

A Legal Dogmatics Analysis of Fugitive Recovery in Absentee Trials of Chinese Official Offenses

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Abstract: Trials in absentia for crimes in office provide a legal basis for anti-corruption fugitives, but due to its shallow operation time, it has encountered many controversies in operation practice. From the perspective of legal doctrine, there is a risk of imbalance between prosecution and defense and deviation from the concept of "trial-centeredness" in the trial in absentia. In order to solve these risks, the trial in absentia of duty crimes should implement the litigation concept of "trial-centered" and construct a "trial-centered" mode of chasing fugitives in absentia of duty crimes. This is not only the inherent requirement of criminal procedure, but also the outward expression of the rule of law thinking to pursue fugitives.

Keywords: fugitive pursuit, job-related crimes, trial in absentia, trial-centered

1. Introduction

In the era of high tide of anti-corruption, the formal incorporation of criminal in absentia trials into law in 2018 is of landmark significance. On the one hand, in absentia trials for crimes in office provide legitimacy support for the normalized anti-corruption efforts to pursue fugitives abroad; on the other hand, in absentia trials for crimes in office also provide an effective legal interface with the reform of the supervision system. However, at present, the provisions on trial in absentia in China are relatively principle, and the operation practice of trial in absentia is still shallow, which makes many controversies and problems appear in the operation of fugitive chasing practice, and becomes a persistent problem that restricts the efficacy of trial in absentia.

Therefore, it is necessary to further examine the problems of in absentia trial for job-related crimes in the current institutional context, combined with legal doctrine, and retrace the original design of the in absentia trial system. Only by tracing the essence of the in absentia trial, can we clarify its position and truly achieve the expected goal in the operation of the system. Therefore, this paper intends to study the issue of fugitive chasing in absentia trials for official crimes.

2. The Legal Doctrinal Review of Fugitive Chasing in Absentia Trial of Office Crimes

The measures of fugitive chasing for crimes in office do not include trial in absentia, and trial in absentia for crimes in office itself does not achieve the effect of fugitive chasing. In fact, the value of trial in absentia for anti-corruption fugitive chasing is to provide the basis of legality. The trial in absentia, as a precondition for the initiation of anti-fleeing measures, is the legal basis and premise of anti-corruption anti-fleeing, which is also the meaning of the existence of trial in absentia for office

crimes. Therefore, the construction of anti-corruption fugitive chasing system should be based on the study of in absentia trial of office crimes.

2.1. One of the Risks Facing Trials in Absentia: The Impact of Imbalance Between Prosecution and Defense

"The interpretation and application of any provision must start from its normative purpose ", and the same is true for the in absentia trial system [1]. Although the trial in absentia system is "to meet the needs of litigation efficiency or legal order maintenance in specific cases ", but at the same time, the trial in absentia of office crimes should also be in line with the purpose of criminal norms that both punish crime and protect human rights [2]. Whether to punish crime or to protect human rights, to achieve always rely on the balance of the "prosecution, defense and trial" tripartite control. And because of China's criminal justice tradition, the public power in China's criminal proceedings is more powerful, and the trial in absentia for crimes in office has exacerbated the risk of power imbalance between the prosecution and the defense [3].

On the one hand, trials in absentia result in a much less effective defense of the defendant. Article 14 of the International Covenant on Civil and Political Rights clearly states that "everyone has the right to a fair and public hearing by a competent, independent and impartial tribunal established by law." This is a principle of criminal justice recognized by the international community, which means that in the criminal justice system under the "two defenses model", the right to be present in court is an important right of the defendant. Article 130 of the Constitution of the People's Republic of China also clearly stipulates that "The people's courts shall hear cases in public, except in special circumstances as prescribed by law. The defendant has the right to a defense." This shows that in China, the defendant's right to a defense is a fundamental right granted by the Constitution, and the provisions of other sectoral laws may not violate, derogate from, or deprive the fundamental right, which is the primary requirement for the unity of the legal order [4].

However, defendants tried in absentia for crimes in office are "at large" and cannot attend the trial to defend themselves, and face the risk of not having other defenders to appear in court on their behalf. At the same time, in the trial in absentia, the defendant has not conveyed his opinion to the judge because of his "absence", but he is bound by the fact that he did not participate in the substantive investigation and the trial to form the verdict, which is against the concept of due process principles [5].

On the other hand, the "absence" of the defendant makes the confrontation between the prosecution and the defense in the trial obstructed, which hinders the judge's objective determination and sentencing of the official crime cases, and affects the quality of the "fugitive" of the official crime cases in China. Although China's protection system for defendants has been very meticulous, it still cannot avoid the impact of trial in absentia itself on the defendant's right to defense, resulting in an imbalance of power between the prosecution and defense during the trial. The defendant is unable to effectively question and present the evidence provided by the prosecution in a timely manner, and the prosecution and defense are unable to form a substantial force against each other in the court trial, resulting in the court trial as the core of the "adversarial trial" is reduced to a "factory assembly line" type of The risk of "approval type trial".

2.2. The Second Risk of Trial in Absentia: Deviation from the Trial-centered Concept

Since the Fourth Plenary Session of the 18th Central Committee, the reform of China's litigation system has focused on the concept of "trial-centered" litigation, which focuses on improving the quality and validity of evidence and ensuring the truthfulness and reliability of the facts of the case by trial defense. It emphasizes the checks and balances of power in litigation activities and requires

that the judiciary must have absolute control over criminal procedures. Therefore, the balance of the litigation structure of the prosecution and defense trial is the key.

However, the "absence" of defendants in trials in absentia breaks the balance of the litigation structure, leading to the risk of deviating from the "trial-centered" concept in litigation activities. The "trial-centered" reform of the litigation system emphasizes the full debate of facts and evidence between the prosecution and the defense in the trial, and the judge makes a decisive decision, which requires equal legal status and balanced power between the prosecution and the defense. However, the status of the prosecution and the defense in litigation activities often exist in substantial inequality, the power gap is very different. Especially in the investigation of crime cases, the supervisory organs as a new and powerful force, intensifying the pull of public power in litigation activities, so that the concept of "trial-centered" litigation should be strengthened. This requires, to emphasize the important role of the court investigation in the entire litigation activities and the judge's freedom of evidence in the process [6]. In a trial in absentia, the absence of the defendant apparently "collapses" the trial structure, making it impossible for the judge to ascertain the facts of the case and conduct a fair trial, which runs counter to the reform of the trial-centered litigation system" and challenges the basic spirit of "trial-centeredness".

On the other hand, corruption and bribery cases have a strong concealment, and there is often a "one-to-one" covert evidence pattern in the investigation and collection of evidence. Because of the strong closed nature of office crime cases, the defendant's confession, witness testimony and other verbal evidence play an important role in such cases, and the defendant's confession is often the most important direct evidence. In the trial in absentia, the "absent" fugitive precisely leads to the absence of the defendant's confession, which is a fatal problem in the trial of office crime cases that highly rely on verbal evidence. The absence of the fugitive from investigation and trial makes the direct verbal evidence missing, which is against the "direct verbal principle". The hollowing out of the "direct verbal principle" and the inability of the prosecution and defense to confront each other intensifies the disintegration of the litigation balance, making it difficult for the "trial-centered" litigation pattern to take shape. Relying only on objective physical and verbal evidence in the possession of the supervisory authorities to indirectly corroborate the facts of the crime, it is difficult to meet the standard of proof of "sufficient evidence". "The absence of the defendant will hinder the court hearing and weaken the function of the cross-examination, and will also lead to the potential pitfalls of a "formal" court hearing, and the materialization of the trial will be affected. The impact on the "trial-centered" reform of the litigation system is hampered, seriously affecting the credibility of the national judiciary.

On the whole, the construction of trial in absentia is significant, but still "natural defects" [7]. Although the new criminal procedure law gives the defendant the right to know, the right to appeal and the right to object in order to reduce the impact of the defendant's rights, the nature of the trial in the defendant's "absence" still has the right to challenge the imbalance of the power of the prosecution and defense. Thus, it is necessary to inject the concept of "trial-centered" litigation into the construction of trial in absentia for official crimes.

3. "Trial-centered" Concept Is Injected into the Trial in Absentia

If The "trial-centered" litigation concept proposes that the three functions of the prosecution, defense and trial should revolve around the standards and requirements of fact finding and law application in the trial, and that the judge should listen directly to the views of the prosecution and defense and make decisions according to the principles of evidence adjudication [8]. This requires judges to play a substantive role in the trial, adhere to trial neutrality, listen carefully to both the prosecution and defense, and make fair decisions. On the other hand, it is also required to ensure effective defense, to give full play to the function of the right of defense, and to protect the defendant's litigation rights.

The defect of "defendant not appearing" in absentia trial is formed by the procedure itself, while the litigation concept of "trial-centered" emphasizes the balance of prosecution, defense and trial, and the fit between the two is self-evident. Adhere to the "trial-centered" litigation concept is to fill the "natural defects" of the trial in absentia of office crimes.

On the one hand, insisting on "trial-centered" is an inherent requirement of criminal procedure. The openness of court trials, the confrontation between the prosecution and the defense, and the objective neutrality of judges determine the legitimacy and fairness of trial procedures in criminal litigation, and the procedural justice of trials becomes the key link to realize substantive justice, and trials play a decisive role in litigation activities. The purpose of criminal proceedings to combat crime and protect human rights, the pursuit of real justice and fairness, which determines that criminal proceedings must adhere to the "trial-centered", and the trial in absentia for crimes of office is naturally the same.

In fact, the in absentia trial of duty crimes insists on "trial as the center" is accomplished through the materialization of the court trial. Without the solid trial activities, the trial can not play a decisive role in the litigation activities, but also lost the legitimacy and authority to require other litigation activities to be subordinated to it. The in absentia trial of duty crimes should adhere to the "trial as the center", because the trial procedure has incomparable procedural justice and the guarantee of fair results, which is the fundamental reason for other litigation activities to trial as the center [9].

On the other hand, adhere to the "trial-centered" is the external expression of the rule of law thinking to chase fugitives. Adhering to the rule of law thinking anti-corruption fugitives, means that the legitimacy of in absentia trials for crimes in office must be improved, and the controversial "absence" of the defendant must be responded to. The integration of the concept of "trial-centered" can respond to the "absence" of the trial in absentia challenge, providing a more stable and normalized operation concept. First, "trial-centered" responds to the challenge of imbalance between prosecution and defense in absentia trials. The "trial-centered" concept is related to the structure and outcome of criminal proceedings [10]. In terms of litigation structure, the trial-centered requires that the prosecution and defense must resolve disputes by presenting evidence to the judge, arguing and stating, and the judge will independently adjudicate based on the evidence. The absconding of the defendant of the crime of duty leads to the inability of the prosecution and the defense to confront the trial, the imbalance of the power of the prosecution and the defense, the disparity between the power of the two sides brings the risk of the prosecution dominating the trial. Adhere to the trial of the substantive, is the limit of the power of the prosecution, the rights of the defendant's procedural due protection. In terms of litigation results, the fairness of the procedure and the independence of the judge in the middle of the decision, can maximize the prevention of false cases, the judge's objective and neutral position is the decisive factor to ensure the fairness of the outcome of the proceedings. Second, "trial-centered" responds to the challenge that trial in absentia detracts from the rights of the defendant. The "trial-centered" approach is aimed at the state's public power, not private rights [11]. However, the premise of the trial as the center is that the prosecution and defense have equal standing in the proceedings, to protect the rights of both sides of the proceedings, inseparable from the protection of the rights of the accused. Especially in the trial in absentia, it is the protection of the defendant's right to sue, emphasizing the defendant's participation in the proceedings, to highlight the importance of the trial independent.

In this regard, "trial-centered" is a key link in the construction of a long-term operating mechanism for trials in absentia for crimes in office. Only by implementing this litigation concept can we truly integrate anti-corruption fugitives with the rule of law and promote the work of anti-corruption fugitives to be in line with international standards.

4. Trial-centered in Absentia Trial for Fugitives

Marx once said, "The trial process and the law are as closely connected to each other as the form and the plant, the carcass and the flesh and blood of the animal " [12]. The realization of anti-corruption relies on the perfect in absentia trial fugitive procedure. Through legal doctrinal review, the fugitive in absentia trial of office crimes can be constructed as a trial-centered normative operation model.

The relationship between "trial-centeredness" and "trial-centrism" has been explained by the Supreme People's Court, which believes that the current connotation of "trial-centrism" should be limited to "Trial-centeredness". Trial-centeredness requires that the investigation of the case at the trial stage should have a substantive character, and that the overall construct in the litigation should be recognized and constructed on this basis [13]. This means that this principle must also be followed in the construction of the trial-centered fugitive pursuit model. The "trial-centered" requires the trial to be substantive, and the prosecution and defense have effective confrontation in the trial, so the prosecution and defense should have equal litigation status. The disadvantageous position of the defendant is especially obvious in the trial in absentia of office crimes, so we should pay extra attention to the protection of human rights of the defendant, the right of the defendant to sue, and establish the view of the purpose of the lawsuit that attaches importance to the protection of human rights, based on which the system is constructed.

On the one hand, we must avoid over-reliance on the case file and attach importance to the defendant's statement. The principle of direct verbal evidence is a necessary requirement for the implementation of "trial centrism", which requires judges to personally contact the direct materials of the case and not to replace direct verbal evidence with indirect evidence. The defendant's statement is an important part of the direct verbal evidence, and the most important feature of the trial in absentia is the defendant's "absence", which also leads to the absence of the defendant's expression and statement in the trial in absentia. Therefore, in order to implement the principle of direct speech, we must pay attention to the expression of the defendant's opinion. In this regard, it is crucial to guarantee the defendant's right to know. The defendant's knowledge of the court trial depends on service, and the service of the "fugitive" mainly involves two issues: "service" and "knowledge". First, service is a guarantee of the defendant's right to know and a necessary condition for the trial in absentia to start. The People's Court should be proactive and exhaust all means of service. Secondly, the defendant's knowledge is a prerequisite for trial in absentia. Only if the defendant refuses to attend the trial even though he is aware of the trial, the People's Court has the right to exempt him from attending the trial in absentia [14]. Therefore, the court's service should be judged by the defendant's ability to know, so the service on the fugitive is not applicable to the public notice service, and the court should determine the service status after the service.

On the other hand, to improve the rules of evidence, to promote the establishment of rigorous rules of evidence system. Rigorous rules of evidence are important rules to implement the "trial-centered" pretrial restraint function, which can also regulate and restrain the investigation and evidence-taking behavior. The rules of evidence force the supervisory organs and procuratorial organs to be legal and standardized in the investigation and evidence collection, especially in the pre-trial investigation in the absence of the defense in the trial in absentia, and this rule is a powerful grip to protect the rights of the defendant. In view of the characteristics of "absence of the defendant", "hidden sources of evidence" and "more circumstantial evidence" in trials in absentia, the rules of evidence should be improved in two aspects.

First, the rules on the exclusion of illegal evidence should be strictly applied. The strict application of the rules on the exclusion of illegal evidence in cases of official crimes can restrain the supervision and procuratorial authorities in the absence of the defendant, and alleviate the power gap of the "imbalance between the prosecution and the defense" in the trial in absentia. In view of the

characteristics of the trial in absentia, the rules on the exclusion of illegal evidence should be appropriately adjusted. For example, in the review of evidence, in absentia trials usually lack "defendant's statement" and mostly rely on "witness testimony" as an indirect basis for the case. Therefore, in the review of illegal evidence, attention should be paid to the standard review of witness testimony, so as to ensure the rights of witnesses and defendants.

Second, the application of the presumption rule should be regulated. The presumption rule gives the judicial authority the power to presume the subjective fault of the defendant, and the application of the presumption rule is recognized by the international community in the case of official crimes, so as to break the dilemma of evidence collection and improve the efficiency of anti-corruption. However, the presumption rule reduces the rights of the accused on another level, and such a rule, if abused, would exacerbate the problem of imbalance between the prosecution and the defense. Therefore, it is necessary to regulate the presumption rule and strictly restrain the application of the presumption rule, as well as to guarantee the defendant's right of rebuttal and improve the rebuttal procedure for the defendant.

5. Conclusions

Trials in absentia for crimes in office provide the basis for the legitimacy and international convergence of China's anti-corruption efforts. However, the judgment of trials in absentia for crimes in office is difficult to be recognized and implemented in most countries, and the underlying reason is the "natural defect" of the "absence" of the defendant of crimes in office in trials in absentia. In this regard, the reform of China's "trial-centered" litigation system is the ideal recipe. To construct a "trial-centered" model for pursuing fugitives from office crimes in absentia, it is necessary to realize the materialization of court trials and consolidate the litigation purpose of attaching importance to human rights protection. It is necessary to solve the problem of power imbalance of the defendant, strengthen the status of judges, emphasize the rules of evidence, and require substantial confrontation between the prosecution and the defense. Focus on the protection of the defendant's right to sue, optimize the litigation structure of in absentia trial of duty crimes, and carry the litigation concept of "trial-centered" throughout.

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