

# On the Basic Connotation and Characteristics of Criminal Inquiry Measures in China

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**Abstract:** Fully understanding the basic connotation and characteristics of inquiry measures in China's criminal procedure legal system is an important theoretical premise to study the conflict between the exercise of investigation rights and the protection of information rights of individuals and units. To investigate the inquiry measures in China's criminal procedure legal system, we should start from four main aspects including the inquiry subject, the object information, the information holder, and the specific way of inquiry. Moreover, the expansion and limitation of query measures should also focus on this. The inquiry measures belong to the subordinate concept of measures of retrieving evidence materials, and are significantly different from other investigation measures in terms of the form, specific method and importance of information acquisition.

With the development of technologies such as Internet communication, databases, and data mining and analysis, the world has entered the era of big data. Many government departments, enterprises and public institutions and other public sectors or non-public private institutions have been holding and using a great amount of individual or unit information<sup>[1]</sup>. With the advent of the era of big data, the information of individuals or units available for criminal inquiry is rapidly expanding in depth and breadth, and the conflict between criminal inquiry measures and the protection of related information rights will become increasingly prominent. Whether the legal system of criminal procedure in our country can adapt to the changes of the times and balance the value pursuit between the exercise of national investigation rights and the protection of individual or unit's information right is worthy of long-term deep research. Thus, it is necessary to accurately grasp the basic connotation and characteristics of the inquiry measures in the current criminal procedure legal system.

## 1.Relevant Legal Provisions on Criminal Inquiry Measures

In the revised Criminal Procedure Law of the People's Republic of China (hereinafter referred to as the criminal procedure law) in 2012 and 2018, "inquiry" has appeared four times. The first is the provision in the section of "Sealing up and Seizing Material Evidence and Documentary Evidence" in the chapter of "Investigation" that the relevant units and individuals should cooperate in inquiring about the property of the criminal suspect, such as deposits, remittances, bonds, stocks and fund shares; The second is the provision in the first instance procedure that People's Court can investigate and verify the evidence, and may make inquiries and freezes; The third is to inquire about the criminal record of minors in the criminal proceedings of minors.

In the revised Criminal Procedure Rules of the People's Procuratorate (Trial) in 2012 (hereinafter referred to as the criminal procedure rules), "inquiry" has appeared 14 times. The first is the provision of inquiry in the section of "Preliminary Inquiry"; The second is the provision in the section of "Inquiry and Freeze" in the chapter of "Investigation" to inquire and freeze the deposits, remittances, bonds, stocks and fund shares of criminal suspects and units concerned with the case; The third is that when the People's Procuratorate investigates and verifies the illegal evidence collection, it inquires about the physical examination records and related materials of the suspects entering and leaving the detention centers; The fourth is the inquiry of minor criminal records; The fifth is the provision of the special procedure of confiscating the illegal income of the criminal suspects and other property involved in the case; The sixth is the provision of inquiring the

information of case management; The seventh is the provision of inquiring information through Interpol, and the eighth is the provision of inquiring and freezing evidence in court adjournment investigation.

When looking back to the criminal procedure law revised in 1996, the word "inquiry" has appeared twice. The first is the provision of inquiring the deposits and remittances of criminal suspects in the chapter of "Investigation"; The second is in the first instance procedure that People's Court's investigate and verify the evidence, and can make inquiries and freezes. In the corresponding criminal procedure rules, the term "inquiry" has appeared six times. The first is the provision of inquiry in the section of "Initial Investigation"; The second is the provision in the section of "Seizing Material Evidence and Documentary Evidence" in the chapter of "Investigation" to inquire and freeze the deposits and remittances of criminal suspects and units related to cases; The third is the provisions of inquiry and freezing after the adjournment of the collegial panel in the trial process of the People's Court. In general, the scope of application of criminal inquiry measures shows a certain degree of expansion in the criminal procedure law or related judicial interpretation; Compared with the legal text of criminal procedure, the relevant judicial interpretation also gives more applicable space for criminal inquiry measures.

## **2. Main Contents of Criminal Inquiry Measures**

Combined with the above investigation and practical observation, the implementation of criminal inquiry measures mainly includes the following four aspects.

### **2.1 Subjects of Criminal Inquiry**

From the perspective of the main function of criminal inquiry, the subjects of inquiry should be the case handlers and their subordinate national organs in each criminal procedure, which can be divided into investigators, examiners, judges and their corresponding national organs. Investigators include those who are engaged in preliminary investigation, investigation and survey in public security, state security, procuratorial organs, disciplinary and supervisory organs and other organs with investigation rights. Examiners usually are those who are engaged in pre-trial in public security organs, examination, approval, arrest and prosecution in procuratorial organs, and trial of cases in disciplinary inspection and supervision organs. They are mainly responsible for examining the results of investigation and survey to decide whether to move the case to the next stage of procedure. Among them, the examiners and prosecutors of procuratorial organs also have the rights to supplement investigation by themselves, and there is no essential difference between them and investigators. Judges here mainly refer to court staff who examine and confirm the facts and evidence of the case in the trial. As for whether the defense lawyers can make inquiries, the legal system of criminal procedure do not clearly define it. According to the provisions of the relevant judicial interpretation, defense lawyers may, with the consent of witnesses or other relevant units and individuals, collect materials related to the case from them. From this general provision, the defense lawyers can carry out the inquiry, and whether the consent of the relevant public sectors can be obtained is related to the relevant management system of these public sectors. The relevant management system of the public sectors should have a direct relationship with the query object, that is, the nature of relevant information. To sum up, the difference of inquiry subjects is mainly rooted in the different links of criminal procedure. In addition, investigators, examiners, and judges play a leading role in different criminal procedures and are empowered to implement specific inquiry measures.

### **2.2 Object Information of Criminal Inquiry**

The object of criminal inquiry refers to some information about individuals or units. The objects of inquiry specified in the above-mentioned institutional texts include property, physical condition of entry and exit, criminal records etc. These are all about the subject of investigation, the case or case clues related to the unit and case-related information. Based on the difference of information subject type, these information can be divided into individual information and unit information. It

should be noted that the inquiry specified in the investigation procedure of the criminal procedure law is first targeted at the financial property of criminal suspects. Through the expansion of the criminal procedure rules, the subject of the “unit related to the case” has been added, but the subject of “other individuals related to the case” has not been added. Since the individuals involved in the case are likely to have certain economic contacts with the suspect, so if investigators obtain their relevant property information, it will be helpful to find out the truth in time. However, in practice, we can only use measures to retrieve evidence materials and issue Notice of Evidence Retrieving in accordance with the relevant provisions of the criminal procedure law and the criminal procedure rules.

From the above institutional text, it can be seen that in the criminal procedure legal system, the inquiry objects are gradually expanding, and no longer limited to the financial property information stipulated in the early legal system. Specifically, the inquiry objects in the original institutional texts only list the deposits and remittances, but with the development of the social economy, bonds, stocks and other financial properties are also included in the scope of the inquiry objects. Relevantly, in the special procedure of confiscating illegal gains constructed later, property inquiry can actually be extended to include real estate, automobiles and other types of real estate, large quantities of durable consumer goods<sup>[2]</sup>.

Financial property information is an important type of inquiry objects. Its features are that information is held legally by financial institutions or financial regulatory agencies, and it can be used for commercial or administrative purposes. It can reflect the specific conditions of the economic behavior of the relevant individuals and units, such as deposits, remittances, investments, transactions, etc. By contrast, property information such as real estate and automobiles are held by the government's housing management and vehicle management departments, and can be used for general administrative and commercial services. However, there is no difference in the essential attributes between the acquisition behavior of this kind of information and the information inquiry of financial property. Moreover, the expansion of the scope of the inquiry object is also reflected in many aspects. For example, the inquiry of the physical examination records and other materials of the entry and exit of the criminal suspects should be based on the newly constructed exclusion system of illegal evidence, and based on the connotation of inquiry, and it is proper to classify it as inquiry measures.

### **2.3 Counterpart of Criminal Inquiry**

The information of the inquiry objects in the above institutional texts is usually kept and used as archives by financial enterprises, government housing and vehicle management departments, public security judicial organs, Interpol and other units or organizations. These units or organizations have the nature of the public sectors, and relevant information has usually been digitized and archived by these public departments. In the theory of administrative law, the public sector refers to a government organization that is authorized by the state with public rights and that aims to organize social public affairs with the public interest of the society and provide legal services to all members of society. It includes government departments, public enterprises, non-profit organizations, and international organizations. Among them, public enterprises generally refer to enterprises owned by the government to improve public services, but also include some non-state-owned enterprises with the purpose of providing public services; Non-profit organizations are ones that are not for profit, and are established for the purpose of performing public affairs. International organizations include organizations such as the United Nations and the World Bank<sup>[3]</sup>.

### **2.4 Specific Ways of Criminal Inquiry**

As a measure of criminal investigation, criminal inquiry includes specific behaviors and actions such as putting forward inquiry requirements, communication and coordination, and obtaining information feedback. These behaviors and actions can be finished through written and verbal

communication, and through the use of electronic data communication networks. The difference between inquiry actions and behaviors itself can be called the difference of inquiry modes. With the innovation of information acquisition methods and technologies as a whole, the inquiry method may be correspondingly innovated, which will bring about innovation to the inquiry mechanism. However, the innovation of this working mechanism does not necessarily bring about a substantial change in the degree of infringement when the scope of the inquiry object is the same. Thus, the inquiry method itself does not necessarily belong to the scope of institutional adjustment.

Taking the information inquiry method of individual bank account and transaction details as an example, the traditional way is to issue inquiry legal documents by the case handlers of public security and judicial organs after examination and approval, and then hand in the inquiry documents to the bank staff at a certain level of bank counter or background. Then, the bank staff will retrieve relevant information, fill in the receipt and attach the relevant printed data or electronic data disk to the case handler. This method is inefficient in practice, and the practice department has been trying to explore new working mechanisms and improve work efficiency<sup>[4]</sup>. Thus, we should use modern electronic information technology to directly set up electronic data ports from higher-level banks or higher-level public departments such as the People's Bank of China, the Banking Regulatory Commission, and establish corresponding management system. The working mode of directly collecting data according to needs has gradually become the goal of innovation of working mechanism. In the specific case of inquiring bank accounts, the inquiry method itself does not bring substantive changes in the degree of infringement, but only improves the working efficiency.

### **3.Particularity of Criminal Inquiry Measures**

From the perspective of investigation informatization, obtaining information about individuals or units is the basic content of criminal fact investigation such as preliminary survey and investigation. Almost most investigation and survey measures have the function of obtaining relevant individual or unit information<sup>[5]</sup>. Interrogation, inquiry, inquest, examination, search, retrieval, seizure and technical investigation are all aimed at obtaining relevant information. Only by clarifying the main differences between the inquiry and other investigation measures can we grasp the connotation of the inquiry more deeply and accurately from two aspects of the characteristics of inquiry behavior itself and the specific scope of inquiry objects.

#### **3.1 The Difference between Criminal Inquiry Measures and Other Investigation Measures**

The inquiry and other investigation measures are mainly different in the three aspects of obtaining the information holder, the expression of the information and the carrier, and the specific way of obtaining information. The first is the information holder. The information holders of interrogation and inquiry are mainly interrogated and inquired persons; The main holders of information for investigation, inspection and search are mainly the places, objects, inspected persons, searched places and staff; The information holders of technical investigation are mainly the relevant persons who have been taken measures, and also include some public sectors who hold the information legally, and the holders of inquiry information only include the public sectors.

The second is in terms of information and carrier forms. The forms of interrogation and inquiry for information are verbal and body expression, and the information carriers are mainly records, synchronous recording, video discs and so on. The expressions of information in investigation, inspection and search are written symbols, static images, audio and video recordings, electronic data and so on, which are directly observed by investigators. The information carriers are mainly records, photos, audio and video discs, etc. The expressions of technical investigation information are mostly written symbolic records, static images, audio and video recordings, which are directly monitored and observed by investigators. The information carriers are mainly records, photos, audio and video discs, etc. Moreover, the expressions of inquiry information are usually written symbolic records and electronic data, and the information carriers are mainly documents and disks.

The next is in terms of specific ways of information acquisition. Interrogation and inquiry acquire information by taking notes, audio and video recordings during the oral process of the

subjects. The way of investigation, inspection and search to obtain information is mainly through the investigators' direct observation of the person or place of the relevant personnel or unit, and the understanding, summary and their relevant characteristics in the written and digitized forms. Search may also start from relevant information carriers that have been written and digitized by relevant individuals or units. However, the method of obtaining information is usually seizure, and most information carriers are discovered and seized by investigators actively. The ways of obtaining information in technical investigation include direct observation, such as real-time monitoring technical investigation, and indirect acquisition like inquiry. However, the information content obtained indirectly is more special and sensitive, such as obtaining email content, text message content, and the like. The inquiry mainly requires the information holder to directly provide the written and digitized information and its carrier, and obtain the information by means of copying the carrier, and the information acquisition method is indirect to some degree.

In the above comparisons, there are two points that deserve special attention. The first is that, in the inquiry, the information holder is usually a certain public sector, and the information and the carrier are actively handed according to the inquiry requirements. The relevant information is usually collected and used by the information holder according to the legal purpose. However, the information and carriers seized during interrogation, inquiry, search and investigation usually do not have these characteristics. The second is that technical investigation also has the function of obtaining others' information from some legal information holders. However, because of the particularity of technical investigation, the obtained information is usually the communication information with special significance to the information subjects, such as email and short message content<sup>[6]</sup>.

### **3.2 The Relationship between Criminal Inquiry Measures and Measures of Retrieving Evidence Materials**

In the other investigation measures mentioned above, the most similar to the inquiry measures is the measures of retrieving evidence materials. The criminal procedure law stipulates that People's Courts, People's Procuratorates and Public Security Units have the right to collect and retrieve evidence from relevant units and individuals. In the investigation chapter, the criminal prosecution rules establish a system of retrieving physical evidence, documentary evidence, audio-visual materials and electronic data. In the criminal procedure, the measure system of retrieving evidence material is formed accordingly. In practice, for example, a call list of suspects is customarily attributed to this measure. Retrieving the call list is for the purpose of obtaining the call record information. The information is legally held by the communication operator. The carrier to obtain the information is usually paper data or electronic data storage device, and the information itself is mainly stored in the form of documents, electronic data and so on. Inquiring about bank transaction details is for the purpose of obtaining transaction information. The information is legally held by the bank. The carrier for obtaining information is usually also a paper material or an electronic data storage device, and the information itself is mainly stored in the form of documents and electronic data. Comparing the main points of the above nature, they are only information. That is to say, even if the types of measures are different, there is no essential difference in the other elements of the acquisition behavior. However, the former is concluded as a measure for retrieving evidence materials, and the latter is a typical inquiry measure.

In the text of the criminal procedure law, through further investigation, the inquiry itself in the investigation section is stipulated in the section of "sealing, seizing physical evidence, and documentary evidence". Thus, query is either a concept under the concept of access to evidence material or a different language expression of the concept of access to evidence material. In terms of the specific provisions for retrieving evidence materials, the scope of obtaining information and its carrier is far larger than that of inquiry connotation. First of all, the retrieval of evidence materials can be from individuals, not limited to public sectors such as government departments, enterprises and institutions, and the inquiry emphasizes the above-mentioned public sectors; Secondly, the information obtained by retrieving evidence materials is not limited to the

information held by others, but also includes obtaining the information about oneself held by others, and the inquiry is usually facing the information held by others; Thirdly, the retrieval of evidence materials has certain exclusivity. Apart from the originals that cannot be retrieved, the originals should be retrieved and the original holders will lose their holding status. The inquiry is more similar to retrieve copies, not excluding the original holder's continued possession. Thus, it can be seen that inquiry and retrieval of evidence materials have differences and connections. The inquiry tends to belong to the category concept of retrieving evidence materials, and the differences mainly include the differences mentioned above.

In conclusion, the particularity of the inquiry measures is at least in three aspects. The first is that the forms of information acquisition and carriers are different. This information is the information that has been collected and used by the information holder for some legitimate purpose, written and digitized, which is indirect; The second is that the holders of information are mainly public sectors; The third is that the obtained information has a specific scope of importance to the information subjects, and the acquisition of some particularly important information may be included in the category of technical investigation and other measures.

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