

Study on the Protection of the Property Rights of the Prosecuted in Criminal in Rem Coercive Measures

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Abstract

Compulsory disposal of property refers to the compulsory actions taken by criminal judicial organs and their staff to seize, seal, freeze or freeze the funds and property of others. In criminal proceedings, in order to exercise the power of national punishment, criminal judicial organs are empowered to impose compulsory sanctions on others' funds and property. But the legitimacy of power cannot guarantee the legitimate exercise of all powers. Given that the accused is in direct opposition to the state in criminal proceedings, their status as prosecuted determines that their assets are more susceptible to compulsory disposal. The original intention of this article is to protect the property of the accused from illegal and compulsory disposal, and to strike a moderate balance between the exercise of power and the protection of rights.

Keywords

Compulsory Disposal of Property; The Defendant; Property Protection.

1. Basic Theory of the Protection of the Property Rights of the Pursued Person in the Context of the Disposition of in Rem Coercive Measures

Property is the basis for the survival and development of individuals and society, and it is the duty of the State to establish and protect everyone's property rights from unlawful infringement. Locke once pointed out that the reason why people enter into contracts to alienate their natural rights "is that the great and chief end of uniting them into a state and placing them under a government is the protection of their property"[1]. The protection of private property rights is no longer just an ideal and desire of the people, but has risen from a theoretical proposition of the scholars to a fundamental right of the citizens protected by the national constitution - it cannot be restricted or deprived except in accordance with the authorization of the law and following the legal procedures. The right to property is at the forefront of ideology and is closely linked to a country's search for legitimacy in social order and political stability. The protection of property rights has become embedded in the rule of law objectives of human rights protection and has become an important component of the contemporary rule of law.

In terms of the principles of public law, the right to property, as a fundamental right of citizens protected by the Constitution, is not unrestrictable or inalienable. Based on considerations of the public interest of the State and society, there is a legitimate basis for appropriate restrictions on citizens' property rights. In criminal proceedings, due to the compulsory disposal in rem with collection, fixation, preservation of evidence and ensure that the stolen money and goods can be recovered and other functions, in order to realize the mission of the national penal power, return to the need to give the criminal justice organs of the accused money and property to take the power of coercion, as long as not beyond the scope of the legal competence of the accused to assist and cooperate with the obligation. However, because of the compulsory disposal of property and the protection of the property rights of the accused, there is a sharp conflict, coupled with the power to expand the nature of the seizure, seizure, freezing

and other compulsory disposal of property is not properly regulated, it is very easy to the property rights of the accused to cause unnecessary infringement.

Although the current Code of Criminal Procedure has a system designed to protect the property rights of the person being prosecuted in the case of compulsory disposition of property, such as searches of other people's property, except in the case of an emergency during the execution of an arrest, a search warrant must be presented to the person being searched, the person being searched or his or her family members, neighbors or other witnesses should be present at the time of the search, and the search should be recorded in a written statement and required to be signed or stamped by the person present. Another example is that the seizure is limited to all kinds of property that can be used to prove the guilt or innocence of the person being pursued, and seized objects that are found to be unrelated to the case are to be released and returned within three days. However, China's criminal procedure law on the compulsory disposition of objects of the system design focuses more on how to ensure the exercise of power, the protection of the right to personal property is relatively insufficient attention. Such as investigating authorities without any prior review of the agency can be forcibly disposed of other people's money, whether before or after the forcible disposal of things, the main body of public power are not to identify themselves and inform the relevant rights of the parties of the obligation to, and on other people's property once taken forcibly disposed of indefinitely --- no specific period of regulation, even if the property rights of individuals. -Without a specific time limit, even if the party concerned is not satisfied with the compulsory disposal in rem, it can only appeal to the relevant authorities, but has no right to bring the matter before the court. As a result of the many deficiencies in the design of the system of compulsory disposal in rem, the property of the person being prosecuted is vulnerable to unlawful compulsory disposal by the criminal justice authorities.

In criminal proceedings, the pursued person's status as a victim of prosecution determines that his or her money and property are often vulnerable to unlawful coercive disposal by the criminal justice authorities, coupled with the fact that the pursued person is unlikely to be able to compete with the criminal justice authorities, either in terms of power or in terms of moral support. On the premise of not affecting the State's pursuit and punishment of crime, the effective protection of the property rights of the accused in a vulnerable position, and the appropriate balance between the use of State power and the protection of individual rights, this is the design of the criminal procedure system in any country governed by the rule of law must be resolved. Everyone may become the object of prosecution by the State, is a potential person being prosecuted, therefore, in the field of criminal procedure where there is a sharp conflict between power and rights, the protection of the property rights of the person being prosecuted should be strengthened. This is directly related not only to the individual prosecuted but also to the property rights and interests of every citizen. Democracy in a country's criminal procedure and the ultimate concern for the human being can be better demonstrated by paying attention to the rights and interests of minorities, especially those of individuals who are in direct opposition to the State, or by not making minorities the object of passionate neglect because of the majority's hatred of crime.

2. Problems in the Protection of the Property Rights of Prosecuted Persons in Criminal in Rem Coercive Measures

Through the above analysis of the current state of legislation on procedures and measures relating to the safeguarding of the property rights of the criminally prosecuted, the problems relating to the safeguarding of the property rights of the criminally prosecuted tend to be more obvious and prominent at the pre-trial stage, focusing mainly on criminal coercive measures at the pre-trial stage, i.e., at the stages of investigation and prosecution, and the subsequent

disposal of property involved in the case. Accordingly, the following analysis is made of the problems relating to the safeguarding of the property rights of persons being prosecuted in criminal cases.

2.1. Conceptual System of Measures of Constraint in Rem Not Yet Established

The concept of coercive measures in kind has not yet been established at the legislative level in China, and criminal coercive measures are merely provided for in the relevant laws and regulations on investigative measures. The concept of coercive measures refers to the relevant people involved in the case, the state organs are the use of coercive force to collect or investigate and control the relevant evidence and criminal suspects on the person of the measures taken. Depending on the object of the measures, there are different compulsory measures for persons and compulsory measures for things. The relevant authorities in the process of handling criminal cases for the criminal accused of property rights taken to limit the criminal accused of property rights investigation measures, in essence, should be distinguished from the right to personal coercive measures and belong to the object of coercive measures. But in our country's legislative system is not so embodied in the provisions of the law, not to strict legal provisions to limit, more for a convenience of investigation and efficiency considerations, so that the exercise of investigative measures more embodied in the characteristics of administrative, internal supervision of the way more obvious from the provisions of laws and regulations, this practice for the relief of any rights are very unfavorable[2].

In criminal proceedings, the use of criminal coercive measures is the case-handling organs as investigative measures taken in the process of investigation, but in essence should be positioned to the same level of control as the coercive measures taken against the right to physical integrity[3]. In the use of these investigative measures in the process of the case-handling organs, the purpose is not only for the collection of evidence, but also focus on the protection of citizens' property rights, especially for the protection of the property rights of the criminal prosecuted. The relevant provisions of the law in China will be criminal coercive measures in the investigative organs in the investigation process can be taken in the investigation measures, but also easy to cause the search, seizure and other measures of the provisions of the problem of non-specific, at the same time, in the operation of judicial practice in the process of some of the search of the initiation and application of the use of often accompanied by the use of seizure and other related measures, but the relevant laws and regulations on the use of the provisions of this incidental is not exhaustive and specific, and more reason is also based on the principle of investigation convenience and litigation efficiency considerations.

2.2. Arbitrariness in the Scope of Compellable Property

As the relevant laws and regulations on criminal coercive measures are relatively rough and general, judicial practice lacks appropriate guidance on the scope of seizure and detention in operation. The main reasons are as follows, first, according to the Criminal Procedure Law, article 141 of the content of the specific provisions of the relevant cases in the process, especially for the investigation measures to make some specific provisions, will be forced to the property of the standard only stipulated that can prove guilt or innocence, and whether or not there is a connection with the case and so on, such a simple and broad standards. Article 136 of the provisions, in the provisions of the search can be seen in the initiation of the reason is relatively simple that is in order to collect evidence and the seizure of suspects can be initiated, to facilitate the needs of the investigative organs, but on the other hand is often accompanied by the process of search and seizure measures, but for the process of search and seizure of property in the process of the scope of property but there is no provision, easy to violate the criminal being pursued. The right to property of the person being pursued. Through the description of the relevant provisions of the law can be seen, the relevant laws and regulations

for the scope of property can be forced does not carry out detailed provisions, but through a relatively simple and broad way of elaborating on the reasons for the start of the program and the scope of the force can be carried out. Based on the relevant laws and regulations of the law is not very comprehensive, not clear on the scope of the seizure of property can be taken to the division, but also to a certain extent for the criminal prosecution of the property rights of people to produce a negative impact, at the same time the relevant authorities are more based on the convenience of the investigation and the efficiency of the considerations of whether belongs to the property can be seized arbitrarily, reflecting a strong subjectivity, and therefore also tend to be easily. Therefore, it is often easy to lead to the seizure of the scope of the property is unclear, and the situation of over-scope seizure of seizure often occurs[4].

Secondly, due to the lack of a certain degree of judicial supervision in the process of investigation, the application of criminal coercive measures is generally decided by the authorities themselves, under the influence of the principle of efficiency and facilitation, the authorities will not deeply examine the reasons for the initiation of the measures and the scope of the measures to be taken, etc., and at the same time, due to the insufficiency of the relevant staff in terms of knowledge of the law and professionalism, there is the phenomenon of seizure and detention of property without any differentiation. At the same time, due to the lack of legal knowledge and professionalism, the relevant staff have indiscriminately seized and detained property, and even seized and detained the lawful property of the person being prosecuted for criminal prosecution and then illegally used it to return it, etc., and the scope of the seizure and detention in the process of concrete operation is also unimaginable. These practices seriously violate the lawful rights and interests of those being prosecuted.

2.3. Absence of Necessary Judicial Review of Coercive Measures

The absence of a judicial review mechanism has led to a high degree of arbitrariness in the initiation of criminal coercive measures. From the point of view of judicial practice, for the criminal prosecuted person's property violation of the phenomenon of the use of criminal coercive measures are not few, the main reason is that the investigative organs in the process of handling the case, the investigative organs of their own power is very large, reflecting the characteristics of the administrative, the use of the relevant power lack of the necessary supervision[5]. First of all, in the system of some countries in the extraterritorial system provisions, for the case-handling organs to take coercive measures on the legal provisions of the law embodies a stronger judicial review of the characteristics of the main writ doctrine embodiment. Secondly, in China's relevant laws and regulations on the sealing, seizure and other measures, the investigating authorities in the criminal investigation process if you want to take the relevant measures need to go through the internal review of the person in charge of the organ to decide whether to use the restriction of the right to property measures, but this kind of decision is the embodiment of the organ's internal self-determination, is a kind of internal administrative practice, this kind of self-determination and self-supervision is not conducive to the protection of the detainee's rights. This self-determination and self-supervision is not conducive to safeguarding the property rights of the pursued persons. Procuratorial organs are supervisory organs stipulated by law, and undertake certain supervisory functions, although the role of supervision is subject to certain constraints and limitations, but in view of the reality of our country should be strengthened to play its supervisory functions, so that its role is put into practice. Through the above analysis of the use of criminal coercive measures, found that the utility of supervision in judicial practice has certain limitations, mainly embodied in the administrative color of the internal approval of the decision of the practice, the legal supervision of the procuratorial organs should also play a substantive role in the cubic level of its supervisory functions should be strengthened. In this

regard, the use of public power by the relevant authorities should be effectively constrained and monitored in order to ensure that citizens' private rights are not unlawfully infringed upon.

2.4. Inadequate Disposal and Safekeeping of Property Involved in Cases

In the process of handling criminal cases, due to the lack of specific and clear provisions in the legal norms, resulting in the existence of a number of problems which in turn have a negative impact on the protection of the property rights of criminally prosecuted persons, the main content of which is the provisions on the prior disposal and return. For the pre-trial stage of the case in the investigation process, case officers are often prone to use criminal coercive measures to restrict the property rights of the criminally prosecuted person, and the subsequent disposal of property brought about by the problem in judicial practice is also manifested in the more obvious, there are mainly the following points.

In the prior disposal of property involved in the case, first of all, the conditions for the relevant authorities to initiate prior disposal are not clearly and carefully stipulated in the provisions of the law, and the relevant laws and regulations are relatively superficial. In the process of judicial practice, the investigating authorities in the criminal prosecuted person's property to take criminal coercive measures, due to the existence of various forms of property in practice, to a certain extent, in order to protect the property rights of the right holder, usually will be some of the property involved in the case is not suitable for the preservation of the depreciation of the property involved in the first disposal. But the relevant laws and regulations for the first disposal only do the principle requirements, especially in the first disposal of the starting conditions, summarized as for the relevant legal provisions in line with the situation and the need for the consent of the right holder or through its application, due to the provisions of the generality, leading to judicial practice in the application of the relevant organs in the application of the more problematic[6].

Secondly, another prominent problem in prior disposal is that the decision-making power of the relevant authorities is the same as that of the criminal investigation authorities in deciding on their own on the application of criminal coercive measures, with multiple powers to investigate and control and dispose of property involved in the case at the same time. According to the relevant laws and regulations, if the organ concerned wishes to dispose of the property involved in the case at the pre-trial stage, such as by auction or sale, only the head of the organ concerned is required to approve the decision. This self-determination of the practice to a certain extent as the use of coercive measures have been questioned to some extent, and at the same time this internal self-determination is more unfavorable to the criminal accused and other relevant personnel of the right to know the protection, which is more unfavorable to the criminal accused of the protection of the right to property. In the property involved in the pre-trial return, first of all, in the pre-trial return of the decision on the subject, and the aforementioned content of the same problem exists, in the decision to take criminal coercive measures and the decision to dispose of the first there are relevant organs of the internal self-determination of the problem, the existence of this problem will produce adverse effects and impact, especially in relation to the issue of the right of the property of the person being pursued for criminal prosecution, with the investigation, control and disposal of property involved in the case of the decision power, this practice is more detrimental to the protection of the right to information and other relevant persons, and thus more detrimental to the protection of the right to information. The decision power of the property involved in the case, this practice is completely internal self-examination of the practice, the lack of don't external supervision and constraints[7]. At the same time, according to the provisions of the relevant laws of our country, the court's judgment can only decide the nature and ownership of property, the practice of the relevant authorities to a certain extent with the provisions of the relevant laws do not accord with. Secondly, the wrongful return is also one of the problems that cause

the property rights of the criminally prosecuted not to be effectively safeguarded. The existence of this error return problem to a certain extent or for the relevant rights of the person causing certain infringement, although the relevant laws and regulations, if the victim's property should be returned in a timely manner, but the problem of the wrong return, but also may be the criminal prosecuted person's property is wrongly returned to the victim. Therefore, the problem of wrongful return may also affect the property rights of the criminally prosecuted. However, the problem is that the relevant laws and regulations are unclear and the lack of necessary public and informative procedures, resulting in the relevant rights of people can not know and timely and effective participation in the judicial practice in the wrong return of the issue of the property rights of the criminal accused of the impact of the specific performance: mainly in the case of the investigating authorities have been wrongly returned to the prosecutor's office or the court for the criminal accused of Or the relevant property is handled differently, or the decision not to prosecute or judgment that the property is not the victim's property, in this case should be how to deal with the problem of the return of the wrong, which is in fact, to a certain extent, the violation of the right to property of the person being prosecuted for a criminal offense.

2.5. Lack of Effective Remedies for Violations of the Right to Property

For criminal prosecution of the property rights of criminal compulsory measures used in most cases is to collect evidence or property value, general circumstances will not be criminal prosecution of the property ownership of the substantive changes in the impact, but the case authorities in the use of criminal compulsory measures, to a certain extent, will still cause for criminal prosecution of the property rights of the impact. Because of the wrong use of criminal coercive measures or other factors will cause the violation of the property rights of the criminal prosecuted, the relevant laws and regulations will still give the criminal prosecuted a certain sense of the right to relief, but the effect of the right to relief is not more obvious[8]. Through the Criminal Procedure Law, article 117 of the specific content of the provisions can be seen, if the criminal prosecuted want to relief their property rights can be given by law to the original decision-making organs or to the procuratorate to seek relief by way of complaint and indictment. It can be seen from the above provisions that, at the present stage, there is a lack of substantive remedies under the laws and regulations for the property rights of criminal prosecuted persons when their property rights have been violated by the criminal coercive measures illegally taken by the authorities in charge of the case, or due to other factors. First of all, because of this approach, the law directly restricts the ways in which a person under criminal prosecution can seek redress to the internal complaints and accusations of the authorities; although the law also provides that redress can be sought from the procuratorial authorities, this kind of redress still fails to effectively solve the problem of the infringement of the right to property in a substantive way. In terms of the substance of the complaints and accusations, the focus is on internal remedies of an administrative nature, and such internalized remedies are often formal remedies that play a limited role in substance. Secondly, to a certain extent, the state compensation of this kind of relief is necessary, and can play a certain role, but this way to play the role of certain limitations that is not timely and effective way. Therefore, at the legislative level, the criminal prosecuted should be given a timely and efficient remedy when their property rights are violated.

3. Comparative Law Study

Through the above analysis, it can be seen that there are many deficiencies in China's legislation and judicial level for the protection of the property rights of the criminal prosecuted. Therefore, it is possible to draw on the experience of representative foreign countries in terms of institutional norms, in view of the current stage of the situation and the more prominent

problems, from which we can draw useful experience, including the relevant institutional mechanisms and judicial concepts, in order to improve China's protection of human rights, in particular, the inadequacies of the right to property.

3.1. The Main Safeguards System in the United States

First, the provisions of the United States on the search and seizure system. In the United States the relevant provisions of the law, in some cases in the process of investigation for the use of public power in the country to carry out a strict limitation, in the use of public power through the state to use some of the compulsory property measures need to go through the legal procedures, for example, the state in the use of public power for the citizen's right to property or other rights need to be disposed of through the legal procedures, is not to let the power in the private abuse of the state. At the same time, the relevant U.S. legal provisions also pointed out that, in the use of some compulsory property measures through the public power of the state, to carry out a kind of necessary constraints, this necessary constraints means that must have considerable reasons or reasonable grounds, considerable reasons means that the relevant authorities in the adoption of criminal coercive measures should have a certain amount of evidence, if there is no such legal provisions of the reasons, then the relevant handling of cases If there is no such legal grounds, the relevant case officer should take an oath, and to take search and seizure and other related measures, such as time, place, items to be seized, etc. to truthfully inform in exchange for a warrant[9]. At the same time, the United States in the search on the division is divided according to the warrant doctrine, divided into a warranted search and warrantless search. In the relevant authorities for a warranted search, need after the relevant authorities of the written application, by the neutral judge to sign a certain warrant for review and approval, in the specific warrant review and approval on the usual situation is the need to carry out some of the detailed content of the record, but also for the mandatory property behavior of some of the constraints and the relief of the relevant personnel; Writ of the application of the doctrine at the same time to set up some exceptions are Warrantless searches, and the United States also for this legal provisions of some of the exceptions to the circumstances of the specific categorization such as the embodiment of emergency searches, incidental searches and consent searches, etc[10]. In judicial practice, search is often accompanied by the use of seizure, some of the requirements on seizure are basically the same as the content of the above search.

Secondly, the United States provisions on the scope of property that can be seized. In the process of judicial practice, the use of search is often accompanied by seizure. According to the relevant laws and regulations, in the search warrant application need to clearly indicate the need to seize the scope of property, this practice is largely conducive to the protection of the property rights of criminal prosecution. At the same time, according to the relevant laws and regulations, in the legislative level for the scope of property can be seized to make some clear, this practice is also to a certain extent conducive to the protection of the property rights of the criminal prosecuted, the law provides that according to the search warrant can be seized property mainly includes, the proceeds of crime, tools of the crime, contraband and so on[11].

Finally, the provisions of the United States on the mechanism for remedying the property rights of persons being prosecuted in criminal cases. In the process of criminal proceedings, the concept of safeguarding human rights in the operation and use of the relevant procedures and measures has a more obvious embodiment, according to the relevant laws and regulations, the relevant authorities in the case of persons involved in the adoption of criminal coercive measures, the person who has been taken criminal coercive measures, if the criminal coercive measures for the decision and the enforcement of the decision made by the authorities to have objections, you can to the relevant court of law to initiate Civil or criminal proceedings are instituted by the courts, and the law gives the objector a means of judicial redress.

3.2. Germany's Main Safeguards System

First, the provisions of the German system of search and seizure. Similarly in Germany, some of the relevant laws and regulations in the content, in the use of some of the compulsory property through the state's public power compulsory measures also need to have certain conditions, but this condition relative to the United States is relatively loose, such as the police in the search with a reasonable basis, this reasonable basis is different from the United States need to be quite a reason or reasonable basis, but should be by virtue of the relevant Criminal experience can withstand scrutiny and speculation, if only by personal intuition and subjective feelings and other unfounded reasons, you can not take the relevant criminal coercive measures. In comparison with the above analysis and summary of the United States, it can be seen that Germany does not carry out strict requirements and regulations on the initiation of the reasons for the criminal prosecuted person to take coercive measures, the reason for this is because the state in the criminal law settings and regulations are more for the punishment of crime factors. In the national public power through the use of some restrictions on the property of the criminal coercive measures, and the United States provisions are the same, it is also in the provisions of laws and regulations for the judicial review of the principle of a more obvious embodiment of the provisions of the German Criminal Procedure Act, Article 105 of the provisions of the review of the relevant writs, the law stipulates that the court enjoys the right to review the relevant writs, but the law also provides for the review of some writs by the prosecutor. However, the law also provides for a number of exceptions in which the prosecutor is to conduct the examination of the writ[12]. The relevant laws and regulations also stipulate that the details recorded in the search warrant should be clarified, such as the specific place to be searched, the suspected crime, and the property to be seized. Germany, under the principle of judicial review, also provides for some exceptions, the relevant laws provide for emergency searches. At the legislative level, for the use of emergency searches also exists some restrictions, stipulates the corresponding conditions, the relevant laws and regulations, the use of criminal coercive measures in emergency situations are limited to the use of the conditions of judicial review to the court if the application will delay the investigation of the relevant authorities can only be used, that is to say, in emergency situations should be prioritized to consider the court's judicial review in urgent circumstances can only be used in compelling emergency situations [13].

Secondly, Germany's provisions on the scope of property that can be seized. The relevant laws and regulations make some exceptions to the scope of property that can be seized, in order to safeguard to a certain extent the property rights of persons being prosecuted in criminal cases. Article 94 of the German Code of Criminal Procedure explicitly regulates that in the course of criminal proceedings, objects that can be used as evidence and that can, to a certain extent, contribute to the course of the proceedings can be taken into custody or preserved by taking the necessary coercive measures. At the same time, the relevant laws and regulations also stipulate that coercive measures are not permitted for items such as documents and instruments of national interest.

Lastly, there are provisions relating to the property rights of criminally prosecuted persons. According to the provisions of the relevant German laws and regulations, in the relevant authorities for the criminal prosecution of the use of coercive measures, the criminal prosecutor can be appealed by way of self-remedy, and for the review of some of the exceptions by the prosecution officials, the relevant laws and regulations in the relief of the provisions of the court shall also be responsible for such cases to provide a certain degree of relief, in the necessary judicial review of the restrictions on the right to property of the criminal prosecuted person, i.e., whether or not the restrictions on the right to property of the criminal prosecuted person are legal. Whether the restriction of the property right of the criminal prosecuted person by the criminal coercive measures is lawful or not. The above analysis shows that Germany's

institutional design is conducive to safeguarding the property rights of the criminally prosecuted.

4. Specific Construction of the System

4.1. Clarification of the Scope of Seizure and Detention of Property

In criminal proceedings, the scope of the property of the criminal prosecution is not clearly defined, and the scope of the property rights of the criminal prosecution is not clearly defined in the relevant laws and regulations, so the relevant authorities in the use of the criminal coercive measures provided for in the legal norms to restrict the property rights of the criminal prosecution, usually have a certain negative impact on the right to property. Therefore, a clear delineation of the scope of the property rights of the criminal prosecution can be avoided to a certain extent due to the abuse of power of the relevant authorities to violate the property rights of the criminal prosecution. Some scholars in the analysis and summarize the overseas experience and China's relevant laws and normative documents, that the scope of the property rights of the criminal pursued, that is, the scope of the seizure of property is divided into the crime, the evidence and the preservation of things. Through the analysis of the author believes that this division, although to a certain extent with overlap, but can be more comprehensive coverage of the property rights of the accused should be guaranteed content, is conducive to the protection of property rights of the accused. Therefore, it is recommended that the above analysis of the division of the scope of the division of property, the scope of the division is able to reflect a certain degree of legitimacy and reasonableness, more comprehensive.

First of all, as criminal property. The content of criminal property is mainly based on the provisions of Article 64 of the Criminal Law, because the content of the specific provisions of this law mainly reflects the handling of criminal cases for the need to dispose of the scope of property and disposal of certain provisions, so it can be summarized through the content of the provisions reflected in the article: First, the illegal income, that is, the prosecuted person through a certain unlawful way to obtain the property and its fruits. First, the proceeds of crime, is the property and its fruits that the prosecuted person obtains through certain unlawful means and is not owned by himself, which is mainly reflected in the direct or indirect proceeds of crime, the former refers to the property directly obtained by the prosecuted person through the illegal or unlawful acts, and the latter refers to the fruits and other related proceeds that the prosecuted person obtains after committing the illegal acts or other unlawful acts directly. Second, contraband, mainly refers to the relevant laws and regulations in accordance with the provisions of our country does not allow the private sale and use and other forms of all the goods. The third is for criminal use of their own property, mainly refers to belong to the accused of their own, in the conduct of the law prohibited acts can be used in the goods, mainly embodied in the tools of the crime. Secondly, it is used as evidence. Evidence of things mainly refers to the criminal procedure process can be used as evidence of the property value of the goods, judicial practice is mainly embodied in the physical evidence, documentary evidence and audio-visual materials. Because in most cases the three are often to physical carrier for the presentation, in social life also often has a certain property value, therefore, in some cases the three also often has the property value of the property value attributes. Finally, as the preservation of things. The preservation of things mainly includes the crime of things, evidence of things to take the limit, the bail waiting for trial of the deposit as well as in the process of the civil process is limited to the relevant property. Through the above more detailed and comprehensive delineation of the scope of the property rights of criminal appellants, to a certain extent, conducive to the protection of property rights.

4.2. Establishment of a Quasi-judicial, Writ-based Review Mechanism

To a certain extent, the writ doctrine is also a concrete manifestation of the principle of judicial review. In the review of criminal coercive measures taken by the relevant authorities to restrict the property rights of the criminal defendant, specifically embodied in the issuance of writs of mandamus for the relevant measures, it is more common practice in overseas jurisdictions for the courts to enjoy the power of judicial review. In the process of criminal proceedings, because of the relevant legal provisions of some of the problems, resulting in the investigating authorities have the dual power to restrict and dispose of property, the legislative intent and starting point is for the convenience of investigation and litigation efficiency considerations, but on the other hand, it breeds problems, that is, in the process of the use of power in the lack of the necessary review mechanism, the lack of the necessary power to supervise the system, because of the possession of a greater number of power and lack of necessary checks and balances, it is easier to cause the violation of the rights of citizens, but also easy to violate the property rights of the criminal prosecuted.[14] So based on the above reasons, the need for the use of criminal coercive measures in the application of neutral organs for review, but in the theoretical community for the specific by the procuratorial organs or the court to exercise the power of judicial review there are certain theoretical disputes. Because from the current situation in our country, the realization of complete judicial review mechanism is not yet have the conditions, some scholars suggest the implementation of quasi-judicial review mechanism, that is to say, by the procuratorial organs to enjoy in the use of national public power to take certain restrictive measures of property when the power of review. The author is of the view that, since the legal supervisory authority is the procuratorate under the relevant laws and regulations, the procuratorate's power of judicial review of the use of coercive measures is in line with the requirements of China's modernized rule-of-law society and with the relevant principles of law.

As a result of the above analysis, China should establish a quasi-judicial review mechanism, with the procuratorial authorities enjoying the power of judicial review, so as to supervise and review the adoption of criminal coercive measures by the relevant authorities, and to make the relevant provisions and improvements at the legislative level. Establishment of quasi-judicial review mechanism should pay attention to the following points: First, one of the specific embodiments of judicial review is the use of judicial writ, also in the establishment of quasi-judicial review mechanism, should also pay attention to the relevant authorities in the adoption of coercive measures must have procuratorate issued a specific judicial writ, the issuance of judicial writs is the relevant authorities accordingly to exercise a certain restrictive measures of property. Second, for the specific practical operation of the judicial writ, that is, for the application of the principle of judicial review, but there are some exceptions to the principle, in some urgent cases such as applying to the court for judicial review will delay the relevant organs of the investigation of the situation can not be timely application for judicial writ, it can be first to take coercive measures and after the relevant procedures for the application for replacement and to be carried out fully Explanation, if the overdue application for procedural remedies or insufficient grounds for the implementation of coercive measures are invalid and need to bear the corresponding responsibility. Third, if the case belongs to the procuratorial organs to investigate the case, then the compulsory measures of the review power to the court, this practice can highlight the criminal procedure for the protection of human rights, more prominent for the criminal prosecution of the right to property protection.

4.3. Reform of Remedies for in Rem Criminal Injunctions

When the criminal accused of property rights have been violated, the relevant laws and regulations is the criminal accused can only take the form of complaint and accusation for the right to relief, but this relief in judicial practice to play a limited role, because the essence of this

relief is actually for the internal supervision of the power, which often embodies more is the characteristics of the administrative, and often can't play any substantive role. It tends to be more administrative in nature, and often fails to play any substantive role, and thus the relief of the rights of the criminally prosecuted also fails to play an effective substantive role. At the legislative level, the relevant laws and regulations do not provide for judicial remedies for the criminally prosecuted, which is obviously not conducive to the protection of the property rights of the criminally prosecuted.

The question of remedies for criminal defendants whose property rights have been violated. First of all, according to the content of Article 117 of the Criminal Procedure Law, the law gives the criminal prosecuted the right to appeal to the procuratorial organs when their property rights have been violated. Based on this provision, it can be considered to introduce the factor of litigation to a certain extent, and solving the problem through appeals can make it more reflective of litigation, instead of realizing the complete form of litigation, and it can be considered that In the existing legal provisions on the basis of the establishment of a complaint hearing mechanism, that is, the person being pursued and other parties, investigators and even defense lawyers can be for the relevant issues to state their own views, the prosecutor in the full hearing of the views of the above people to make the corresponding review of the decision[15]. Secondly, under certain conditions, the remedy of complaint and accusation can also be changed into a remedy that embodies the characteristics of litigation, and the person being pursued for criminal prosecution can directly file a complaint and accusation to the court to seek a judicial remedy for the infringement of his property rights, instead of the internal review of remedies provided for by the law, which is to file a complaint and accusation to the original case-handling organ[16]. By comparing with the remedy provided for in the law, this judicialization or the introduction of judicial factors makes the remedy of the property rights of the pursued person can play a timely and effective role, and is no longer a form of internal supervision of the administrative practice, which can not only play a good effect on the remedy of the property rights of the pursued person, but also to a certain extent, can strengthen the power of the relevant authorities to supervise and constrain the inter-agency.

4.4. Regulating Mechanisms for the Pre-trial Return of Property Involved in Cases for Safekeeping

First, the main body of the decision on pre-trial return should be standardized. Through the previous content, although many countries in the legal system of extraterritoriality in the provisions of the principle of judicial review, but our country in the provisions of the system and the establishment of the relevant principles have not been fully established similar to the western countries of the property preservation of judicial review and control mechanism, generally by the investigative organs of the case to decide on their own disposal of property, at this time, the relevant authorities in the enjoyment of power At this time, the relevant authorities in the enjoyment of power, not only for the preservation of the property involved in the case, but also for the subsequent disposal of the property involved in the case, the relevant authorities will decide to take the power of criminal coercive measures and the disposal of the property involved in the case of the power of the authorities are concentrated in their own hands, this practice is not conducive to the external supervision of the conduct of the more unfavorable to the safeguarding of the relevant rights of property. For this reason, should be further standardized in the pre-trial stage in the property involved in the decision to return the main body, in the property involved in the decision to return the power of setting, also based on the reasons mentioned above can be handed over to the procuratorate enjoy a certain pre-trial return of the review power, corresponding to the court for the procuratorate to investigate the case of the property involved in the return of the case of the court enjoys a certain review of the power.[17] This can be a greater degree of play the role of legal supervision of the

procuratorial organs, can better carry out the use of power on the constraints and supervision, to protect the criminal prosecution and other rights of the main body of the property rights.

Secondly, because in judicial practice, the property rights of criminal defendants may be violated in cases of erroneous return. In order to avoid wrongful return and infringement of the property rights of the relevant persons including the person being prosecuted: Firstly, in the preventive mechanism beforehand, the relevant authority, that is, the decision-making authority of the first return should follow the principle of openness and the principle of participation in the procedure, based on which the relevant authority before making the decision of the pre-trial return should inform the relevant matters, such as the decision of the return of the property and other matters, to the relevant persons, including the person being prosecuted, and should also inform the relevant persons before making the corresponding decision. At the same time, it should also have the obligation to inform the persons concerned of their opinions through complaints or other means after the corresponding review, and more importantly, it should not blindly decide on the return of the property involved in the case without any basis, and should listen to the opinions of the persons concerned in the process of decision-making, and if necessary, the right holder can also provide certain evidence. Evidence, in the decision should be given full justification; Secondly, in the after the relief mechanism, if the wrong return of the situation violates the property rights of the people concerned, then can be in the case to determine the situation, the relevant authorities for the cause of such a situation should bear a certain degree of legal responsibility, can be through the fulfillment of a certain degree of state liability to be resolved, and was violated by the violation of the property rights of the people concerned and accept the The person who is infringed the property right and the person who accepts the return of property because of the interest dispute between the two can be regarded as the civil law of unjust enrichment, so the two parties who have the right to dispute can be resolved through the civil litigation or other ways to solve the disputes of the property interest between them[18].

4.5. Regulating Mechanisms for the Custody of Property Involved in Cases

Custody of property involved in the case is also an important part of the management of property involved in the case, due to the relevant laws and regulations are not very perfect, in the process of custody will also show some more prominent problems, and the need for related problems to be solved, the main solution ideas can be considered in the following aspects of the content. First of all, in the custody of the main body, can consider the establishment of a centralized custody of the neutral custody of the property involved in the custody of institutions, that is to say, the property involved in the custody of institutions and relevant authorities to carry out substantive separation, otherwise the custody of property will be subject to a variety of factors of multiple influences, is not conducive to the custody of property involved in the case. Specialized custodial institutions can be set up by the judicial administrative department for the supervision and management of the custodial premises, professional custodians and other facilities and equipment and personnel can be set up through the financial allocation of the way, in order to maximize the property involved in the case for the proper custody[19].

Secondly, for the property involved in the process of custody of the property is private misappropriation of property and multiple subjects custody lead to the property involved in the depreciation of the problem, can consider the establishment of a strict list of property involved in the system, at the same time for the depreciation of property involved in the problem of property involved in the custody of property involved in the property and the list of the property transferred to the strict management of the separate[20]. First, when the property involved in the case is sent to or taken out of the specialized custodial institutions, the relevant staff should be related to the property involved in the establishment of a detailed list, such as detailed registration responsible for handling the case, transfer and custody of personnel, the

type of property involved in the category and flow, custody of the location and mode, etc., while the staff of the custodial institutions should also be for the different types of property involved in the safekeeping of the proper work. Secondly, because of the existence of more custodian body and the property in the case of repeated circulation between the various departments to cause property depreciation is also more common, through the custody of the property involved and the property list of the transfer of strict separate management, through a strict list of property transfer can effectively reduce the property involved in the repeated circulation of the property caused by the depreciation of the situation, but also for the relevant personnel's property to carry out the appropriate It is also a reflection of the proper custody of the property of the persons concerned.

Finally, for the criminal prosecuted person, including the relevant rights can not be timely and effective understanding of the custody of property-related information, can consider the use of modern Internet and other scientific and technological means to establish the custody of property-related information public platform, will remove the need for confidentiality can be made public information on property-related information to be disclosed in a timely manner, so that in addition to the relevant rights of the custodian of property-related status can be timely and effective understanding of the public can also learn more information, while more convenient for the supervision and control of public power. Understand, also can let the public understand more information, at the same time more convenient for public power supervision and constraints, this practice to a certain extent can fully protect the right to know.

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