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厦门大学

硕士 学位 论文

刑事缺席审判制度研究

A Study on the System of Trial by Default in Criminal
Procedure

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内容摘要

刑事缺席审判制度作为一项重要的法律制度，能够有效地解决因诉讼中止或者诉讼终结带来的定罪量刑、涉案财物处理、被害人赔偿等问题，能够在及时化解纠纷，保护诉讼当事人合法利益的同时维护法律的权威和保持社会的稳定。在我国社会主义法律体系基本确立的背景下，刑事诉讼法急需修改与现阶段司法状况不相适应的地方，以更好地在贪官外逃和刑事附带民事诉讼等方面发挥惩罚犯罪和保障人权的基本目的。

除了引言和结论，本文总共分为五个章节。

第一章从刑事缺席审判制度的概念和历史发展入手，阐明了刑事缺席审判制度是随着公民主权观念的发展而发展的。

第二章论述刑事缺席审判制度存在的价值基础，主要从公正与效率、刑罚相对主义和人权保障等角度理清当前理论界和司法界对缺席审判制度的一些质疑。

第三章紧接着介绍国外几个国家关于刑事缺席审判制度的立法现状，通过对其共性和差别的比较，为我国确立缺席审判制度提供必要的借鉴。

第四章首先对我国法律关于刑事缺席的几种情况进行介绍和评析，然后从几类案件的实际需要出发说明我国确立缺席审判制度的现实必要性，最后通过刑事缺席审判对象的可惩罚性、辩护制度和法律援助制度的发展情况以及死刑适用标准的提高三方面阐明在我国确立刑事缺席审判制度是切实可行的。

第五章在以上问题解决的基础上，从适用范围、适用情形和配套措施三大方面为我国建构刑事缺席审判制度提供参考。

关键词：缺席审判；效率侧重；人权保障

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ABSTRACT

As an important legal system, criminal default trial system can solve the problems effectively such as conviction and sentencing, processing involved property and the victims' compensation caused by procedural suspension or termination, it also can promote legal authority and maintain social stability by resolving disputes timely and protecting the litigant's legitimate interests. In the context of China's socialist legal system which has basically been established, it is urgently needed to amend the provisions of Criminal Procedural Law which is not compatible with the current justice, in order to achieve the purpose of punishment of crime and protection of human rights in some cases such as the escape of the corrupted officials and criminal supplementary civil action.

Except for preface and conclusion, this text fraction is totally divided into five chapters.

The first chapter mainly introduces the concept and history of the criminal default trial system and concludes that the system develops along with the development of the idea of citizenship.

The second chapter discusses the value foundation of the criminal default trial system, and answers the questions of the current theory and justice's attitude to this system through the view of justice and efficiency, the penalty relativism and the protection of the defendants' and victims' human rights.

The third chapter describes the legislative situation about criminal default trial system in the main foreign countries, and provides necessary references for the construction of the system in China by comparing the common characteristics and different provisions of these countries.

The fourth chapter introduces and reviews the several situation about default trial in our country's law firstly. Then discusses the necessity to establish the system based on the actual need of several cases. Finally, it is

practicable to establish the system by clarifying the punishable of the absent suspects and defendants, further perfecting the defense system and the legal aid system and improving the applicable standards of the judicial practice.

After resolving the above problems, the fifth chapter supplies a reference for the construction of our country's criminal default trial system based on the applicable scope, the applicable situation and the perfection on the related supporting system.

Key Words: Default Trial; Highlight on Efficiency; Protection of Human Rights

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