

Analysis of Criminal Property Handling in Criminal Cases Based on Comparative Criminal Law between China and Thailand

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Abstract: Based on the stable improvement of the current level of economic and social development, the situation of economic and financial categories is gradually becoming more serious. This basic factor indirectly promotes the proportion of criminal civil cross disciplinary cases in the total number of criminal cases in China to continue to rise. Thailand and China are separated by a narrow strip of water. The governance of anti-corruption and related criminal property disposal issues is not only a reference for China, but also an important factor in optimizing the business environment of Southeast Asian countries and enhancing economic and cultural exchanges between China and Southeast Asian countries, especially under the regional platform of China ASEAN. This article first provides an overview of criminal property involved in cases, and through an analysis of the cross disciplinary issues between criminal and civil law in the handling of criminal property involved, proposes five specific measures for the handling of criminal property involved in cases based on the comparative criminal law between China and Thailand. A comprehensive understanding and comparative study of Thailand's anti-corruption legislation and related criminal property disposal is of great significance for improving China's anti-corruption legislative system and related criminal property disposal, deepening China Thailand cooperation, and enhancing the level of China ASEAN cooperation.

Keywords: Comparative Criminal Law between China and Thailand; Handling of property involved in criminal cases; Cross disciplinary issues between civil and criminal law.

1. Introduction

Corruption, as a cancer of national development, has become a consensus on its adverse impact on a country's socio-economic development. Under this consensus, combating corruption is also a common choice for countries around the world. However, according to the National Integrity Index released by Transparency International over the years, although countries intend to combat corruption, the anti-corruption effectiveness of each country varies greatly. Typical countries such as Thailand, as a country with an early process of anti-corruption legalization and relatively complete domestic legislation, have some thought-provoking aspects of anti-corruption effectiveness. As a signatory country to the United Nations Convention against Corruption, Thailand's criminal law provides us with a blueprint for preventing and combating corruption in the disposal of property involved in corruption. Thailand is following the relevant legislative concepts of the Convention and extracting several core mechanisms based on its content, including corruption prevention mechanisms, conviction and law enforcement mechanisms, international cooperation mechanisms, and mechanisms for recovering property and assets involved in cases, which are worth learning from. Although Thailand has weaknesses in aligning with the Convention, its overall performance is commendable. The reason for the delayed progress of its domestic anti-corruption process is not due to the legislative text itself, but rather due to the lack of professionalism and integrity of law enforcement personnel in the subsequent implementation process, as well as the high tolerance of the public for corrupt behavior influenced by traditional Buddhist culture, resulting in lax anti-corruption legislation and enforcement. From this, it can be concluded that sound legislation is only a necessary

condition for effective anti-corruption, not a sufficient condition. However, Thailand's anti-corruption legislation and good practices in handling criminal property related to the Convention can provide valuable legislative experience for China, which is in a critical period of anti-corruption reform.

Thailand and China are separated by a narrow strip of water. The governance of anti-corruption and related criminal property disposal issues is not only a reference for China, but also an important factor in optimizing the business environment of Southeast Asian countries and enhancing economic and cultural exchanges between China and Southeast Asian countries, especially under the regional platform of China ASEAN. Anti corruption is one of the key areas of cooperation between China and ASEAN. Since the release of the 2017 China ASEAN Joint Declaration on Strengthening Comprehensive and Effective Anti Corruption Cooperation, China and ASEAN countries have carried out anti-corruption cooperation, including high-level visits, fugitive tracing, the construction of the Clean Silk Road, and experience exchange, continuously consolidating the regional "circle of friends".

In the judicial practice of our country, anti-corruption and the handling of criminal property have always been difficult tasks. Firstly, the problems that lead to judicial difficulties are multifaceted, with common ones being the imperfect system of criminal or civil legislation in the handling of property involved, making it difficult to handle work issues in detail. The overall regulations also have significant omissions or conflicts; Secondly, there is a certain degree of unscientific division of powers in most judicial organs, and the phenomenon of each acting independently is generally prevalent, making it difficult to achieve efficient coordination of actual case handling work. One of the more serious issues is the cross disciplinary issue of handling criminal and civil

property involved in criminal cases, and a typical one is the effectiveness of civil contracts and the protection of the rights and interests of third parties involved in economic crimes; In fact, relying solely on criminal judicial procedures, combined with the Criminal Law and Criminal Procedure Law, it is already difficult to handle civil legal relationships, and ultimately it will lead to the phenomenon of difficult to control the judicial processing situation. This article conducts research on the analysis of the intersection of criminal and civil issues based on the handling of property involved in criminal cases.

Influenced by traditional forms of judicial policies, most judicial organs in China have generally formed the concept of valuing conviction and sentencing, while neglecting the disposal of property. In most cases, the concept of neglecting the disposal of property has evolved into the most easily overlooked role in criminal proceedings. The main reasons for the above problems can be studied from the following aspects. Firstly, the legislation currently being implemented grants multiple judicial organs the right to handle the property involved in the case, and this non exclusive power has a very small probability of being punished by law. This also leads to an increase in the judicial organs' discretion when actual rights are disregarded in the later stage; Secondly, the current legislation does not clearly define the procedural participation rights of third parties and other stakeholders, which makes it difficult for relevant parties to fully participate in the handling of property involved in criminal cases, and it is difficult to express objections clearly and intuitively. The most obvious manifestation of neglecting the handling of property involved in the case is the confusion in the way it is handled, and there is also a lack of unified understanding of the effectiveness of civil contracts involved in the case.

2. Overview of Criminal Property Involved in Cases

From a comprehensive analysis of the current Criminal Procedure Law, it can be seen that there is no clear definition of the concept of property involved in criminal cases, and in basic terms, it is only referred to as property involved in cases. The clear use of the term property involved in cases is still mentioned in the relevant regulations issued by the Supreme People's Procuratorate and the Ministry of Public Security. During actual work, most judicial organs in certain stages of litigation procedures usually use the customary term of stolen money and property to replace the involved property, and the non-standard nature of this professional term directly leads to the unclear definition of the involved property.

From a theoretical perspective, there are also some viewpoints that point out the essence of the concept of property involved in the case, which actually refers to the judicial organs seizing some stolen funds and goods obtained through crimes, such as interest and financial gains obtained after price changes, on a legitimate basis. Some viewpoints also point out that the property involved in criminal cases is property protected by laws and regulations, and there is varying degrees of correlation between these property rights and formal litigation procedures. There is also a viewpoint that criminal property involved mainly refers to the property recognized by relevant judicial organs using their own powers to identify some valuable property related to criminal cases. Finally, they will be seized, frozen, recovered or confiscated according to relevant regulations. Based on some overview

explanations and regulations made by relevant judicial authorities at present, it can be seen that in most cases, the property involved in the case refers to recovered and confiscated stolen money and property. In judicial interpretations, the current judicial interpretations do not provide a clear explanation of the meaning and specific scope of criminal property involved. In terms of the overview of the management regulations on property involved in criminal cases issued by the later Supreme People's Procuratorate and the Ministry of Public Security, there are systematic and detailed corresponding definitions and handling methods for criminal property involved in cases. However, there are still significant differences in content and scope. In terms of procuratorates, the main emphasis should be on the illegal nature of property involved in cases and the mandatory consequences of compulsory disposal; However, the Ministry of Public Security tends to focus more on the evidence collection aspect of the involved property, so from the details, it can be seen that the Ministry of Public Security has a broader definition of its scope.

3. Analysis of Criminal Civil Cross disciplinary Issues in the Handling of Criminal Property

3.1. Incoordination between criminal legislation and civil legislation

In judicial practice, the intersection of criminal and civil law is the most common problem, which also brings certain difficulties and challenges to the handling of criminal property involved. However, due to the significant differences between the procedural system involved in the current Criminal Procedure Law and the Civil Procedure Law, effective coordination cannot be achieved, especially with some unclear regulatory provisions, So it greatly limits the victim's ability to recover property through civil litigation. According to the Criminal Procedure Law and relevant regulations, if the offender illegally occupies the victim's property during the crime, the court should first make a ruling to recover or refund the property. In addition, in criminal proceedings, there is no clear definition of the scope of losses for victims, nor is there a clear explanation of whether it is related to the scope of losses in civil compensation procedures. Therefore, there is some controversy in theory and practice. If the determination of the scope of losses is small, it may be unfair to the victim, but if the scope is large, it violates the principles of criminal legislation. Therefore, The lack of coordination and unity between criminal and civil procedures has caused a series of problems.

3.2. Program opacity

The fundamental principle of litigation law is procedural norms, and the transparency of the entire procedural subject is one of the core contents of the procedural system. To achieve program transparency, it is necessary to strictly require the disclosure of the processing period and results of relevant programs. Transparency must also be achieved regarding the interests involved, and the most crucial point is to accept supervision from the public. However, based on the actual situation, China's transparency in the handling of property involved in criminal cases is not very adequate. Even though it is closely related to criminal cases, the procedural handling of them has not been fully disclosed. So, from reality,

it can be seen that the court has only achieved a one-sided approach in publicly disclosing the criminal property trial procedures, and has not actually made them public; Moreover, as a third party involved in the case, I am not familiar with the final destination of court rulings such as recovery and confiscation of property. The main reason is that the court does not make reasonable disclosure of criminal property information before and after the judgment. Although it has achieved a public trial of criminal property cases, the actual handling of property is not clear, so its practical significance is relatively lacking. Secondly, public security organs and procuratorates have strong administrative capabilities in handling procedures, so they are unable to disclose information to third parties and other stakeholders.

4. Specific Measures for Handling Criminal Civil Cross disciplinary Issues Based on Criminal Related Property

4.1. Strictly abide by the principle of legality

As a fundamental principle that must be followed when dealing with property involved in criminal cases, relevant judicial departments should strictly abide by the principle of legality. In addition, this principle of necessity also makes clear provisions for judicial organs to carry out practical work, requiring them to comply with the Criminal Procedure Law and other relevant legal norms, and to make necessary arrangements for handling procedures. In general, when investigative agencies want to seize or freeze criminal property involved in a case, they must carry out their work in accordance with legal conditions, especially in the recovery, confiscation, and refund of some criminal property involved, they must ensure that it complies with relevant norms and regulations, guarantees entity legality, and procedures are legitimate. Fully ensure that the judicial process operates within the scope of statutory norms, and for legislation, the first thing to do is to fully clarify the rules for handling criminal property involved, and to provide rational guidance for the behavior of judicial organs from a clear and specific perspective of standardization.

4.2. Adhere to the principle of proportionality

The principle of proportionality is a fundamental principle applied to various judicial departments. This principle requires judicial organs to make decisions based on the actual situation of the case when dealing with criminal property involved. In addition, in the process of taking relevant measures, it is necessary to fully ensure that the overall measures match the facts, circumstances, and degree of harm to the rights and interests of others. To be specific, when the judicial organ seizes the property of the suspect, it should grasp the limit as far as possible, and the strength of the measures actually taken must also be consistent with the purpose of the judicial organ in essence, which is not only the basic requirement of the principle of presumption of innocence, but also the inevitable logic of the modesty of criminal law. For those suspect who are restricted and deprived of property rights due to illegal crimes, this measure is a necessary way to protect the legitimate rights and interests of the country, society and people and the safety of property. However, considering that relevant judicial authorities have a greater degree of discretion in handling criminal property

related work, it can also lead to many cases of abuse of power. Through actual case analysis, this situation can be seen in the following forms: seizure of financial assets that are unrelated to or closely related to the handling of the case, and unauthorized confiscation of financial assets that exceed the financial value of the crime. When dealing with property involved in criminal cases, if the work is not carried out in accordance with the prescribed norms, there is a high probability of infringing on the legitimate property rights of the offender and third parties. From the perspective of the basic principles of criminal law, it is necessary to analyze the handling of criminal property that belongs to the nature of criminal liability. It is necessary to correspond with the crime of the offender and not do anything that violates the criminal punishment.

4.3. Determine the principle of involving powerful stakeholders in the program

When dealing with property involved in criminal cases, it is inevitable that it will involve the civil property rights and interests of third parties. This is also a typical problem in the intersection of criminal and civil law, and the difficulty of handling it is relatively high in the entire judicial practice. Based on the protection of the legitimate rights and interests of third parties, the most crucial core of the work is to ensure that they have the opportunity to express their opinions on the handling of criminal property cases. This can also play a supporting role in the handling of criminal property cases, accelerate the speed of case handling, and most importantly, provide relevant opinions and suggestions based on the actual disposal situation of judicial organs. So, only by fully safeguarding the right of third party participation in the procedure can the fairness, impartiality, and standardization of the handling of criminal property be fundamentally guaranteed; It is also possible to refer to some international experiences based on actual situations. For example, some countries have developed a unique institutional system for handling the participation rights of stakeholders in the proceedings. If the relevant judicial level affects the property outside the case, the prosecution can inform the outside parties of the specific criminal property handling situation within the scope of regulatory provisions, and then grant them the right to express their opinions. Non parties involved in the case can also obtain relevant evidence information through hearings and other channels, and play a role in advocating their own opinions or suggestions. Therefore, taking into account the actual situation, China can approach the litigation status of third parties and parties to criminal cases on an equal basis from its own development perspective and the reality of judicial procedures. It can achieve self evidence and has the right to obtain relief through litigation channels. Additionally, it should be noted that this right to participate in judicial proceedings should run through multiple stages, including investigation, prosecution, and trial.

4.4. Fully improve the procedures for informing and reviewing property involved in criminal cases

When improving the procedures for informing and reviewing criminal property in China, targeted measures can be formulated by combining the current situation and drawing on excellent foreign experiences. Overall, before improving the relevant procedures, the first thing to do is to connect the responsibilities of the procuratorate and the court, especially

for some prosecution behaviors of the procuratorate at this stage, which should be standardized and improved. Especially when transferring the list of criminal property involved, it must be complete and clear, and the list must also indicate key information such as financial types, quantities, and locations that have been cleared of property enforcement measures. Then, it should be transferred to the court together with the case file. The most crucial thing is to clearly state the opinions and control methods for handling criminal property involved in the prosecution. In addition, after filing the case in the court, the indictment should be sent to the defendant, victim, and other stakeholders who have substantial connections with the case, clearly informing them of their right to participate in the litigation. At the same time, they can also express their opinions on the handling of criminal property involved in the case.

4.5. Establish an independent criminal property trial procedure

At present, the Criminal Procedure Law has made relatively clear provisions for the court to handle criminal property involved in cases, and also endows the court with the responsibility and obligation to handle criminal property involved in cases. However, further clarification has not been made on the establishment of the attack procedure; Based on a comprehensive analysis of the previous handling methods, China has basically carried out the work of assigning criminal responsibility to the property involved in criminal cases through subsidiary procedures. Therefore, in terms of the ownership of property involved in criminal cases, formal trial methods are basically adopted. Therefore, this issue needs to be changed. When it comes to issues involving a large number of criminal property incidents, it is necessary to change traditional concepts and establish an independent criminal property trial procedure, specifically addressing the investigation and disposal of criminal property ownership. Especially for cases involving a large number of people or complex property, special court investigation and debate procedures should be established to utilize this independent review procedure, It can better guide the defendant to argue with other stakeholders, help the court clarify the facts faster, and ensure the standardization of the handling of criminal property involved. For judicial organs, establishing an independent criminal property handling procedure will further ensure the overall standardization of case handling, provide targeted constraints on various behavioral patterns, and ensure the legality of criminal property handling.

5. Conclusion

In summary, based on the stable improvement of the current level of economic and social development, the situation in the economic and financial sectors is gradually becoming more serious. This fundamental factor indirectly promotes the proportion of criminal civil cross disciplinary cases in the total number of formal cases in China to continue to rise. In this context, relevant judicial authorities must comprehensively transform their thinking on handling

criminal property at the root of the problem. In practical work, it is not only important to pay attention to the prosecution of criminals, but also to strengthen the protection of the property rights of third parties and other stakeholders. Especially when conducting criminal recovery, it is necessary to always abide by the principles of modesty and solidity in criminal law, and not arbitrarily expand the scope of recovery. When dealing with the property involved in the case, it is necessary to report the participation of stakeholders in accordance with procedural regulations to ensure their equal and independent status as subjects. When determining the validity of the contract involved, it is necessary to always adhere to the direction of safe and free trading markets, and classify it as an invalid contract according to work standards. Only by ensuring this can the legitimate civil rights and interests of the parties to the criminal case and third parties be fully guaranteed.

A comprehensive understanding and comparative study of Thailand's anti-corruption legislation and related criminal property disposal is of great significance for improving China's anti-corruption legislative system and related criminal property disposal, deepening China Thailand cooperation, and enhancing the level of China ASEAN cooperation.

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