

# Research on the Voluntary Guarantee of Leniency System for Confession And Punishment

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## Abstract

Taking the voluntary guarantee of the leniency system for confession and punishment in China as the starting point, this article summarizes the nature, role, and characteristics of the leniency system for confession and punishment, introduces the current regulations and mechanisms of the voluntary guarantee of the leniency system for confession and punishment, lists the problems of legislative deficiencies, the need to reconcile the conflict between freedom and selectivity and the inherent remedial nature of criminal litigation rights, the challenges faced by voluntary guarantee in serious and severe criminal cases, the difficulties in balancing effective voluntary guarantee and accurate attitude characterization in lengthy criminal proceedings, and analyzes the causes one by one. It proposes to explore the establishment of new mechanisms at the legislative level, innovate case handling ideas, diversify the improvement of voluntary confession and punishment guarantee mechanisms in serious and severe criminal cases, and timely review and supervision in lengthy criminal proceedings. Solution measures.

## Keywords

Leniency system for confession and punishment; Inherent criminal procedural rights; Heavy punishment for serious crimes; The game of argumentation and communication.

## 1. The Nature, Function, and Characteristics of The Leniency System for Confession and Punishment

Since the system of confession, admission, punishment and leniency came into being on October 26, 2018, in the Decision on Amending the Criminal Procedure Law of the People's Republic of China adopted at the sixth meeting of the Standing Committee of the 13th National People's Congress, and has been officially implemented, it has played a very important and unique role in China's criminal procedure law and even the entire criminal procedure rule of law system due to its nature and role. Including the following aspects: Firstly, the leniency system for confession and punishment applies to a wide range of criminal charges. In essence, all charges in China's criminal law can be applied to cases of confession and punishment. Various types of criminal offenses, including traditional criminal offenses, economic crimes, and job-related crimes, are included. Secondly, there are many trial procedures applicable to the leniency system for confession and punishment. For cases that apply the leniency system of pleading guilty and accepting punishment, this system may appear in the first instance, second instance, and even retrial procedures of criminal cases, and can be closely related to the entire criminal trial process and have a significant impact. The third is that the leniency system for confessing guilt and accepting punishment has dual attributes of criminal procedure and criminal substance. This is the most fundamental and significant feature of the system. By reviewing the practical process of the leniency system for confessing guilt and accepting punishment, and analyzing relevant laws and judicial interpretations, it can be found that the leniency system for confessing guilt and accepting punishment has the basic attributes of criminal procedure.

At the same time, because its content involves the determination of charges, types of punishments, and specific sentence terms, it also has criminal substance.

## **2. Overview of the Current Regulations and Mechanisms for The Voluntary Guarantee of Leniency for Confession and Punishment**

### **2.1. Overview of the current regulations on the voluntary guarantee of leniency for confession and punishment.**

At present, China's regulations on the voluntary guarantee of leniency for confession and punishment are reflected in criminal procedure laws, judicial interpretations, and normative legal documents. Overall, the distribution of relevant current regulations can be said to be relatively scattered. From a legislative perspective, in order to achieve voluntary protection of this system, the Criminal Procedure Law of the People's Republic of China has made explicit legal provisions in Chapter 3 of Part 2 and Section 1 of Chapter 2 of Part 3 regarding criminal procedure, which is the most fundamental and core provision. In addition, in the corresponding chapters of the current judicial interpretations of the Criminal Procedure Law, more detailed, comprehensive, and systematic supplementary provisions have been made for the voluntary procedural protection of this system in criminal proceedings. In addition to the scattered provisions in laws and judicial interpretations, some normative legal documents are also important sources of provisions for this system.

### **2.2. Overview of the current mechanism for voluntary protection of the leniency system for confessing guilt and accepting punishment in China.**

The main contents of the current mechanism for voluntary protection of the leniency system for confessing guilt and accepting punishment in China include the following aspects:

2.2.1 The guarantee of voluntary confession of guilt and punishment is basically based on judicial documents. The guarantee of voluntary confession of guilt and punishment of suspect and defendants cannot be arbitrary and uncertain, but should reflect the legal effect and credibility in every link of the criminal case handling process. The most powerful or even the only evidence related to this guarantee is the relevant judicial documents produced by the public security, procuratorial, and judicial organs. If the judicial organ's legal documents for closing the case can confirm whether the criminal pleads guilty and accepts punishment, then the statement of guilty and accepts punishment and the proposal for sentencing are the evidence of voluntary guarantee for suspect and defendants to plead guilty and accept punishment.

2.2.2 Lawyers play an important role in the system of confession, punishment and leniency. suspect and defendants know little about criminal law and criminal procedure law. Therefore, it is crucial for their defense counsel to ensure effective protection of their criminal procedural rights. Defenders in criminal cases are usually lawyers, and the position and role of lawyers in this mechanism are more important and crucial than in general criminal cases. For example, for cases where suspect and defendants voluntarily plead guilty and plead guilty to punishment, the judicial authorities should attach great importance to the defense opinions of lawyers on case characterization, evidence identification, litigation procedures, sentence and other aspects of the case, whether they employ lawyers, or assigned legal aid lawyers or lawyers on duty. As a national legal supervision agency, the procuratorial organs play a leading role in the leniency system for confession and punishment. [1] In the first instance public prosecution cases accepted by the People's Procuratorate, on the premise that the criminal involved pleads guilty and accepts punishment, the prosecutor handling the case must listen to the opinions and suggestions of the criminal's lawyer or the duty lawyer stationed in the detention center and sign relevant legal documents before determining the specific charges, punishment and

sentence, and reviewing the prosecution procedures. During the implementation of the aforementioned work, on-site synchronous audio and video recording is required. When a lawyer disagrees with the nature, charges, or sentencing recommendations of a case and refuses to sign the plea agreement, even if the criminal involved in the case that the lawyer serves, safeguards, and maintains voluntarily pleads guilty and accepts punishment, and has no objection to the charges and sentencing recommendations and reasons and basis given by the investigating authority, and signs and stamps the plea agreement, the plea agreement will still have no legal effect because it does not have the lawyer's signature.

2.2.3 The voluntary nature of applying the system of pleading guilty and accepting punishment and leniency from beginning to end and flexible suspect and defendants' voluntary choice of the system of pleading guilty and accepting punishment and leniency exist in the whole process of criminal proceedings. They can voluntarily plead guilty and accepting punishment at the earliest stage of investigation, and can still voluntarily plead guilty and accepting punishment at the latest in the retrial stage of criminal cases. In addition, the voluntariness of pleading guilty and accepting punishment refers to the free choice of the accused to plead guilty and accept punishment based on full knowledge and understanding of the charges and the consequences of pleading guilty and accepting punishment. [2] The concept of voluntariness should be broadly understood, encompassing both the freedom to choose the system and the freedom not to choose it. This kind of voluntariness can be adjusted randomly in different stages of criminal proceedings. suspect and defendants can either voluntarily plead guilty and admit punishment first, and then clearly express that they will no longer plead guilty and admit punishment in the subsequent criminal proceedings, or abandon the application of the leniency system by means of implicit means such as appeal and criminal appeal after the sentence is pronounced in the first instance, or they can ignore the application first, and agree to apply the system in the subsequent stages of the proceedings. At the same time, the voluntary nature of the leniency system for confession and punishment can be flexibly applied to any type of criminal trial procedure. The voluntariness of this system is also not necessarily related to the cause of action and sentence, and can be applied in cases where the charges and penalties are not severe, such as drunk driving. It can also be applied in serious crimes such as intentional homicide, injury causing death, robbery causing death, and severe criminal cases that may result in life imprisonment or even death penalty.

### **3. Analysis of the Problems and Reasons for The Voluntary Guarantee of Leniency System for Confession and Punishment**

#### **3.1. There is a legislative deficiency in the relatively systematic written provisions for the voluntary guarantee of leniency for confession and punishment**

The current relevant procedural laws and judicial interpretations in our country have made clear and definite provisions on the legal effects that may arise from the application of the leniency system for confession and punishment, as well as the protection of the litigation subjects of this system. However, there is a lack of relatively systematic and systematic written regulations on the voluntary guarantee of leniency for confession and punishment. The relative lack of this legislation has caused some problems in the practice of the leniency system for confession and punishment, among which the most prominent is the coordination and cooperation between the prosecution and defense in its voluntary guarantee. From the legislative level, the communication and exchange between prosecutors and lawyers on issues such as conviction and sentencing of guilty plea and punishment is the key link for whether the voluntariness of suspect and defendants can be guaranteed and even whether they can successfully plead guilty and punishment. In general, the criminal lawyer entrusted by the

suspect or his close relatives will be of great benefit to the maintenance and exercise of the right of defense of the suspect. However, from the perspective of the voluntariness of confession and punishment, in the practice of handling cases, lawyers will hinder the voluntary confession and punishment of suspect and defendants from time to time. In fact, in the litigation process of some criminal cases, sometimes the parties' confession and punishment may deviate due to the different opinions of lawyers. The main reason for the emergence of this problem is that the leniency system for confessing guilt and accepting punishment is a new thing in China's Criminal Procedure Law, and its voluntary protection is still in the embryonic stage of legislation.

### **3.2. The conflict between the autonomy, freedom and selectivity of confession and punishment, and the self rescue and self-help nature of inherent criminal procedural rights needs to be reconciled**

The leniency system for confession and punishment has put forward higher requirements for judicial investigators, and has also posed greater decision-making challenges for criminals involved in cases. The realistic basis reflected by this view is the friction between the voluntariness of the system of leniency of guilty plea and punishment and the "right to refuse" and the "right to repent", which is embodied in a more subtle relationship between the voluntariness of the system of leniency of guilty plea and punishment and the remedies enjoyed by suspect and defendants, such as the right to defense, the right to appeal, and the right to appeal. At the same time, it is also relatively familiar with the remedies of traditional criminal procedural rights. There is a unified overall goal between the two, while there is also opposition between them. Among various types of oppositions, voluntary confession of guilt and insistence on appeal are the most prominent and typical. As a new phenomenon in the Criminal Procedure Law, there is a certain friction between the autonomous and free selection of the leniency system for confession and punishment, and the self rescue and self-help nature of the inherent criminal procedural rights that have been preserved in the evolutionary history of criminal proceedings. The main reason for this problem is that the voluntary nature of China's leniency system for confession and punishment and the remedial nature of traditional criminal litigation rights are still in the adjustment stage.

### **3.3. The voluntary guarantee of leniency for confession and punishment in serious criminal cases faces challenges**

The voluntary nature of the leniency system for confession and punishment cannot be separated from the actual criminal case, and it must be effectively linked with the corresponding legal and reasonable sentencing. The most important and direct reason why suspect and defendants are willing to voluntarily plead guilty and accept punishment in the process of criminal proceedings, even the consistent and unswerving voluntary pleading guilty and accept punishment is that the leniency obtained through voluntary pleading guilty and accepting punishment will be clearly reflected in the length of sentence and even the type of punishment when sentencing by procuratorates and courts. However, it should be noted that there are two necessary prerequisites for the effective application of the current sentencing guidance and the implementation rules of sentencing guidance in various provinces, autonomous regions, and municipalities directly under the central government in judicial practice. Firstly, the sentencing guidance and specific rules adjusted in each region are common crimes, and some serious crimes are not included in these charges. For example, intentional homicide in personal crimes is a typical serious crime and not a common crime. Secondly, even if the scope is limited to the charges of these common crimes, the specific sentencing for each common crime in the relevant sentencing guidance opinions and the implementation rules of the sentencing guidance opinions of each province, autonomous region, and municipality directly under the central government is also limited to the scope of criminal detention or fixed-

term imprisonment. How can the adjustment ratio that can reduce the statutory 30% or 60% by combining confession and other statutory, discretionary, or mitigating circumstances effectively be reflected within the scope of the benchmark sentence being life imprisonment or death penalty, whether in common or uncommon criminal cases, if the sentencing is determined to be life imprisonment or death penalty, and the defendant voluntarily confesses and accepts punishment while also having some other favorable sentencing circumstances? Regarding the understanding of "admitting punishment", some scholars believe that it means agreeing with the sentencing recommendation. [3] Some scholars believe that the so-called "confession of punishment" refers to the sincere repentance of the suspect and the defendant and their willingness to accept punishment. [4] However, in judicial practice, due to the inability to reduce punishment, some defendants involved in serious crimes believe that even if they plead guilty and accept punishment, they will still receive heavy punishment. Therefore, they have lost the voluntary willingness to plead guilty and accept punishment during the first and second criminal trials, and even intentionally retract their confessions. The main reason for this problem is the lack of transparency, specificity, and quantifiability in the sentencing system of China's criminal law regarding sentences such as life imprisonment and death penalty with a two-year reprieve.

### **3.4. There are difficulties in balancing the voluntary and effective guarantee of confession and punishment with accurate attitude characterization in longer criminal proceedings**

Due to the complexity of criminal proceedings, it is not common for cases to be successfully concluded after the appeal period has expired. Some cases may be tried again or even multiple times after the first instance verdict is announced through appeals in the second instance, appeals in the second instance, and appeals in the trial supervision procedure. In such trial procedures, the final charges, types of penalties, and sentences imposed on the defendant in the original trial may differ from those in the original trial due to "revocation of the original judgment and remand for retrial" or "revocation of the original judgment and instruction for retrial". This change will result in the original defendant who voluntarily pleaded guilty and accepted punishment in the first instance procedure, even from investigation to the first instance procedure, no longer pleading guilty and accepting punishment in the retrial or ordered retrial trial procedure. At the same time, in the retrial or retrial procedure, changes in the key evidence of the case result in corresponding changes in the facts of the case, making the confession and punishment made by the defendant in the original trial based on the originally determined facts of the case meaningless by the investigating and prosecuting authorities. The confession and punishment related to newly confirmed case facts are often limited to the retrial or retrial period, and the original defendant often finds it difficult to understand or even accept the changes from the criminal facts to the sentence in a short period of time.

## **4. Solutions to the Problems in the Voluntary Guarantee of the System of Leniency for Admitting Guilty and Punishing Punishments**

### **4.1. Exploring the establishment of a new mechanism at the legislative level to ensure the voluntariness of confession and punishment is protected from illegal and unreasonable obstacles through communication and game theory between prosecution and defense**

One is to continuously strengthen the right of criminals in criminal cases to timely and effectively obtain and understand the relevant connotations of the system from lawyers who provide them with criminal legal services at the legislative level. The defender of the case of confession and punishment may be the lawyer employed by the suspect and the defendant, or

the lawyer who is connected with the suspect and the defendant involved in the case and provides them with corresponding services, protection and maintenance according to other legal provisions. However, regardless of the reason and method for providing lawyer services, whether they have obtained remuneration, and whether the time of serving as a lawyer for the criminal is long or short, they should adhere to the practice guidelines based on the facts of the case and truthfully inform them of the nature of the case, the screening of the cause of the case, the determination of the type of punishment, the evaluation of the principal punishment and supplementary punishment, and the selection of case handling procedures and other important aspects arising from the application of the leniency system of confession and punishment. Of the criminals involved in the case, real-time, accurate and complete explanation and analysis were given. The second is to further strengthen the dialogue and interaction between prosecutors and case lawyers regarding the application of this system from a legislative perspective. Due to different positions, statuses, and identities in the criminal case handling process, lawyers involved in plea bargaining cases have a stronger subjective judgment on whether the leniency system for plea bargaining is ultimately applicable to the criminals they serve. Therefore, whether there can be effective dialogue and interaction between prosecutors who charge crimes and lawyers who provide defense services for criminals regarding the application of this system is also related to whether it can achieve a win-win effect. Third, from the perspective of legislation, it should be proposed that when the criminals involved in the case agree to apply the system of lenient punishment for pleading guilty, but the lawyers who serve them refuse to apply the system and also refuse to sign the affidavit, and the suspect and defendant cannot change their lawyers, they can consider creating a highly targeted verification and veto system. When the lawyer of the criminal involved in the case holds a negative attitude towards the application of the system, but lacks a detailed formal explanation, or although they have provided a relatively detailed formal explanation, for the confession and punishment cases that are still under review and prosecution by the procuratorial organs, after holding a case discussion meeting with all the prosecutors in the internal institution where the prosecutor in charge of the case is located, they ultimately believe that the reason for the lawyer's denial lacks evidence support and legal basis.

#### **4.2. Innovate case handling ideas to achieve the organic unity of independent and free choice of confession and punishment, as well as inherent criminal procedural rights of self rescue and self-help**

One should objectively and dialectically examine the relationship between the system's autonomy, freedom, and inherent criminal procedural rights, as well as its self rescue and self-help nature. It is necessary to fully realize that after the first instance verdict of a criminal case, appealing to the higher court within the prescribed time limit and appealing to the relevant judicial organs after the criminal judgment takes effect is an obvious, inalienable and only in specific circumstances right of relief for the appellant and the serving criminal. The leniency system of confession and punishment has existed in all criminal case procedures from investigation to retrial since its establishment. Through comparative analysis, it can be found that although the two are not completely consistent in their focus, they can coexist and promote and complement each other on this basis. The second is that when the prosecutor handling the case makes contradictory and frequent swings in the key point of whether to agree to the application of the system when encountering the criminal element involved in the case, such as reviewing the investigation file, transferring evidence for verification with the case, returning or supplementing the investigation on their own, filing a public prosecution with the same level trial authority, appearing in court to accuse the crime, and expressing opinions in court, they must handle it carefully. One should never use their attitude on the spot as a criterion for judgment, or even rashly draw so-called conclusions based on it. Based on the overall situation

of the whole case, the evidence chain of the whole case should be combed and analyzed repeatedly, and the attitude of the suspect and the defendant to plead guilty and accept punishment since they were brought to justice should be comprehensively examined, so as to speculate the underlying intention behind their attitude on the spot, whether they really disagree with the application of the system of pleading guilty and accepting punishment, and refuse to give up the inherent right of self rescue and self-help in criminal procedures; It is true that all the criminal facts have been truthfully stated. In the judicial practice of our country, the withdrawal of the defendant's plea of guilty should not be judged as a high personal danger, nor should it be regarded as a sign of a bad attitude towards confession. [5] Thirdly, while insisting on the parallelism between the two, we should also consider striving to achieve the most reasonable allocation, utilization, and savings of relatively limited or even scarce judicial resources, such as strengthening the voluntary judicial review of confession through pre-trial conferences and other forms. [6] The procuratorial organs can assist the same level court in persuading the defendant to abandon the appeal and the appellant to withdraw the appeal in cases where the defendant pleads guilty and accepts punishment, in order to achieve the goal of withdrawing the appeal and serving the sentence. For cases where the defendant pleads guilty and accepts punishment and appeals occur after the case is closed, measures should be taken to avoid the situation of hierarchical appeals and entanglements, and to minimize the burden of litigation caused by appeals.

#### **4.3. Improving the guarantee mechanism for voluntary confession and punishment in serious criminal cases from all aspects and multiple perspectives**

First, prosecutors should be soberly aware of the obstacles and difficulties faced by suspect and defendants involved in relevant criminal cases who finally succeed in making them agree to apply the system of plea of guilty and lenient punishment in criminal cases involving serious crimes and severe punishments, whether in the different stages of criminal prosecution handling cases or in the stages of handling cases at different trial levels. But it is also because of this that we must always believe that: the prosecutor has the ability and patience to achieve this difficult goal, and only when he believes that, can the suspect, the defendant and even the defender believe that. The second is whether the suspect and defendant in these criminal cases should be prosecuted according to law, whether they should be approved for arrest according to law, or whether they should take other criminal coercive measures. The prosecutor or prosecutor's team responsible for handling the case should carry out relevant work on the application of the leniency system for confession and punishment. When carrying out confession and punishment work, they should persist in being patient and meticulous, and provide clear definitions and effective guidance to the criminals involved. For certain serious criminal cases involving cruel means to commit murder, large quantities of drugs, and causing significant economic losses, the leniency system for confession and punishment should not be abandoned. Instead, the core and key points should be grasped, and targeted measures should be taken as soon as possible to ensure that the criminal is not only trapped or restricted by some factors involved in the criminal case, such as the cause of the criminal case, the severity of the punishment, the criminal methods, and the results of the crime. By organizing and summarizing the entire content of the case, judging and controlling the evidence chain, and analyzing and clarifying the relevant laws and regulations, the criminal involved can deeply realize that even if they have committed extremely serious criminal crimes, they may receive lenient punishment through the application of this system. A valuable opportunity for leniency, And the extent of leniency in handling cases is also extremely considerable, avoiding being trapped in preconceived notions of serious crimes and improving the defendant's right to know. [7] The third is for criminal cases with heavier or longer substantive criminal penalties. For

example, in the initial sentencing, the punishment may be immediate execution of the death penalty, a two-year reprieve of the death penalty, life imprisonment, or a fixed-term imprisonment, but the sentence range is between ten and fifteen years. At the legislative level, it is necessary to explore the most timely, scientific, reasonable, pragmatic, and feasible support mechanism for determining the specific types of penalties that are in line with the actual situation of the case and smoothly calculating the specific sentence based on this. It is gratifying that through the specific business practice of handling criminal cases, prosecutors and judges have successively discovered several related provisions that are scattered and created in different types of criminal law interpretations, which are related to the quantifiable sentence range of traditional criminal law meanings such as death sentence with reprieve and life imprisonment, which are considered to be unquantifiable and calculable.

#### **4.4. Targeted treatment during lengthy criminal proceedings to achieve timely review and supervision**

One is that even in this marathon like lengthy criminal proceedings, the voluntary admission of guilt and punishment by the defendant in the original trial must always be given high priority. It is not enough to deny the defendant's previous voluntary admission and punishment just because the criminal case has entered the second instance or retrial procedure. For those who withdraw their appeal after appeal, voluntarily plead guilty and accept punishment during the second instance after appeal, and for those whose reasons for initiating the trial supervision procedure are unrelated to the defendant in the original trial, such as the omission of criminal records or the recovery of illegal gains, the voluntariness of their confession and acceptance of punishment should be comprehensively considered and comprehensively grasped. Secondly, if there are changes in the facts of the crime, key evidence, or sentencing circumstances during the retrial or retrial period, and the defendant in the original trial has no defense counsel or does not understand such changes, the prosecuting attorney should make full use of the opportunity to appear in court for public prosecution, explain the reasons and legal basis for the changes to the defendant in the original trial through evidence presentation, public prosecution opinions, court debates, and adjust sentencing recommendations in a timely manner according to the situation. Thirdly, if it is found that the facts of the case are unclear or the evidence is insufficient after being remanded for retrial or the retrial is initiated, it shall not be deemed as a reversal of confession due to the defendant's refusal to plead guilty and accept punishment in the original trial. If the defendant in the original trial always truthfully confesses but refuses to plead guilty and accept punishment, it cannot be regarded as a reversal of the confession. Fourthly, in cases such as second instance appeals and retrials where the sentencing recommendations of the People's Procuratorate may weaken, when the presiding judge exercises discretionary power, follow-up attention, supervision, and evaluation should be carried out, and if necessary, prosecutorial suggestions or even protests should be made regarding the proposed punishment and sentence. For example, for those who, after examination, have no legitimate and reasonable grounds for appeal and simply use the principle of "appeal without additional punishment" to delay, and only plead guilty and accept punishment during the second instance, or if they plead guilty and accept punishment during the second instance but their previous confession and acceptance were not stable, it should be recommended that the second instance court strictly control and supervise the leniency obtained from their confession and acceptance during the second instance.

## **5. Conclusion**

With the continuous development of Chinese society and the improvement of the socialist rule of law system with Chinese characteristics, the voluntary guarantee of leniency for confession and punishment has taken shape and accumulated certain experience after years of exploration,

and is developing rapidly and steadily. As a new mechanism in China's Criminal Procedure Law, the voluntary guarantee of leniency for confession and punishment is normal to encounter problems during its development. At present, the problems faced are both challenges and opportunities. We believe that through persistent efforts, the relevant mechanisms for voluntary protection of the leniency system for confession and punishment in China will become more perfect and achieve fruitful construction results.

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