

Visit of the Chinese delegation
on October 27th 2006

THE DUTCH PUBLIC PROSECUTOR

THE PRINCIPLE OF EXPEDIENCY IN THE NETHERLANDS



A warm welcome to the Chinese delegation,

- Mr. Huo Xiandan
Director-General, Bureau of Forensic Science Administration,
Ministry of Justice;
- Professor Mr. Zheng Jian
Deputy Director-General, Department of Justice of Chongqing
Municipality directly under the Central Government;
- Mr. Zhu Guangyou
Deputy Director of Institute of Forensic Science, Ministry of Justice
- Ms. Sun Yequn
Division-chief, Bureau of Forensic Science Administration, Ministry
of Justice
- Mr. Li Zhilu
Division-chief, General Office, Ministry of Justice
- Mr. Lou Youqiu
Division-Chief, Division of Forensic Science Administration,
Department of Justice of Jiangxi Province
- Mr. Xie Zhikao
Senior legal medical doctor, Head of the Health Centre of the Central
College for Judicial Police
- Ms. Zhang Yan
Project Officer, Department of Judicial Assistance and Foreign
Affairs, Ministry of Justice

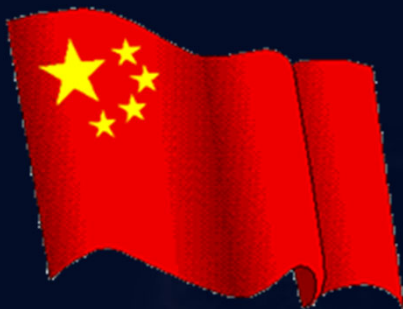
You are hosted by

Mr. H.N. Brouwer
The Prosecutor General of the Netherlands

Mrs. Dr. Anke Slotboom Scientific
Researcher

Prof. Dr. Gerard Strijards,
International Penal Law

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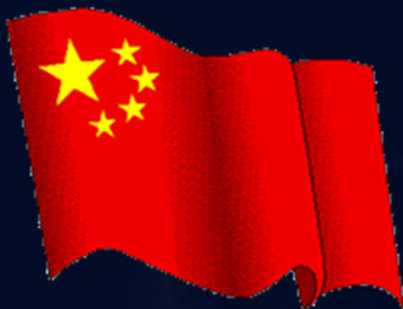
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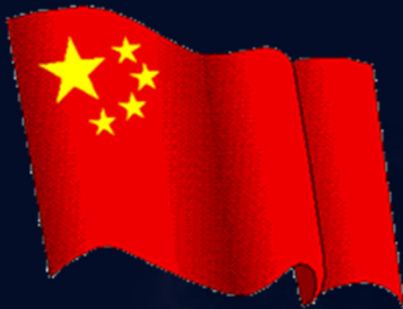
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THE DUTCH PUBLIC PROSECUTOR (PP)

- **ADVERSIAL SYSTEM**
 - State against accused
 - Equal parties in criminal proceedings
- **INQUISITORIAL SYSTEM**
 - The pp is a part of the judiciary
 - Pp is investigator and advisor to judge



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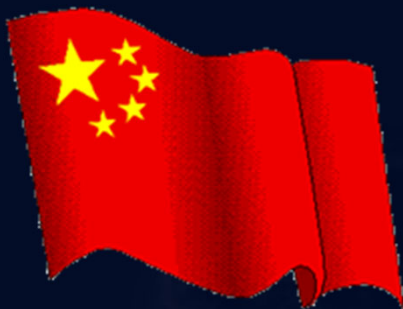
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EXAMPLE: The Netherlands versus The UK

- UK: NO 'PUBLIC' PROSECUTION
 - PUBLIC INTEREST
 - DISCRETION POWER
- SOLLICITOR PARTY IN CRIMINAL PROCEEDING
 - SOLLICITORS 'HIRED BY' POLICE
 - DEFENDS QUEEN'S PEACE IN HER REALM



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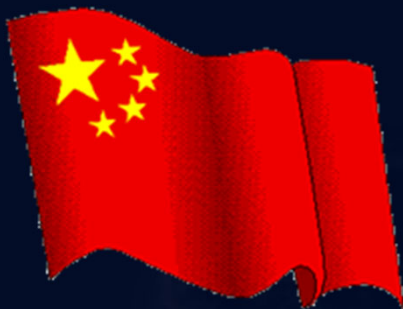
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MAIN ROLE OF THE PP (CRIMINAL CASES)

- DECISION IF A CASE SHOULD BE BROUGHT TO COURT
 - The right to exercise prosecutorial discretion
- POLICY ON CERTAIN CATEGORIES OF MINOR OFFENCES
 - No involvement of the courts
- PROTECTING THE RIGHTS OF VICTIMS AND OFFENDERS
 - Throughout the judicial process



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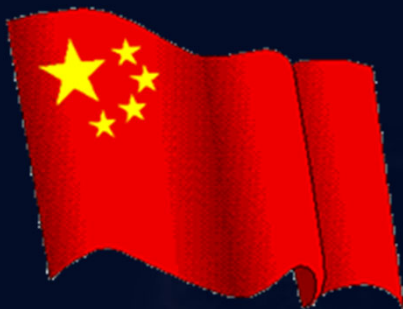
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PROSECUTORIAL TASKS

- LAID DOWN BY LAW: the PP
 - DETERMINATES INVESTIGATION THEME
 - SOLE PROSECUTOR OF OFFENDERS
 - DOMINUS LITIS
 - BINDS THE SITTING MAGISTRATE TO INDICTMENT

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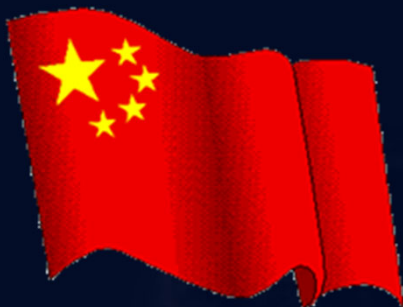
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PROSECUTION AND DISCRETION

- INVESTIGATION
 - BY POLICE
 - DIRECT INSTRUCTION PP
- PROSECUTION
 - INVOLVEMENT OF COURT
 - PP DECIDES (a) WHETHER AND (b) HOW TO PROSECUTE

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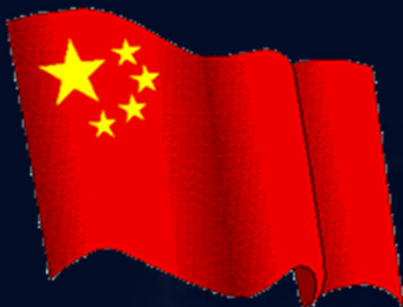
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TO PROSECUTE OR NOT...

- DISCRETIONARY POWER PP
- TECHNICAL REASON FOR DROPPING CHARGES
- OTHER REASONS FOR DROPPING CHARGES
 - POLICY
 - UNDERAGED + OFFENDER HAS MADE GOOD DAMAGE DONE

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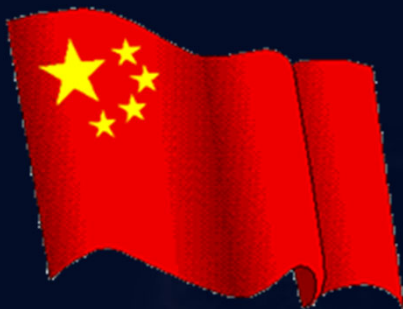
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PROSECUTE, BUT HOW... (1)

- OUTSIDE FORMAL PROCEDURES
 - RELATIVELY MINOR OFFENCES
 - SETTLEMENT, RECONCILIATION BETWEEN VICTIM AND OFFENDER, CAUTION, ORAL/WRITTEN ADMONITION, TRANSACTION, SIMPLIFIED PROCEDURE



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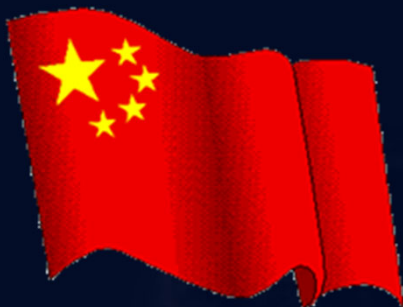


PROSECUTE, BUT HOW... (2)

- TAKING THE CASE TO COURT
 - MINOR OFFENCES: 1 JUDGE
 - MORE SERIOUS OFFENCES: 3 JUDGES

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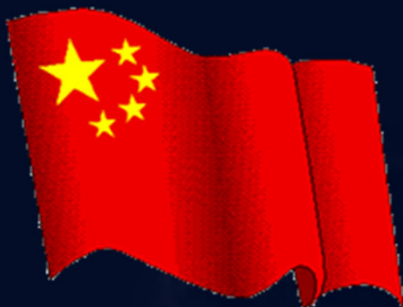
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CORRECTION MECHANISMS (1)

- COMPLAINT BY DIRECTLY INTERESTED PERSON(S)
 - ANYONE DIRECTLY INVOLVED
 - OBJECTION TO CHARGE BEING DROPPED
 - HEARD BY COURT OF APPEAL

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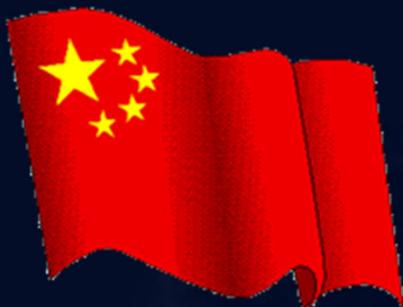
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CORRECTION MECHANISMS (2)

- GROUND FOR ORDERING PP TO PROSECUTE
 - NON LEGALITY OF DECISION TO DROP CHARGES
 - MISUSE OF DISCRETION
 - THE DECISION IS NOT IN LINE WITH GENERAL PROSECUTION POLICY



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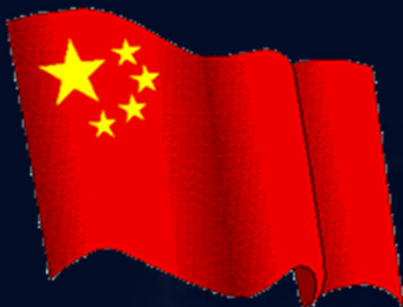
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CORRECTION MECHANISMS (3)

- REQUEST OF DIRECTLY INTERESTED PERSON TO
HIGHER OFFICIAL
 - REVIEW OF PP'S DECISION NOT TO PROSECUTE





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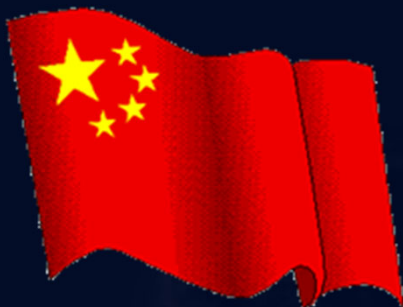
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CORRECTION MECHANISMS (4)

- MINISTER OF JUSTICE
 - POLITICALLY ACCOUNTABLE FOR GENERAL POLICY ON PROSECUTION
 - POSSIBILITY TO INTERVENE
 - SECTION 127 OF THE JUDICIAL ORGANISATION ACT
 - THE MINISTER CAN GIVE BINDING GENERAL/SPECIFIC DIRECTIVES ON THE EXERCISE OF TASKS AND POWERS OF THE PROSECUTION SERVICE



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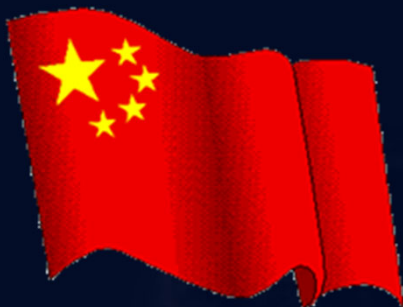


BACKGROUND EXPEDIENCY PRINCIPLE

- TWO BASIC PRINCIPLES PROVIDE THE BASIS FOR PROSECUTORIAL POLICIES:
 - LEGALITY
 - EXPEDIENCY

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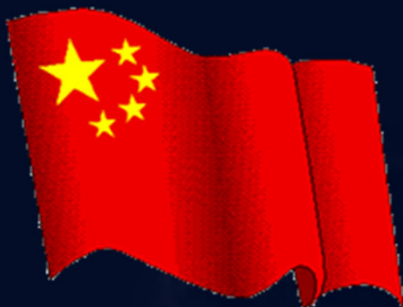
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LEGALITY

- PROSECUTION MUST TAKE PLACE IN ALL CASES WITH:
 - SUFFICIENT EVIDENCE FOR GUILT
 - NO LEGAL HINDRANCES PROHIBITING PROSECUTION

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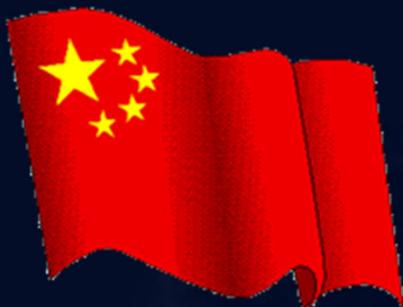
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EXPEDIENCY

- PP HAS DISCRETION OF THE PROSECUTORIAL DECISION
- EVEN WHEN
 - PROOF EXISTS ABOUT OCCURENCE OFFENCE AND IDENTITY OFFENDER
 - NO LEGAL HINDRANCES



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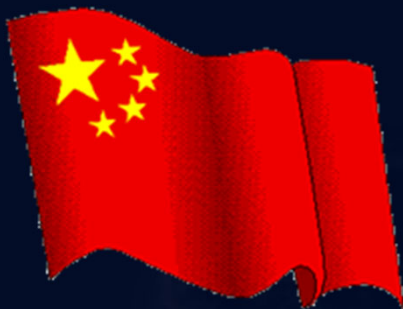
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LEGAL BASIS EXPEDIENCY

- SECTION 167 SUBS. 2 CODE OF CRIMINAL PROCEDURE
 - “THE PUBLIC PROSECUTOR SHALL DECIDE TO PROSECUTE WHEN PROSECUTION SEEMS TO BE NECESSARY ON THE BASIS OF THE RESULT OF THE INVESTIGATIONS. PROCEEDINGS CAN BE DROPPED ON GROUNDS OF PUBLIC INTEREST”
- THE PROSECUTOR MAY WAIVE PROSECUTION FOR REASONS OF PUBLIC INTEREST



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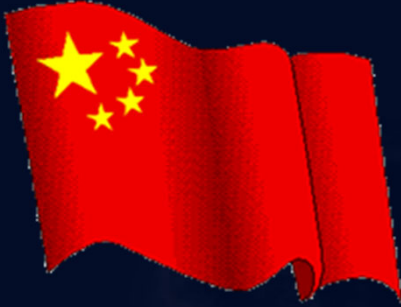
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RENDITIONS (1)

- POSITIVE RENDITION
 - RULE: PROSECUTION
 - EXCEPTION: PROSECUTORIAL WAIVER
 - WAIVER NEEDS JUSTIFICATION BECAUSE OF INFRINGEMENT OF LAW



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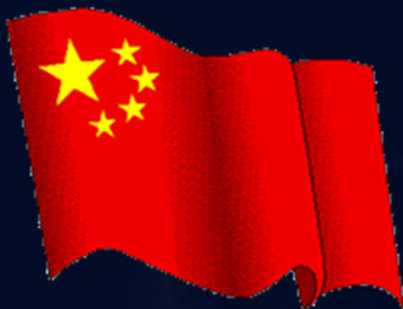
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RENDITIONS (2)

- **NEGATIVE RENDITION**
 - RULE: NON-PROSECUTION
 - EXCEPTION: PROSECUTION
 - INFRINGEMENT OF LAW IS NOT SUFFICIENT REASON FOR PROSECUTION



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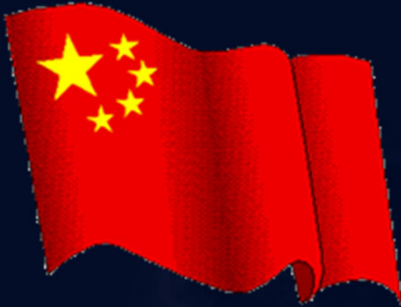
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HISTORY PRINCIPLE OF EXPEDIENCY (1)

- MAIN REASON FOR ADOPTION OF EXPEDIENCY PRINCIPLE IN THE NETHERLANDS:
 - AVOID NEGATIVE SIDE EFFECTS OF STRICT APPLICATION OF LEGALITY PRINCIPLE THAT CAN LEAD TO INJUSTICE
 - NEGATIVE RENDITION: NON-PROSECUTION IS RULE



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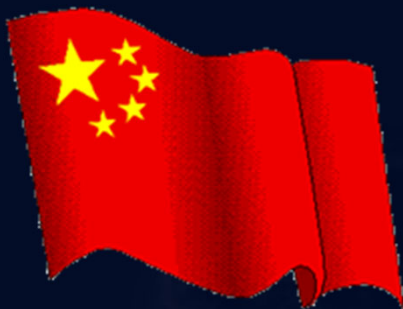
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HISTORY PRINCIPLE OF EXPEDIENCY (2)

- BEFORE 1926
 - PRINCIPLE OF EXPEDIENCY LEGALLY UNKNOWN
 - LAW BASED ON CRIMINAL ACT NAPOLEON
 - NO DISCRETION POWER WHATSOEVER
 - NO 'PROSECUTION POWER' POLICY OUTSIDE OF CRIMINAL ACT



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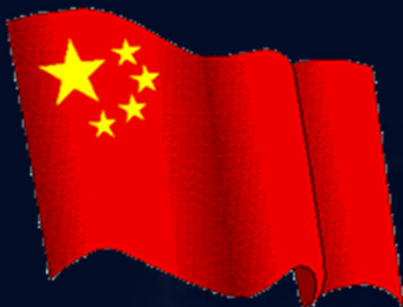
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HISTORY PRINCIPLE OF EXPEDIENCY (3)

- 1926: PRINCIPLE OF EXPEDIENCY INTRODUCED IN
DUTCH CRIMINAL LAW
 - NEGATIVE RENDITION: NON-PROSECUTION IS RULE

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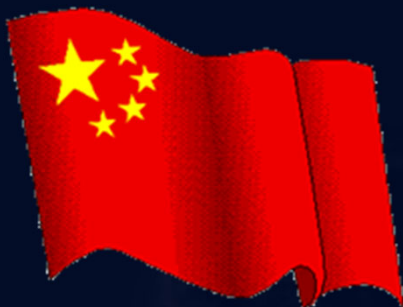
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HISTORY PRINCIPLE OF EXPEDIENCY (4)

- 1970's: INCREASE IN CRIME
- GOVERNMENT POLICY:
REDUCE HEAVY CASELOAD OF JUDICIARY
- POLITICAL MOVEMENT OF REDUCING PUBLIC EXPENDITURE
- ABOLITIONISTIC TENDENCY WITH REGARD TO CRIMINAL LAW
 - POSITIVE INTERPRETATION OF SOCIAL ENGINEERING
 - REDUCING DISTURBANCES IN SOCIETY
PREFERABLY BY OTHER MEANS THAN USING CRIMINAL LEGISLATION

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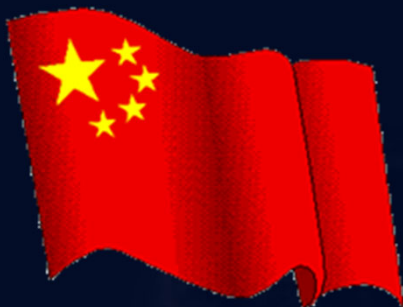
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HISTORY PRINCIPLE OF EXPEDIENCY (5)

- NEGATIVE RENDITION: NON-PROSECUTION IS RULE
- EXAMPLE: PEDOPHILIA
 - NO PROSECUTION
 - NO DIRECT CAUSAL RELATIONSHIP BETWEEN PEDOPHILIA AND OFFENCE OF VIOLATION OF THE RIGHT TO CHILDS PHYSICAL OR PSYCHOLOGICAL INTEGRITY



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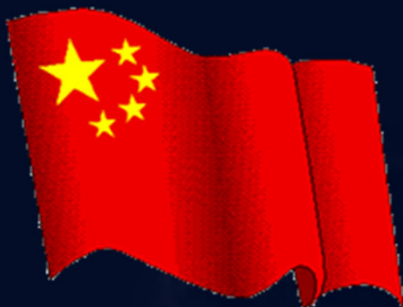
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HISTORY PRINCIPLE OF EXPEDIENCY (6)

- 1990's
- MORE NEGATIVE INTERPRETATION OF SOCIAL ENGINEERING
- GOVERNMENT: DIRECT CONTROL OVER PROSECUTION POLICY
 - POSITIVE RENDITION: PROSECUTION IS RULE
- 1999: FOUNDING OF NATIONAL BOARD OF P-G (CENTRAL GOVERNING OF PROSECUTION POLICY)
 - SYSTEM OF 5 AREA'S OF JURISDICTION ABOLISHED (WERE FUNCTIONING INDEPENDENTLY FROM EACHOTHER)

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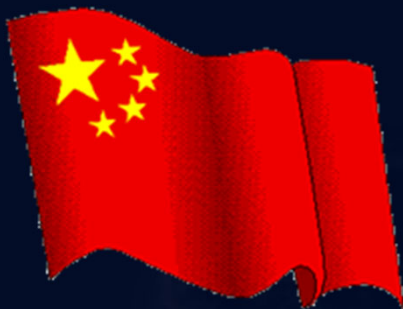
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HISTORY PRINCIPLE OF EXPEDIENCY (7)

- PROSECUTION POLICY SUBJECT TO CRIMINAL POLITICS
 - NO AUTHORITY/POWER WITHOUT RESPONSIBILITY
 - NO RESPONSIBILITY WITHOUT POLITICAL ACCOUNTABILITY
- CONCENTRATED CIVIL SERVICE MEANS:
 - BOARD OF P-G HELD CONSTANTLY, DIRECTLY AND IMMEDIATELY ACCOUNTABLE BY MINISTER OF JUSTICE REGARDING POLICY PROSECUTION

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- Mr. Lou Youqiu
Division-Chief, Division of Forensic Science Administration,
Department of Justice of Jiangxi Province
- Mr. Xie Zhikao
Senior legal medical doctor, Head of the Health Centre of the
Central College for Judicial Police
- Ms. Zhang Yan
Project Officer, Department of Judicial Assistance and Foreign
Affairs, Ministry of Justice

and wish you a
safe return home.

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