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Study on the Prosecution-Defense Balance in the Plea and Penalty Leniency System

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Abstract

Since the system of plea bargaining and leniency was written into the Criminal Procedure Law in 2018, it has become an important part of the criminal procedure in China. The balance between prosecution and defense is the key to the good operation of the leniency system of plea bargaining, and whether or not the balance between prosecution and defense is reached relates to whether or not the system can operate normally. However, in the practice of the system, there exists unequal status of prosecution and defense, asymmetric information of prosecution and defense, and unequal negotiation ability of prosecution and defense. The "path dependence" of the system reform on the original authoritarianism, the "personal tendency" of both the prosecution and the defense, and the conservative system design are the main reasons for the imbalance of the prosecution and defense relationship in practice. Through the establishment of the concept of plea bargaining system, the automated behavior and behavioral inertia, clear system of the accused to start the right to deepen the implementation of the prosecution to explain and inform the obligation to improve the accused to strengthen the protection of the right to defense, the court to strengthen the review of the court hearing, and to build an effective judicial remedy, with a view to solving the problem of imbalance in the plea of guilty to punishment, and ultimately to achieve the equality of the prosecution and defense.

Keywords

Guilty plea leniency, prosecution and defense balance, prosecution and defense negotiation, duty counsel.

1. Introduction

Looking for alternative mechanisms to formal trials, in October 2018, the Standing Committee of the National People's Congress passed the Decision on Amending the Criminal Procedure Law of the People's Republic of China, and the system of pleading guilty and accepting punishment with leniency was formally established. The partial transition from adversarial justice to consultative justice is a worldwide trend in criminal justice change, and China's plea and punishment leniency system is among them[1].The system of plea bargaining and leniency is not only the result of the long-term cultivation of the soil of China's local judicial practice, but also draws on the experience of the extraterritorial plea bargaining system, especially the plea bargaining system. The plea bargaining system is under the auspices of national public power, the prosecution and the defense through equal consultation to reach a settlement of criminal disputes, cooperation and mutual benefit are the starting point of the system of plea bargaining and leniency. Therefore, the normal operation logic of the system of plea bargaining leniency is to be pursued as a criminal procedure to participate in the subject's qualification confirmation, as well as on this basis, supporting the prosecution and defense balance of the litigation mechanism. However, because China has not fully realized the process of adversarial justice in

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criminal proceedings, some internationally accepted principles of criminal substantive or procedural law have not yet been established in China's criminal law. If the rights and obligations of the prosecution and the defense in the plea bargaining leniency system are not reasonably allocated, and a corresponding prosecution-defense balancing mechanism is constructed, "the prosecution may take advantage of the asymmetry of information, as well as other resources, to suppress the person being pursued, and force and induce him to accept the negotiated terms." [2]The reasonable configuration of the prosecution-defense relationship in the plea bargaining leniency system is the core of realizing the balance between prosecution and defense.

In view of this, in order to give full play to the function and value of the system, this paper intends to analyze the problem of imbalance between prosecution and defense in the system based on the actual situation, with a view to correctly understanding the system of leniency of guilty plea in the criminal procedure law, and promoting the formation of a consensus on the dispute resolution between the prosecution and defense parties in the equal consultation.

2. Problem: Imbalance Between Prosecution and Defense in The System of Leniency of Plea and Punishment

2.1. Unequal status of prosecution and defense

In the plea bargaining system, "equal consultation" is the source of legitimacy and vitality. But in the plea leniency system, the consultation is dominated by the power to replace whether it is the start of the program, the consultation process, or the results of the consultation (sentencing opinions) to adopt, basically showing a unilateral domination of the pattern of the procuratorate. The most important element of consultation: the choice of procedural application and substantive disposition has been attributed to power, failing to reflect the spirit of equal consultation.

First, the procedural application failed to reflect the consultative nature. For example, in terms of trial procedures, prosecutors should have been guided by Article 34 of the Guiding Opinions on the Application of the System of Pleading Guilty and Accepting Penalties in a Lenient Manner (hereinafter referred to as the "Guiding Opinions") and the relevant provisions of the Criminal Procedure Law to make recommendations on the application of procedures, but in practice, because of the short deadlines and other reasons, many of the cases that should have been subject to the speedy trial procedure could only be subject to the summary procedure or ordinary procedure. However, in practice, because of the short deadlines and other reasons, many cases that should have been subject to the speedy trial procedure could only be subject to the summary or ordinary procedure, which did not reflect judicial efficiency. In other words, in practice, the prosecution's procedural recommendations do not start from the protection of the rights and interests of the accused, but rather are "one-sided".

Secondly, the prosecutor dominates the negotiation process. The prosecutor is willing to plead guilty. Some prosecutors did not seriously fulfill the obligation to inform and explain, only in accordance with the practice of reading out the content of the legal instrument, without detailed explanation, regardless of whether the prosecutor understands, continue to promote the process, the sentencing, and the procedural application of the proposal. The rights and interests of the accused are not fully protected, subject to their own educational quality, lack of legal knowledge, the accused do not fully understand the system of leniency in plea bargaining, can only be a simple literal knowledge of the system, how to negotiate, how to leniency, how to get their own satisfaction with the results can not be correctly predicted and grasped, coupled with the lawyer's effective help is insufficient, can only be completely passive to listen to the prosecution's command, be The lawyer can only be completely passive and listen to the prosecution's command, being simply informed of the possible future penalties and procedures

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to be applied, and has to answer whether or not to agree with the "content of the negotiation". This process of sentencing recommendations and procedures for the application of full of passivity and ignorance, in this process, the accused did not really consult with the prosecution, basically only agree or reject the prosecution's sentencing recommendations and procedures for the application of the right, and in practice most of the accused is to choose to agree to, and only a small number of accused of the content of the consultation to put forward their own questions. The performance of the "listening to the advice of" litigation style, the subjective qualification of the accused has not been reflected, the consultation process is full of passivity, and thus can not be accused of pleading guilty to the authenticity and voluntariness of the guarantee.

2.2. Prosecution and defense information asymmetry

The right to know is one of the preconditions for the accused to be able to negotiate with the prosecution on an equal footing, if one party has the advantage of information and the other side of the information is blocked, in the negotiation of the disadvantaged party will be blind and passive, the authenticity of the negotiation and the voluntariness of the negotiation can not be guaranteed, the negotiation of the agreement and the balance of the talk. The problem is:

First, the lawyer's right to read the file plays a limited role. China's criminal procedure at present did not establish the right to read the system, only by giving the defender the right to read to help the accused to reach the knowledge of the evidence, such as the "guiding opinions" 12 provisions, duty lawyer "can" access to the case file materials, but the practice of this kind of indirectly informed of the great limitations. First of all, the investigating and prosecuting party in the process of collecting evidence information is easily influenced by the preconceived idea of conviction, and thus intentionally or unintentionally ignores that the pursued person is innocent, guilty of minor evidence information. Secondly, the exercise of the right of the defense to read the file is limited to the examination and prosecution stage, at the same time part of the file due to legal provisions can not be accessed or access is limited, as well as in practice, not all the evidence will be transferred to the file, subject to the scope of the investigating authorities and prosecuting authorities to provide the file, the right of the defense to read the file is severely restricted. Again, because of the law is not clear (such as witnesses to prove the content of verification is not clear) coupled with the investigating and prosecuting authorities tend to limit the pre-trial notification of the attitude of the defense out of risk aversion awareness of the right to use the right to read the file, and therefore will be selective to the prosecuted person to inform. All of the above lead lawyers to read the right to play an effective role, resulting in the prosecution and defense information being far from being informed by the prosecuted side of the defects in information caused by the prosecuted person's right to know can not be guaranteed.

Second, "difficult to meet" problem. First, there is a lack of institutional safeguards. Due to our country plea leniency system will duty lawyer defined as "legal helper" rather than "defender", so duty lawyer to meet with the client has always existed theory and jurisprudence on the controversy. Whether duty lawyers can meet with their clients depends on the relationship and degree of cooperation between the public prosecutor and the law. Although the Guiding Opinions give duty lawyers the right to meet with their clients, there is still the problem of weak operationalization. Secondly, duty lawyers are not motivated enough to meet with their clients. For a long time, China's legal aid lawyers have basically adopted the practice of "meeting with the client once", "reading the file once," and "appearing in court once", and the quality of legal aid cases is not high. The quality of legal aid cases is not high, not to mention duty counsel, whose legal status is inferior to that of legal aid lawyers. There is no adequate one-on-one communication between the prosecuted person and the duty lawyer, and they even meet only when signing the recognizance, so it is difficult to guarantee voluntariness and judiciousness.

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2.3. Unequal Consultation Capability between Prosecution and Defense

2.3.1. The lack of effective legal help for the prosecuted person

Criminal proceedings, the accused due to their own conditions, knowledge, understanding of the law, the mastery of the negotiation skills and other deficiencies, is unable to fight with professional prosecutors, and therefore need the effective help of lawyers, to achieve the prosecution and defense in the litigation of the ability to equal. At the same time, the negotiation of justice simplifies the role of the procedure and trial, resulting in the accused's decline in the ability to defend, and the legitimacy of the negotiation of justice from the prosecution and defense of the equality of negotiation, so more need for lawyers to provide effective legal help. However, the plea leniency system in the lawyer's role in the formalization has not led to an effective defense being realized.

First, the duty lawyer was reduced to a witness. In practice, the prosecution dominates the negotiation process, resulting in the negotiation process of the lawyer's participation is low: on the one hand, the duty lawyer in the plea of guilty and punishment during only can only provide formalized legal help. Although the duty lawyer's right to help throughout the whole process of the proceedings, but the investigation stage of the prosecution has no right to obtain the case materials, at the same time can not provide or verify the information to the prosecuted person, there are some cases due to the nature of the case prohibit lawyers from intervening; on the other hand, the practice of duty lawyer involved in the case of plea bargaining case time late and participate in the case of the time is too short, the process of the duty lawyer simply do not have the time to the prosecution to grasp the litigation information to understand, and with the prosecuted person to understand the information, and the lawyers have no time to participate in the process. Information to understand, and the prosecution to verify the authenticity of the evidence, so it is difficult to put forward targeted advice and suggestions, can not be in the consultation for the prosecution to put forward substantive help, reduced to the formation of the statement of witnesses, and a lawyer on duty to be more than one on duty to provide legal help, there is no time to understand the details of the case for the prosecution to provide effective legal help.

Second, the duty lawyer's "position bias". Duty lawyers in the actual stationing process, with the investigative organs, procuratorial organs, staff contact time far more than with the prosecuted person contact time, are vulnerable to the influence of public power organs. At the same time, duty lawyers are basically local practicing lawyers, many of whom have a better relationship and more interaction with the procuratorial authorities. [3] plus the fact that the right of duty lawyers to meet with the pursued person is subject to many restrictions, and the duty lawyers have less time to meet with their clients and meet with them in late time slots. The above problems will make the lawyer's impartiality is suspected, in order to maintain good relations with the procuratorial organs, duty lawyers in the legal helper will not be a high probability of defense lawyers for the prosecuted as dedicated, consciously or unconsciously will substituting themselves into the role of the prosecution's friends, at the same time, in practice, some of the procuratorate's substantive staff also believe that the duty lawyers should be the procuratorate's allies, these circumstances lead to duty Lawyer's position is naturally susceptible to the prosecution's influence.

2.3.2. The court's effective review of the mutation

First, the "court trial has become deflated". Most of the court hearing plea leniency cases spend very little time, simple cases spend a few minutes in court, slightly difficult cases ten minutes, only difficult cases will exceed half an hour, such "efficiency" makes the judge almost no time to focus on the authenticity of the case, the voluntariness of the effective review. In practice, due to the plea of guilty and punishment to the pursuit of efficiency, and the voluntariness of the review of the file, the review of the file is very strongly dependent on the file, as the file

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material is already enough to prove the voluntariness of the accused, so that the review is a formality. The principle of direct speech is a good recipe for detecting voluntariness, but the more formalized voluntary review so that the judge usually does not choose to talk with the prosecuted person in detail, there is no time, no opportunity to observe the details of the prosecuted person's speech and demeanor, the state of the will and the ability to identify, which is likely to lead to part of the involuntary guilty plea leniency cases can not be detected.

Second, the review method is "logically inverted". The court's review of the voluntariness, legality, and truthfulness of the plea and punishment mainly centers on the written statement, focusing on the facts of the case. There is no excuse for the high degree of attention to the statement of consent, but in practice, some courts will voluntariness review to confirm whether the statement of consent is signed by the person himself, this understanding of the "backwards logic is 'signed the statement of consent of the suspect is voluntary'", [4] voluntariness is inverted through the authenticity of the signature. Under this logic, the court reviews the way and direction of the major error, although the efficiency of the guarantee is also in line with the provisions of the law and to protect the authenticity of the case, but in fact, the voluntariness of the pursued person, the legality of the review of the neglect, damage to the legitimate rights and interests of the pursued person, resulting in the imbalance between the prosecution and the defense.

Thirdly, judges are limited in their ability to change sentencing recommendations. Article 201 of the Criminal Procedure Law provides that the judge "shall generally adopt the recommendations of the procuratorial organs"; the legal provisions of the judge's power of review are limited, and the power of the prosecutor is expanded. At the same time, China's criminal prosecution in addition to the only public prosecution, but also legal supervision organs, the investigating authorities, the legal activities of the judiciary has the right to legal supervision, although the actual effect of this supervision power is limited, but in criminal proceedings undoubtedly strengthened the status and ability of the prosecution, the prosecution of the judge's right to legal supervision, but did not give the judge the corresponding countermeasures, so that the guilty plea Plea leniency system in the judge's right to review is very difficult to play an effective role. The above reasons make the judge want to pretrial procedures for substantive review of the litigation behavior into empty talk, resulting in its inability to effectively exercise the right to review, and thus unable to allocate litigation resources for balance.

3. The Reason: The Plea Leniency System in The Prosecution and Defense Relationship Is an Imbalance

3.1. "Path dependence" caused by authoritarianism.

For a long time, China's criminal justice has a distinctive feature of authoritarianism, in the criminal procedure, the prosecution has been to discover the true for the purpose of the litigation, the formation of the prosecution of the truth and procedural progress of the dominant control, "In contrast, the defense is more of a subject of power to carry out procedural action." [5] Therefore, China's criminal procedure has always presented the litigation structure of "authoritarianism + punishment of crime". In practice, the prosecution pays more attention to punishing the crime, and pays insufficient attention to the criminal procedure, and the prosecution's sense of justice often comes from punishing the prosecuted person rather than neutral adjudication, thus it is easier for the judge and the prosecutor to reach a consensus, which leads to the law and the prosecution's skepticism and exclusionary attitude towards the prosecuted person, and creates the problem of the judge and the prosecutor suppressing the prosecuted person in the litigation procedure together in practice.

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China's plea bargaining leniency system is for the purpose of reflecting the leniency and strictness of the criminal policy and easing the pressure of criminal cases in China, that is, it is stimulated by external factors rather than the system itself being a product of the development. First, due to the phenomenon of lightning, the criminal circle in China, the number of criminal cases has increased dramatically, and the relatively limited judicial resources and the rapid increase in the number of criminal cases are exacerbating the contradiction. Secondly, China's criminal prosecution of leniency and strictness of criminal policy for a long time there is a lack of effectiveness and lack of call, the reason for this is that the prosecution in the implementation of the policy is in a dominant position, the status of the prosecutor can only be passive with the prosecution, and often appear in practice, the prosecutor is often with the prosecution, but promised leniency concessions have not been realized, "so the so-called" in the society. 'Confess to leniency, sitting through the bottom of the prison; resist to strictness, go home for the New Year. " From the observation of the overall environment of criminal proceedings in China at present, it can be seen that it has not undergone any fundamental change, and China's plea bargaining leniency system is still operating in a strong authoritarian criminal proceedings environment.

Therefore, in the criminal procedure environment has not changed, plea leniency system ahead of the prosecution at the same time can not be too restrictive conditions, plea leniency system is bound to be affected by the traditional criminal procedure, even if the system designers set up a duty lawyer system and inform the obligation to explain, but also difficult to change the plea leniency system in the traditional criminal procedure "inertia" under the action of the system. The role of the "inertia" in the traditional criminal procedure, the status quo, makes it difficult to make significant changes in a short period of time.

3.2. Prosecution and defense of the "personal tendency"

Criminal procedure, the prosecution and defense due to long-term internalization in the operation of the process and the formation of their own and the criminal procedure of a particular point of view and cognition, that is, in the plea bargaining leniency system, the prosecution and defense are still traditional criminal procedure justice, "automated behavior" in the proceedings.

China's procuratorate has a special status in criminal proceedings, as the country's legal supervisory body, and this special status of supervising the law makes it transcend the role of the prosecution, and in practice, it has a "superior" status and the power to "command" the prosecuted person. At the same time the procuratorate is also China's only public prosecution, the obligation to discover the entity real, that is, the obligation to identify and punish crimes, the obligation to discover the truth so that the prosecutor is very offensive and repressive, which is for the prosecution to suppress the pursued person to provide a natural convenience. In this kind of litigation structure, the prosecution for a long time to fulfill the duties and obligations of the prosecutor's rights and obligations of the formation of the inherent cognition, so that it is very difficult to give up their superior position in the system of leniency in the plea system and the accused of equal treatment, listen to the views of the accused of and communicate with them.

In our country's litigation procedures, the accused passively accept the results of the penalty as the norm, so the accused basically do not have their own understanding of the main body of the proceedings. At the same time due to the lack of effective defense in China, the accused can not accurately access to litigation information, can not accurately understand the law, can not effectively exercise their rights, so that in the system of leniency in plea bargaining even more difficult to realize that they have the right to negotiate with the prosecution on an equal footing. At the same time, China's criminal cases in pre-trial detention is the norm, relative to the accused, if he thinks his case facts are clear, the evidence is indeed sufficient, can not escape

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punishment or as soon as possible to get out of the litigation process, will be the prosecution put forward sentencing recommendations such as leniency preferences as a relief or gift, thus the practice of the accused are mostly on the prosecution of plea bargaining all accept.

Lawyers in criminal cases in China are not only the advocates of the accused agent, but also the protectors of justice in China. This professional qualification plays a distinctive role in the traditional criminal procedure, as it has a distinctive feature, the defense of independence, which is also the reason why the traditional criminal procedure in our country is the reason for a high rate of innocence defense. But in the plea bargain case, because the accused pleaded guilty, the operation of the innocent defense space basically does not exist, resulting in lawyers in this type of case to exercise the accused's right to defense is hindered, coupled with lawyers practice rights protection insufficient reasons such as lawyers are difficult to change the original thinking, can't effectively participate in the case of plea bargaining from leniency.

3.3. The design of the leniency system is conservative.

China's plea leniency system in the design, in order to prevent the abuse of rights, is in line with the existing judicial system, and the is is set up with a lot of restrictions. But at the same time, these restrictions also inhibit the plea bargaining leniency system of vitality, "more of a you plead guilty, I leniency 'consensual relationship," which is also the cause of the prosecution and defense imbalance.

In order to safeguard the fairness of the plea bargaining system and eliminate the public's concerns about plea bargaining, many restrictions were placed on the plea bargaining system at the time the system was designed. These conservative designs can, on the one hand, prevent the alienation of the power of negotiation, safeguard judicial justice, and promote public acceptance. But on the other hand, they have suppressed the vitality of the system of leniency in plea bargaining, and also led to the intensification of the passive position of the accused in the system, which in turn has relatively expanded the dominant power of the prosecution, resulting in an imbalance between the prosecution and the defense. For example, the review of the necessity of pretrial detention has become a mere formality. In the case of plea bargaining, whether to plead guilty or not is an important judgment standard of the life danger of the accused, but out of the public's concern for criminals, only plea bargaining as one of the considerations of "can not be detained", in fact, exacerbates the control of the prosecution over the accused [6]; Another example, in order to prevent the public from accepting the plea bargaining, the prosecuted person in the actual procedure, the choice of plea bargaining is only to agree and refuse, without the option of negotiation, such a setup leads to the process of negotiation and the results of the negotiation is dominated by the prosecution and appears to be extremely irregular, and the negotiation mechanism operates arbitrarily with a large number of obvious problems.

The system of leniency in pleading guilty and accepting punishment is premised on the voluntariness of the person being pursued, and thus Article 23 of the Guidance stipulates that "criminal suspects shall not be forced to plead guilty", but at the same time, the Criminal Procedure Law also stipulates that the person being pursued shall be obliged to "answer truthfully", so that the right to silence has not yet been established in our country. The right to silence has not been established in China, and at the same time, the investigating authorities should "conduct education on guilty plea", which in fact implies the suspicion of "coercion"[7], Coupled with the closed nature of the investigation stage in China and the limited involvement of lawyers, it is very easy to suppress the possibility of an involuntary guilty plea of the pursued person.

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4. Improve: The Path to Realize The Balance Between Prosecution and Defense in The System of Leniency of Plea and Punishment

The prosecution and defense relationship is balanced, depending on the reality of the conditions, the rule of law concept of updating, and the system improvement of the joint role. Realistic conditions is the plea leniency system to achieve the material basis of the balance between the prosecution and the defense, can not think of an overnight solution to the imbalance between the prosecution and the defense, the need to safeguard the rights of the accused as the core of the premise of targeted plea leniency system through the improvement of the supporting facilities, the judicial concept of simultaneous updating, and systemic reforms to achieve the balance between the prosecution and the defense.

4.1. Balancing the prosecution and defense of the status of the proceedings

4.1.1. Further define the concept of equal consultation between the prosecution and the defense

First, change the judicial staff's concept of the case. The author suggests that through the study, lectures, and other ways, public security and judicial staff should establish a plea bargaining leniency system by applying the concept that they should uphold consultation, communication, and cooperation. Prosecution and defense in the plea bargaining leniency system is not a confrontational state, the accused is through the derogation of their own part of the procedural rights, so as to obtain the entity and procedural leniency concessions, and the prosecution is to reduce the burden of handling the case, highlighting the spirit of human rights protection of the case, to give leniency benefits. Prosecution and defense is through cooperation towards a win-win situation, at the same time make all parties involved in the interests of both, so in the practice of case management, the judicial staff to establish the spirit of tolerance and cooperation, with greater initiative and initiative to create a good communication and negotiation environment, so that the plea leniency system to get a good concept of operation.

Second, change the lawyer defense concept. With the implementation of the system of leniency in plea bargaining, the lawyer's defense is facing a series of new opportunities and challenges. This means to change the defense concept and way, from "confrontational" to "consultative" or "compromise" defense.[8] Specifically, one is to focus on the guilty defense; the vast majority of defendants have pleaded guilty and admitted punishment, and the focus of the defense is shifted to the negotiation of the sentence rather than the innocent defense. Second, avoid "deadlock", especially deadlock procedural issues. For some procedural flaws, through the negotiation of conversion into sentencing concessions. Third, actively reach an understanding with the victim in exchange for non-custodial measures and the application of probation, to maximize the advantages of restorative justice.

Third, to transform the concept of justice for victims as well as society as a whole. Pleading guilty to leniency is not to indulge in crime, not to mention "money in exchange for punishment", but in order to repair the damaged social relations as soon as possible. Procuratorial organs should also grasp the scope of application of the system of leniency of guilty plea; not one-sided pursuit of the application of the rate of application of the system of leniency of guilty plea will be applied to cases that are clearly not applicable.

4.1.2. Clarifying the right of the prosecuted to initiate the system of guilty plea and leniency of punishment.

In response to the problem of unclear provisions of the negotiation program, the author believes that the law and judicial interpretation should make it clear that the prosecuted party enjoys the right to start the decision. Specifically, if the prosecuted party voluntarily pleads guilty and accepts punishment during the investigation stage, the investigating authorities should be given the right to consult formally, i.e., the investigating authorities can collaborate

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to help the prosecuted party initiate the leniency system for guilty pleas and penalties. In addition, cases of guilty pleas and penalties can be labeled and categorized to help streamline cases and improve procedural efficiency. Review prosecution stage of the accused voluntarily plead guilty and accept punishment, in addition to the procuratorial organs ex officio, should consider the accused side of the procedure to start the right to give, the accused have the right to take the initiative to apply for the application of the system of plea of guilty to leniency, do not need to wait for the procuratorial organs agree to the application, of course, the procedure to be applied for after the prosecution to the case of the case to see whether it is in line with the scope of the cases of the system of application of the system of plea of guilty to leniency (for example, insufficient evidence of the facts are not clear). For example, the case of insufficient evidence and unclear facts should not be applied to the system of leniency of plea and punishment), after the start of the procedure, the procuratorial authorities should still fulfill the litigation rights and procedures to inform the obligation, and plea leniency procedures should be clear not to start the defendant's case, there is no clear general should be considered that can be initiated.

4.2. Symmetrical prosecution and defense information accessibility

4.2.1. Deepening the obligation to inform and explain the rights of the prosecution.

The implementation and deepening of the prosecution's obligation to inform and explain. The accused in the plea bargaining leniency system reliance interests, should be clear that the prosecution in addition to the specific rights and obligations to perform the plea bargaining leniency notification, but also in the consultation process of procedural options recommendations, sentencing recommendations, etc. to the accused to do a detailed explanation, so that the accused can be clearly know can get the procedural and substantive benefits of leniency and the application of the procedure and the reasons for the recommendation of the sentencing. For example, it explains the application of procedural leniency such as speedy trial, summary trial, ordinary trial, etc., and the content of custodial measures, non-prosecution, and sentencing and other substantive leniency options, so as to enhance the ability of the accused to correctly and completely understand the information on plea bargaining and leniency.

4.2.2. Clarifying the supply of leniency rights

Sentencing recommendation in the entity leniency is the core content of the negotiation, which is an important manifestation of the agreement between the prosecution and the defense, and is also the part that the prosecuted person is most concerned about. The more the prosecution can provide an accurate and standardized supply of sentencing advice, the more the pursued party can anticipate the expected benefits, and the more it can reflect the balance between the prosecution and the defense, so the existing sentencing mechanism should be improved by improving the degree of sentencing standardization. Sentencing guidelines need to be expanded to include all crimes and types of penalties, to provide a reference for the practice of procuratorial organs, and to help case handlers improve the degree of standardization of sentencing recommendations. Specific "sentencing menus" should be set up to reflect the consultative elements of sentencing, based on the crime, the form of completion, the circumstances of the case, the subjective attitude of the prosecutor in pleading guilty and accepting punishment, the social investigation report, and the initiative to make reparations and apologies in cases where there have been victims, and in cases where there have been no victims, to salvage the social damage caused. In addition, for those who are not socially dangerous, bail or residential surveillance is applied, and the prosecuting party is encouraged to increase the proportion of non-custodial coercive measures applied. The principle of fewer arrests and more prudent arrests should be implemented, pretrial detention should be reduced, the status of the person being pursued should be improved, and electronic monitoring should

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be used in lieu of custodial sentences at a time when high technology is developing so rapidly. Pre-trial non-custodial application rate increased, which helps reflect the plea bargaining system of leniency preference, and at the same time, attracts other cases of the accused voluntarily choosing to plead guilty to avoid punishment.

4.3. Equalizing the negotiating power of the prosecution and the defense

4.3.1. Strengthening the safeguards for the defense rights of the prosecuted.

First, the proportion of defense lawyers in the leniency system should be increased. "In addition to micro-crime cases (such as cases with penalties of less than a custodial sentence), mandatory defense counsel should be implemented," such mandatory will not be abolished because of the waiver of the prosecuted. At the same time can learn from the U.S. plea bargain in the public defender system, the designated defense for the accused to provide those experienced, have a very rich experience in the field of criminal justice lawyers to defend their own, they have a sensitive grasp of the nuances of sentencing, the complexity of the negotiation as well as the practice of criminal justice, not only for the accused to provide a better defense, but also to prevent the accused by the prosecution of suppression and coercion of necessary means. It is also a necessary means to prevent the defendant from being coerced by the prosecution.

Secondly, there must be substantial participation of lawyers in the process of plea bargaining. Plea bargaining process of lawyer's substantive participation in order to be prosecuted to provide effective help, whether it is between the prosecution and the defense of the consultation, or the formation of the conclusion of the process, must first have a lawyer and the prosecuted consultation, lawyers to help the prosecutor's office and the prosecutor's office consultation can only be signed on the conclusion of the book.

Third, improve the duty lawyer system. First of all, an on-duty lawyer should be repositioned, from the role of a legal helper to the role of the class defender. Why can't the duty lawyer take on the role of a defender? Restricted by the reality of the conditions, now the duty lawyer directly into a defender is impossible to immediately realize, but can through the implementation of the duty lawyer to help implement the right to defend, the right to meet independently, the right to be interrogated by the accused in the presence of the right to interrogation and interrogation supervision rights to ensure the exercise of the right of defense, for the accused to provide substantive and effective help. Secondly, the specific details and procedures of the duty lawyer's right to legal advice, the right to meet with him or her, and the right to read the files should be implemented. Such as the exercise of the right to read the file, should be clear on duty lawyers when to exercise, what formalities are required, where to exercise, can exercise times, can use what means to read the file, read the scope and content of the file to clarify the right to read the file procedures, to help duty lawyers to exercise their rights effectively and quickly. Finally, improve the duty lawyer's treatment, stationed duty lawyer and defense lawyer income gap is too big is the duty lawyer formality reason, through improving the duty lawyer income, improving the duty lawyer's working environment, and other ways, improve the duty lawyer working environment and other ways to improve the duty lawyer perform the right to help the enthusiasm. This can be done by equalizing and improving remuneration according to the region itself, with remuneration being charged on a per-case basis.

4.3.2. Strengthening the review of court hearings

At present, the plea leniency case court trial is seriously deflated, to a certain extent, deviated from the "trial centrism", and is very easy to produce misdemeanor cases of wrongful convictions. The author believes that the trial simplification does not mean that the trial is virtual, but rather to play the role of the last judicial justice "firewall". The reason is that in the plea leniency case, the standard of proof inevitably declined.

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In practice, due to plea bargaining cases are mostly misdemeanor cases, part of the investigating authorities in the evidence is not enough attention, resulting in the investigation stage when the evidence already exists. Transferred to the examination and prosecution stage, some prosecutors, for the sake of efficiency, choose "with sick prosecution"; under the assessment, the prosecutor will be required to pursue lower quality, so the prosecution can only choose for the sake of efficiency "with sick prosecution". At this time, the prosecution will choose to pack several charges into a crime that is "packaged prosecution" by pleading guilty and sent to trial, which there is a crime there is a standard of evidence does not meet the standard, packaged prosecution will lead to the defense in order to other sentencing preferences and do not dare to raise objections to the existence of problematic charges. In order to deal with the aforementioned problems should be introduced to the judge to review the details of the evidence standards, that is, on the one hand, should strictly adhere to the evidence standards, to prevent insufficient evidence, conviction of doubtful cases into the plea, to determine the quality of the plea cases; on the other hand, should be divided into cases, for minor criminal cases, conviction of the evidence standards should be adhered to the "facts of the case is clear, the evidence is indeed sufficient ", but for the sentencing evidence standards, the author believes that the requirements can be lowered, the sentencing evidence of minor criminal cases can have minor flaws. Through the above way, one can ensure the effectiveness of the court review, and the second is to give play to the efficiency of the plea bargaining system. [9]

4.3.3. Constructing effective judicial relief

The construction of the withdrawal mechanism. Should be based on the different time periods to make specific provisions, the investigation stage of the failure to negotiate the case to continue to investigate and collect evidence and the accused still have the opportunity to continue to plead guilty and accept punishment; review and prosecution stage, the failure of the prosecution to negotiate the prosecution should be put forward a formal indictment, at this point in time to enter into the trial stage of the accused to continue to reach a plea of guilty to the prosecution; to the trial stage of the failure of the negotiation of both the prosecution and the defense, the judge should apply the formal criminal procedure for the trial of the case to make a decision on the verdict. When negotiations between the prosecution and the defense fail at the trial stage, the judge shall apply formal criminal procedure to try the case and render a judgment. At the same time should be clear in the trial stage, the accused still have the opportunity to reach a plea bargain with the prosecution, but should be such a failure to reach again after the negotiation of the opportunity to limit, can not be unlimited, the author believes that it should be divided into three kinds of cases: First, the prosecution reversed the negotiation fails to be pursued by the accused can continue to take the initiative to expect to reach a negotiation. Second, the objective conditions lead to the failure of the consultation in the obstruction of the problem, which is removed with reference to the voluntariness of the accused whether to reach a consultation. Thirdly, if the defendant repents, he or she should be restricted if there is no reason to do so, and if there is a legitimate reason, he or she may be allowed to continue to make a request for negotiation. At the same time, it should be clear that the defendant to plead guilty to the content of the confession can not be formal trial evidence against him, otherwise there may be prosecuted for pleading guilty to remorse and then be prosecuted to retaliate with more serious crimes, which is not conducive to the realization of the balance between the prosecution and the defense.

The safeguard of the right to appeal. First of all, the procuratorial organs should use the right of appeal prudently, according to the reality of the review of the appeal justification, and selective protest. For the court has adopted the prosecution's sentencing recommendations, the accused has enjoyed the degree of leniency with the entity preferences but still no justifiable reason to appeal, should be regarded as not admit guilt or not admit punishment or neither admit guilt

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nor admit punishment, then the prosecution through the protest to recover its original enjoyment of procedural and physical leniency preferences, which can be eliminated outside the appeal without justifiable reasons; for justifiable reasons for the appeal should not be stopped, and even Should maintain the justified appeal in order to safeguard the justification of the plea and punishment leniency system basis.

5. Conclusion

The imbalance between the prosecution and the defense is the norm, and the balance is an unattainable pursuit in practice, so the balance between the prosecution and the defense is the key to the improvement of the system of leniency in plea bargaining. Modern criminal procedure is the balance of prosecution and defense is the equality of the prosecution and defense, the balance of the prosecution and defense is the plea leniency system under the existing conditions of the equality of the prosecution and defense of the specific performance of the plea bargaining system of the balance of the prosecution and defense of the specific meaning of the two sides of the prosecution and defense of the status of equality, symmetry of information, negotiation ability to reciprocate. The guarantees for the balance of prosecution and defense in the system of leniency in plea bargaining are the principle of the main body of the proceedings, the principle of equality of arms, and the principle of checks and balances of power. The balance between prosecution and defense in the system of leniency in plea bargaining requires procedural support, not only the support of an effective defense, but also the implementation of the protection of the right to information of the prosecuted person, and even more indispensable to the implementation of an effective judicial review. In this way, a balanced prosecution-defense relationship can be achieved at all stages of criminal proceedings.

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