

Right to Counsel during Detention for Duty Crimes in China

–A Balanced View of Corruption Combating and Human Rights

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Abstract

In accordance with the Supervision Law of China, the duration of detention for the purpose of investigating duty-related offences may extend for a maximum term of six months. In contrast to the provisions of Criminal Procedure Law, it should be noted that individuals who are detained for duty crimes do not possess the right to counsel. The issue of whether suspects should be granted the right to counsel under the Supervision Law, and how to effectively balance the objectives of eliminating corruption and protecting human rights, remains unaddressed. This paper presents the contention that lawyers' intervention in the process of detention should be permitted, as the obstacles associated with lawyers for the purpose of combating corruption can be addressed, however, the violation of human rights resulting from the absence of such engagement cannot be adequately rectified. Simultaneously, this study posits that right to counsel is not without limitations. The supervisory organs possess the authority to restrict the right to counsel in the four statutory instances, based on persuasive justifications.

Keywords: detention, right to counsel, human rights, duty crime, supervision law

1. Introduction

1.1 Background

In 2018, China formulated and officially promulgated the Supervision Law, merging the original powers of the Discipline Inspection Commission's "double-requirement" and the procuratorial organs' investigation of duty crimes into the supervisory authorities. Article 22 of China's Supervision Law stipulates that the supervisory authority may detain an investigated person in a specific place if he or she satisfies specific circumstances of serious duty violation or duty crime. In contrast to the provisions of China's Criminal Procedure Law, the Supervision Law does not permit access to an attorney during detention for duty crimes. In practice, the commission typically prohibits solicitors from intervening on this basis. According to the Supervision Law, detention can last up to six months, resulting in the investigated individual being confined to a closed location for such a long time and being denied access to attorneys and family members during this time. Article 130 of the Chinese Constitution stipulates that the accused shall have the right to a defense, and prohibiting attorneys from intervening would likely violate human rights.

Since the 18th National Congress of the CPC, China has intensified its anti-corruption measures, demonstrating to the world its resolve to combat corruption. China scored 45 points on the Corruption Perceptions Index published by the international anti-corruption organization Transparency International in 2022, placing it between 25 and 50 on the list of the most corrupt nations (Transparency International, 2022, p.4), and the anti-corruption situation is still quite dire. Corruption prevention and punishment are of paramount importance to public interest because they affect public support and the survival of the governing party. The rationale for the exclusion of attorneys throughout the detention term in the preceding context has been interpreted as a measure used to deter and punish corrupt officials. It is relatively easy to undermine the psychological defenses of those under investigation when they are isolated and unable to communicate with the outside world to obtain information (Jia & Sun, 2016, p.56-61). However, if lawyers are allowed to intervene during the detention period, they are likely to interfere with the investigation and evidence collection process of the supervisory authorities, resulting in the supervisory authorities being unable to ascertain the facts and discover the truth, thus indulging the corrupt criminals and leading to greater damage to the public interest.

In summary, whether China's supervision law should allow lawyers to intervene during the detention period is highly controversial, and how to balance the punishment of corruption with the protection of human rights has become the crux of the problem.

1.2 Research Methods

(1) Comparative research: This article compares the duty crime laws of China and Canada, Macao SAR, Hong Kong SAR, and the United Kingdom, with a view to drawing on the legislative experience of other countries and regions in addressing the challenges of lawyers' intervention during the detention phase of duty crimes.

(2) Historical research: By examining the evolution of the legal system of criminal judicial procedures of duty crimes and right to counsel during detention and arrest of duty crimes in China, this paper explores the internal reasons for the changes of the relevant system, and predicts the development trend of the detention lawyer intervention system in the future.

(3) Legal doctrinal analysis: This article speculates on the legislative intent of lawyer's intervention that is not stipulated in the Supervision Law through other articles of the Supervision Law, namely the application of systematic interpretation and purpose interpretation method.

1.3 Guiding Principles

Whether the protection of human rights in criminal proceedings is conditional or absolute will determine whether attorneys are permitted to intervene in detention proceedings. If we believe that the preservation of human rights in criminal proceedings is paramount, then the system should be abolished by law when a violation of human rights occurs. Regarding the question of whether lawyers should be permitted to intervene in detention measures, as it would contravene one of the fundamental human rights of the person under investigation, according to the "absolute" view, right to counsel should never be limited. Macao SAR, for instance, has adopted the more comprehensive approach to human rights, and Article 51(1) of the Macao Criminal Procedure Code allows a suspect to appoint an attorney at any moment during the proceedings.

If we consider human rights protection in criminal proceedings as conditional, it means that the rights of the parties involved can be restricted, but the premise of the limitation is that the interests of protecting human rights outweigh the interests of combating crime. In certain situations where the interest in combating crime is highly significant, such as severe social disorder and rampant criminal activities, the public's demand for crime prevention may surpass the protection of human rights. In such cases, the country can legislate restrictions of human rights of the parties involved without violating the constitution or natural law principles.

When using a conditional approach to analyze the issue of lawyers' intervention in detention measures, it is necessary to demonstrate and consider the importance of human rights protection interests and corruption combatting interests. If the view is that lawyers should be allowed to intervene in detention, then it must be demonstrated that the benefits of lawyers' intervention in detention are beneficial to the preservation of human rights and that these benefits are widely recognized as essential social benefits. It is also needed to investigate the drawbacks of lawyers' intervention in detention stage and whether these drawbacks can be mitigated by alternative solutions. From a reverse perspective, we should analyze the benefits of prohibiting lawyers' intervention in detention and whether these benefits can be substituted by measures with a lesser degree of infringement on human rights. Additionally, we should evaluate the drawbacks of such restrictions on human rights and whether they can be effectively compensated through other means.

According to Article 18(3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order. The international standard on criminal justice of United Nations adopts a conditional attitude regarding the issue of lawyers' intervention, acknowledging that in specific circumstances, the right to legal counsel may be restricted.

According to Wang Shui-ming, the constraints of human rights protection on criminal procedures are not absolute but conditional, as human rights are not a value element of criminal proceedings, which will only serve to restrict criminal proceedings when it has more traction than the notion of punishing corruption. There is no absolute abstract humanism, and the protection of human rights must depend on certain realistic social conditions (Wang & Liu, 2009, p. 40-46). Consequently, the right to counsel during detention is not absolute, and may be restricted for compelling reasons to protect the public interest (Li & Li, 2022, p. 60-80). The above will serve as the guiding principle for the subsequent analysis for weighing the values of corruption and human rights.

between the Supervisory Commission and the person under investigation and better integrate into the international community, lawyers should be allowed to intervene in detention (Liu, 2019, p.1-3). Guo Shijie believes that China's special national supervision system does not preclude the limited intervention of lawyers and that lawyers should be permitted to intervene during detention on the condition that a threshold is established (Guo, 2020, p.127-136). Wang Yi argues that public lawyers should be allowed to intervene in detention measures to a limited extent, and the violation of the human rights of the people under investigation should be reduced through multi-party participation such as hearing of witness (Wang, 2019, p. 68-76). In another article, Wang Yi elaborates on the principle of procedural proportionality enabling lawyers to intervene, enhancing the supervision commission's obligation to inform and approve, and achieving effective defense through the principle of lawyers' presence (Wang, 2021, p. 52-60). Jiao Na argues that the right to counsel should be extended to the person under investigation through the assignment of legal aid attorneys in order to make up for the legal lacuna during detention on the legal track (Jiao, 2018, p. 65-68). Ji Ruijia proposes that the right to counsel during detention be elevated to a constitutional right and protected in accordance with international practice (Ji, 2019, p.1). Huang Binwen is of the opinion that the supervision law cannot transfer power without transferring rights, and law should allow lawyers to intervene (Huang, 2020, p.1). To assure the voluntariness of a guilty plea, according to Yang Caihong, the time, selection, and relief system of solicitors should be explicitly specified (Yang, 2019, p. 75-79). Zhang Yuling believes that allowing lawyers to intervene is the integral component of China's supervision system reform, but only to ensure that the people under investigation enjoy minimum due process safeguards (Zhang, 2022, p. 148-150). Dong Bangjun suggests that duty violation and duty crime should be differentiated during detention, and the individual under duty violation investigation should not have the right to counsel (Dong & Zhang, 2021, p. 65-77).

A minority of scholars hold a compromised view on the issue of lawyers' intervention during detention. Guo Yanxin contends that the specific circumstances of each case should be categorized, and the issue of lawyers' intervention should not be generalized (Guo, 2019, p. 124-126). Even if lawyers are allowed to intervene, they should not enjoy the right to read the files and other lawyers' rights. Li Xi believes that the Supervisory Commission should review whether lawyers can be allowed to intervene during detention, and that the rights of lawyers should be rigorously limited (Li & Zhu, 2021, p. 17-20).

There is a severe duplication of viewpoints and the issue that permitting attorneys' participation makes it harder to punish corruption has not been addressed despite the abundance of scholarly debate on the topic of lawyers' intervention during detention. Furthermore, there is a general debate on how to strike a middle ground between human rights protection and corruption punishment, with inadequate argumentation to sway readers and lawmakers. While there are many studies on the topic, the vast majority are theoretical in nature, with little to no study or analysis of China's actual practice; as a result, their findings are likely to be at odds with the reality on the ground. Therefore, this article begins with a critique of existing literature, moves on to an in-depth examination of the connection between corruption punishment and human rights protection in the intervention of lawyers during detention, and concludes with arguments regarding the contentious issues surrounding lawyers' intervention at the level at which the system actually operates.

3. The Provisions for Supervision Detention and Criminal Detention Shall Be Consistent

3.1 There Is no Essential Difference between Supervision Detention and Criminal Detention

The current academic doctrine on the nature of the supervision detention is very detailed and extensive, including the party disciplinary investigation doctrine, the administrative action doctrine (Chen, 2017, p. 93-104), the criminal arrest doctrine (Zhang, 2017, p. 61-82; Xiong, 2017, p. 40-60), the hybrid doctrine (Chen, 2019, p. 1-15; Tan, 2018, p. 168-175), and the independent doctrine (Yin, 2019, p.1). This article considers that detention is a mixture of criminal nature, including party disciplinary investigations, administrative actions, and other properties. Supervision detention severely restricts the freedom of the person under investigation and may be transferred to the prosecutor's office for review and prosecution. From this point of view, there is only a formal difference between the detention of duty crimes and criminal detention. It can be said that it is only a change of name, consequently the intervention limit of lawyers during detention should be the same. Even if the detention has other attributes, as long as there are factors restricting the personal freedom of the parties in the criminal procedure measures, then counsel should be allowed, as the other attributes of the detention for duty crime are not sufficient to negate the criterion that the counsel should be allowed to defend as long as the personal freedom is restricted. For terrorist crimes that are more serious than duty crimes, the Criminal Procedure Law also allows lawyers to intervene in the arrest stage, while for less serious duty crimes, lawyers are prohibited to intervene during detention, which is not in line with the principle of analogical interpretation of "argumentum a maiore ad minus". Officers also contribute a great deal to the country and the limitation on lawyer intervention does not need to be any harsher than for terrorist crimes.

3.2 Cohesion of Evidence between the Supervisory Committee and the Public Prosecutor's Office

If the Supervisory Law does not grant the investigated person the same guarantee of the right to counsel in similar circumstances under the Criminal Procedure Law, there is no justification for the evidence obtained during detention of the Supervisory Commission to have the same validity as that in the general Criminal Procedure Law. If the detention measures of the Supervision Commission are not considered to be a criminal justice process, then their evidentiary value should be significantly lower than that of evidence obtained in the ordinary criminal justice process, for example by applying the rule of evidence reinforcement (Sun & Zhang, 2018, p. 91-99), or even by re-examining them critically. The principle of evidence reinforcement is generally considered necessary when there is a substantial likelihood that the evidence is fraudulent, and other evidence should be used to "strengthen the probative value of the main evidence" in order to support a conviction (Qin & Ji, 2023, p.8-13). If the lawyer knows nothing about the procedure, process, and legality of the collection of verbal evidence during supervisory investigation, the restriction on illegal evidence collection through examination, prosecution, and trial activities will become empty talk (Liu et al., 2022, p. 63-71). Therefore, the principle of "beyond reasonable doubt" with 95 percent proof level should be applied to verbal evidence collected during detention which doesn't grant the defendant right to counsel, and the 70 to 80 percent proof level that is commonly used in Chinese judicial practice should not be applied in order to protect human rights. Other physical evidence can still retain the standard of strength of proof in criminal practice. However, according to Article 33 of the Chinese Supervision Law, given the cumbersome procedures, low judicial efficiency, and high judicial costs of re-investigating and collecting evidence, the evidence of supervision can be directly applied in criminal proceedings, and the degree of proof of the evidence is the same as that of criminal investigation evidence in general criminal proceedings. Therefore, it can be inferred from this article that it is reasonable to grant the investigated person the same protection level of the right to counsel during both supervisory detention and criminal arrest.

4. Analysis of the Drawbacks of Barring Attorneys from Intervening

4.1 Drawbacks Analysis

4.1.1 Insufficient Supervision by Private Subjects

The Supervision Law delegates to the Supervisory Commission the responsibilities of an anti-corruption agency, exercising supervisory authority on behalf of the party and the state. It is a political organ, not an administrative organ that handles matters rigorously in accordance with the law nor a judicial organ that conducts impartial trials. Under the condition that the Party's Discipline Inspection Commission and the national supervision organs collaborate, the supervisory commission possesses significant political characteristics. Some supervisory committee members who have neglected their original goals may exploit the opportunity to selectively persecute their political opponents in the guise of combating corruption, thereby gravely violating the constitutional rights of criminal suspects. The Supervisory Committee is responsible for overseeing other officials, and according to the law, the Standing Committee of the National People's Congress and the Supervisory Committee itself supervise the Supervisory Committee. Given that "people cannot be their own judges," it is challenging for the aforementioned self-monitoring strategies to be effective in practice. The most effective way to prevent the suppression and persecution of other officials in the name of punishing corruption is through the supervision of external parties, and the best supervision subjects during detention are the defense attorneys entrusted by the suspects who have no affiliation with the government.

4.1.2 Confessional Evidence Is Established during Detention

Evidence acquired early in an investigation frequently lays the foundation for the prosecution of a crime and has a decisive impact on the subsequent criminal defense (ECtHR, *Salduz v. Turkey*). Suspects are especially vulnerable during detention, and this vulnerability may be exacerbated by the increasing complexity of criminal proceedings, particularly with regard to the rules governing the collection and use of evidence, thereby affecting the overall fairness of the proceedings in specific cases. According to Chinese Supervision Law, solicitors may only intervene during the stages of prosecution. Nonetheless, following a six-month period of covert detention, the relevant confession evidence has been established by the Supervision Committee. It is challenging for solicitors to obtain more space for defense. Suspects in criminal cases suffer calamitous and irreversible violations of their human rights. To guarantee a fair trial in the absence of a right to counsel, courts must decide whether additional protections offered by other laws are sufficient.

4.2 Negation of Mainstream Solution

4.2.1 Negation of the Duty Lawyer System

Some scholars believe that the legal advisers or public lawyers should be established by the supervisory

committees to provide legal advice and assistance, such as legal counselling and representation for appeals, to suspects during detention, in order to realize the right to counsel of persons under investigation (Chen, 2018, p. 19-27; Zhao, 2021, p.1; Hu, 2020, p. 60-70; Chen & Zhou, 2020, p.126-133). This article argues against this viewpoint. The most important function of lawyers is to resist and oversee the Supervision Commission, thereby safeguarding the human rights of suspects. However, the duty lawyers established by the procuratorate or supervisory committees do not have a countervailing role in China, and the probability is that they will follow the orders of the Procuratorate or supervisory committees and find it difficult to raise objections.

Under the pressure of the plea and punishment procedures, the duty lawyer system has gradually become a streamlined operation. In some instances, supervisory case handlers take turns bringing more than a dozen suspects to the duty lawyer's office to sign the plea affidavit, which is difficult for lawyers to review and investigate. In contrast to defense lawyers, who can only make defenses that benefit the suspects, duty lawyers have no such restriction, and the purpose of establishing duty lawyers is not to assist the suspects but to take a neutral stance.

In the event of a disputed case, the duty lawyer is likely to be pressured into choosing between favoring the person under investigation and the investigative process of the Supervisory Commission in favor of the Supervisory Commission. As the duty lawyers are not in the capacity of defenders, they cannot report the monitoring authorities for obstructing them in the exercise of their duties as defenders when they are being watched during the meeting, and they are unable to stand up to the public authorities in order to safeguard the lawful rights and interests of the suspects. If the participation of duty lawyers damages some of the legitimate rights and interests of suspects, there is also no one responsible.

As a result, duty lawyers are likely to be formalistic, not only making it difficult to provide substantive legal protection for the human rights of suspects, but also disguising themselves as a neutral party to give unfavorable guidance to the person under investigation, turning them into an "endorser" of public power, and helping the supervisory authorities to persuade the person under investigation to plead guilty, thus wasting judicial resources, increasing the cost of justice and slowing the efficiency of investigations.

To this end, some scholars suggest that the independence of duty lawyers should be strengthened, that is, the duty lawyers should be hired by judicial administrative organs or third-party legal aid agencies, and cannot be dismissed at will. At the same time, if it is not possible to appoint defense lawyers, scholars also suggest that the law should be amended so that duty lawyers only serve the people under investigation and become quasi-defenders in emergencies, rather than serving the investigation authorities as a neutral party at the same time. However, it is unlikely to be adopted because the watchdog is still worried about cases such as collusion of lawyers, which is not conducive to the smooth progress of the investigation of duty crimes and does not solve the fundamental problem of the balance of interests.

4.2.2 Negation of Audio-Visual Recording of the Entire Detention Process

At present, the environment in which evidence is collected during detention is completely secret and closed, and neither the family members nor their lawyers can know it, and such an environment will seriously affect the reliability of the evidence. The Chinese existing audio and video recording system is only limited to the period of interrogations. In reality, extorting confessions by torture is generally "do not record if tortured, and do not torture if recorded". The presence of lawyers during interrogation is useful, but the supervision committee can extract confessions by torture after the lawyers have left, as lawyers cannot stay in detention centers all day.

Under such circumstances, it is difficult for criminal suspects to provide evidence to exclude illegal evidence, and the closed detention period without the help of lawyers is the high incidence period of torture to extract confessions. Whether defendants and their defenders have the right to apply for access to audio and video recordings by procuratorial organs and courts, so as to prevent coercion and ill-treatment of suspects, avoid unilateral and hidden interrogation methods, and strengthen supervision and restraint on the exercise of supervisory power, is crucial to protecting the human rights of persons under investigation.

Therefore, some scholars suggest that the supervisory organs can keep the relevant evidence confidential in the process of obtaining evidence for the reason of preventing lawyers from interfering with the evidence, but they should videotape the whole process of obtaining evidence for lawyers continuously, and disclose it to the criminal suspects and their lawyers and prosecutors after submitting it to the procuratorate for review and prosecution.

Lawyers must have access to legally recorded footage of the entire process. If the supervisory organ fails to record and video completely, it should bear the adverse consequences of the illegal exclusion of verbal evidence during detention. If the person under investigation is not allowed to record the whole process on the grounds of privacy, or because of the negligence of the investigator or equipment failure, the investigator shall testify in court and

discover and confirm the facts through fierce court questioning confrontation. If he or she refuses to appear in court, the verbal evidence during detention shall not be accepted.

Audio-visual recording of the entire process can make up for the inefficiency caused by the intervention of lawyers, prevent the delay of case trial caused by illegal exclusion of verbal evidence. On the one hand, it reduces the possibility of reversal of confession, and on the other hand, it exposes the tortured confession to the camera, so as to realize the oversight of the supervisors without dead angle.

Although audio-visual recording of the entire detention process system is technically feasible and has been adopted in Hong Kong, China, the United Kingdom and many other places, Chinese Criminal Procedure law is still mainly aimed at cracking down on crimes. If relevant audio and video recordings are made public, relevant confessions are easily excluded as illegal evidence, and it will be difficult to convict cases of duty crimes, and the public interest will suffer huge losses. The audio recording and video recording system has failed to dispel the doubts of the legislature and solve the fundamental problem of lawyers' collusion in corruption crimes. Therefore, although the whole-process audio and video recording system is very effective, necessary and even the only system to effectively prove the existence of illegal evidence collection, it is difficult for China's legislature and supervisory organs to adopt it.

5. Evaluation of the Drawbacks of Permitting Lawyers to Intervene

5.1 Evaluation of the Drawbacks

5.1.1 Characteristics of Individuals Investigated for Duty Crimes

Compared with general population, those investigated for duty crimes have the following characteristics:

- 1) Being in the vortex of political power struggles for a long time, their ability to withstand pressure and withstand setbacks is generally higher than that of ordinary people. Faced with the techniques of interrogators, officers have stronger psychological qualities to cope.
- 2) In the selection of civil servants, a certain level of education will be required, and in the context of Chinese "law-based governance in all fields", civil servants will be more familiar with the law in the process of performing their duties, so it can be presumed that officials generally have a stronger awareness of legal rights protection and legal understanding than ordinary people. According to statistics, the probability of duty criminals hiring lawyers to defend themselves is about 70%, which is much higher than that of ordinary criminal cases (Liu Q, 2019, p. 1).
- 3) As the upper echelons of China's social hierarchy, officials wield greater power and rely on that power to accumulate more social connections, and since China is a society of favors, officials are more likely than ordinary people to use their connections to interfere with the collection of evidence by the supervisory authorities.
- 4) Civil servants' salaries are typically higher than the average local salary, allowing them to employ more experienced solicitors for their defense. For the sake of high solicitor's fees, some solicitors may even assist duty-crime suspects in the destruction and fabrication of evidence.
- 5) When the person under investigation commits duty-related crimes such as offering and accepting bribes, he or she usually commits the crime with strong premeditation and has stronger anti-investigation motives and capabilities, for example, by pre-selecting the delivery of bribes in places where there is no monitoring and so on to evade the sanctions of the law, in which case it will be even more difficult for the supervisory authorities to investigate the physical evidence.

Taking the above characteristics into account, in the face of closed interrogation by the supervisory authorities, the person under investigation is not particularly vulnerable, but rather has some "rights of defense" naturally endowed by China's political system, so that prohibiting lawyers from intervening in the investigation is a lesser infringement of human rights for the investigated person compared to an ordinary person who is a suspect of a criminal offense, and permitting lawyers to intervene in the period of retention has a higher level of risk of interfering in the investigation compared to an ordinary case.

However, this does not mean that all the means used by the interrogators are justified; for example, means such as torture to extract confessions are difficult for even a person under investigation for an official crime to withstand and go beyond the limits of the investigative measures that he or she foresaw when choosing a career in the civil service in the event of suspicion of an official crime. If lawyers are not allowed to intervene, the Supervisory Commission may resort to unlawful or even criminal means of obtaining a confession from an investigated person when it is unable to obtain effective evidence and is faced with enormous political pressure from its superiors. Therefore, the causal relationship between the identity of the person being investigated for an official crime and the restriction of the right to counsel is weak, and even if the official possesses the above-mentioned identity, the

situation of "the Taoist is higher, the devil is higher" may occur, so that the above-mentioned identity does not constitute a decisive reason for restricting the right to counsel.

5.1.2 Reliance on Confession Evidence in Duty Crimes

Since job-related crimes are highly covert and specialized, and there is usually no actual "scene of the crime" or victim, the supervisory authorities generally investigate the person first, and then investigate other physical evidence on the basis of relevant clues. Therefore, investigators of duty crimes are forced to focus on people's confessions at the investigation stage. Consequently, investigators of duty crimes must concentrate on confessions during the investigation phase. According to the data, the conviction rate for corruption and extortion in the case of zero confession is only 44%, whereas the conviction rate for zero confession in other categories of cases exceeds 90% (Feng, 2023, p. 51-60,88). When investigating duty offences, investigators are currently confronted with a dire lack of evidence sources and the inability to obtain evidence. If lawyers are allowed to intervene during detention, it is likely that the supervisory authorities will find it difficult to collect effective evidence of confessions, thus making it difficult to carry out investigations and condoning corruption.

5.2 Reaction to Potential Obstruction Caused by Hiring Lawyers

5.2.1 Interest Balance

In order to balance the interests of combating crime and protecting human rights, the following three questions need to be answered:

Does the suspect have the opportunity to challenge the authenticity of the evidence and object to its use? In China, it is difficult for a suspect to retract a confession in court without the right to counsel, and retractions are generally not accepted by the judge, whereas the burden of proof in cases such as forced confessions is on the suspect himself or herself, and it is difficult for the suspect to prove this without the right to counsel.

Once an investigation is initiated for a duty crime, will it always be prosecuted? In China, the Supervisory Commission is on the strong side, and once an investigation is initiated, there is a high probability that the case will be referred to the Procuratorate for review and prosecution, and the Procuratorate will be pressurized to make a decision to prosecute. If lawyers are prohibited from intervening, there will be little chance of redressing the injustice, and the probability is that the case will be reviewed and prosecuted and finally tried as a guilty verdict, which will cause great damage to the human rights of the person being investigated.

Is the system for excluding illegal evidence functioning well? In China, it is difficult for courts to exclude illegal evidence from trials. Prosecutors must consult the supervisory authorities when making decisions not to prosecute. And once no prosecution or exclusion of illegal evidence is made, it is a serious political mistake. According to statistics of the 768 cases of duty crimes, in only two cases the defense applied for exclusion, neither of which was accepted (Han, 2020, p. 25-40). At present, if the audio and video recordings are incomplete, it is only a violation of the law but does not fall into the category of coerced confessions, which cannot be excluded as illegal evidence.

In China, where the above system is imperfect, granting the right to counsel to the investigated person is the best option for protecting human rights on balance, because the harmful consequences of prohibiting the intervention of lawyers cannot be remedied through other systems. However, even if an investigated person refuses to make a confession, the supervisory authorities can still use interrogation techniques such as coaxing, threatening, or cheating to reduce the sentence, or investigate and interrogate his or her family members in order to urge him or her to reveal the facts.

5.2.2 Solutions

Supervisory authorities can use the following tools to address the harms that may result from the intervention of lawyers during detention:

- 1) Public solicitation of evidence of corruption (Huang et al., 2012, p.1): the challenge of gathering evidence in bribery may be alleviated by publishing calls for evidence of crimes committed by corrupt officials in the publication of the procuratorate.
- 2) Establishment of a system of presumption of bribery (Ruan, 2004, p. 71-74): In proceedings where the accused is suspected of having committed a bribery offence, if the prosecution is able to prove that the defendant has received or given property to the other party, unless the defendant provides evidence to the contrary, it shall be presumed that the property received is the property of the bribe.
- 3) Improve the system of disclosure of officials' property: compared with Canada, China has a large number of corruption crimes, a small proportion of investigations and prosecutions, difficulty in collecting evidence, high dependence on confessions, and therefore can only use the "from confession to evidence" line of investigation to

find out the truth, and the root cause of this is that China's officials' property is not open and transparent. More than 160 countries, including Canada, have already established a property disclosure system, and China should also gradually promote the improvement of this system, so as to avoid investigating and punishing functional crimes in a way that violates human rights.

4) Adherence to the investigative concept of "from evidence to confession": "from evidence to confession" can force the monitoring authorities to improve their investigative techniques and reduce their reliance on verbal evidence. Under the traditional investigative model of "confession to evidence", investigators sometimes try to actively contact suspects in the initial investigation of individual cases after grasping only a small amount of information, in the hope of obtaining more information through interrogation, a situation that should be strictly prohibited, as the method of investigating and solving cases at the expense of human rights violations is unsustainable. Supervisory authorities should strengthen their preliminary and investigative work, collect evidence in a comprehensive manner, form a complete chain of evidence and enhance their ability to combat crime.

5) Emphasis on first interrogation: supervisory authorities should attach importance to the first interrogation, adopt a short and quick strategy, fully grasp the time gap, make use of the material information collected in the preliminary investigation stage, apply interrogation tactics and questioning techniques, obtain effective confessions from criminal suspects, and deny criminal suspects the opportunity to retract their confessions.

6) Reversal of the burden of proof: the principle of not being compelled to incriminate oneself in criminal proceedings is not absolute, and the burden of proof can be reversed in certain special cases, such as possession-type crimes and crimes of unknown origin of large amounts of property. In order to prevent lawyers from interfering with the investigative activities, China should adopt the reversal of the burden of proof for officials' property in conjunction with the property disclosure system, so as to reduce the pressure on the supervisory authorities to provide evidence.

5.3 Exceptions to Allow Lawyers to Intervene during Detention

It is not absolute that lawyers are permitted to intervene during detention, and in certain special circumstances, they may be prohibited from doing so. However, the prohibition should not be applied across the board, but should be strictly limited in accordance with the principle of proportionality. The first step in determining whether a prohibition can be imposed should be whether the following four circumstances exist: (1) Another criminal suspect in the same case is at large. (2) The facts of the case are unclear, evidence is insufficient, or the omission of a crime or another criminal suspect in the same case entails a supplementary investigation. (3) A state secret or trade secret is related. (4) The fact indicates a possibility of a collusive confession, destroying or forging evidence, or endangering the person of a witness. If not, the lawyer should be allowed to intervene throughout the process. If so, the second step should be to examine whether the lawyer's meeting is about a substantive or procedural issue; if it is about a procedural issue, the Supervisory Committee should allow the lawyer to intervene in the meeting so as to make it easier for the next-of-kin and the lawyer to understand the procedure and to seek remedies in that way, but may send a commissioner to supervise the meeting in order to know the content of the conversation (Zhao & Wang, 2019, p. 72-79). If it is a substantive issue, the committee should weigh whether there are compelling reasons to prohibit lawyers from intervening at the investigation stage, and if the committee believes that there are, it should explain the reasons to the person under investigation and his or her lawyer, and the investigated person and his or her lawyer may apply for a reconsideration or a court ruling if they do not accept the decision.

On the basis of the above steps, this paper suggests that corresponding restrictive measures be added during detention, such as the adoption of a system of off-site jurisdiction to prevent local government Supervisory Commission officials from utilizing the six-month-long closed detention measure as a tool to engage in political persecution, and that the Supervisory Law should grant procedural rights, such as the right to apply for designation of an investigation and the right to object to the investigation of an investigated person, and specify the criteria for off-site jurisdiction of job-related offenses, as well as the procedures for the connection of the various organs.

With regard to the specific criterion of "compelling reasons", the public interest involved in the case should be determined on the basis of the public interest involved in the case, i.e., the specific amount of money involved in the crime, the matter of the request, the level of the official's title, the degree of danger, and the geographic scope of the impact of the case, combined with the distinction between "duty-related crimes" and "serious duty-related crimes" to ultimately determine whether it is necessary to prohibit the intervention of lawyers. In the case of minor duty offenses, the Supervisory Commission should not deprive the suspect of the right to counsel. Only in cases so serious as to carry a possible sentence of more than 10 years' imprisonment, life imprisonment or even the death penalty can the right to counsel in investigations conducted by the Supervisory Commission for Official Offenses be restricted to the extent necessary. It is the responsibility of the supervisory authorities to determine, through a

case-by-case assessment, whether there are compelling reasons.

6. Benefits Balance in System Detailed Design

6.1 Dual-Track System

It is unnecessary to provide suspects with access to counsel in party discipline investigations and serious duty-related violations. Only when it is clearly a duty-related crime should a suspect be granted the right to counsel. In practice, the supervisory committee has a wide range of responsibilities, including party discipline investigations, serious duty violations, and duty crimes discussed in this article. However, the boundaries between "serious duty violations investigation" and "crime investigation" are very blurred during the investigation stage, and may be switched at any time. Therefore, the supervisory authority usually refuses the intervention of lawyers who are actually "criminal investigations" in the name of "serious duty violations investigations". This article argues that it is the responsibility of the supervisory organ to explicitly distinguish duty-related violations from duty-related crimes. The possible adverse consequences, that is, hiring a lawyer for duty-related violations, should be borne by the supervisory organs themselves.

6.2 Return to the Additional Investigation System

The Supervision Law has not yet been amended, and lawyers are still unable to intervene during detention. Therefore, the procuratorate's self-supplementary investigation should be prioritized. This is because the procuratorial agency can monitor whether the supervisory agency has committed illegal acts such as torture during detention, so as to fully protect the human rights of suspects. In practice, supervisory agencies that need to perform political tasks will only collect evidence of crimes. Compared with supervisory organs, procuratorial organs are more likely to collect evidence of guilt and innocence, serious crimes and minor crimes at the same time, and simultaneously punish corruption and protect human rights. What's more, if it is returned to the supervisory agency for supplementary investigation, the person under investigation will be deprived of personal liberty again for a maximum of six months without the right to counsel, which will exacerbate the human rights violations of the individual under investigation and should be discarded.

6.3 Other Limitations on the Intervention of Lawyers

6.3.1 Confidentiality Limitations

Should interviews with lawyers be audio-visually recorded or overseen under the supervision of supervisory committee? This article argues that audio-visual recordings of conversations between lawyers and suspects should only be permitted under the aforementioned four special circumstances, and that other restrictions on the confidentiality of conversations between lawyers and respondents should be strictly enforced. If the supervisory authorities unlawfully listened to the recorded conversations and obtained other evidence based on the recordings, such evidence should be excluded as illegal by applying the "fruit of the poisonous tree" rule.

6.3.2 Time Limitations

This article believes that the time limit for lawyers to intervene during detention by the supervisory agency should be the same as the Chinese Criminal Procedure Law, i.e., the right to counsel is only available after the first interrogation. This is because the lawyer's early intervention will seriously compromise the evidence collection process compared to the timely intervention after the first interrogation. At the onset of the investigation, the supervisory authorities held very little evidence, and imprudent disclosure of the investigation file at that time would have adversely affected the investigation's normal progression.

6.3.3 Right Limitations

This paper argues that rights to counsel, such as interviews, access to files, and duplicating, should be unrestricted. What's more, there should be no restrictions on the group of solicitors involved in the defense of duty crimes, with the exception of restrictions on solicitors at risk of collusion, as these restrictions are not strongly causally related to the punishment of corruption.

7. Conclusion

The duration of detention measures for duty crimes may extend up to a maximum of six months, during which the individual under investigation is often denied access to legal counsel and familial contact. This practice raises concerns over potential violations of the individual's human rights. In order to address this issue, the legislator should consider the delicate equilibrium between addressing corruption and safeguarding human rights. This paper analyzes that combating corruption is hardly a decisive obstacle to allowing lawyers to intervene, as the potential hindrance of investigations due to lawyer intervention can be remedied by means of public disclosure of officials' assets, interrogation methods, reversal of the burden of proof, and similar strategies. However, there exists a dearth

of viable solutions to address the human rights infringements resulting from the prohibition of lawyer intervention, which include the absence of private oversight, fixed and irrevocable confession evidence, and challenges in seeking procedural remedies. Both the implementation of duty counsel systems and the adoption of audio-visual recording systems throughout the whole detention process are difficult to provide significant support for or may not be compatible with the specific circumstances in China.

In brief, the deprivation of right to counsel would result in enduring and irreparable detriment to suspects' human right, but the provision of right to counsel would only lead to reparable and resolvable injury for the combat against corruption. In this context, the protection of human rights has superior significance compared to the pursuit of criminal punishment. Therefore, the Supervision Law should legislate to explicitly protect right to counsel during detention of supervisory authorities.

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