

# Further Analysis of Evading Investigation Behavior

-- Interpretation and Development of Legal Doctrine in Article 88, Paragraph 1 of the Criminal Law

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**Abstract:** Article 88 of the Criminal Law of China establishes two major termination grounds for the statute of limitations for prosecution. Among them, the debate on "evading investigation or trial" is particularly lengthy and has not been effectively resolved, which affects the correct and unified implementation of the law and is not conducive to the development of the modernization of the Chinese style rule of law. The vitality and value of law lie in its implementation and application. For the judicial determination of "evading investigation", a judgment and interpretation of the value orientation of equity should be made based on textual and systematic explanations. The "expansion theory" and "extreme expansion theory" have elevated the legislative intent of the statute of limitations for prosecution, which is suspected of violating the criminal law and the principle of restraint in criminal law. The theory of limitation also faces the problem of self consistency in system interpretation. The determination of "evading investigation" should correctly handle the "investigation defense relationship", clarify the legal constituent elements of "evading investigation", distinguish the determination of joint crimes, and adhere to the interpretation position of following the criminal judicial value order, the judicial concept of putting the people at the center, and the objective and fair obligation of prosecutors.

**Keywords:** Evading investigation; Limitation of prosecution; Interpretation of legal doctrine; Expected possibility.

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## 1. Introduction

The establishment of the statute of limitations system for prosecution is made by modern criminal law by balancing the interests of all parties involved, not intentionally indulging criminals, but in order to better achieve the objectives of the criminal law. The act of evading investigation is not protected by the statute of limitations for prosecution, but there is still some controversy in legal theory and judicial practice on how to determine the act of evading investigation.

## 2. Embedding: Case Review and Problem Export

### (1) Basic facts of the case

At about 1:00 a.m. on a certain day in 1998, the suspect Yang, Guo and his wife Huang went to a restaurant in H city to have a snack. Later, they quarreled with the owner Zhang because of the taste of the food. The three were driven out of the restaurant by Zhang with a knife. After returning to their residence, Yang and Guo became more and more unconvinced, so they called on Yang and Kang (on the run) to return to the restaurant with two machetes and retaliate against Zhang. Zhang took out a Mitsubishi bayonet to confront the three of them as they approached fiercely. During the fight, Zhang was repeatedly hacked several times by Guo and Yang with machetes. The right shoulder and middle abdomen were stabbed by Yang with a Mitsubishi bayonet that Zhang had dropped to the ground. Zhang died of hemorrhagic shock due to lung rupture after being stabbed. After committing the crime, Yang, Guo, and Yang fled H city overnight by car and fled to cities such as C and S. After learning that the crime was not exposed, Yang and Guo returned to H city in 1999 and 2000 respectively, and have been working and living normally in H city. They were arrested by the public security authorities in 2022.

### (2) Problem export

In the above case, three people, including suspect Yang, became angry after they quarreled with the victim Zhang Moumou due to trivial matters, and took the murder weapon to the crime site to retaliate against Zhang Moumou, which eventually led to Zhang Moumou's hemorrhagic shock death, suspected of intentional injury crime, with aggravating circumstances of intentional injury causing death. The legal maximum sentencing circumstances are fixed-term imprisonment of not less than ten years, life imprisonment, or death penalty. It has been 24 years since the case was committed and the suspect was captured. At this time, 20 years of limitation for prosecution has passed. According to the regulations, if the prosecution organ wants to investigate the criminal responsibility of Yang and others, it must report to the Supreme People's Procuratorate for approval and consent.

The focus of controversy lies in whether Yang and others fled H city overnight by car after committing the crime, and fled to cities such as C and S to hide. After learning that the crime was not exposed, they returned to H city in 1999 and 2000 respectively, and whether their behavior of working and living normally in H city should be recognized as "evading investigation" under Article 88 of China's 1997 Criminal Law. This is also the core issue that must be addressed whether the case needs to be reported to the Supreme People's Procuratorate for approval for prosecution.

Viewpoint 1 holds that only long-term changes in name, whereabouts, phone numbers, and frequent changes in address can be considered as "evading investigation". In this case, Yang and others fled to another place to hide after committing the crime. After learning that the crime was not exposed, they returned to H city and started a normal life. Therefore, it cannot be deemed that the person has engaged in "evading investigation".

The second view is that although Yang and Guo heard or knew that the authorities did not lock them as the suspect who killed Zhang, they were aware of the crime. Even if they did

not hide their names, change their residences, or even live openly and honestly with their real names, they should also be considered as "evading investigation".

### 3. Interpretation of Legal Doctrine in Article 88, Paragraph 1 of the Criminal Law

The controversy caused by the aforementioned case is a microcosm of the chaotic prosecution theory projected onto judicial practice. The vitality and value of law lie in its implementation and application, and the interpretation of law should also be systematically interpreted based on the existing legal system. For the judicial determination of "evading investigation", it should be based on textual and systematic explanations, guided by the needs of judicial practice and people's simple view of justice, and judged by the value orientation of equity. Therefore, based on the normative text of criminal law and from the perspective of legal doctrine, a reasonable and legal explanation of "evading investigation" will be more conducive to realizing the fair and just value of law.

#### (1) Explanation of "Evading Investigation"

From the perspective of Chinese grammar structure, "evading investigation" is a parallel progressive verb object phrase composed of two verbs: "evading" and "investigating". The object of "evasion" refers to the investigation of the investigative agency. The term "escape" first appeared in the "Biography of Zhao Qi in the Book of Later Han Dynasty", Modern Chinese defines it as "escape and avoid". The so-called "investigation", according to the provisions of Article 108 of the Criminal Procedure Law of China, "evasion of investigation" can be understood as the suspect escaping from a place or evading a fact in order to avoid the investigation of the investigation organ. However, a simple literal interpretation separated from the legal context can only be said to be a formal interpretation, and it may be difficult to clarify the true meaning of normative texts. As Professor Zhang Mingkai said, "Judges must always interpret legal texts with a conscience that pursues justice and legal truth. Relying on consulting dictionaries and other reference books to 'interpret' legal texts in a blank mind is completely impractical. In other words, the interpretation of legal texts should integrate the spiritual essence and value pursuit of legality, while not exceeding the boundaries and degrees specified in the legal texts to ensure the legality and rationality of the conclusions of criminal law interpretation.

1. Understand and interpret "evading investigation" in the corresponding unity. Article 88 of the Criminal Law of China in 1997 revised Article 77 of the Criminal Law of China, which is not subject to the limitation of statute of limitations for prosecution, to include prosecution, investigation, investigation by national security organs, or evasion of investigation or trial by people's courts after accepting a case, as well as "victim complaint+should be filed but not filed". The revised provisions move the port of termination of the statute of limitations to the time of investigation for public prosecution cases, the acceptance of private prosecution cases, and when the victim files a complaint and the case should have been filed but not filed after the statutory filing deadline has expired. This not only effectively responds to the criticism from the theoretical community that "coercive measures" are difficult to reconcile in legal theory, but also further clarifies the issue of grasping the time nodes in judicial practice.

Therefore, when understanding "evading investigation", it is necessary to unify it with the corresponding relationship of "filing investigation" and grasp it as a whole. The purpose of case filing and investigation is to find out the facts of the case, collect evidence, investigate the criminal responsibility of the suspect, and ensure the fairness and justice of the parties to the case and maintain social order. The target of the filed investigation is both "to the person" and "to the matter", and once discovered, within the jurisdiction, the investigation should be filed. This indicates that "evading investigation" also inevitably points to "filing investigation" and forms an opposing relationship with it. Otherwise, there would be no way to say the truth of 'escape'. Based on this, "evading investigation" should have the subjective purpose of evading punishment, positive and objective actions taken to resist investigation, and the results of obstacles caused to investigation. In other words, when the suspect is identified as "evading investigation", the motivation should be confirmed, and the "evading behavior" should not be interpreted as "escaping behavior", but should be interpreted as "actively opposing investigation behavior", while causing substantial damage to the investigation behavior or results of the investigation organ.

2. Grasp and define "evading investigation" in value balance. The so-called legal value, in short, refers to the satisfaction of human desires by the law. This desire is contested by various schools of thought due to the different positions of the theorists. In summary, it is nothing more than a conflict and trade-off between order, justice, and efficiency. To solve the issue of "evading investigation" identification, it is necessary to abandon the conflicting positions of a single value orientation preference and construct a diversified value orientation model in different judicial contexts. From the evolution of the statute of limitations system, there are three obvious changes in the provisions of the Criminal Law of 1997 on the reasons for the termination of statute of limitations compared to the Criminal Law of 79: firstly, the scope of application is further expanded, that is, in addition to evading investigation or trial, a clause is added that states "if a victim charges, the judicial organ should file a case but not file a case"; Secondly, the timing of the crackdown is advanced, revised from "after taking compulsory measures" to "when filing for investigation" in criminal public prosecution cases or "when the people's court accepts cases" in criminal private prosecution cases; The third is to expand the scope of application and include national security agencies within the scope of the main body. From the perspective of purpose interpretation, the change of this provision reflects the legislator's desire to increase the crackdown on "evading investigation or trial" behavior, strengthen the deterrent effect of the law, and reflect the value pursuit of substantive justice of the law. However, from the perspective of systematic interpretation, from the perspective of the entire statute of limitations system, as well as the changes in criminal law legislation trends and criminal policies, we should see that the modesty of criminal law is more obvious, and the trend of lenient punishment has become the mainstream of criminal justice policies in various countries around the world. This also aligns with the leading ideology of leniency in criminal legislation in our country, which is a shift from the emphasis on punishing crimes in the Criminal Law of 1979 to the emphasis on human rights protection in the Criminal Law of 1997, which advocates for the rule of law in criminal legislation and criminal judicial

practice over the past 20 years. Therefore, when determining the behavior of "evading investigation", it is necessary to take into account the criminal punishment function advocated by legislators, as well as the value orientation of criminal legislation and criminal justice mitigation. For those who adopt active confrontation or violence to obstruct the investigation and evidence collection of investigation organs, and cause substantial impact or the harm caused by criminal behavior to victims and their families is still in a state of existence, they should be recognized. On the contrary, one should maintain a cautious attitude and adhere to the modesty of criminal law.

## (2) Interpretation Position of Article 88, Paragraph 1 of the Criminal Law

### 1. Comply with the value order of criminal justice

On the issue of how to understand and apply the law, legal philosophy professor Joseph Raz proposed that "to understand the law, one cannot study a single law in isolation, but must study it within the entire legal system or system. He emphasized that "analyzing the structure of the legal system is indispensable for defining 'law'. That is to say, in order to accurately understand and interpret legal normative texts, it is necessary to include them in the entire legal system for systematic analysis and interpretation, so as to meet the value requirements of legal order. This provides a path for us to scientifically understand and accurately grasp the essence of legal texts.

As mentioned above, the limitation system of prosecution is based on the fact analysis and legal value evaluation of the social harmfulness of the suspect's behavior to determine the period during which a criminal act can be investigated for criminal responsibility and the extent of the public's evaluation of the criminal act. The adjustment model of criminal law access governance based on time as a boundary is a commonly adopted accountability system model in various countries, which runs through the entire process of criminal justice practice. Its establishment, on the one hand, is to urge the organs with investigative power to exercise their powers and responsibilities in a timely and active manner, to investigate the facts of the case within a reasonable and limited period, and to avoid the phenomenon of "standing without investigation" and "long-term investigation without decision". On the other hand, it is also to prevent the unlimited expansion of public power, improperly compress the space for private rights, reduce the risk of power abuse, and safeguard and protect human rights. In addition, China's punishment system adopts a liability assessment model of "degree of harm+amount". It emphasizes that the evaluation and condemnation of a certain crime should not only have harmful facts, but also reach a certain degree of harm, which is necessary for criminal punishment. The behavior of "evading investigation" is one of the important factors to evaluate the social harmfulness of suspect, which is of great significance to the definition and sentencing of entry and exit crimes. Therefore, in determining the issue of "evading investigation", it should not be interpreted literally in Article 88 of the Criminal Law, but should be understood and interpreted in the entire statute of limitations system and even the entire penalty system, in order to achieve a coordinated and orderly judicial value level, and prevent isolated and one-sided views from causing cognitive bias and application misconduct.

### 2. Adhere to the judicial concept of putting the people at the center

'Putting the people at the center' is the fundamental stance

of comprehensive rule of law and a fundamental requirement that criminal justice activities must follow. In the new era, the people have a higher demand for a democratic, legal, fair, just, and safe environment. "We must adhere to the construction of the rule of law for the people, rely on the people, benefit the people, and protect the people, with safeguarding the fundamental rights and interests of the people as the starting point and foothold, ensuring that the people enjoy a wide range of rights and freedoms in accordance with the law, undertake their due obligations, maintain social fairness and justice, and promote common prosperity. In 2020, at the Central Conference on Comprehensive Rule of Law, it was proposed that comprehensive rule of law must "adhere to putting the people at the center". It was further clarified that the broadest and deepest foundation for comprehensive rule of law is the people, and that "we must adhere to serving the people and relying on them. We must implement the entire process of comprehensively governing the country in accordance with the law, reflecting the interests and aspirations of the people, safeguarding their rights and interests, and enhancing their well-being. The procuratorial organs adhere to the judicial concept of putting the people at the center, and must step out of the "prosecutorial circle" and view "prosecutorial work" from the perspective of the people. Dialectically viewing the relationship between accusing crimes and protecting human rights, in the process of determining the facts of a case and applying the law, it is necessary to comply with both national laws and natural and human circumstances, and achieve the unity of legal principles and circumstances. To determine "evasion of investigation", it is not only necessary to consider whether the interpretation process and its results meet the technical requirements of legal interpretation, but also whether the determination results meet the expectations of the people, the basic understanding of the general public, and the simple concept of fairness and justice.

### 3. Adhere to the objective and impartial obligation of prosecutors

Fairness and justice are the eternal value pursuit of a rule of law society. The report of the 20th National Congress of the Communist Party of China pointed out that "fair justice is the last line of defense to maintain social fairness and justice", and called for "strengthening the supervision and restriction of judicial activities to promote judicial fairness". The procuratorial organs, as the legal supervision organs of the country, bear the sacred responsibility of maintaining the correct and unified implementation of the Constitution and laws. As the specific executor of prosecutorial power, prosecutors should act as the "night watchers" of society, not only punishing crimes in accordance with the law, but also safeguarding and safeguarding human rights, impartial, and impartial. Only in this way can we achieve objectivity and fairness. Specifically, prosecutors uphold the obligation of objectivity and impartiality. On the one hand, they should maintain an objective and neutral stance, firmly abandon the thinking of "preconceived, presumption of guilt", and in the process of handling each case, they should guide the investigation organs to collect fixed evidence that can confirm the guilt and severity of the crime, as well as pay attention to discovering evidence that has been convicted or lightly convicted, and firmly exclude illegal evidence; On the other hand, we need to maintain a dual protection stance and achieve both formal and substantive justice. It is necessary to safeguard the legitimate rights and interests of the injured

party as well as the legitimate litigation rights and interests of the suspect. For example, when determining whether the suspect has "evaded investigation", we should not only guide the investigation organ to collect relevant evidence that can prove that the suspect has subjectively opposed the investigation of the investigation organ and objectively implemented antagonistic behavior, but also review whether the suspect's antagonistic behavior has reached the degree of impeding the investigation of the investigation organ. We should not only listen to the demands of the victim and their families, but also listen to the defense opinions of the accused and their defenders.

#### **4. Optimize the Identification Path of "Evading Investigation" Behavior**

(1) Correctly viewing the relationship between investigation and defense

Investigative power is the power that the constitutional law endows the investigative organ with the ability to carry out special investigative measures such as search, seizure, freezing and interrogation in order to discover illegal crimes and collect and fix relevant evidence related to suspect 'suspected crimes. It contains three levels of meaning. Firstly, it must have constitutional or legal authorization, and must be strictly carried out in accordance with legal procedures, that is, there is law to be followed, and there is law to be followed; Secondly, its purpose must be to identify the facts of suspected criminal cases, investigate the suspects who have committed criminal acts, and collect and fix evidence in accordance with the law; The third is to clarify the necessary mandatory measures to ensure the smooth progress of the investigation. From this, it can be seen that identifying the facts of a case is not only a power of the investigation agency, but also an unshirkable responsibility and obligation. The right to defense refers to the litigation activities in which the accused and their defenders in a criminal case refute the accusations made by the prosecution against the accused based on facts and laws, propose facts and reasons that are beneficial to the accused, argue that the accused is innocent, has a minor offense, or should be given a lighter, mitigated, or exempted punishment, and protect the legitimate rights and interests of the accused. The right to defense is a concept of relative investigative power, which is established to prevent the unlimited expansion of the penalty power and the improper infringement of the legitimate rights and interests of the parties involved in the case.

Investigation and defense are a unity of opposites. Formally, the two are tit for tat. The investigation purpose of the investigation organ is to actively seek the criminal responsibility of the prosecuted party, and collect and fix evidence through a series of investigation activities to prove that the censure of the suspect is legitimate, while the defense side is to refute the allegations of the investigation organ, especially when the suspect is facing the situation of being prosecuted, out of instinct, I will inevitably choose to sophistry or even try my best to conceal the suspected criminal facts. Essentially, both are unified, both aimed at achieving fairness and justice. Based on the understanding of the vulnerable position of the accused party in criminal proceedings, in order to further safeguard and protect human rights, various countries' criminal laws have established rules on the arbitrariness of confession or granted the accused person the right to remain silent, requiring investigation

agencies not to force the accused person to confess their guilt. Therefore, actions such as fleeing the crime scene out of fear of being held accountable, not voluntarily confessing during questioning, or not voluntarily surrendering after the crime cannot be defined as "evading investigation".

(2) Clarify the legal components of "evading investigation"

Criminal constitution refers to the essential elements required by criminal law to determine whether a certain act constitutes a crime. It is a concentrated manifestation of the judiciary's free evaluation of evidence, running through the entire process of judicial activities. The traditional criminal composition system in China is built based on the evaluation system of the "four elements" (criminal subject, subjective aspect of crime, criminal object, and objective aspect of crime). In recent years, influenced by the "three class progressive" criminal constitution system of Germany and Japan, Chinese scholars have conducted critical research on the "four elements", which has sparked a wave of calls for the reconstruction of the criminal constitution system in the academic community. Among them, renowned professors in the field of criminal law, such as Zhang Mingkai, Chen Xingliang, and Zhou Guangquan, all advocate for necessary reforms to the "four elements", while Professor Gao Mingxuan adheres to the proposition of the "four elements". However, whether it is the "three strata" or the "four elements", the criminal theory system, as a tool of criminal law interpretation and application, should serve the current judicial practice context. According to the documents published on the China Judgment Document Network, the "four essential elements" are still the universally applicable guidelines for judges to evaluate evidence and interpret legal reasoning. Therefore, the legal components of "evading investigation" should be clarified from the perspective of the "four elements".

1. The subject of the crime. According to the criminal law of our country, the subject of the crime is a person, which includes both natural persons and artificial "persons" such as units. "Evading investigation" means that the suspect evades the investigation of the investigation organ. Therefore, as the subject of "evading investigation", there is no controversy regarding natural persons with criminal responsibility, and this will not be repeated here. There is no consensus in the theoretical community on whether a unit can serve as the subject of evading investigation. According to Article 62-1 of the Criminal Law of China and Article 8 of the 2010 Supreme People's Procuratorate and the Ministry of Public Security's "Provisions on the Standards for Filing and Prosecuting Criminal Cases under the Jurisdiction of Public Security Organs (II)", it can be seen that when a unit takes active countermeasures such as concealing, intentionally destroying, or refusing to hand over accounting vouchers, accounting books, financial accounting reports, etc. after being filed for investigation, it shall be filed for prosecution in accordance with the law. In other words, as a "person" created by law, during its existence, when a unit is suspected of committing a crime and faces investigation by the investigation authority, in order to avoid criminal responsibility, it will also face the punishment of being filed and pursued by actively opposing the investigation. Therefore, the unit can also become the criminal subject of "evading investigation".

2. Subjective aspects of the crime. The subjective cognition and behavioral motivation of suspect are the evaluation elements based on which to identify the subjective malignancy and social danger of their crimes. Is it necessary

for suspect to have subjective knowledge when identifying the behavior of "evading investigation"? At present, scholars have two main points of contention: first, whether the suspect needs to know that he has been put on file for investigation; Second, whether the suspect needs to have the consciousness of resisting the investigation of the investigation organ subjectively. On the first question, what needs to be corrected is that "evading investigation" refers to "investigation" rather than "filing". It is of no practical significance to discuss whether the suspect knows the situation of being filed. On the second question, from the perspective of the criminal psychology of suspect, when faced with questioning or interrogation, they do not truthfully explain, or even there are circumstances such as escaping from the scene after committing a crime, hiding their whereabouts, all of which are based on the instinctive reaction of people to seek benefits and avoid disadvantages. The law is not strong enough to require every suspect to voluntarily surrender to the case and testify against himself. Therefore, when identifying "evasion of investigation", it should be proved that the suspect has the intention to oppose investigation subjectively.

3. Criminal object. In the new era, the people have raised higher demands for fairness and justice. "Late justice" does not meet their inner expectations, cannot meet the needs of the people, damages the authority of the judiciary, and also reduces their sense of security and satisfaction. This requires the judicial organs to efficiently and high-quality enforce the law and ensure the legitimate rights and interests of the people in a timely manner. The "evasion of investigation" has caused substantial interference and obstruction to the normal investigation activities of the investigation organs, and to some extent, it has consumed more time for the investigation organs to collect fixed evidence and even led to the permanent loss of evidence. It infringes on the normal investigative order and judicial environment of the investigative agency.

4. Objective aspects of crime. The suspect who "evades investigation" should have carried out concrete "evading" behavior objectively. For example, after the investigation organ has filed a case for investigation and implemented such compulsory measures as obtaining a guarantor pending trial and residential surveillance, the suspect actively evades the investigation of the investigation organ by taking such flight behaviors as failing to report his whereabouts as required, leaving the administrative region where he lives without approval, or the investigation organ takes destruction or other active confrontation behaviors of refusing to submit when taking accounting books and vouchers. In order to facilitate judicial recognition, an enumeration method can be adopted to clarify relevant interpretations.

### (3) Distinguished Determination of Joint Crimes

In the theory of joint crime, the criminal behavior of all perpetrators is usually recognized based on the principle of "partial behavior and full responsibility". In the context of statute of limitations for prosecution, whether the consequences of a person evading investigation and the loss of the statute of limitations protection function can be extended to all accomplices depends on the specific situation,

and different determinations need to be made. Otherwise, it will violate the principle of proportionality between crime and responsibility. The core of distinguishing identification lies in whether the accomplices have a subjective consensus on "evading investigation" and an objective act of joint execution. If after the suspect jointly commits a criminal act, when facing the subsequent investigation of the investigation authority, there is no criminal intention contact of "evading investigation" subjectively, and no consensus or plan on "evading investigation" has been reached, then the behavior of some people evading investigation should not be blamed on all accomplices. If there is a consensus on the criminal intent of "evading investigation" in advance, a specific analysis should also be conducted on whether the actual act belongs to a shared joint execution or a concurrent execution. In the shared joint execution behavior, there is a division of labor within the accomplices, and each accomplice needs to cooperate with each other in order to better achieve the goal of "evading investigation". In this case, if the individual in the accomplice unilaterally terminates their actual behavior during the execution process, but fails to achieve the effect of terminating the entire "evasion of investigation", then the provisions of Article 88 (1) of the Criminal Law should still apply to the terminated individual. In the progressive joint execution behavior, since each individual in the accomplice has all the necessary conditions to independently complete the "evasion of investigation", if some accomplices voluntarily terminate the behavior during the execution process, even if other accomplices in the accomplice complete the "evasion of investigation" behavior and cause substantial obstacles to the investigation behavior of the investigation agency, indefinite prosecution cannot be applied to the automatic terminator. The adverse consequences can only extend to the actor who completes the implementation.

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