

Procuratorial Ethics in the Lenient System of Confession and Punishment

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Abstract

The procuratorial organ is the leading organ of the system of leniency on admission of guilt and acceptance of punishment. It is responsible for many important functions such as supervision, consultation, procedure advancement and sentencing suggestion. Its influence can radiate the criminal procedure from beginning to end. Whether the system of confession and punishment can be well implemented requires not only external institutional norms, but also the internal driving force and binding force of procuratorial ethics. From the perspective of the main structure of criminal proceedings, this paper demonstrates in detail the leading role of procuratorial ethics in the case of confession and punishment, and clarifies the due state of procuratorial ethics in the case of confession and punishment from the three dimensions of normative level, conceptual level and technical level, and summarizes the actual state of the lack of procuratorial ethics in the specific case handling process. Finally, from the three levels of value orientation, fact finding and penalty discretion, the construction path of procuratorial ethics norms of the leniency system of confession and punishment in China is gradually introduced to promote the improvement of the leniency system of confession and punishment.

Keywords

Confession and Punishment Leniency; Procuratorial Ethics; Relationship between Prosecution and Defense; Judicial Integrity.

1. Introduction

Article 15 of the Criminal Procedure Law stipulates the system of leniency on admission of guilt and acceptance of punishment, encourages the judicial organs to negotiate with the accused, and urges the accused to take the initiative to admit guilt and accept punishment through leniency on entity or procedure. The implementation of this system has greatly improved the efficiency of case handling, realized the diversion of criminal cases, and realized the scientific and modern management of misdemeanors in China. However, with the continuous in-depth development of the leniency system of confession and punishment in China, the ensuing problems have gradually erupted. These problems not only reflect the imperfection of the system itself, but also extend some reflections on the professional ethics of prosecutors. In judicial practice, because most of the cases of confession and punishment are dominated by the procuratorial organs, and the procuratorial organs are under the pressure of time limit, assessment and so on, sometimes they will walk on the edge of the law, blindly pursue high efficiency and break through the requirements of professional ethics. Therefore, in order to make the system of confession and punishment play its due role, it is necessary to put forward higher requirements for the professional ability and professional ethics of prosecutors.

2. Leading Role of Procuratorial Ethics in Cases of Pleading Guilty and Accepting Punishment

Leniency on admission of guilt and acceptance of punishment is a basic system of criminal procedure. Whether it can be well implemented is in fact inseparable from the joint efforts of the four parties of investigation, prosecution, defense and trial. However, the reason why the importance of procuratorial ethics is particularly emphasized is that the procuratorial organ, as a connecting link between the past and the future in criminal proceedings, has a very wide range of functions and powers. Once abused, the consequences are extremely bad. The essence of the system of leniency on admission of guilt and acceptance of punishment is the procedural acceleration mechanism under the leadership of the procuratorial organ. The procuratorial organ is not only the leader of the diversion of complexity and simplicity, but also the master of the criminal policy of tempering justice with mercy and the supervisor of litigation activities. The lack of professional ethics of prosecutors will undoubtedly cause penetrating damage to judicial justice. Specifically, in the process of handling cases of confession and punishment, the influence of procuratorial ethics on all parties in criminal proceedings is as follows:

2.1. Procuratorial Ethics to Public Security Organs

The premise of confession and punishment is that the facts of the case are clear and the evidence is sufficient, which mainly depends on whether the investigation work of the public security organs is in place, including the acquisition of evidence materials and the adoption of investigation measures. No matter from the perspective of procedure connection or the content of functions and powers, the procuratorial organs are undoubtedly the first responsible person to supervise the public security organs, which requires the prosecutors to dare to play and be good at playing, to strictly review the applications and evidence submitted by the public security organs, and to resolutely safeguard judicial justice and protect human rights. In addition, Article 24 of the ' Guiding Opinions on the Application of the System of Lenient Punishment for Confession and Acceptance of Punishment ' stipulates : ' The public security organs should listen carefully to the opinions or suggestions put forward by the people 's procuratorates during the examination of arrests or in the hearing of major cases, and actively carry out relevant work ' - This also provides a strong normative basis for the dominance of the procuratorial organs over the public security organs in cases of confession and punishment.

2.2. Procuratorial Ethics to Criminal Suspects and Defenders

As the core subjects in the system of confession and punishment, the defense and the prosecution have both confrontational and cooperative sides. The purpose of the system of confession and punishment is to reduce confrontation, strengthen cooperation, and achieve mutual benefit and win-win results within the legal scope. The procuratorial organ, as the party that guides the accused to sign the ' written statement of confession and punishment ', plays the most significant role in the implementation of the confession and punishment system. In judicial practice, it is generally for prosecutors to promote the procedure of confession and punishment, and put forward corresponding sentencing suggestions. Whether prosecutors can fulfill the obligation of full disclosure and reach a contract of confession and punishment by means of equal consultation determines whether the voluntary confession and punishment of criminal suspects can be guaranteed. On the other hand, procuratorial ethics requires that the prosecution must strictly abide by the bottom line of the law and cannot make unlimited concessions to reach a plea agreement. Whether the prosecutor can abide by professional ethics, respect the facts and the law, and make reasonable and legal sentencing recommendations based on the combination of various circumstances also determines whether the plea agreement signed by the prosecution and the defense can exert the expected effect.

2.3. Procuratorial Ethics to the Court

The agreement between the prosecution and the defense is reached by the prosecution and the defense. The court did not participate in the consultation process. However, the court's judgment is related to the final realization of the agreement between the prosecution and the defense. After the defendant has signed the ' guilty plea ', the prosecution can generally make follow-up sentencing recommendations to the court - which is the main reason for the defendant to plead guilty and accept punishment, that is, to actively cooperate in exchange for a more lenient sentencing recommendation. Whether the court finally accepts the sentencing proposal put forward by the prosecution is related to the judicial integrity of confession and punishment. Article 40 of the " Guiding Opinions on the Application of the System of Leniency for Pleading Guilty and Accepting Punishment " stipulates : " If the people's court does not adopt the sentencing recommendation of the people's procuratorate, it shall state the reasons and basis. It can be seen that the court can not refuse to adopt the sentencing recommendations of the procuratorial organs without reasonable reasons. If prosecutors can uphold their professional quality and professional ethics and ensure the rationality and legality of sentencing recommendations, they will play a good guiding role in the court's sentencing results ; on the contrary, if prosecutors break through the ethical bottom line and exchange confession contracts by means of coercion, deception, unlimited concessions, etc., such contracts will ultimately not be honoured in the court.

3. The Proper State of Procuratorial Ethics in the System of Leniency on Admission of Guilt and Acceptance of Punishment

3.1. Normative Level

In the case of confession and punishment, the primary obligation of the prosecutor is to strictly adhere to the norms of handling the case according to law, respect the facts and evidence of the case, and ensure the legality of the accused's confession and punishment. It is worth noting that the leniency on admission of guilt and acceptance of punishment is not a simple substantive leniency. It is a comprehensive legal system that integrates substantive norms and procedural norms. Because it advances the substantive discretion that belongs to the trial stage to the pre-trial stage, and the pre-trial stage is relatively less transparent, it needs more stringent procedures to regulate. Therefore, in the process of handling cases of confession and punishment, the procuratorial organs need to pay special attention to the follow-up of procedural norms.

3.2. Concept Level

The establishment of the system of admission of guilt and acceptance of punishment essentially marks the transformation of China from confrontational justice to consultative justice. The judicial concept of equal consultation needs to be taken seriously. In the process of handling cases of confession and punishment, the procuratorial organs should not carry out policy education in a condescending manner, but should conduct consultations with the defense in a rational and peaceful manner. The agreement of guilty plea and punishment should be based on the discovery of evidence, and through the full communication between the prosecution and the defense on the circumstances of sentencing and related factors, so as to ensure the legal, voluntary and true results of the consultation between the two parties.

3.3. Technical Level

The purpose of the implementation of the system of confession and punishment is to reduce the pulling and confrontation through the mutual concession between the prosecution and the defense, so as to improve the efficiency of litigation, so it is not possible to pursue the

application of confession and punishment unilaterally. On the one hand, prosecutors should grasp the limits of consultation. The criminal suspect and the defender can fully communicate with the prosecution on the characterization of the case in combination with the facts of the case and the legal provisions, but it is strictly prohibited to use the identification of the crime as a bargaining chip. On the other hand, prosecutors should pay attention to guiding the judgment results with high-level sentencing suggestions, comprehensively consider various sentencing circumstances, and try to achieve accurate sentencing, so as not to pursue the efficiency of handling cases one-sidedly and perfunctory.

4. The Actual State of Procuratorial Ethics in the Case of Confession and Punishment

As mentioned above, the system of leniency on admission of guilt and acceptance of punishment is one of the important signs of the transformation from adversarial justice to consultative justice, marking great progress at the institutional level. However, the current leniency system of confession and punishment in China is implemented under the background that the principles of criminal procedure, such as equality of prosecution and defense, separation of prosecution and trial, and free evaluation of evidence, have not been fully implemented. In addition, there are assessment requirements for the application rate and adoption rate of confession and punishment in the procuratorial system. In order to pursue the assessment indicators one-sidedly, some prosecutors have led to some problems in the specific operation, specifically :

4.1. The Defendant 's Right to Know is Lack of Protection

Whether the right to know of the prosecuted party can be fully guaranteed is indispensable factor to measure the voluntariness of pleading guilty and accepting punishment. However, from the perspective of adversarial game, the prosecution with the responsibility of fighting crime has insufficient internal motivation to disclose information, especially the exculpatory evidence that is conducive to the accused. Moreover, the suspects of criminal crimes, their cultural level is generally not high, most of them lack of awareness of the law, which undoubtedly exacerbated the procuratorial organs in the process of information disclosure, not timely, inadequate disclosure of information or even disguised concealment.

In practice, most of the contents informed by the procuratorial organs to criminal suspects focus on the positive effects of confession and punishment, that is, the opportunity to obtain leniency, but most of them are vague about the negative aspects of confession and punishment to criminal suspects, including the abandonment of litigation rights in what procedures will be faced after confession and punishment. Therefore, as a non-professional person, the accused often pleads guilty and accepts punishment for the pursuit of leniency without understanding the consequences of the procedure. In addition, the content of the current ' confession and punishment statement ' is relatively rough. Most of them only list the alleged crimes, the basic situation of the criminal suspect 's confession and punishment, and the corresponding lenient punishment suggestions. As for the consultation process between the prosecution and the defense, the opinions of the defense, etc., will not appear in the statement, which will also easily lead to the ambiguity of the accused 's knowledge.

4.2. Negotiation between Prosecution and Defense Becomes a Mere Formality

The leniency system of confession and punishment is a rapid processing model dominated by prosecutors. Whether to apply leniency on admission of guilt and acceptance of punishment, and to what extent to make concessions to the prosecuted party. Although in principle, the prosecution and the defense are allowed to negotiate and reach an agreement as much as possible, in judicial practice, it is still the procuratorial organ that plays a leading role. The

defense does not have the basis for sentencing negotiations with the prosecution, which makes the prosecution and the defense naturally in an unequal position. As a party to the prosecution, the procuratorial organ has two functions of criminal prosecution and legal supervision. It can not only interrogate criminal suspects in the pre-trial stage, but also supervise the court's trial of cases in the trial stage. The strong authority of the prosecution can easily lead to the imbalance of the status of the prosecution and the defense.

Due to the fact that most of the criminal suspects are in the state of custody during the consultation stage of the prosecution and the defense, personal freedom is limited. In this state of repression, according to the current practice of consultation, the initiation of the system of leniency on admission of guilt and acceptance of punishment is usually decided by the procuratorial organs. The current law does not clarify the right of the accused to initiate the procedure unilaterally. It can be said that most of the consultations on admission of guilt and acceptance of punishment are carried out in the interrogation dominated by the prosecution, and the prosecutor negotiates with the attitude of the interrogator.⁸ The consultation process becomes a process in which the staff of the procuratorial organ confirm and sign the accused in a short time with a pre-determined statement of admission of guilt and acceptance of punishment. In this case, prosecuted person can only choose to agree or disagree and cannot negotiate in essence. If they choose not to agree, then the prosecution is likely to make heavier sentencing recommendations. At present, the mechanism of confrontation between prosecution and defense in court trials in China is not perfect. Criminal suspects and defendants do not have much opportunity to compete with procuratorial organs in court. At this time, it is common for the accused to confess guilt against his original intention.

4.3. The Contract of Pleading Guilty and Accepting Punishment Cannot Be Fulfilled

Article 201 of the Criminal Procedure Law of the People's Republic of China stipulates: 'In cases of confession and punishment, when the people's court makes a judgment according to law, it shall generally adopt the charges and sentencing recommendations charged by the people's procuratorate. As a restriction on "should," "generally" gives the court the power to reject the sentencing recommendation of the procuratorate, and in practice, it is not uncommon for the court to reject the sentencing recommendation. For reasons such as criminal policy and case handling efficiency, many procuratorial organs will make too many concessions to criminal suspects and defenders, resulting in the court's refusal to adopt sentencing recommendations at the trial stage, and then the procuratorial organs file a protest. The failure to fulfill the confession contract not only reduces the efficiency of the proceedings, but also greatly undermines the integrity of the judiciary - criminal suspects and defenders based on the trust of the prosecution, and to a certain extent, the right to self-justification, but this concession ultimately failed to obtain the results promised by the prosecution, which will undoubtedly increase the confrontation and distrust between the defense and the judiciary.

5. Construction Path of Procuratorial Ethical Norms in the System of Leniency on Admission of Guilt and Acceptance of Punishment

The lack of procuratorial ethics in the operation of the leniency system of confession and punishment may make the leniency system of confession and punishment lose the basis of operation, cause problems such as false confession and forced confession, and seriously hinder the realization of judicial justice. Combined with the characteristics of the system of confession and punishment and the problems in the implementation process, the construction path of procuratorial ethical norms can be discussed from the following aspects.

5.1. At the Level of Value Orientation, Establish the Right Standard of the System of Leniency on Admission of Guilt and Acceptance of Punishment

A correct understanding of the legislative intent of the leniency system of confession and punishment is the value basis for the procuratorial organs to handle relevant cases. The ideal state of equal communication in the leniency system of confession and punishment in legislation is far from the strong state under the unilateral leadership of the actual procuratorial organs, which is contrary to the original intention of legislation. The fundamental reason is that the procuratorial organs have a wrong understanding of the nature of the system of leniency on admission of guilt and acceptance of punishment, so they fail to guide and consult the defendants on an equal footing. It should be made clear that the result of "leniency" obtained by the accused stems from the waiver of some substantive defense rights and some procedural rights. In the context of the criminal policy of combining punishment with leniency, it is the legal right of the accused to obtain lenient punishment by voluntarily pleading guilty, rather than being regarded as the extrajudicial grace of the prosecution organ. China should clarify the procedural initiation right of the accused to plead guilty and accept punishment from the legislation, rather than passively accepting the six-crime contract written by the judicial organ. When handling lenient cases of confession and punishment, procuratorial organs should establish the concept of right standard, rather than blindly take the application rate of confession and punishment cases as the performance evaluation index under various administrative tasks such as assessment and evaluation. In the process of consultation between the two sides, the procuratorial organs should fully listen to the defense from the aspects of fact finding, behavior characterization, sentencing basis and so on.

5.2. At the Level of Fact Finding, the Defendant's Right to Know is Guaranteed by Evidence Discovery.

Article 29 of the "Guiding Opinions on the Application of the Leniency System for Pleading Guilty and Accepting Punishment" stipulates the system of evidence discovery, that is: "The People's Procuratorate may explore the system of evidence discovery according to the specific circumstances of the case, and protect the criminal suspect's right to know and the authenticity and voluntariness of confession and punishment. Throughout the world, whether it is the civil law system or the common law system, or some countries with procedural transformation, they have established the corresponding evidence discovery system while establishing the speedy trial procedure of criminal procedure, or the right to read the files of the accused party is clearly stipulated in the law.

The disclosure of evidence is the proper meaning to protect the defendant's right to know, and it is also an important prerequisite to ensure the voluntariness of confession and punishment. Only when the accused has a full understanding of the evidence in the case, can he or she have the cognitive factors of confession and punishment, that is, to clarify what his or her behavior is, the legal effect of his or her behavior will occur, and to judge whether his or her behavior has constituted a crime on a rational basis. At this time, the prosecution and the defense can communicate on an equal footing, and in essence, respect the will of the accused. At the same time, the discovery of evidence is the inherent requirement of the specific practice of the leniency system of confession and punishment. Especially in the case where the accused agrees to adopt the speedy trial procedure, the court investigation and debate are generally no longer set up in the trial procedure, and the use of the evidence discovery system can play a role in reinforcing the trial.

5.3. At the Level of Penalty Discretion, the Prosecution and the Law Should Go Hand in Hand to Build the Concept of Judicial Integrity

In practice, there are some prosecutors who, under various external pressures, do not hesitate to take illegal acts such as threats and inducements to coax criminal suspects into confessing their guilt; after the case of confession and punishment was transferred to the prosecution, the judge respected the facts and evidence of the case and handled the case according to law, and could not fulfill the original promised sentencing results of the procuratorial organs. If it is allowed to spread, it will certainly make criminal suspects and even the public question the legislative purpose of leniency on admission of guilt and acceptance of punishment, which will have a negative impact on the credibility of the judiciary. It is imperative to build up the concept of judicial integrity and avoid the confession contract becoming a dead letter.

It has many values to attach importance to the construction of judicial integrity in the system of leniency on admission of guilt and acceptance of punishment. It is the source and foundation for the prosecution and the defense to reach a consensus. The good implementation of the system of confession and punishment is inseparable from the cooperation between the procuratorial organs and the judicial organs. On the one hand, in the stage of examination and prosecution, the prosecutor should handle the case strictly within the scope of functional authority, and guide the defendant to make the choice of whether to plead guilty and accept punishment based on rational judgment. Judicial commitments cannot be abused. On the other hand, the judicial organs should try their best to fulfill their judicial commitments, and their overthrow of sentencing recommendations cannot be routinely applied to individual cases. Unless it involves the factual basis of the case and the reasons for the application of the law, the court shall not easily violate the principle of judicial integrity, so as to make the system of leniency on admission of guilt and acceptance of punishment achieve better implementation results.

6. Conclusion

From the perspective of criminal integration, the characteristics of leniency and simplicity of procedure make all parties in criminal proceedings become beneficiaries to varying degrees. However, if this new system is to be stable and far-reaching, the key is to take the stage of examination and prosecution as the key field of risk prevention and control. As the main force to promote the leniency program of confession and punishment, the construction of the professional ethics system of prosecutors is an important guarantee to improve the leniency system of confession and punishment, and also the cornerstone of the benign promotion of criminal policy. It should be noted that the external institutional norms have their irreplaceable value, but if we can pay attention to the role of procuratorial ethics as an internal coercive force at the same time, we believe that the criminal policy of tempering justice with mercy and the judicial concept of equal consultation will be practiced to the greatest extent.

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