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Procedural Correction of Criminal Justice for the Crime of Aiding Information Network Criminal Activities

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Abstract: Nowadays, the crime of aiding information has expanded rapidly. In the criminal judicial practice, there have appeared the phenomena of "criminal presumption of knowing to simplify the crime standard", "lenient application of guilty plea in the crime of helping letter", and "shelving the rights and interests of the accused". In this paper, case analysis and literature research are used to explore the applicable ways of procedural correction. Firstly, the paper maintains that criminal presumption should meet the standard of "certainty". Secondly, the article needs accurately grasp whether the defendant suffers "knowing", use the system of plead guilty fairly, and implement the basic criminal law thought of "strict but not severe". Thirdly, it's necessary to make good use of the right of estoppel to defend the rights of the person pursued through the extended duty lawyer system to implement the policy guidance of tempering condone and avoiding the imbalance of crime and penalty in procedural law.

Keywords: knowing, criminal presumption, leniency in guilty plea, duty lawyer system

1. Introduction

The crime of helping information network crime is a popular crime, its rapid expansion also causes the academic circle to have many views on the identification of this crime. The subjective elements of the constitutive elements of the crime of aiding and crediting and the relation between them and accomplices have been studied deeply in the field of law. Although the academic community has a general consensus on the crime of helping faith in the substantive law, but there is still a certain blank in the application of the crime of helping faith in procedural law.

When searching relevant literature, the author found that "Opinions on Telecom Network Fraud Cases (II)" stressed that "the implementation of the whole chain and all-round attack on upstream and downstream related crimes". Therefore, under the guidance of criminal policy of cybercrime source governance and whole-chain governance, it has become an important choice for current procedure identification to set up a constructive way to simplify the difficult process of "knowing" proof standard [1]. At the same time, in judicial practice, the crime of helping the letter as a misdemeanor is usually applicable to the "guilty plea and leniency system". However, due to the natural deficiency of the balance structure of charge and debate in our system of charge and debate consultation, there are often one-sided emphasis on the "efficiency first" in practice, which leads to the exaggerated abuse of the "the system of plead guilty" [2]. It is worth discussing the issues of guilty plea, penalty and rights. Therefore, in theory and practice, the crime of helping information network crime involves

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criminal presumption "knowing", the widespread use of the system of guilty plea, and the defense of the rights of the accused all need to be paid attention to and perfected.

2. The Crime of Aiding Information

In order to more clearly reflect the judicial application of the crime of aiding information since its addition, the author took "helping information network activities" + "criminal" as the search conditions, conducted a fuzzy search in Peking University magic weapon. The author retrieved 22406 relevant judgment documents, among which it is worth noting that before 2020, the number of judgment documents on the crime of aiding information was very rare. However, since the release of the "Cybercrime Interpretation", In 2020, there were about 1,052 cases of convictions for crime of aiding information, which is 15 times more than the total number of convictions crime of aiding information in previous years. In 2021, there were 13,953 relevant judgment documents, more than 13 times more than in 2020, and it became the third crime prosecuted by the national procuratorate that year. In 2022, due to the issuance of the "2022 Meeting Minutes" document, the number of judgments on crime of aiding information has dropped slightly, but it is as high as nearly 7,159. Such a rapid growth rate of crime of aiding information is inevitably worrying, and in the process of punishing the crime of aiding information, a series of problems related to the Criminal Procedure Law are exposed that urgently need to be clarified and resolved.

3. Procedural Law Dilemmas Faced in the Crime of Aiding Information

3.1. The Presumption of "Knowing"

Under the severe crackdown of the "card-breaking operation", the crime of aiding information has become a key crime for the public security institutions. Later, state institutions issued the "Opinions on Telecom Network Fraud Cases (II)", which pointed out that relevant network information crimes should not only be traced back to the source, but also cracked down on the entire line. Therefore, under the guidance of criminal policy of source governance and full-chain governance, setting up a presumptive method to simplify the process of "knowing" the difficulty of proving the standard has become an important choice for the current procedural determination.

Does the standard of proof for "knowing" really need to be simplified? It should be examined from the standpoint of procedural law. The interpretation of presumption which in the traditional theory of evidence law means the process of determining presumptive fact B based on basic fact A. The establishment of fact B is the result of the presumption rule. For example, in the Interpretation of " Money Laundering Crime", the situation of "knowing that another person has committed a crime and assisting in the transfer of the crime" is a basic fact [3]. However, it is worth noting that helping the perpetrator to transfer property does not mean that the perpetrator must know that the property comes from this type of crime. The reason why this situation is considered to be a basic fact is that the judicial authorities, in dealing with practice, believe that since they know that another person has committed a crime, and the perpetrator is still willing to help the perpetrator to transfer property, there is a high possibility of money laundering. It is not difficult to find that the process from A to B is not directly corroborated, but a standard of proof built with "experience" as a bridge. This method of proof will inevitably face the scrutiny of whether the evidence is true and sufficient. Firstly, the prosecution only bears the burden of proof of basic fact A, and if the defense challenges the prosecution's presumption, the burden shifts to the defense, to the detriment of the defendant. Secondly, the third paragraph of article 55 of the Criminal Procedure Law stipulates that "reasonable doubt has been eliminated of the facts determined by combining the evidence of the whole case", and the determination of basic facts in criminal proceedings need to be examined by "beyond reasonable doubt". However, in practice, they often fail to comply with this provision, and usually replace

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"beyond reasonable doubt" with the application mode of "high degree of certainty" to downgrade the determination of "knowing".

For example, in a "case of Jie", the basis for determining "knowing" is only the degree of knowledge between the defendant and the perpetrator [4]. Nevertheless, from the "intimacy" it can only be concluded that the defendant "may know", and "intimacy" does not mean that he must know all the financial information of others. Such as salaries and investments, does not mean that the defendant must know that the property is the proceeds of crime, nor does it mean that the defendant must know that the property is the proceeds of corruption and bribery. If the offence of money laundering is presumed "knowingly", there will inevitably be reasonable exceptions, and the presumptive method of proof does not properly address the "beyond reasonable doubt" criterion.

3.2. The "Plead Guilty" System

The system of plead guilty has become a very important procedural principle in China. It has been guided by the criminal policy of tempering mercy with severity, and in practice, through mutual consultation, the defendant voluntarily admits guilt and suffers penalty. Meanwhile, through the use of the plea system, the litigation efficiency is improved, helping the case to be handled efficiently and simplifying. However, due to the natural shortcomings of the balance structure of prosecution and defense in China's prosecution and defense consultation system, "efficiency first" is often one-sidedly emphasized in practice, resulting in the exaggeration of the "plead guilty" system [5].

The emphasis on efficiency over fairness in litigation has also been exposed in the crime of aiding information, which is roughly manifested as follows. Firstly, the problem of proving the subjective elements of the crime of aiding information can be eliminated by applying guilty pleas and suffering penalty to achieve the purpose of avoiding uncertainty in conviction. In other words, through "lenient" preferential treatment in exchange for the defendant's self-confession that he "knows" [6]. Secondly, under the current environment of "efficiency first", as long as the prosecuted person voluntarily gives up the right to defense, the judicial organs will inevitably simplify the evidence when handling cases of aiding information. Moreover, when the prosecuted person admits guilt and suffers penalty, and the case is transferred to expedited judgment and summary procedure, court investigation, court debate and other links are dissolved. The judgment of "knowing" will become very easy [7]. Finally, since pleas of guilt and penalty apply throughout the entire process of criminal proceedings, once the system is applied and the crime of aiding and information is established, according to article 201 of the Criminal Procedure Law, the court's recommendation on the procuratorate should generally be adopted. Based on the above situation, judicial workers blindly apply guilty pleas and penalty to the prosecuted, the prosecuted person gives up the defense [8]. How to comply with the spirit of the procedural law and the procedural restrictions on the crime of helping to believe cannot be practiced.

3.3. The Opportunity to Defend the Rights of the Accused

In traditional cases, the power and status of the procuratorate far exceeds that of the defense. The prosecution department is a public symbol of the country, and the defendant who violates the law is passively punished by the judicial authorities. In order to better balance the position of prosecutors and defendants, the author use the procedural rights granted to defendants to limit the public power of the State. If the accused exercises cross-examination and argument in court, the trial judge will be closer to the truth in the process of cross-examination and very heated argument, rather than limited to the evidence submitted by the prosecution and sentencing recommendations, so that the defendant can receive a fair final trial. Another example is to give defendants the right to apply for recusal, so as to avoid judicial workers who have reasons to recuse themselves from relevant cases, and affect the fair handling of relevant cases.

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Since admitting guilt and suffering punishment has become the main way to handle criminal cases, the focus of criminal procedure development has shifted to the early stage of investigation and prosecution. The guarantee mechanism for basic rights such as the right to lawyer's defense has been largely ignored, and the human rights protection of criminal proceedings is facing a reorientation.

For example, in the "WeChat case", Chen was accused of helping others unblock 400,000 WeChat platform accounts (each platform account made a profit of 1 yuan) [9]. The defender claimed that Chen subjectively did not know, objectively did not help the illegal activities of the information mesh, and his criminal evidence was insufficient. In the absence of ascertaining whether the unblocking of WeChat accounts can be used for criminal activities, the judicial personnel directly determined that they were "knowing" based on the two basic objective facts of the fourth and fifth paragraphs of article 11 of the "Interpretation of the Crime of Helping information". However, there is a right of defense against the defendant in this case. The defendant argued that the deletion of mobile phone data was due to frequent bumps when playing games, and the deletion of content data was due to cleaning up memory capacity. This behavior implementation is a common behavior of smartphone users in their daily lives. Basically, all smartphones come pre-installed with the "Mobile Manager" app. The most commonly used professional service is "timely cleanup". Such conduct cannot be directly understood as "evasion of investigation".

4. The Shortcomings of the Procedural Law of the Crime of Aiding Information

4.1. The Application of the "Presumption" in Criminal Proceedings

In order to eliminate the major crisis posed by the presumption to criminal proceedings, the following responses can be taken. Firstly, the presumption is regarded as an exception to reasonable doubt, and then forcibly steps out of the framework of the standard of proof [10]. This countermeasure is also the current common method used by judicial personnel in handling cases, adopting a high degree of certainty and introducing empirical judgment, so that the facts of the case can reach the standard of criminalization. However, such an approach is nothing more than a cover-up that fails to solve the most fundamental trouble of the procedure itself, increases the strength of proof of the defendant's guilt, and is not conducive to protect the rights and the progress of the judiciary. Secondly, presumptions are first and foremost commonly used in civil proceedings, but in criminal proceedings, it has always been argued that criminal presumption should still meet the standard of "beyond doubt" [11]. The author believes that civil litigation and criminal proceedings should not be confused, and the consequences caused by criminal proceedings are not tolerated by civil litigation, and their punishment is stronger and more lethal, and it is more prudent and prudent. Criminal proceedings follow the principle of presumption of innocence and require strict norms to follow the procedure of cross-examination (adducing and cross-examination). Therefore, the scope of application of the presumption cannot cover the constituent elements of the facts of violation and crime. Presumption of innocence is a fundamental principle in the legal system, which presupposes that the burden of proof is assigned in criminal proceedings, and the procuratorate bears the responsibility for the guilt of the person being prosecuted. In criminal charges, due process requires that every necessary objective fact of the alleged crime be justified by a certain degree of natural proof [12]. This burden of proof is not assignable. The presumption does not presuppose the allocation of the burden of proof, but affects the allocation of the burden of proof between the parties in the course of application. Therefore, there is only one standard of criminal proof in criminal cases. Article 55 of the Criminal Procedure Law, and all criminal facts must be tested by this standard. Judicial institutions shall follow the principle of evidence adjudication, limit the application of legal presumptions, strengthen reasoning in the appraisal process, and adhere to the standard of proof in article 55 of the Criminal Procedure Law. Only in this way can people coordinate with the criminal policy of combining

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leniency and strictness, prevent the imbalance between leniency and severity, and promote the effective and comprehensive realization of fairness and efficiency. A correct understanding of the policy of combining leniency and severity will help judicial organs carry out more accurate and prudent appropriate adjustments under the coordination and guidance of policies. Meanwhile, it can build a new criminal prosecution model for information network crimes such as the crime of aiding information with sufficient legitimacy, and safeguard fairness and justice in the entire society [2].

4.2. The Application of the "Plead Guilty" System

Article 222 of the Criminal Procedure Law provides that expedited adjudication procedures may be applied to plea cases. Expedited proceedings, generally do not involve court investigation and court arguments. At the trial stage, cases related to pleas of guilt and punishment are usually "confirmation trials" and "written trials", and the review of the voluntariness of pleas and penalty is basically a formality, which has become the root cause of "consultative criminal justice errors" [13]. Therefore, "discovering a voluntary confession of guilt" and "refusing to endorse a pretrial confession" have become the tasks of the central trial [14]. The defendant of the crime of aiding information is not always aware of crime elements, and in particular whether "knowing" can cover "ought to know". Therefore, the voluntary and truthful confession of one's crimes in a confession of guilt and the objection are inevitably biased in court.

The first approach is to take a different approach to the degree of knowing corroboration [1]. In the case of the crime of helping the letter, the defendant claimed to know the relevant cases, in strict accordance with the "guilty plea Guidance" Article 39 for review and correction, firmly grasp the criminal procedure law Article 215, 233 "other is not suitable for the application of summary procedures, quick trial procedures of the case" signal. For the trial of the guilty repentance of the case, should be timely change the procedure. In cases where the accused denies knowing from the very beginning, the relevant authorities should focus on whether there is reasonable doubt in the prosecution's presumptive knowing, and fully present the presumptive process when making a guilty verdict. The above approach is an effective way to distinguish procedurally between the "criminal presumption" and the "presumption of guilt".

The second way is to apply discretionary non-prosecution system. The second paragraph of article 177 of China's Criminal Procedure Law stipulates "Whenever the crime is minor, and no criminal punishment is needed in accordance with the Criminal Law, the procuratorate may choose not to prosecute." This clause indicates that the procuratorate can exercise discretion when the "minor circumstances" do not meet the conditions for the application of the proviso, based on the circumstances of the crime, the seriousness of the harmful consequences, subjective malignancy, etc. The establishment of this system is intended to give a good opportunity for rehabilitation of many defendants who are not harmful to society and need to be punished or can be exempted from punishment. As one of the representatives of petty crimes, the application of discretionary non-prosecution for the crime of aiding information has practical value. The author believes that, firstly, the conduct that formally complies with the provisions of Items 1 to 4 of the first paragraph of Article 12 of the Judicial Interpretation on the Crime of Aiding information. However, the degree of harm of the actual consequences is not equal to the explicit provisions in Item 6 of this paragraph, and can be included in the type of discretionary non-prosecution. Since the crime of helping one person may cause greater serious damage to the legal interests than the crime of providing assistance to more than three people. Therefore, more attention should be paid to the substantive judgment in the identification of "serious circumstances". Secondly, the first act of helping relatives and friends may also be included in the scope of discretionary non-prosecution. In judicial practice, there are many cases in which defendants lent their bank cards, Alipay and other media with payment and settlement functions to relatives and friends for free or without compensation. If it is the first "borrowed card",

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the probability that the defendant did not know about the violation is higher. It is therefore reasonable to include the first "borrowed" and "borrowed" assistance acts within the scope of discretionary non-prosecution. From this point of view, it is possible to effectively control the situation in which the defendant is convicted because the basic conditions for the conviction of the crime of aiding and information are insufficient.

4.3. The Rights of the Defendant

Whether an aid-in defendant can knowingly plead guilty is dependent on the expert's explanation. At present, China has set up a duty lawyer system, the primary driving force is to offer the accused more legal consulting services, and the country's laws give defendants the right to know. Secondly, The right of remorse, which enables the defendant to begin the prosecution or alter the trial process in order to emphasize the role as the primary body.

The first is to extend the rights of assigned attorney. Firstly, the assigned attorney has the right to conduct research and gather testimony. The on-call attorney is permitted to conduct research and gather evidence, which can be found outside the case file in favor of the accused person. At the same time, it can also make substantive suggestions on the review of prosecution, conviction and sentencing, and application of procedures. If the duty lawyer only uses evidence from the case file, it will be difficult to find testimony. In order to better stimulate the subjective initiative of the attorney, the lawyer is not to mechanically answer the same content to different consultants, but to constantly deepen the new understanding of the case in the process of investigation and evidence collection. Only in this way can they be encouraged to better perform legal advice on a case-by-case basis. Secondly, the lawyer on duty was given the right to actively assist the judge in his review of the work of voluntary confession. The reason why the lenient punishment system can be applied and operated is because the defendant voluntarily admits to vices. Therefore, voluntariness is the main basis for judging whether the leniency system of guilty plea can be applied to specific cases. Both the Criminal Procedure Law and the judicial interpretation of the Supreme Court clearly stipulate that the presiding judge should examine. In accordance with the law, whether the defendant's confession is voluntary and whether the agreement reached is genuine. During this process, the lawyer on duty is able to assist the judge in his examination.

The second is the reasonable application of the right of estoppel, which is an important free right to strengthen the position of the defendant. The expression of the right of estoppel is an effective means of self-relief. However, in order to avoid the abuse of the right of estoppel and ensure the fairness and justice of the procedure, the author believes that a set of standard estoppel inspection system should be established. Firstly, as far as the subject of inspection is concerned, the subject should change accordingly according to the stages of investigation, prosecution and trial. During the investigation stage, the person being prosecuted may freely exercise the right of estoppel. However, the relevant records must be filed in writing. At the prosecution stage, the person being prosecuted must apply to the procuratorate to exercise the right of repentance, if the application is approved, the right of remorse will be valid. However, the judicial staff who previously handled the case should recuse themselves. At the trial stage, the defendant may apply to the judge for the right of retraction before the decision is made. Similar to the prosecution stage, the application for the right of retraction is approved. The person concerned withdraws to protect the defendant's right to a fair and reasonable trial. Secondly, as far as the content of the inspection is concerned, the author believes that it is necessary to reasonably limit the reasons for the application of the right of estoppel, focusing on grasping the voluntariness and knowledge of the defendant. First of all, extortion of confessions by torture to force the accused to confess guilt and suffer penalty, among other illegal tactics, due to the lack of voluntary understanding of the prosecuted person. The right of estoppel can certainly be applied, which is also the most basic guarantee of human rights. Secondly, the prosecuted person

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needs to have a clear understanding of the procedure. For example, the judicial institution should promptly perform the corresponding obligation to inform, the duty lawyer or defense lawyer should be present on key occasions to witness the record. If the defendant becomes passive because he is not clearly aware of the rights he should have enjoyed during the operation of the procedure, the right of estoppel can also be applied. It is true that the above-mentioned reasons for the application of the right of estoppel cannot be generalized. The possibility of applying the reasonable reasons should be continuously enriched and dynamically developed in plea cases.

5. Conclusion

To further regulate the procedural legislation of the crime of assisting the letter, there is still much work to be done. In this process, there are many difficulties in the recognition of subjective knowledge, the outward expansion of the system of plead guilty, and the defense of the rights for the accused. The policy value orientation of combating new information network crime needs to be adjusted appropriately according to the actual situation. The article should be aware of the tendency of simplifying operation and excessively applying criminal presumption, and adhere to the inherent law of the system of "leniency in confession and punishment" in criminal proceedings. Under the premise of protecting the legitimate rights and interests of the defendant, speed and efficiency should be taken into consideration, and the policy of tempering condone and severity need unified and coordinated. As time goes by, with the continuous progress of our legal construction, the regulation of new information network crimes will be more and more scientific and precise.

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