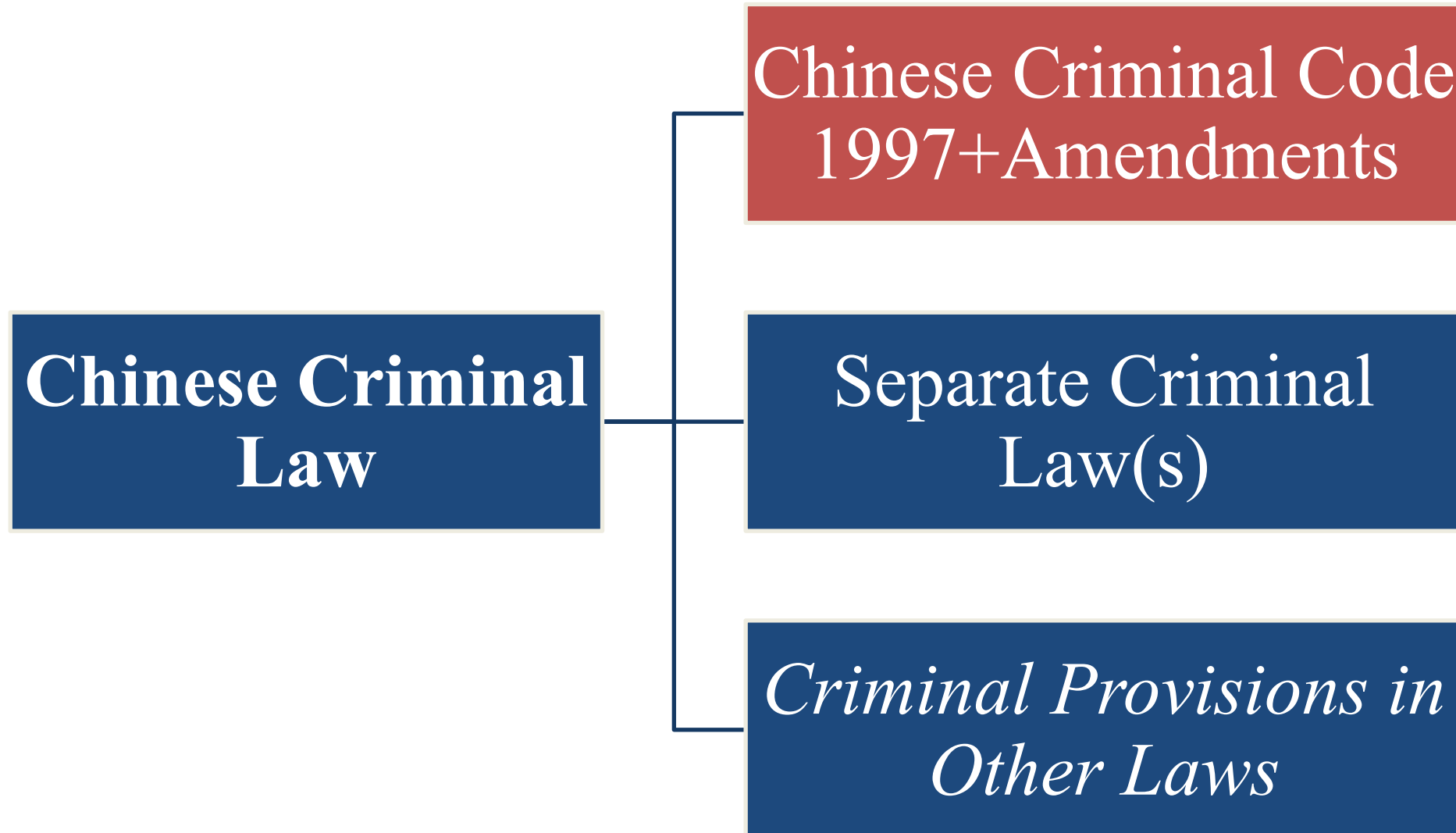


A Brief Introduction of General Part of Chinese Criminal Law

Jianing Geng

Criminal Justice College, China University of
Political Science and Law

0. Sources of Chinese Criminal Law (*fontes iuris*)



1. Concept of Crime

1.1. Case of Zhao Chunhua

- Zhao Chunhua, a 51-year-old woman, was arrested in 2016. When police came to patrol Zhao's recreational shooting booth in Tianjin, they discovered nine gun-shaped items.
- Police judged six of the items to be real guns powered by compressed gas.
- As a result, the court sentenced Zhao to three years and six months in prison for illegal possession of guns.

- Article 128. Whoever, in violation of the regulations governing control of guns, illegally possesses any guns shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public control; if the circumstances are serious, he or she shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

- What can be judged as “real guns”?

Ministry of Public Security 2010

- fire a bullet with a force ≥ 1.8 J/cm²
- eyes

Ministry of Public Security 2001

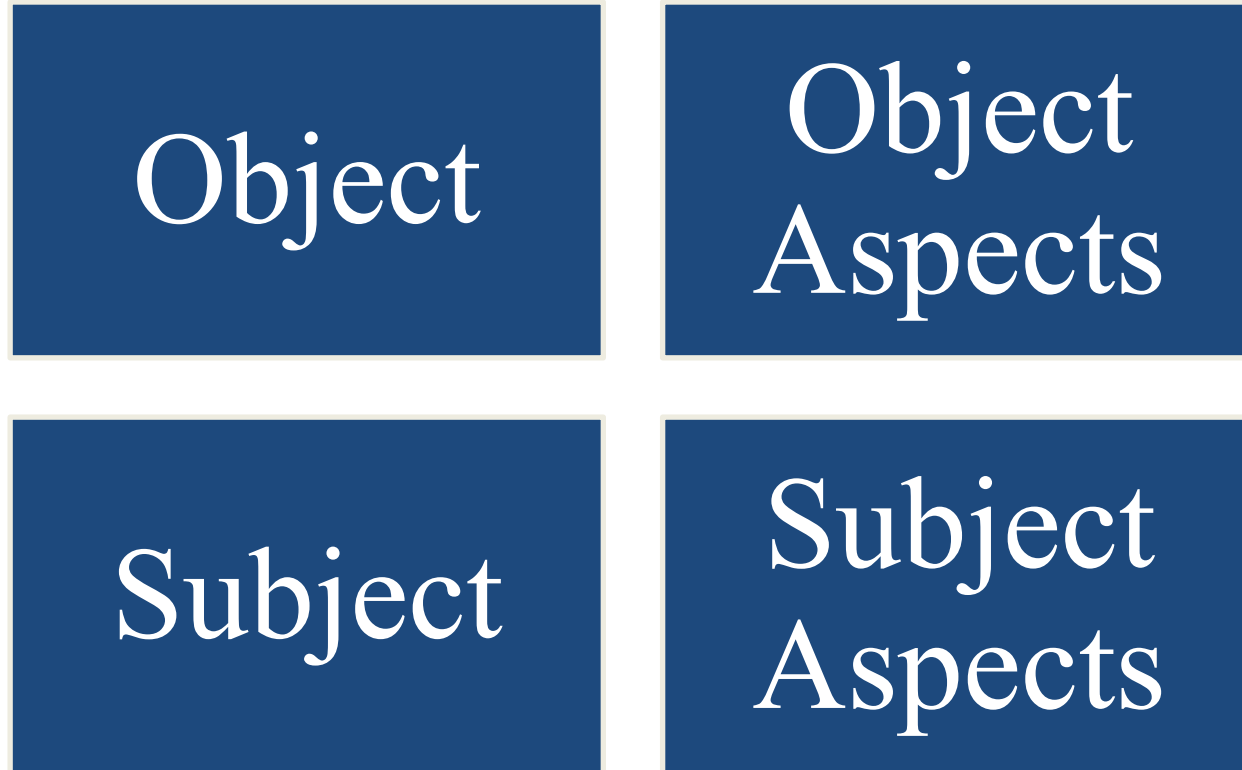
- fire a bullet with a force ≥ 16 J/cm²
- skin

What is a crime?

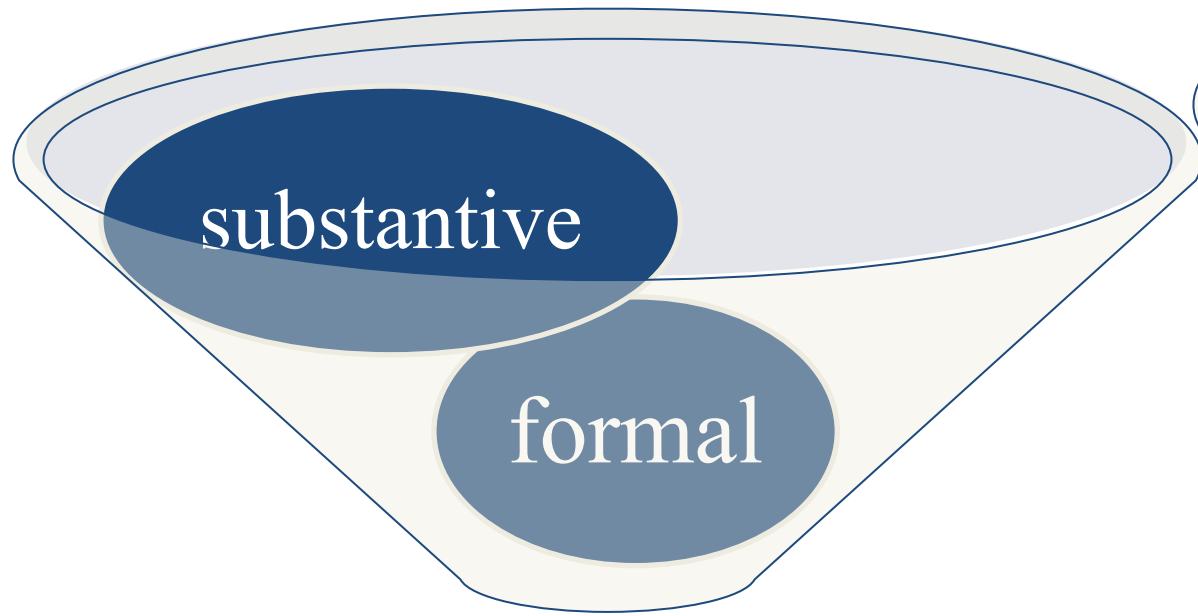
What are their elements?

What is the relation between these elements?

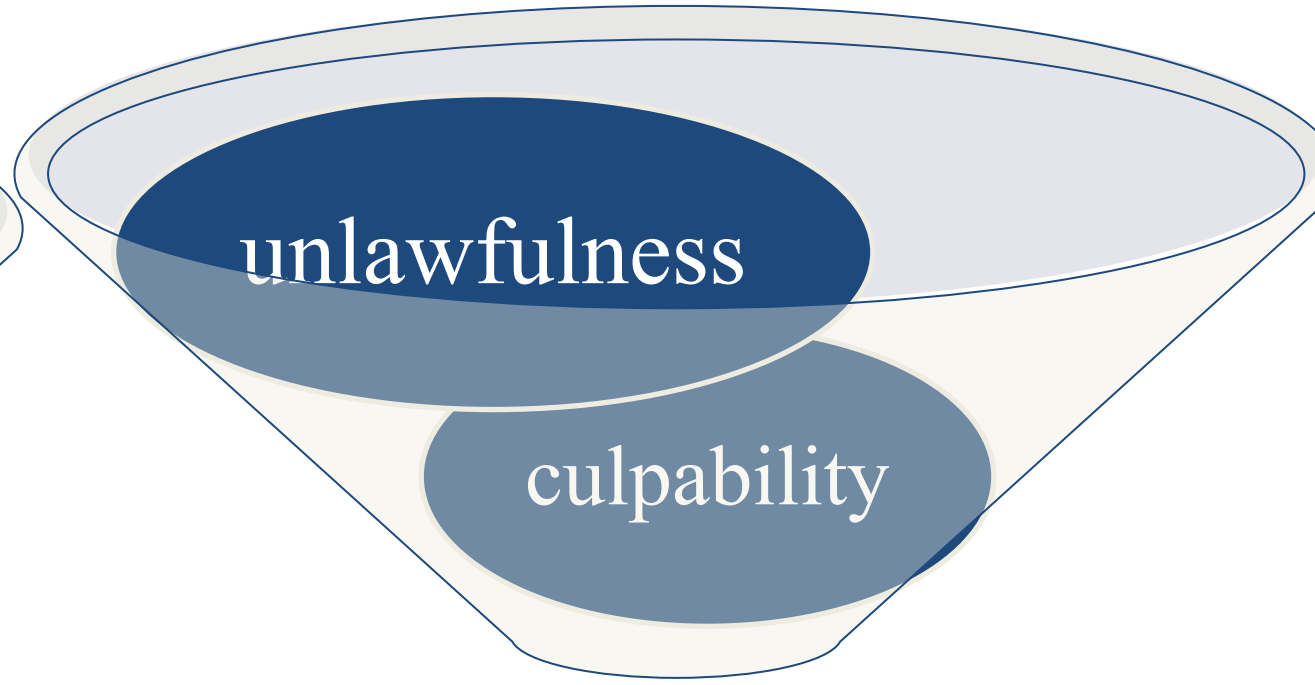
1.2. The Four-layered Structure of a Criminal Offence (in traditional views)



- Criminal Constitution \neq *Tatbestand*



↓
crime

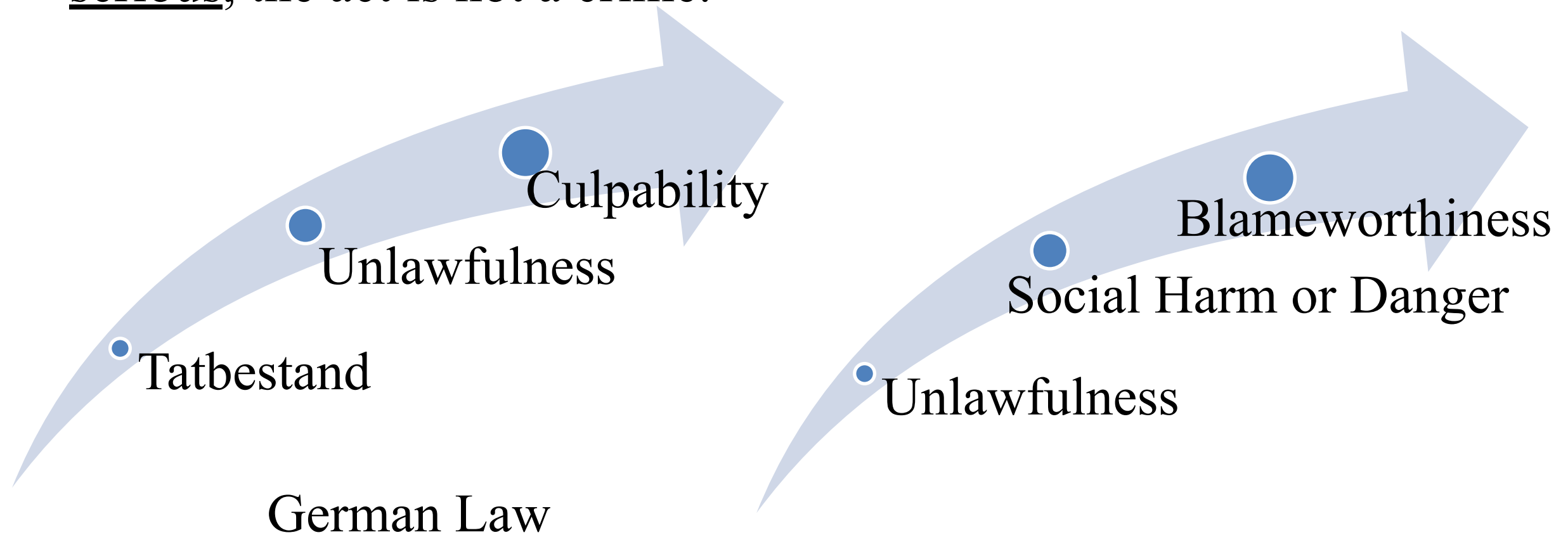


↓
crime

1.3. Tripartite System Based on the Legal Definition of Crime

Article 13. **A crime refers to an act** that endangers the sovereignty, territorial integrity and security of the State, splits the State, subverts the State power of the people's democratic dictatorship and overthrows the socialist system, undermines public and economic order, violates State-owned property, property collectively owned by the working people, or property privately owned by citizens, infringes on the citizens' rights of the person, their democratic or other rights, and any other act **that endangers society and is subject to punishment according to law**. However, if the circumstances are obviously minor and the harm done is not serious, the act is not a crime.

- A crime refers to an act that endangers society and is subject to punishment according to law.
- If the circumstances are obviously minor and the harm done is not serious, the act is not a crime.



- Could Zhao's possession of the gun-shaped items cause any concrete danger to the public security?

Criterion 2010 (J/cm²)	Force of the six 'guns' owned by Zhao (J/cm²)	Criterion 2001 (J/cm²)
1.8	2.17 ~ 3.14	16
Eyes		Skin

- Is Zhao blameworthy for her possession of the gun-shaped items?

2. Crimes Committed by a Unit (Unit Crimes)

- Article 30. A company, enterprise, institution, state organ or organization shall be subject to criminal liability if it commits an act that endangers society and if such act is prescribed by laws as unit crime.
- Article 31. A unit that committed crimes shall be fined.

Subject or Actor
of Crimes

Natural Person

Unit

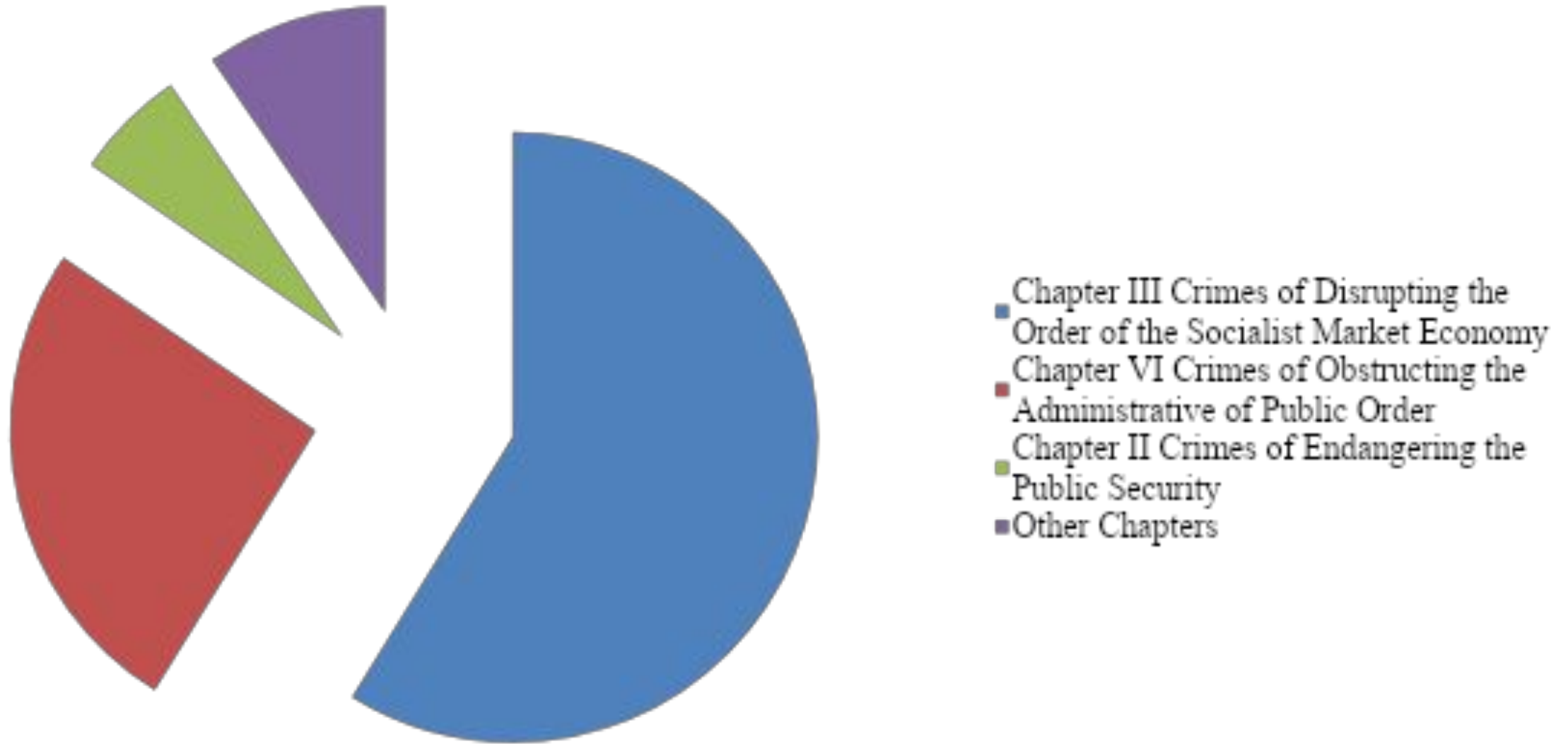
Customs Law 1987

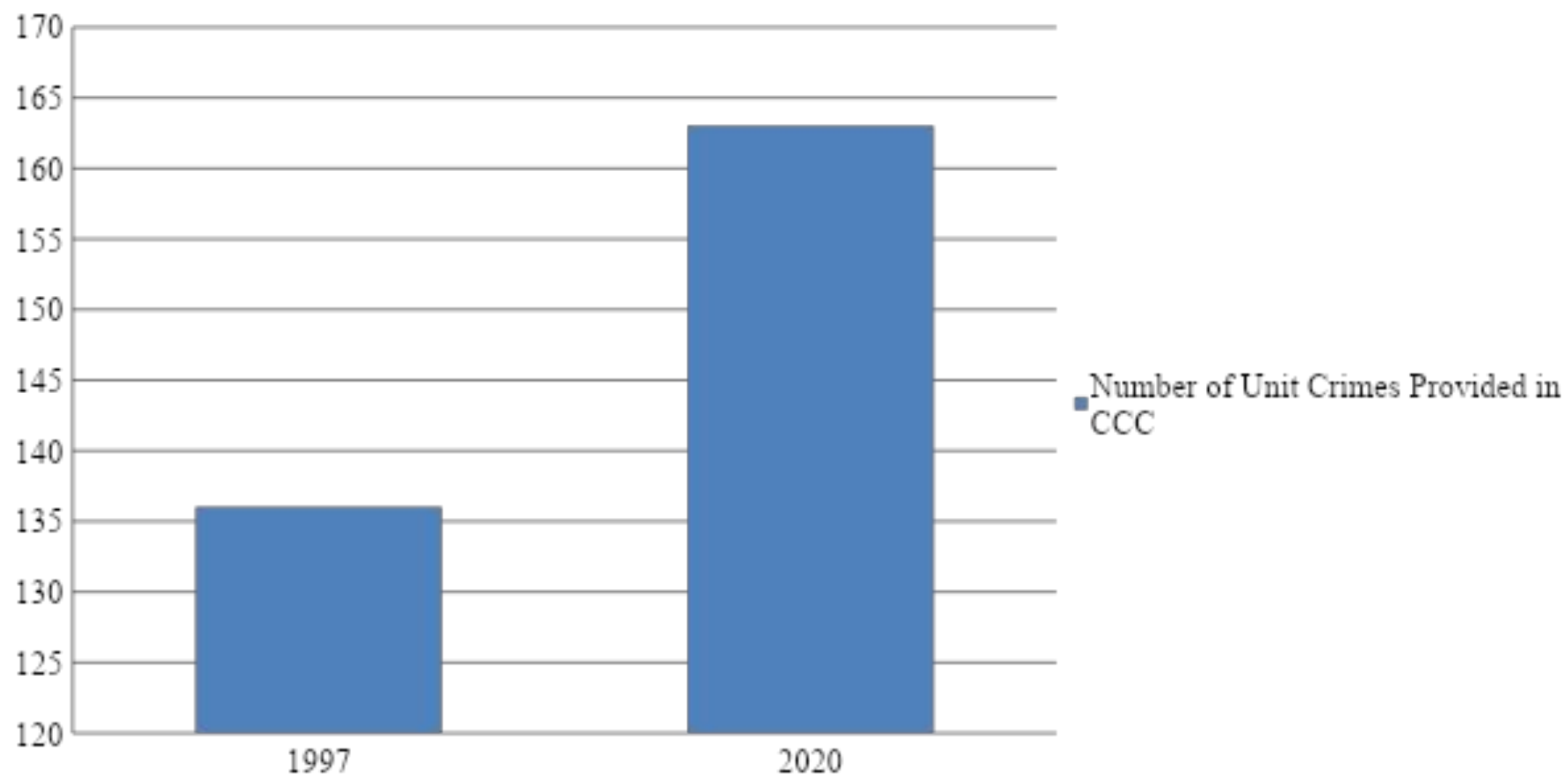
Amendments

Criminal Code 1997

- Criminal Code 1997

Unit Crimes





Non-standard Unit Crimes

- Individuals & Units

Standard Unit Crimes

- Units

Article 137. Where any building, designing, construction or engineering supervision unit, in violation of State regulations, lowers the quality standard of a project and thereby causes a serious accident, the person who is directly responsible for the accident shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined.

- Does it seem logical to punish natural persons associated with a crime committed by a unit without punishing its true actor?
- → Why the individuals shall be punished for a crime committed by a unit?

- Double Punishments (Article 31)

Unit that committed a crime


- Fine

persons who are directly in charge

persons who are directly responsible for the crime

- Imprisonment, Fine, etc.

Why the individuals shall be punished for a crime committed by a unit?

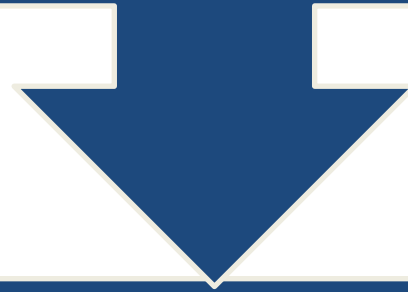


their contribution to the unit crime



What if a unit committed a crime for which the corporate criminal liability is not prescribed by law, such as theft?

When a unit committed a crime that has not been prescribed as unit crime, **persons who organized, planned, carried into execution** activities socially harmful shall be subject to criminal liability



SEPARATED

Unit

Individuals

- How a unit can be the subject of crime as natural persons?

Collective decision made by the unit

or

Individual decision made by a person in a position of responsibility

- What if the individual decision that leads to the criminal offence did not reflect **the real will of the unit**?
- Principle of personal responsibility?

Organization & management model of the unit itself

3. Punishments

3.1. Types of punishments

Principal Punishments	Supplementary Punishments
<ul style="list-style-type: none">• Public control• Criminal detention• Fixed-term imprisonment• Life imprisonment• Death penalty	<ul style="list-style-type: none">• Fine• Deprivation of political rights• Confiscation of property
<ul style="list-style-type: none">• exemption from criminal sanctions→ Statement of repentance→ Formal apology→ Compensation for losses→ Administrative sanctions	

3.2. Death Penalty

- the most serious crimes

- Death penalty shall no longer be imposed on:

persons who have not reached the age of 18 at the time when the crime is committed

women who are pregnant at the time of trial

- Death penalty shall not be given to:

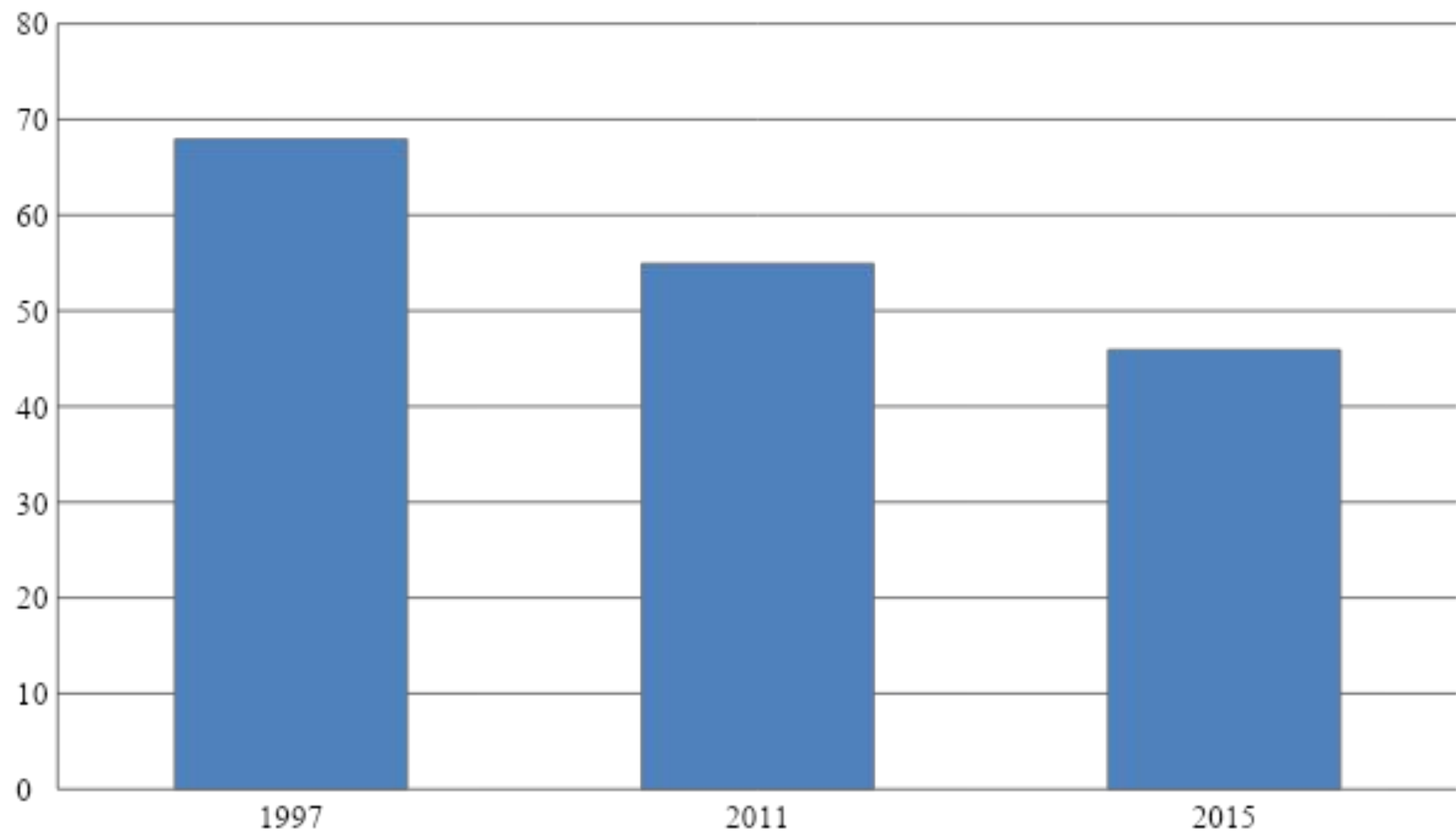
a person attaining the age of 75 at the time of trial, unless he has caused the death of another person by especially cruel means

- Death penalty verdicts 2007

Provincial
High Courts



Supreme
People's Court



VIII Amendment to the Chinese Criminal Code (2011)

- Smuggling of cultural relics
- Smuggling of precious metals
- Smuggling of precious animals or their products
- Smuggling of ordinary freight and goods
- Fraud connected with negotiable instruments
- Fraud connected with financial instruments
- Fraud connected with letters of credit
- False invoicing for tax purposes
- Forging and selling value-added tax invoices
- Larceny
- Instructing in criminal methods
- Excavating and robbing ancient cultural sites or ancient tombs
- Excavating and robbing fossil hominids and fossil vertebrate animals

IX Amendment to the Chinese Criminal Code (2015)

- Smuggling of weapons and ammunition
- Smuggling of nuclear materials
- Smuggling of counterfeit currency
- Counterfeiting of currency
- Fundraising fraud
- Organizing prostitution
- Forcing others into prostitution
- Obstructing the performance of military duties
- Spreading rumors during war time



Death penalty
with the
two-year
reprieve

Immediate
execution of
death penalty

*Possible
outcomes
during or
at the
end of
the
two-year
reprieve*

Immediate execution

Life imprisonment

Fixed-term imprisonment of
25 years

- VIII Amendment to the Chinese Criminal Code (2011)

For a recidivist or a convict of murder, rape, robbery, abduction, arson, explosion, dissemination of hazardous substances or organized violence who is sentenced to death with a reprieve, the court may, in sentencing, decide to put **restrictions on commutation** of his or her sentence in light of the circumstances of the crime.

- IX Amendment to the Chinese Criminal Code (2015)

For a convict of corruption who IS given the suspended death sentence due to the especially huge amount of money stolen or received, at the end of the two-year reprieve, his or her suspended death sentence may be commuted to life imprisonment **without the possibility of parole or commutation.**