheduling of court dates, all of which occur during the trial stage and fall under the broad definition of procedural defense. He also points out that “the defense party can also engage in various defense activities with the prosecution on procedural issues before the trial stage,” but “since such pre-trial activities do not involve the participation of neutral judicial officers,” “these procedural applications can at most be regarded as negotiations and consultations between the defense party and the prosecution on some procedural issues,” and do not fundamentally belong to “legal defense”⁶. **Narrowly** defined procedural defense refers to “defense aimed at requesting the court to declare the procedural illegal acts of police, prosecutors, or lower-level judges.” In his view, unlike substantive defense directly addressing conviction and sentencing issues to pursue favorable litigation outcomes for the defendant, “procedural defense seeks to declare illegal the conduct of investigation, prosecution, and adjudication, and the procedural sanctions imposed for such illegal procedural behavior.” “Through this offensive defense activity, it is possible to challenge the legality of investigative, prosecutorial, and adjudicatory actions, persuade judicial authorities to declare these actions illegal, and ultimately invalidate the legal effects of these litigation actions and results.”⁷

³ Wang, M. Y. (2001, December 23). Procedural defense in criminal defense. *Legal Daily*.

⁴ Chen, R. H. (2005). A preliminary study on procedural defense. *Journal of Yanshan University (Philosophy and Social Sciences Edition)*, (1).

⁵ For further details, see Chen, R. H. (2005). A preliminary study on procedural defense. *Journal of Yanshan University (Philosophy and Social Sciences Edition)*, (1); Chen, R. H. (2005). A preliminary study on procedural defense. *Modern Law*, (2).

⁶ Professor Chen Ruihua believes that “legal defense” refers to “defense with the presence of a neutral third-party adjudicator,” otherwise, it falls under “natural defense.”

⁷ Gu, Y. Z., & Lou, Q. Q. (2020). The theoretical development and practical implementation of procedural defense. *Journal of National Prosecutor’s College*, 28(03), 138-149.

Professor Chen Ruihua's viewpoint clarifies the relationship between procedural defense and substantive defense, presenting defense activities aimed at challenging the procedural illegal acts of state agencies and applying to judicial authorities for invalidation, particularly concentrated on the issue of exclusion of illegal evidence.

2.2. Development of the Exclusionary Rule of Illegal Evidence

Evidence is the basis for determining the facts of a case and is crucial for ensuring the quality of case handling. The underdevelopment of the evidence system and the lack of necessary rules and guidelines for evidence collection and review have led to the frequent occurrence of wrongful convictions and judicial injustice, especially in cases involving coerced confessions and other forms of illegal evidence gathering. Therefore, the establishment of the exclusionary rule of illegal evidence is of paramount importance.

The origin of the exclusionary rule of illegal evidence lies in Western countries, especially the United States. The United States established the exclusionary rule of illegal evidence earliest in the Wicks case in 1914, which prohibits the use of evidence obtained through unconstitutional searches and seizures in criminal proceedings. Subsequently, this rule was expanded to include evidence obtained through violations of the Fifth Amendment right against self-incrimination and the Sixth Amendment right to counsel. The development of the exclusionary rule of illegal evidence in the United States has undergone multiple revisions and improvements, forming a relatively mature system and theory.

Traditionally, due to insufficient emphasis on procedural justice and human rights protection, a "confession is king" approach has dominated law enforcement practices. However, with the emergence of numerous major wrongful convictions, the Supreme People's Court of China has begun actively promoting the reform and improvement of the criminal evidence system.⁸ Therefore, the development of China's exclusionary rule of illegal evidence has been relatively late but has also undergone a process of continuous improvement. This process can be divided into four stages:

The first stage, from 1979 to 1996, was an initial exploration stage. During this stage, China's Criminal Procedure Law established a prohibitive rule with a declaratory nature regarding the use of illegal means such as "coerced confession, threats, inducement, deception" by investigators in gathering evidence. However, there was no clear provision on the exclusion of illegal evidence and procedures, leading to a situation where it existed but was not effectively applied in practice. Additionally, the Supreme People's Court and the Supreme People's Procuratorate respectively issued some judicial interpretations and rules, defining and regulating the scope and criteria for identifying illegal evidence to some extent, but still lacked uniformity and systematization.

The second stage, from 1996 to 2010, was a stage of deepening exploration. During this stage, China's Criminal Procedure Law developed provisions regarding illegal evidence, expanding the scope of illegal evidence from testimonial evidence to physical evidence and documentary evidence, and broadening the content of illegal means from "coerced confession, threats, inducement, deception" to "other illegal methods." Procedures for the exclusion of illegal evidence were also specified. Meanwhile, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security, and the Ministry of Justice jointly issued regulations on the handling of death penalty cases and the exclusion of illegal evidence in criminal cases, providing detailed regulations for the exclusion of illegal evidence and further clarifying and refining the criteria for identifying illegal evidence, exclusion procedures, burden of proof, and standards of proof, thereby providing clearer guidance for the practice of excluding illegal evidence.

The third stage, from 2010 to 2017, was the stage of institutional establishment. In 2012, the Criminal Procedure Law was amended, marking the first formal establishment of the exclusionary rule of illegal evidence in legislation. The scope of illegal evidence to be excluded, the standards of burden of proof, and the relevant exclusion procedures were clearly defined, incorporating the main contents of the "two evidence provisions" to establish the exclusionary rule of illegal evidence at the legislative level. The Supreme People's Court's "Interpretation on the Application of the Criminal Procedure Law of the People's Republic of China," the Supreme People's Procuratorate's "Rules of Criminal Procedure of the People's Procuratorate," and the Ministry of Public Security's "Regulations on the Procedures for Handling Criminal Cases by Public Security Organs" elaborated and explained the exclusionary rule of illegal evidence. Additionally, the five departments including the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security, and the Ministry of Justice jointly issued regulations on the handling of criminal cases and the exclusion of illegal evidence, providing norms and guidance for the specific operation and implementation details of excluding illegal evidence, thus providing a more complete institutional guarantee for the practice of excluding illegal evidence. This marks the formal establishment of a relatively systematic exclusionary rule of illegal evidence in China, which has had a significant impact on the criminal procedural evidence system and judicial practice.

The fourth stage, from 2017 to the present, represents a phase of institutional improvement. During this period, there has been no substantive change in the provisions of China's Criminal Procedure Law regarding illegal evidence. However, five departments including the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security, and the Ministry of Justice jointly issued the "Provisions on Strictly Excluding Illegal Evidence in Handling Criminal

⁸ Refer to Dai, C. L., Luo, G. L., & Liu, J. K. (2017). The exclusionary system of illegal evidence in China: Principles, cases, applications (revised edition). Law Press China, 3-25.

Cases,” addressing issues such as the difficulty of initiating and excluding illegal evidence in practice. These provisions further refine, supplement, and improve the scope, criteria, and operational details of illegal evidence that should be excluded, providing clearer guidance for judicial practice. Emphasizing the strictness and necessity of excluding illegal evidence, they offer more specific and operational norms for the practice of excluding illegal evidence. In 2018, the “Three Regulations” issued by the Supreme People’s Court were officially implemented, among which the “Provisions on the Exclusion of Illegal Evidence in Criminal Cases by People’s Courts (Trial)” further detailed the basic procedures for key issues in the exclusion of illegal evidence, thus addressing practical difficulties in excluding illegal evidence. While the legal and highest judicial authorities have comprehensively established rules for the exclusion of illegal evidence, some localities have also issued relevant local regulations on this basis. For example, in 2019, Shenzhen issued the “Provisions on the Exclusion of Illegal Evidence in Handling Criminal Cases in Shenzhen (Trial).”

The emergence and development of the exclusionary rule of illegal evidence reflect the progress and improvement of China’s judicial system construction, as well as the country’s emphasis on and pursuit of safeguarding human rights and judicial justice. The implementation of the exclusionary rule of illegal evidence plays an important role and holds value in safeguarding the legitimate rights and interests of defendants, preventing wrongful convictions, promoting the authenticity and legality of evidence, and enhancing judicial credibility.

3. Types of Procedural Defense

Procedural defense is not only a theoretical concept but also a defense activity parallel to substantive defense. From the perspective of how to defend, according to the attributes and methods granted to criminal suspects, defendants, and their defense counsel by the Criminal Procedure Law regarding different actions of handling cases by law enforcement agencies, procedural defense can be divided into the following types:⁹

3.1. Request-based Procedural Defense

Request-based procedural defense refers to the defense counsel’s submission of procedural requests to the court that are unrelated to criminal charges, such as requests for altering coercive measures, requests for recusal, requests for trial postponement, etc. These requests are not aimed at illegal conduct by law enforcement agencies and personnel but rather at lawful actions, for which there are statutory or reasonable grounds for making the procedural request, and relevant evidence or materials should be provided to support the request’s validity and necessity. Defense counsel need to submit written or oral requests based on legal provisions or court rules, explaining the reasons and grounds for the request. Whether the court accepts it depends on whether the court agrees with the defense counsel’s request. If accepted, the defense counsel can secure more favorable procedural conditions for the defendant. If not, the defense counsel can continue to defend the defendant through other means. This type of defense is characterized by initiative, flexibility, and timeliness. Defense counsel can make reasonable procedural requests to the court at any time to safeguard the defendant’s legal rights and the defense counsel’s right to defense, thereby maintaining the normal progress of the litigation process. The frequency of request-based procedural defense is extremely high and runs through the entire process of criminal litigation. To carry out this type of procedural defense effectively, defense counsel need to be very familiar with relevant legal provisions and timely submit applications to law enforcement agencies, fully explaining the relevant reasons according to relevant legal provisions.

In practice, defense counsel can submit procedural requests to the court based on the defendant’s wishes and circumstances to safeguard the defendant’s litigation rights and the right to defense, and to promote effective communication and negotiation between the prosecution and defense. For example, defense counsel can request the court to alter the defendant’s coercive measures to enable the defendant to participate more effectively in the adversarial process, thereby increasing the defendant’s satisfaction with the litigation; defense counsel can request the court to recuse judges, prosecutors, or expert witnesses who may have conflicts of interest or biases to maintain the fairness and credibility of the adversarial process; defense counsel can request the court to postpone the trial to gain more time and opportunities for communication and negotiation with the defendant and the prosecutor, and to provide more space for evidence collection and organization. If these procedural requests are granted by the court, they can secure a more favorable litigation position and outcome for the defendant in the adversarial process.

3.2. Demand-based Procedural Defense

Demand-based procedural defense is based on explicit legal provisions, requiring law enforcement agencies and their personnel to carry out certain procedural actions or make procedural decisions in accordance with the law. For example, Article 88(2)¹⁰ and

⁹ The four categories of procedural defense were first proposed by Professor Chen Ruihua, see footnote [5] above.

¹⁰ Article 88, Paragraph 2 of the Criminal Procedure Law stipulates that “the People’s Procuratorate, when reviewing and approving arrests, may inquire with witnesses and other litigants, and listen to the opinions of defense lawyers; if requested by defense lawyers, their opinions shall be heard.”

Article 161¹¹ of the Criminal Procedure Law stipulate that defense lawyers have the right to request that prosecutors listen to their opinions when public security organs apply for the approval of arrest of criminal suspects. Requests for supplementary investigation, exclusion of illegal evidence, and supplementation of evidence can be made. Before the conclusion of the investigation, if it is deemed necessary, relevant investigators can be requested to listen to the defense counsel's opinions on the case. This type of defense is characterized by its targeted, strict, and necessary nature. Defense counsel question and supervise these procedural legitimacy and evidence legality of law enforcement agencies regarding the criminal charges presented by the prosecution, requesting the court to take corresponding procedural measures to promote the efficiency and fairness of criminal proceedings. As long as there are clear legal and factual bases, defense counsel can submit written or oral requests based on legal provisions or court rules, bearing the corresponding burden of proof, and law enforcement agencies and their personnel must handle them according to the law and cannot refuse.

In practice, defense counsel can make procedural demands to the court based on the criminal charges presented by the prosecution to safeguard the defendant's legal rights, supervise the procedural legitimacy and evidence legality of law enforcement agencies, and promote effective communication and negotiation between the prosecution and defense. For example, defense counsel can request the court to conduct supplementary investigations if they find that the criminal charges presented by the prosecution are unclear or lack evidence, in order to uncover the truth and provide more opportunities for defense for the defendant; defense counsel can request the court to exclude illegal evidence if they find that the criminal charges presented by the prosecution violate legal procedures or infringe upon the defendant's basic rights, in order to uphold the legitimacy of criminal proceedings and eliminate some unfavorable influences for the defendant; defense counsel can request the court to supplement evidence if they find that the criminal charges presented by the prosecution lack evidence or have doubts, in order to improve the evidence chain and provide some favorable evidence for the defendant.

3.3. Defense-based Procedural Defense

Defense-based procedural defense aims to defend against procedural violations already committed or potentially committed by law enforcement agencies and their personnel during litigation activities. It involves challenging the procedural violations of law enforcement agencies and their personnel, legally demanding correction by law enforcement agencies, and providing relevant evidence or reasons to support the legitimacy and necessity of the defense or objection. For instance, Article 99¹² of the Criminal Procedure Law stipulates that defense lawyers not only have the right to object to the excessive detention by law enforcement agencies, pointing out its illegality, but also have the right to request correction and release of coercive measures when the statutory time limit expires. The relevant provisions also mention the exclusion of illegal evidence, mainly focusing on objections to jurisdiction, objections to illegal case filing, and objections to procedural violations. This type of defense is characterized by its passivity, adversarial nature, and urgency. The conditions for the application of defense-based procedural defense are the existence of clear legal and factual bases. Defense counsel must submit written or oral defenses or objections within the statutory or court-prescribed time limits and explain the reasons and bases for the defense or objection. Particularly in the context of excluding illegal evidence, this type of procedural defense is particularly evident.

In practice, defense counsel may submit procedural objections or protests to the court based on procedural judgments or instructions to safeguard the defendant's litigation rights and defense rights, supervise the court's procedural legality and fairness, and facilitate effective communication and negotiation between the prosecution and defense. For example, defense counsel may object to the court's jurisdiction. If the court's jurisdiction over a case is found to be erroneous or inappropriate, it may lead to transferring or dismissing the case, thereby preventing the defendant from facing an unfair trial. Defense counsel may also object to the court's illegal case filing. If procedural violations or failures to meet statutory conditions in case filing are discovered, the case may be dismissed or rejected, providing the defendant with more time for defense. Additionally, defense counsel may object to procedural violations by the court. If violations of statutory procedures or infringement of the defendant's basic rights are found during the trial process, it may lead to correction or sanctions for procedural violations, thus mitigating unfavorable procedural consequences for the defendant. If these procedural objections or protests are accepted by the court, they can contribute to a fairer litigation process and more reasonable sentencing recommendations for the defendant.

Objectively speaking, defense-based procedural defense, due to its adversarial nature against the subject, belongs to the type of procedural defense with comparatively strong opposition. Defense lawyers conducting this type of procedural defense must not only master legal bases but also factual evidence. For instance, when applying for the exclusion of illegal evidence, they "should provide relevant clues or materials," and when the court decides to conduct an investigation, they should participate in relevant court investigation activities, providing comprehensive arguments based on facts and law for the existence of illegal evidence and

¹¹ Article 161 of the Criminal Procedure Law states: "Before the conclusion of the investigation in a case, if requested by defense lawyers, the investigative organs shall listen to the opinions of defense lawyers and record them. If defense lawyers submit written opinions, they shall be attached to the case file."

¹² Article 99 of the Criminal Procedure Law stipulates that "if the statutory period for compulsory measures taken by the people's court, the people's procuratorate, or the public security organ against criminal suspects, defendants, their legal representatives, close relatives, or defense lawyers expires, they have the right to request the lifting of compulsory measures."

the reasons for its exclusion.¹³ Consequently, this type of procedural defense, although typical and distinctive, is not universally applicable in all criminal cases. According to a survey conducted among 182 practicing lawyers from 28 provinces nationwide, out of 7,154 criminal cases they handled, there were 698 cases involving applications for the exclusion of illegal evidence, accounting for 9.76% of all cases. Among these, 268 cases were initiated for investigation, accounting for 38.4% of the applied cases, and 67 cases were ultimately decided by the court to exclude illegal evidence, representing 9.6% of the applied cases and 25% of the cases initiated for investigation.¹⁴ Therefore, while emphasizing the importance of this type of procedural defense, procedural defense should not be limited to it.

3.4. Remedial Procedural Defense

Remedial procedural defense refers to the procedural defense raised against illegal actions already taken or potentially to be taken by law enforcement agencies and their personnel. However, it adopts specific methods stipulated in the Criminal Procedure Law, namely “appeal or accusation,” making it a statutorily remedial procedural defense. In this defense, after the procedural judgment or instruction of the court has taken effect, defense counsel, based on legal provisions or court rules, request procedural remedies from higher or peer courts. For example, Article 49¹⁵ of the Criminal Procedure Law provides recourse to the procuratorate for supervision when law enforcement agencies obstruct the lawful practice, and Articles 117 and 181¹⁶ offer channels for relief when the demand-based procedural defense is not accepted by law enforcement agencies. Compared with other types of procedural defense, remedial procedural defense is compulsory and binding at the initiation of the procedure. The authorities being appealed or accused cannot refuse to accept or respond to it. Particularly, the main authority to handle appeals or accusations is the People’s Procuratorate as the legal supervision authority, which is significant for the initiation and implementation of such procedural defenses.¹⁷ Mainly in the form of requests for retrial, revocation, or modification, remedial procedural defense has characteristics of follow-up, remediation, and limitation. After adverse procedural consequences arise from the court’s procedural judgment or instruction, defense counsel questions and remedies the legality and fairness of the court procedures to safeguard the defendant’s litigation status and defense rights, and to correct or eliminate procedural violations or unfairness. Such defense requests must have clear legal and factual bases. They should be submitted to higher or peer courts in accordance with the law or within the deadlines specified by the court, accompanied by written requests explaining the reasons and grounds to support the legitimacy and necessity of the requests.

In practice, defense counsel can submit procedural remedial requests to higher or peer courts after the court’s procedural judgment or instruction has taken effect to safeguard the defendant’s litigation and defense rights, supervise the court’s procedural legality and fairness, and promote effective communication and negotiation between the prosecution and defense. For example, defense counsel can request retrial if they find violations of legal procedures or infringement of the defendant’s basic rights in the court’s judgment to facilitate a rehearing of the case, or to obtain a fairer litigation result and more reasonable sentencing recommendations for the defendant. Defense counsel can request revocation if they find violations of legal procedures or infringement of the defendant’s basic rights in the court’s rulings, to nullify the rulings or alleviate some adverse procedural impacts on the defendant. Defense counsel can request modification if they find errors or improprieties in the court’s procedural judgments or instructions, to amend the judgments or instructions or to obtain some procedural benefits for the defendant. If these requests for procedural remedies are approved by higher or peer courts, they can help the defendant obtain a fairer litigation process and more reasonable sentencing recommendations in the adversarial procedure.

¹³ Gu, Y. Z., & Lou, Q. Q. (2020). The theoretical development and practical implementation of procedural defense. *Journal of National Prosecutor’s College*, 28(03), 138-149.

¹⁴ Refer to Gu, Y. Z. (2019). An empirical study on the reform of criminal defense system. *Chinese Journal of Criminal Law*, (5).

¹⁵ Article 49 of the Criminal Procedure Law stipulates that “if defense lawyers or legal representatives believe that public security organs, people’s procuratorates, people’s courts, or their staff are obstructing their lawful exercise of litigation rights, they have the right to appeal or lodge complaints with the people’s procuratorate at the same level or one level higher. The people’s procuratorate shall promptly review the appeals or complaints, and if the situation is found to be true, notify the relevant authorities to correct it.”

¹⁶ According to Article 117 of the Criminal Procedure Law, parties, defense counsel, litigation agents, and interested parties have the right to appeal or lodge complaints to judicial authorities and their staff in the following circumstances:

- (1) Failure to release, revoke, or amend compulsory measures upon expiration of the statutory period.
- (2) Failure to refund bail pending trial.
- (3) Seizure, attachment, or freezing of property unrelated to the case.
- (4) Failure to lift seizure, attachment, or freezing when required.
- (5) Embezzlement, misappropriation, misallocation, substitution, or unauthorized use of seized, attached, or frozen property.

The authority receiving the appeal or complaint must handle it promptly. If dissatisfied with the handling, one can appeal to the same-level People’s Procuratorate; cases directly accepted by the People’s Procuratorate can be appealed to the higher-level People’s Procuratorate. The People’s Procuratorate must promptly review the appeal, and if found valid, notify the relevant authorities to correct the situation.

Article 181 stipulates that individuals dissatisfied with the non-prosecution decision made by the People’s Procuratorate according to Article 177, Paragraph 2 of this Law may appeal to the People’s Procuratorate within seven days of receiving the decision. The People’s Procuratorate shall make a review decision, notify the person not prosecuted, and simultaneously inform the public security organ.

¹⁷ Refer to the same as footnote [12].

4. Procedural Defense in View of the “Zhang Guoxi Bribery Case”

In China’s criminal proceedings, based on the types of legal challenges posed by the defense, narrow procedural defense mainly consists of two types: first, the procedural defense of applying to exclude illegal evidence¹⁸, and second, the procedural defense of applying for the appellate court to revoke the original judgment and remand for retrial. Compared to other types of procedural defense, the defense of applying to exclude illegal evidence has the greatest impact. This form of defense is established on the basis of a relatively complete procedural sanction mechanism, with a relatively mature rule system, and is also protected by a well-developed procedural adjudication mechanism.¹⁹ To achieve success in procedural defense, lawyers need to undertake four convincing activities: first, persuade the court to accept the litigation request of the defense side; second, persuade the court to initiate formal courtroom trial procedures, thereby subjecting the legality of certain investigative or judicial actions to judicial review; third, present evidence to prove the illegality of investigative actions or the violation of statutory procedures in judicial actions, and effectively cross-examine the evidence provided by the prosecution; fourth, persuade the court to declare the illegality of investigative actions or judicial actions, and issue rulings to exclude illegal evidence or revoke the original judgment and remand for retrial.²⁰

4.1. Overview of the Case

In April 2011, the defendant Zhang Guoxi (formerly the Assistant Director of the Dongqian Lake Tourism Development Bureau in Ningbo) stood trial in the Yinzhou District People’s Court of Ningbo on charges of bribery brought by the procuratorial authority. In July of the same year, the Yinzhou District People’s Court acquitted the defendant of the charge of accepting bribes, ruling out 70,000 yuan from the prosecution’s accusation due to flaws in the preliminary investigation by the procuratorial authority and insufficient evidence provided by the prosecution to prove the legality of the defendant Zhang Guoxi’s pre-trial confession. Only 6,000 yuan was ultimately recognized, and the defendant was sentenced for bribery but exempted from criminal punishment.²¹ This case was referred to as the “First Case of Illegal Evidence Exclusion” and the “First Case of Illegal Evidence Exclusion in China.”

4.2. Application of Illegal Evidence Exclusion Procedure

In the trial of the Zhang Guoxi bribery case, the first-instance court initiated the illegal evidence exclusion procedure based on the request of the defendant and their defense counsel, focusing on reviewing whether the evidence collected by the prosecution was legal during the process of excluding illegal evidence. If the prosecutor failed to provide evidence or the evidence provided was not sufficiently reliable or adequate, such testimony could not serve as the basis for conviction. The second-instance court mainly examined whether the evidence excluded by the first-instance court through the illegal evidence exclusion procedure could still be excluded after the procuratorial authority supplemented or provided reasonable explanations. It also assessed whether the facts proving Zhang Guoxi’s bribery behavior were indeed sufficient and reliable.

According to Article 5 and Article 6²² of the “Provisions on Several Issues Concerning the Exclusion of Illegal Evidence in Handling Criminal Cases” jointly issued by the Supreme People’s Court and the Supreme People’s Procuratorate along with three other departments in July 2010 (hereinafter referred to as the “Provisions on Exclusion of Illegal Evidence”), as well as Article 56 and Article 182²³ of the Criminal Procedure Law (Revised Edition of 2012), the exclusion procedure for illegal evidence is initiated.

¹⁸ Article 58 of the Criminal Procedure Law states that parties and their defense counsel or litigation agents have the right to apply to the People’s Court for the exclusion of evidence obtained through illegal means. When applying for the exclusion of evidence obtained through illegal means, relevant clues or materials should be provided.

¹⁹ For preliminary discussions on procedural defense, see Chen Ruihua’s “Procedural Sanction Theory,” published by China Legal Publishing House in 2010, pages 294 and below.

²⁰ Refer to Chen Ruihua’s “Procedural Sanction Theory,” 2nd edition, published by China Legal Publishing House in 2010, page 294.

²¹ Refer to Judgment No. (2011) Zhe Yong Xing Second Final No. 288.

²² The Exclusion of Illegal Evidence Regulation states: “Article 5: Before or during the court session, if the defendant or their defense counsel claims that the pre-trial confession of the defendant was obtained illegally, the court should conduct an on-site investigation after the prosecutor reads the indictment. Before the end of the court debate, if the defendant or their defense counsel claims that the pre-trial confession of the defendant was obtained illegally, the court should also conduct an investigation. Article 6: If the defendant or their defense counsel claims that the pre-trial confession of the defendant was obtained illegally, the court shall request them to provide relevant clues or evidence related to the suspected illegal collection of evidence, including personnel, time, place, method, content, etc.”

²³ Article 56 of the Criminal Procedure Law (2012 revised edition) stipulates: “During the trial process, if the judge believes that there may be evidence collected by illegal means as stipulated in Article 54 of this Law, the legality of the evidence collection should be investigated by the court. The parties and their defense counsel or litigation agents have the right to apply to the People’s Court for the exclusion of evidence obtained through illegal means. When applying for the exclusion of evidence obtained through illegal means, relevant clues or materials should be provided.”

Article 182 stipulates: “Before the court session, the judge may convene both the prosecution and defense to understand the situation and hear opinions on issues related to the trial, such as the exclusion of illegal evidence. This indicates that the defendant and their defense counsel

This reflects the request-based procedural defense, whereby the defense counsel actively applies for the exclusion of illegal evidence in court. It provides a detailed list of evidence to be excluded, along with the reasons and basis for exclusion, addressing issues such as the source of evidence, collection procedures, and standards of proof, and requests the court to exclude them according to law.

According to Articles 7 and 12²⁴ of the “Provisions on Exclusion of Illegal Evidence” and Article 57²⁵ of the Criminal Procedure Law (2012 Revised Edition), the burden of proof for excluding illegal evidence lies explicitly with the prosecution. The method of proof involves the People’s Procuratorate providing evidence of the legality of evidence collection during the process of judicial investigation. Regarding the standard of proof, the prosecution’s evidence must meet the criteria of being both sufficient and reliable. If no evidence is presented, or the evidence provided is not sufficiently reliable or adequate, the prosecution shall bear the legal consequences of being unable to prove the criminal facts with that evidence.

In the first instance of this case, although the prosecution presented and read out the transcripts of Zhang Guoxi’s confession of guilt, his “Self-Confession,” and played video clips of Zhang Guoxi’s confession of guilt, they also submitted explanations regarding the lawful and civilized handling of the case, stating that there was no torture or inducement to confess illegally. However, the above evidence was insufficient to prove the legality of obtaining Zhang Guoxi’s confession of guilt before trial. On the contrary, the court obtained Zhang Guoxi’s physical examination registration form, proving that Zhang Guoxi was injured during interrogation. The prosecution failed to provide a reasonable explanation. The defense counsel applied to the court to request that the investigators appear in court to explain the situation, and the court also notified the relevant investigators to testify. However, the prosecution explicitly stated that they would not appear in court to explain the situation. This clearly indicates that in the first instance, the prosecution failed to meet the standard of providing sufficient and reliable evidence for the evidence collected, which also reflects the nature of request-type procedural defense. The defense counsel requested the court to fulfill its procedural obligations, investigate, review, and adjudicate on illegal evidence, requested the court to transfer the full interrogation video, requested the court to summon the interrogators to testify, and requested the court to investigate torture-induced confessions. In the first instance of this case, the court partially accepted the defense counsel’s requests, requiring the procuratorial authority to submit the full interrogation video and, together with the prosecution and defense, watched parts of the interrogation video. However, the court disagreed with summoning the interrogators to testify and refused to investigate torture-induced confessions.

According to Article 11²⁶ of the “Provisions on Several Issues Concerning the Exclusion of Illegal Evidence in Handling Criminal Cases” and Article 58²⁷ of the Criminal Procedure Law (2012 Revised Edition), if, after trial, the court confirms certain evidence to be illegal through the application of the parties, court investigation, prosecution evidence, cross-examination, and debate, such evidence should be excluded. If it is impossible to exclude evidence collected by illegal means, i.e., if the prosecution cannot provide evidence to prove the legality of the evidence or the evidence provided is not sufficiently reliable or adequate, such evidence cannot serve as the basis for conviction and should also be excluded according to law.

In the first instance of this case, the defendant Zhang Guoxi and his defense counsel pointed out that the investigative authorities unlawfully obtained Zhang Guoxi’s confession of guilt before trial and provided corresponding evidence and clues. The prosecution should have submitted the full interrogation video of the relevant defendant Zhang Guoxi bribery case for cross-examination and should have notified the interrogators to appear in court to testify, to prove the legality of obtaining Zhang Guoxi’s confession of guilt before trial by the investigative authorities. Although the prosecution partially presented relevant evidence, it was insufficient to prove the legality of obtaining Zhang Guoxi’s confession of guilt before trial by the investigative authorities.

have the right to apply to the People’s Court before or during the trial to exclude evidence obtained through illegal means. Based on this application, the People’s Court should conduct a judicial investigation into the legality of the evidence collection. During the trial phase, initiating the exclusion of illegal evidence procedure must meet the following four conditions: ① initiation before or during the court session, or before the end of the court debate; ② the initiators include the parties and their defense counsel or litigation agents; ③ the form of initiation can be written or oral application; ④ the content of initiation should provide relevant clues or evidence, i.e., personnel, time, place, method, content, etc., related to the suspected illegal collection of evidence.”

²⁴ The Exclusion of Illegal Evidence Regulation, Article 7: “After examination, if the court doubts the legality of the pre-trial confession obtained by the defendant, the prosecutor should provide the court with interrogation transcripts, original audio or video recordings of the interrogation process, or other evidence, and request the court to summon other persons or witnesses present during the interrogation for testimony. If the suspicion of extracting confessions through torture cannot be eliminated, the court should summon the interrogators to testify and prove the legality of the confession.” Article 12: “If the prosecutor fails to provide evidence to prove the legality of the defendant’s pre-trial confession, or the evidence provided is not sufficiently reliable and comprehensive, the confession cannot be used as the basis for conviction.”

²⁵ The amended Criminal Procedure Law, Article 57: “During the judicial investigation into the legality of evidence collection, the People’s Procuratorate shall provide proof of the legality of evidence collection. If the existing evidence materials cannot prove the legality of evidence collection, the People’s Procuratorate may request the People’s Court to summon relevant investigators or other personnel to testify; the People’s Court may summon relevant investigators or other personnel to testify. Relevant investigators or other personnel may also request to testify. Upon notice by the People’s Court, relevant personnel shall appear in court.”

²⁶ The Exclusion of Illegal Evidence Regulation, Article 11: “The legality of the defendant’s pre-trial confession, if the prosecutor fails to provide evidence to prove it, or the evidence provided is not sufficiently reliable or adequate, such confession shall not be used as the basis for conviction.”

²⁷ Article 58 of the Criminal Procedure Law (2012 revised edition) stipulates: “In cases where, after court trial, it is confirmed or cannot be excluded that evidence was collected through illegal means as stipulated in Article 54 of this Law, the relevant evidence shall be excluded.”

At the same time, the prosecution explicitly stated that the interrogators would not appear in court. On the contrary, the court obtained Zhang Guoxi's physical examination registration form, proving the fact that Zhang Guoxi was injured during interrogation, and the prosecution again failed to provide a reasonable explanation. According to the above provisions and facts, Zhang Guoxi's confession of guilt before trial in the first instance cannot serve as the basis for conviction. This reflects the nature of request-type procedural defense, where the defense counsel actively applies to the court to exclude illegal evidence.

Furthermore, in this case, the defense counsel stated that "the investigative authorities seriously violated the law during the investigation process, using torture or disguised torture, inducement, deception, and other means to obtain his confession of guilt. During this period, they illegally extended the investigation period and detained him in another place. Therefore, his confession of guilt is invalid and cannot be used as evidence for conviction." "The investigative authorities obtained Zhang Guoxi's confession of guilt through torture or disguised torture, inducement, deception, etc. The prosecution did not provide interrogation videos to prove the legality of obtaining Zhang Guoxi's confession, so there is reasonable doubt about the legality of obtaining the confession, and Zhang Guoxi's confession of guilt cannot be used as evidence for conviction." "The testimonies provided by the prosecution witnesses, such as Shi Jiandang, Zhou Liang, Cai Zhenwu, Zhao Xinfu, and Xu Xiongwen, are formally illegal, and their content is not objective and truthful. There is mutual collusion with Zhang Guoxi's confession, so they cannot serve as the basis for conviction,"²⁸ which reflects the nature of defensive procedural defense: In this case, the defense counsel refuted the prosecution's accusations, questioning the legality, truthfulness, and relevance of illegal evidence, such as questioning the use of threats by the investigative authorities to obtain evidence, questioning the tampering and alleged forgery of records by the investigative authorities, questioning the use of threats against the defendant's family to coerce a confession, and questioning that the evidence submitted by the prosecution cannot prove the defendant's criminal acts, and requested the court to reject them.

The appeal in this case also reflects the remedial procedural defense, wherein the defense counsel requests the court to remedy procedural violations, exclude illegal evidence, and demand a verdict of innocence, presenting an appeal as a remedy and requesting the court to conduct a review and judgment on the illegal evidence.

In the "Nianbin Poisoning Case" in 2014, not only did the lawyers challenge the probative force of the defendant's confession and witness testimonies, but they also hired multiple experts in relevant fields to provide opinions on the opinions made by the investigative authorities. They even persuaded the court to summon these experts to testify, questioning the opinions issued by the prosecution's experts. Ultimately, the Fujian Provincial High People's Court adopted the opinions of the defense's experts and excluded the opinions of the prosecution's experts from the basis of judgment. This flexible application of the system of expert assistance ultimately led to the acquittal in this case.

Therefore, procedural defense is an important method of criminal defense. It is based on criminal procedural law and points out serious violations of procedural law by criminal investigators, prosecutors, and judges, or serious infringements of the basic rights of defendants in the process of handling cases, thereby negating the validity of certain evidence or litigation actions, thwarting criminal charges, and achieving the goal of safeguarding the legitimate rights and interests of defendants. It complements substantive defense, together forming a complete system of criminal defense.

5. The Value and Significance of Procedural Defense

The value significance of procedural defense refers to the important role and positive impact that procedural defense plays in safeguarding the defendant's litigation rights, maintaining the fairness of criminal proceedings, and promoting the realization of consensus between the prosecution and defense.

Procedural defense is an effective means of safeguarding the defendant's litigation rights. The defendant's litigation rights refer to the statutory rights and interests enjoyed by the defendant in criminal proceedings, including the right to defense, the right to remain silent, the right to be informed, the right to cross-examine, and the right to appeal. Procedural defense can assist the defendant in exercising their litigation rights in a timely, full, and effective manner, preventing the infringement or restriction of the defendant's litigation rights, and safeguarding the defendant's legitimate rights and dignity. In practice, defense counsel can, through various means such as requesting changes to coercive measures, requesting recusal, and requesting deferred hearings, secure more favorable procedural conditions for the defendant, safeguarding the defendant's personal freedom and participation in litigation. Defense counsel can also request supplementary investigations, request the exclusion of illegal evidence, and request additional evidence to exclude unfavorable evidence or add favorable evidence, thereby safeguarding the defendant's right to defense and cross-examination. Through procedural defense, defense counsel can challenge jurisdiction, challenge unlawful case filing, and challenge procedural violations to eliminate adverse procedural impacts or obtain favorable procedural benefits for the defendant, safeguarding the defendant's right to be informed and right to appeal. Defense counsel can also request retrials, request annulments, or request changes to restore lost procedural benefits or obtain new procedural benefits for the defendant, safeguarding the defendant's right to appeal and right to remedies.

Procedural defense is an important guarantee for maintaining the fairness of criminal proceedings. The fairness of criminal proceedings refers to compliance with legal procedures and principles in criminal proceedings, safeguarding the legitimate rights and interests of parties involved, and achieving the goal of criminal justice. Procedural defense can question and supervise the legality of the procedures and evidence of law enforcement agencies and courts, promoting the efficiency and fairness of criminal

²⁸ Refer to Judgment No. (2011) Zhe Yong Xing Final No. 288.

proceedings. In practice, defense counsel can engage in inquiry, rebuttal, objection, and remedy regarding criminal charges brought by the prosecution or procedural judgments or instructions issued by the court through different types of procedural defenses such as request-based, demand-based, objection-based, and remedial-based defenses, exposing and correcting procedural violations or unfairness, pushing law enforcement agencies and courts to handle cases in accordance with the law, ensuring the legality and credibility of criminal proceedings.

Procedural defense is an effective means of promoting consensus between the prosecution and defense. Consensus between the prosecution and defense refers to the process and result of reaching a unanimous agreement on issues such as case facts, evidence, legal application, and sentencing recommendations through communication and negotiation between the prosecution, the defendant, and their defense counsel in criminal proceedings. Procedural defense can provide favorable procedural conditions and safeguards for the realization of consensus between the prosecution and defense, promoting effective communication and negotiation between both sides. In practice, defense counsel can engage in procedural negotiations and coordination with the prosecution and the court through various types of procedural defenses such as request-based, demand-based, objection-based, and remedial-based defenses, securing more opportunities and time for the defendant to participate in litigation, thereby increasing the defendant's satisfaction with the litigation process. Defense counsel can also challenge, rebut, object, or seek remedies against criminal charges brought by the prosecution through procedural defense, securing a fairer litigation outcome and more reasonable sentencing recommendations for the defendant, thereby increasing the defendant's trust in the litigation process.

6. Challenges in the Practice of Procedural Defense

Procedural defense refers to the defense activities in which defense counsel, based on the legitimacy of legal procedures, question, object to, or seek remedies against procedural violations or unfairness by law enforcement agencies and courts. Procedural defense is an integral part of criminal defense and an effective means of safeguarding the fairness of criminal proceedings and the rights of defendants²⁹. However, in the practice of criminal litigation in China, procedural defense still faces some difficulties and challenges.

The legal basis for procedural defense is not sufficiently clear and comprehensive. Although China's Criminal Procedure Law stipulates some litigation rights of defendants and defense counsel, there is no clear and detailed provision regarding the specific content, form, conditions, methods, and effects of procedural defense. This lack of clarity in operational space and standards makes the implementation of procedural defense difficult and uncertain. For example, China's Criminal Procedure Law does not explicitly specify what procedural requests defense counsel can make to the court, nor does it specify how the court should handle procedural requests from defense counsel, or what the effects and remedies of procedural requests are. This often leaves defense counsel lacking legal basis and protection when making procedural requests, and courts lacking legal guidance and constraints when handling procedural requests. Additionally, China's Criminal Procedure Law also has issues with the exclusion rules for illegal evidence, such as the scope, procedure, standards, and effects of exclusion, which are not clearly defined or elaborated. This often leads defense counsel to encounter refusals or evasions from the court when applying to exclude illegal evidence, and the courts often lack unified and standardized operating rules when reviewing illegal evidence.

The practical environment for procedural defense is not sufficiently fair and democratic. In China's criminal litigation practice, there are still factors that are unfavorable to procedural defense, such as procedural violations by law enforcement agencies and courts, the power advantage of procuratorates and courts, the weak position of defendants and defense counsel, and the backwardness of judicial culture and concepts. These factors affect the effective implementation and normal functioning of procedural defense. For example, law enforcement agencies and courts sometimes violate statutory procedures or infringe upon the basic rights of defendants during investigation, prosecution, and trial, such as illegal detention, search, interrogation, and evidence collection. These situations not only harm the litigation rights of defendants but also weaken the effectiveness and significance of procedural defense by defense counsel. Procuratorates and courts in criminal proceedings sometimes use their power advantage to restrict or interfere with the litigation rights of defendants and defense counsel, such as refusing to change coercive measures, recusal, trial postponement, supplementary investigation, exclusion of illegal evidence, or supplementary evidence. These actions not only undermine the fairness of criminal litigation but also hinder the implementation and effectiveness of procedural defense by defense counsel. Defendants and defense counsel sometimes lack awareness of the importance and necessity of procedural defense due to their weak position in criminal litigation. For example, they may be hesitant or unwilling to request procedural relief, challenge procedural judgments or instructions, or appeal for procedural remedies to higher or peer courts. These situations not only harm the litigation interests of defendants but also weaken the ability and initiative of defense counsel in procedural defense. In China, there are still some backward and conservative factors in judicial culture and concepts, such as prioritizing substance over procedure, efficiency over fairness, and confession over defense. These factors affect the social acceptance and judicial respect of procedural defense, as well as the theoretical research and practical training of procedural defense.

The practical effects of procedural defense are not sufficiently pronounced and stable. In the practice of criminal proceedings in our country, there are still some deficiencies and problems in the implementation and function of procedural defense, such as the low level and effect of procedural defense operations, the unclear standards and mechanisms for evaluating procedural defense,

²⁹ Refer to the preceding footnote [7].

and the poor relief channels and effects of procedural defense, etc. These deficiencies and problems all affect the practical effects and value of procedural defense. For instance, the low level and effect of procedural defense operations are mainly due to the lack of sufficient legal knowledge and skills when defending, which makes it difficult to accurately grasp the types, content, conditions, methods, and effects of procedural defense, and also makes it difficult to effectively utilize strategies and skills for procedural defense, leading to the implementation of procedural defense that is not standardized, professional, strong, or orderly; the unclear standards and mechanisms for evaluating procedural defense are mainly because there is currently no perfect evaluation system and method for procedural defense, which cannot objectively measure and reflect the degree and effect of the function of procedural defense, and cannot timely discover and correct the deficiencies and problems of procedural defense, leading to the lack of effective supervision, feedback, incentive, and restraint for the practical effects of procedural defense; the poor relief channels and effects of procedural defense are mainly because the current relief system for procedural defense is not yet perfect and effective enough to fully protect the rights and interests of the defender in procedural defense, nor can it fully correct and punish procedural violations or injustices, leading to unsatisfactory relief effects of procedural defense. In practice, although our criminal procedural law stipulates that defenders can make procedural requests to the court, it does not clearly stipulate whether the defender has the right to object to the court's procedural decisions or instructions, nor does it clearly stipulate whether the defender has the right to appeal or petition against the court's procedural decisions or instructions, which makes it difficult for defenders to have effective relief channels and results when they encounter unfair procedural decisions or instructions from the court; although our criminal procedural law stipulates that defenders can make procedural relief requests to higher or same-level courts, it does not clearly stipulate the conditions, methods, time limits, and effects for defenders to make procedural relief requests, nor does it clearly stipulate how higher or same-level courts should handle, adjudicate, and execute defenders' procedural relief requests, which makes it difficult for defenders to have legal basis and protection when making procedural relief requests, and also makes it difficult for higher or same-level courts to have legal guidance and constraints when dealing with procedural relief requests.

In summary, although procedural defense holds significant theoretical value and practical significance in China's criminal litigation, there are still areas in which it falls short in both legal provisions and judicial practice. Further improvement and development are needed.

7. Strategies for Improving Procedural Defense

To improve the level and effectiveness of procedural defense and safeguard the fairness and human rights of criminal litigation, the author suggests several innovations and improvements:

Clarification and elaboration of the legal basis and norms for procedural defense: Special provisions regarding procedural defense should be added to the Criminal Procedure Law, clearly defining the rights and obligations of defense counsel in procedural defense, as well as the content, forms, conditions, methods, and effects of procedural defense. This would provide clear and comprehensive legal guidance and protection for the implementation of procedural defense. For example, a chapter specifically dedicated to procedural defense could be added to the Criminal Procedure Law, outlining various procedural requests, demands, objections, remedies, etc., that defense counsel can submit to the court. It should also detail how the court should handle, respond to, adopt, or remedy defense counsel's procedural defense, as well as the effects and avenues for redress of procedural defense, thereby providing clear and comprehensive legal basis and system for procedural defense. Additionally, the exclusion rules for illegal evidence should be improved, clearly defining the scope, procedures, standards, and effects of excluding illegal evidence, providing clear and effective legal basis and norms for the objectives of procedural defense.

Improve and optimize the practical environment and conditions for procedural defense. Strengthening procedural supervision and accountability over case-handling authorities and courts is essential, as is severely cracking down on and punishing procedural violations or injustices to uphold the rule of law and legal spirit in criminal proceedings. At the same time, it is necessary to balance and coordinate the powers and rights between the procuratorates and courts and the defendants and their defenders, to eliminate or reduce the asymmetry of power and inequality of rights in criminal litigation, and to promote fairness and democracy in criminal proceedings. Furthermore, it is imperative to enhance the procedural awareness and capacity of defendants and defenders, to strengthen their understanding and emphasis on procedural defense, and to stimulate their enthusiasm and initiative in procedural defense. It is also essential to change and renew judicial culture and concepts, to establish and promote the concept of procedural justice, to increase the social acceptance and judicial respect for procedural defense, and to strengthen theoretical research and practical training in procedural defense. For instance, supervision and punishment of procedural violations by case-handling authorities and courts can be intensified to improve their procedural legality and fairness, to safeguard the litigation and defense rights of defendants and their defenders, and to eliminate situations of procedural violations or injustices; power constraints and balance over procuratorates and courts can be strengthened to reduce their power advantage and increase the rights strength of defendants and their defenders, ensuring their litigation and defense status and preventing restrictions or interventions on their litigation rights by procuratorates and courts; procedural education and training for defendants and defenders can be enhanced to improve their awareness and capacity, to increase their litigation confidence and initiative, to safeguard their litigation and defense interests, and to promote their understanding and emphasis on the importance and necessity of procedural defense; reform and innovation of judicial culture and concepts can be promoted to increase their advancement and openness, to enhance their

procedural and fairness aspects, to ensure the rationality and credibility of criminal litigation, to promote social acceptance and judicial respect for procedural defense, and to drive theoretical research and practical training in procedural defense.

To enhance and ensure the operational level and effectiveness of procedural defense, it is necessary to strengthen legal education and training for defense counsel. This involves improving their legal knowledge and skills so that they can accurately grasp the types, contents, conditions, methods, and effects of procedural defense, and effectively utilize strategies and techniques to ensure its implementation is more standardized, professional, powerful, and orderly. Additionally, establishing and improving the evaluation system and methods for procedural defense is crucial. Objective measurement and reflection of the functional implementation and effectiveness of procedural defense, timely identification and correction of deficiencies and issues, and effective supervision, feedback, encouragement, and constraints on the practical effects of procedural defense are necessary. Furthermore, it is essential to improve and effectively implement the remedial system for procedural defense. This includes fully protecting the rights and interests of defense counsel in procedural defense, rectifying and sanctioning procedural violations or injustices, thereby making the remedial effects of procedural defense more significant and stable. For example, establishing a comprehensive evaluation system and methods for procedural defense, formulating objective evaluation criteria and indicators, adopting scientific evaluation methods, measuring and reflecting the functional implementation and effectiveness of procedural defense objectively, and promptly identifying and correcting deficiencies and issues to provide effective supervision, feedback, encouragement, and constraints for procedural defense are essential steps. Moreover, improving the remedial system and mechanisms for procedural defense, setting reasonable conditions and methods for procedural defense remedies, establishing specialized institutions and personnel for procedural defense remedies, fully guaranteeing and remedying the rights and interests of procedural defense, correcting and sanctioning procedural violations or injustices adequately, thereby providing effective protection, compensation, education, and punishment for procedural defense, are necessary measures.

8. Conclusion

Procedural defense has significant theoretical significance and practical value, serving as an effective means and important safeguard for defense counsel to fulfill their duties and achieve defense objectives. Different types of procedural defense have different characteristics, applicable conditions, operational methods, and practical effects. They play a crucial role in the adversarial process and can provide favorable procedural conditions and safeguards for effective communication and negotiation between the prosecution and defense.

However, the challenges and dilemmas faced by procedural defense in China's criminal procedural practice hinder its effective implementation and normal function. In order to enhance the theoretical level and practical effectiveness of procedural defense, and to promote its healthy development and widespread application, this paper explores procedural defense, focusing on the exclusionary rule of illegal evidence from both theoretical and practical perspectives.

8.1. Innovations, Insights, or Managerial Implications of the Article

This paper systematically reviews and analyzes the conceptual definition and classification of procedural defense, clarifying its connotation, extension, and characteristics. It categorizes procedural defense into four types: request-based, demand-based, defense-based, and relief-based, elaborating on their applicable conditions, operational methods, and practical effects, providing valuable references for understanding and applying procedural defense. Moreover, using the "Zhang Guoxi bribery case" as a case study, it demonstrates the application of procedural defense in practice, revealing its value and practical significance. Procedural defense not only embodies the value of procedural justice but also contributes to achieving the goals of substantive justice. It plays an important role in safeguarding the defendant's litigation rights, supervising the legality of law enforcement agencies, and promoting the efficiency and fairness of criminal proceedings. Additionally, it proposes some improvement strategies and suggestions from the perspectives of enhancing the legal basis and system of procedural defense, optimizing the practice environment and conditions of procedural defense, and improving the practical effectiveness and value of procedural defense, providing feasible ideas and measures for the healthy development and widespread application of procedural defense.

8.2. Differences from Previous Studies

Building upon and absorbing previous research, this paper has several distinctive features.

Firstly, it emphasizes the exclusionary rule of illegal evidence as the core content of procedural defense, highlighting the close connection between procedural defense and the exclusionary rule of illegal evidence, thus exploring the theoretical and practical issues of procedural defense more comprehensively and deeply. Secondly, in the classification of procedural defense types, it not only considers the purpose and function of procedural defense but also takes into account the procedural form and effects of procedural defense, thus meticulously and scientifically distinguishing different types of procedural defense, providing clearer criteria for the operation and evaluation of procedural defense. Lastly, in the analysis of the practical dilemmas and improvement strategies of procedural defense, it not only discusses from a legal perspective but also examines from multiple angles such as

judicial practice and social psychology, thereby more comprehensively and objectively reflecting the real problems and improvement directions of procedural defense.

8.3. Shortcomings and Prospects

Although this paper has conducted a relatively in-depth study on the theory and practice of procedural defense, there are still some shortcomings that need to be addressed and further developed in the future.

Firstly, while the classification of procedural defense types in this paper is relatively detailed and scientific, there are still some areas of ambiguity and overlap. For example, the boundaries between request-based and demand-based procedural defense, and the relationship between defense-based and relief-based procedural defense need further clarification and differentiation. Secondly, while this paper uses the “Zhang Guoxi bribery case” as a case study, which has a certain degree of typicality and representativeness, it still cannot cover all types and scenarios of procedural defense. It is necessary to examine and verify the theoretical and practical effects of procedural defense in more cases. Finally, although this paper proposes some feasible ideas and measures for the improvement of procedural defense, it still needs to be piloted and evaluated in judicial practice to test its feasibility and effectiveness. At the same time, coordination and cooperation with other relevant legal systems and judicial mechanisms are also necessary to form an organic whole.

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