

Influence of “Trial by Default System” on China’s International Pursuit of Fugitives and Stolen Goods

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Abstract: In 2018, the sixth meeting of the Standing Committee of the 13th National People’s Congress voted and adopted the Decision on Amending China’s Criminal Procedure Law, in which a criminal trial by default system was officially added in part V. The system is of great significance to improve China’s legal system, safeguard China’s national interests and ensure China’s national security. Based on the newly established trial by default system, starting from the theoretical principle and practical operation, combined with the current situation of China’s overseas stolen goods recovery, this paper expounds the impact of the trial by default system on China’s overseas stolen goods recovery at the legal and practical levels, studies the overseas stolen goods recovery under the new situation, which has guiding significance for the development of the work of recovering fugitives and stolen goods.

1. Introduction

In 2012, when the second amendment of criminal procedure law was carried out in China, the illegal income confiscation procedure was added to the case of the death or escape of the suspects. In fact, it is a specialized procedure specially designed to deal with the property involved by some defendants and suspects in absence of court hearing for some reasons. However, the scope of application of this procedure is limited, which only solves the property problems in the work of recovering fugitives and stolen goods, and there are still many constraints in the specific application process of judicial practice. The establishment of the criminal trial by default system in 2018 really made up for the vacancy in China’s legislation, solved the problems such as the judgment of crimes and punishment of fugitives, and provided a more solid and direct legal guarantee for the promotion of China’s international pursuit of fugitives and stolen goods.

2. Overview of Criminal Trial by Default System

Court trial is a significant part of criminal procedure, and one of its basic requirements is the defendant’s participation in court. The reason is that criminal trial is related to important personal rights and interests such as the defendant’s right to life and property. In order to safeguard the judicial public and protect the defendant’s legitimate rights and interests, the court trial is often postponed in the absence of the defendant. However, under special circumstances, such as the defendant absconds overseas and has no news, or the defendant can’t appear in court for trial due to

his own reasons or can't determine the date of appearance for a long time. If the court continues to try the case and make a legal ruling without the defendant, it will constitute the trial of the defendant in absentia.

Different from the application of trial by default in the civil procedure law, according to the relevant provisions of articles 291, 296 and 297 of the criminal procedure law, there are three situations in which judgment by default is applicable in criminal proceedings. First, the suspects in criminal cases of corruption and bribery, crimes seriously endangering national security and terrorist activities are abroad. Second, the defendant is seriously ill and can't appear in court for more than 6 months, and he or his legal representative and close relatives apply for or agree to continue the trial. Third, the defendant died. It can be seen that since China's procuratorial organ, as a public prosecution organ, is bound to attend the court trial, the trial by default in criminal procedure essentially only refers to a special court trial conducted by the receiving court when the defendant does not attend the court trial or judgment stage.

3. Current Situation of International Fugitive and Stolen Goods Recovery in China

3.1 Characteristics of Chinese Fugitives Abroad and the Specific Manifestations of the Outflow of Stolen Money

3.1.1 Relatively High Proportion of State Functionaries and Large Amount of Money Involved

According to the relevant reports of the People's Bank of China and other public information, in the two decades from the 1990s to the beginning of the 21st century, there were more than 18000 corrupt personnel fleeing abroad, and the amount of stolen money outflow exceeded 800 billion yuan. Among these fugitives, state functionaries account for a large proportion, and some of them have high ranks. The amount of stolen money in a single case is more than 100 million, and the political impact is extremely bad.

3.1.2 Careful and Diverse Flight Plans

Through the research and analysis of the case of the fugitives arrested and brought to justice, it can be found that few of the fugitives have the intention to abscond abroad temporarily, and most of them have already prepared many sets of careful escape plans, including forged identity documents, escape methods, escape countries and other details. Moreover, there are various ways to escape, including using forged identity documents to leave the country, absconding after going abroad on business, smuggling through illegal organizations and so on. The illegal property will be transferred abroad by means of proxies of close relatives and multi-channel money laundering. For their families, some fugitives choose to let their families go abroad in advance to ensure the safety of their families. Others use money to enable their families to arrive their places of escape in the form of legal immigration after their own and property "safely" arrive abroad. In this way, as "naked officials", they don't have to worry about being restricted by money or relatives. Finally, most of the fugitives will choose to hire local lawyers, use the laws or international treaties of the country of escape to apply for political asylum in the country of escape, or even change their nationality and become local citizens.

3.1.3 A Wide Range of Options for Countries

The choice of countries for Chinese fugitives is very wide, not limited to one or several countries. Most of them will select 2-3 countries in advance according to their own situation. According to the relevant statistics of the central pursuit office, the United States, Sweden, Canada and other

countries without extradition treaties with China are the first choice for Chinese fugitives. The reason is that the political game between China and these countries is complex, and extradition is difficult, and fugitives are easier to obtain political asylum. Secondly, some of the fugitives choose countries with a large number of overseas Chinese such as Thailand and Singapore, which have little cultural difference with China. Thirdly, a small number of fugitives eventually fled to some small countries in Africa and Latin America because the stolen money was not successfully transferred out of the country. They needed labor and lived under hard conditions.

3.2 Measures and Achievements of Pursuing Fugitives and Stolen Goods in China At the Present Stage

China's international pursuit of fugitives and stolen goods started earlier, but limited by various conditions, so the early work was difficult to carry out and the effect was low. However, since the 21st century, the party and the government have attached great importance to the anti-corruption work, intensified anti-corruption efforts and made remarkable achievements. First, the Ministry of public security, the People's Bank of China, the central anti-corruption coordination group and other departments took joint actions to launch international special actions for recovering stolen goods, such as "Fox Hunting" action and "Skynet" action. Then, special anti-corruption actions in provinces, cities and fields across the country were carried out, and provincial coordination mechanisms for recovering stolen goods were established one after another. For example, Guangdong Province has established a "green channel" for the pursuit of fugitives and stolen goods, and Jiangsu Province has established a basic information database for fugitives, jointly promoting the development of China's international pursuit of fugitives and stolen goods. Meanwhile, China's international pursuit of fugitives and stolen goods no longer only depends on extradition, but takes many measures, such as relatives' persuasion and remote tracing, achieving remarkable results. According to the data released by the Central Commission for Discipline Inspection of the Communist Party of China, in the seven years from 2014 to 2020, China has recovered 7831 fugitives from more than 120 countries and regions, including 2075 state functionaries, with a stolen goods recovery amount of 19.654 billion yuan. These large-scale, high-intensity and all-round international actions not only safeguard national interests and social fairness and justice, but also show the determination of our party and government.

4. Plight of Overseas Stolen Goods Recovery in China

Relying on the attention paid by the party and the state to the anti-corruption work, although China's international pursuit of fugitives and stolen goods has made remarkable achievements, it still faces some problems.

4.1 Obstacles to Extradition

At present, more than half of the countries in the world, especially the European and American countries, have abolished the death penalty for the reason of respecting and protecting human rights. However, China's current criminal law still retains the death penalty system, and the maximum penalty for the 12 specific crimes involved in corruption, bribery and crimes against national security can be sentenced to death. Meanwhile, the principle of "non-extradition of death penalty offenders" is also stipulated in international law, which leads some countries to refuse extradition on the grounds of protecting the defendant's right to life. In addition, some countries, according to their laws and regulations, believe that the crime accused by China does not constitute a crime in that country, and will also refuse China's extradition request. All these have hindered the progress of

China's international pursuit of fugitives and stolen goods.

4.2 Limited Role of International Cooperation

Transnational pursuit of fugitives and stolen goods will inevitably lead to international cooperation in relevant fields. Interpol is an international organization that China's relevant departments frequently cooperate in the international pursuit of fugitives and stolen goods. After China submits an application to Interpol, it can issue a wanted notice for criminals to the police institutions of the member states of the organization, and the police of the country where the offender is located can arrest and temporarily detain the wanted persons according to the wanted notice. However, in the United States, Canada, Australia and other countries, the effectiveness of Interpol's wanted notices is limited. The police agencies of these countries often take measures according to their own judgment. After discovering the wanted persons, they will not arrest them immediately, but monitor or focus on them. However, our staff abroad lack both real-time and effective information of fugitives and law enforcement power, resulting in the failure to promote the pursuit of stolen goods.

4.3 Unclear or Even Missing Relevant Laws and Regulations

Before the third amendment of China's criminal procedure law in 2018, there was no trial by default procedure in China's criminal procedure, which only stipulated that the criminal procedure should be terminated in case of the death of the accused at any stage. There is a lack of relevant provisions on how to conduct the proceedings after the accused escapes or loses his capacity. In response to this problem, China's public security and law departments have issued relevant implementation rules, which stipulate that if the accused dies, escapes or loses litigation ability, all retrospective activities will be stopped, but it is still imperfect, and the property involved will continue to be sealed up or frozen, which can't be effectively disposed of.

5. Influence of Trial by Default System on China's International Pursuit of Fugitives and Stolen Goods

5.1 Fill the Legal Gap and Improve the Legal System

The newly revised trial by default system in 2018 is both clear and detailed. Its provisions include the scope of application, application, prosecution conditions, relief measures and other specific procedures of the system, which truly fills the legislative gap in China's criminal procedure law. For the scope of application of the trial by default system, although the trial by default system is proposed from the perspective of anti-corruption, chasing and recovering stolen goods, it is not limited to the crime of corruption and bribery, but also extended to the trial of major cases such as serious crimes endangering national security and terrorist activities.

The second is the comparison between the trial by default system and the procedure of confiscation of illegal income. Although they have some intersection, they have different emphases. The confiscation procedure of illegal income mainly solves the problem of property, and provides legal basis for recovering the illegal property of the defendant or suspect in a major crime case that escapes or dies. The trial by default system mainly solves the problem of suspects. For major cases such as huge corruption and bribery, under the condition of sufficient evidence, it makes a clear system for the procedural definition of crime and non-crime of fugitives. Therefore, the trial by default system is actually a further improvement of the confiscation procedure of illegal income, and provides a solid legal basis for China's international pursuit of fugitives and stolen goods.

In the case of effective crime identification of fugitives, it is easier for China's international pursuit of fugitives and stolen goods to obtain the support of international justice.

5.2 Improve the Means of Attack and Safeguard National Security and Interests

In view of the current situation that a large number of assets of Chinese fugitives flow abroad, the trial by default system can well solve their criminal judgment and the disposal of illegal assets at home and abroad. According to the provisions of articles 291 and 292 of the newly revised criminal procedure law, for corruption and bribery cases and cases of crimes seriously endangering national security approved by the Supreme People's Procuratorate and required to be tried in time, if the People's Courts examine and find that they meet the conditions for trial in absentia, it shall decide to conduct trial in absentia and notify the defendant through diplomatic channels, international judicial assistance channels or other ways permitted by law. If the defendant fails to appear in the case as required, the People's Courts shall hold a court session and make relevant judgments on the property involved in the case according to law.

In this way, the money in the property of the suspect is clearly identified and the stolen money, whether in or out of China, can be recovered. At the same time, in the case of effective judgment and crime determination of fugitives, the effective judgment can be used as the basis for relevant staff to negotiate with foreign government departments and even file a lawsuit abroad, making it easier for China's international fugitive and stolen goods recovery work to obtain the support of international justice.

At present, China adopts the principle of "civil after criminal". Only after the effective criminal judgment can the civil part of the case be handled, that is, only after the criminal judgment is completed can the seized and frozen property involved be returned to the victim or turned over to the state treasury. Therefore, the establishment of trial by default system can also protect the national interests and the legitimate rights and interests of victims by producing timely and effective criminal judgments.

6. Conclusion

The establishment of criminal default trial system has improved our legal system, and has effectively changed the plight of our public security organs and judicial organs in the practice of criminal trial that can't punish suspects for the sentencing and illegal income disposal because of the suspect's default. It has promoted the efficiency of criminal litigation in China, safeguarded the national interests and social equity and justice, and effectively deterred fleeing personnel and those whose ideology has wavered. It is of great significance to promote the development of China's international pursuit of fugitives and stolen goods.

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