

The Leading Role of the Procurator in China's Plea Bargaining Process

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Abstract

The leniency system for plea bargaining in China is a plea bargaining system similar to plea bargaining in the United States. With the substantial increase in the application rate of the leniency system for plea guilty and accepting punishment, the criminal policy of "fewer arrests, careful prosecution and prudence" has become its due meaning. In China, the functions of censorship, arrest and prosecution are exercised by prosecutors. The burden of powers and responsibilities of prosecutors allows prosecutors to have procedural decision-making power and substantive disposition power in the plea bargaining process, that is, the procuratorial dominance. In the context of fewer arrests, prudent prosecution and prudent detention, prosecutors have greater discretion over arrest and prosecution during the plea negotiation process, coupled with the high adoption rate of sentencing suggestions in practice, the expansion of prosecutors' substantive disposition powers, and the procuratorial dominance further highlighted. However, we must clarify the relationship between procuratorial power and sentencing power, clarify the status and responsibilities of prosecutors, and further improve the leading role of prosecutors.

Keywords: leniency in admitting guilt and accepting punishment, procuratorial leadership, fewer arrests, careful prosecution and careful detention

1. Brief Description of the Status of Prosecutors in Plea Negotiations

Whether it is China's leniency system for guilt and punishment or the United States' plea-bargaining system, prosecutors play a key role in the process. The Sino-US plea negotiation process is essentially based on the value orientation of efficiency. In China, the Criminal Procedure Law provides the basis for the implementation of the prosecutor's leading sentencing suggestion. In practice, the high adoption rate of sentencing suggestion has established prosecutors predetermined effect of sentencing suggestion. It is destined that prosecutors should be the dominant players in the leniency system for confessing guilt and accepting punishment. In terms of procedural diversion, the main purpose of prosecutors in improving the leniency system for plea guilty and accepting punishment is to filter cases, reasonably control and categorize the cases that enter the trial process of diversion. In terms of pretrial procedures, prosecutors review arrests, review the social danger of criminal suspects, review evidence, confessions, and applicable procedures. Prosecutors are not only the main body of initiating the complaint, but also the guide of the investigation. (Long, Z.-Z., 2016)

The dominant position of prosecutors in the plea bargaining system is embodied in the filtering power used in the criminal procedure. The criminal procedure cannot function effectively without a perfect filtering mechanism; and the prosecutor who is entrusted with filtering the case cannot accomplish this task satisfactorily without a certain discretion. (Fionda, J., 1995)

2. Prosecutor Dominance Does Not Mean Unrestricted Power

Although judges in the United States occupy a respected position in society and their power is very important, it is also recognized that "the United States prosecutors enjoy such a wide range of powers, which undoubtedly shows that they occupy a central position in the criminal justice system". Some commentators even believe that US prosecutors "enjoy unparalleled independence and discretionary powers". (Zhang, J.-W., 2022) The "leading role" of US prosecutors is mainly reflected in the two pretrial procedures of "selective prosecution" and "plea

bargaining", which are reflected in the prosecutor's powers of witness immunity, prosecution decision power and plea bargaining power. (Alschuler, A., 1968)

The law even allows U.S. prosecutors to selectively prosecute criminal facts and charges, and consciously choose to prosecute, which itself does not violate the provisions of the Federal Constitution. US prosecutors have a strong "conviction mentality", so they are often criticized. In many cases, the purpose of plea bargaining is to convict the accused as much as possible. When his evidence is weak, the prosecutor will propose generous bargaining terms in order to overcome the defendant's inclination to go to trial. When, on the other hand, the prosecutor's evidence is strong, he will offer few plea concessions since the defendant whose chance for acquittal is slight will need only a small inducement to renounce his right to trial. (ANON., 1972)

However, the powers of U.S. prosecutors in plea-bargaining proceedings are not completely unrestricted, and the factors that prosecutors should consider when prosecuting are limited in state legislation and in the policies of the U.S. Department of Justice. For example, in the U.S. Attorneys Manual, prosecutors are required to take into account the seriousness, background, and personality characteristics of the defendant's criminal behavior when making sentencing, suggestion and must also fully consider public interests.

At present, Chinese prosecutors have fully implemented the leniency system for admitting guilt and accepting punishment. Pleas of guilt and leniency are conducive to resolving conflicts, promoting harmony, and achieving endogenous social stability. Despite the doubling of workload, prosecutors actively lead the exhaustion. Formulate sentencing recommendations and guidance, listen to the opinions of the parties and lawyers with simultaneous audio and video recordings, and ensure that pleas are voluntary and legal. Last year, the application rate exceeded 85%; the adoption rate of sentencing recommendations exceeded 97%; the first-instance verdict rate was 96.5%, 22 percentage points higher than other criminal cases, and a large number of appeals and were reduced from the source. (Zhang, J., 2022)

Articles 3, 5 and 7 of the Criminal Procedure Law of the People's Republic of China point out that the court should exercise judicial power independently. Sentencing power is a part of judicial power. The extremely high adoption rate of sentencing suggestion in the practice of the leniency system makes the "sentencing power" suspected of being transferred.

According to the data from the Supreme People's Procuratorate, more than 80% of all criminal cases were convicted and sentenced by the courts in accordance with the prosecutor's sentencing recommendations. Therefore, some scholars maintain that the prosecutor has obtained substantial sentencing power. However, the prosecutor's restrictions on the court's jurisdiction should be limited to a limited extent. First, the voluntary guarantee for criminal suspects to sign affidavits of guilt and punishment is worrying, and it is doubtful to what extent the sentencing suggestion reflect the substantive requirements of negotiation. If the content of the sentencing suggestion is really a unilateral expression of intention by the prosecutor, then the legitimacy of the sentencing suggestion should be questioned. Second, even if the prosecution and the defense reach an agreement, it is difficult to use it as a reason to restrict the right of trial. Sentencing power can be partially transferred to prosecutors, so that sentencing suggestion have certain binding force, but in any case, it is an unbreakable bottom line to ensure independent trial and implement the principle of final judicial decision. (Qing, Z.-W., 2022)

3. Improve Procuratorial Leadership in China's Plea Bargaining

3.1 Extending the Leniency System to the Investigation Stage

Although admitting guilt and accepting punishment is a system throughout the entire criminal procedure, its application in the investigation stage seems to be more valuable. The investigation stage is the process of collecting evidence to prove the facts of the crime. In addition to obtaining a confession when a criminal suspect pleads guilty and accepts punishment, collecting other evidence through the confession can end the investigation as soon as possible, save judicial resources, and improve the efficiency of litigation. Investigators should actively guide the application of the leniency system for admitting guilt and accepting punishment, so that criminal suspects can understand the legal provisions and consequences as soon as possible.

In some cases, the suspect's anti-investigation ability is relatively strong, the heavier expected punishment often makes the criminal suspect hesitant to deny guilt and accept punishment, which is accompanied by the possibility of subsequent repentance. The reliability of the statement of the accomplice in a joint crime is low, and the close interest between the accomplices determines that they have a strong motive for perjury. Sometimes, several accomplices may establish an offensive and defensive alliance before the crime to evade punishment to mislead the investigation. Personnel brought great difficulty in detection. But the most sturdy fortress is often

broken from within, and extremely confusing testimony and situations can be broken by a criminal suspect who pleads guilty and is willing to confess truthfully. While encouraging perpetrators to confess their guilt and repentance, and save judicial resources, accomplices are guided to admit guilt and accept punishment with a large margin of leniency and even sacrifice a certain amount of entity justice, and obtain their key testimony. In addition to the use of special investigation and technical investigation methods, it is self-evident that the criminal suspects who are in a subordinate position and play a lesser role are given greater leniency in exchange for their confessions and testimonies. (Wang, X.-H., 2021)

3.2 Conduct Plea Bargaining During the Arrest Process

In the stage of review and arrest, the prosecutor will review whether the criminal suspect meets various conditions for arrest, one of the most important conditions is social danger. Courts, procuratorates, and police shall take criminal suspects and defendants' admission of guilt and punishment as an important consideration in judging their social danger.

The concept of "fewer arrests, prudent prosecutions" requires that the work of admitting guilt and accepting punishment be brought forward to the stage of review and arrest. The leniency system for admitting guilt and accepting punishment not only requires that criminal suspects and defendants who plead guilty and accept punishment be given lighter sentences, but also requires more rapid and milder methods in terms of procedures and application of compulsory measures, including reducing arrest measures. The application of reducing arrest, conduct a review of the necessity of detention, and change the compulsory measures in a timely manner, and take leniency by not prosecuting criminal suspects who meet the conditions to be not prosecuted. The application of confession and punishment at the stage of review and arrest is also conducive to fixing the confession of the criminal suspect as soon as possible, and reducing the risk of changes and repetitions of the confession of the criminal suspect during the litigation process. In addition, prompting criminal suspects to voluntarily plead guilty and accept punishment as soon as possible will also help judicial organs to carry out the work of recovering assets and restoring losses, making up for the losses of victims, repairing social relations, and resolving social conflicts in the stage of review and arrest in advance.

3.3 Improve the Evidence Display System

In the theoretical tradition of discovery, prosecutors and defense lawyers are the subjects involved in discovery, but criminal suspects are not included. Article 4 of the "Provisions for Simultaneous Audio and Video Recording of the People's Procuratorate for Hearing Opinions in Cases of Pleading Guilty and Acceptance of Punishment" issued by the Supreme People's Procuratorate shall include the content of "evidence presentation according to needs", and clearly include criminal suspects in evidence discovery. subject scope. Evidence discovery can prompt criminal suspects to admit guilt and accept punishment, and it can also ensure the voluntariness and authenticity of criminal suspects' admission of guilt and punishment.

Prosecutors shall present the following evidence to criminal suspects and defenders: First, evidence proving the facts of the crime and the circumstances of sentencing. A comprehensive presentation of all evidence favorable and unfavorable to the suspect. Evidence disclosure of sentencing circumstances such as surrender, recidivism, meritorious service, etc., after the leniency system for admitting guilt and accepting punishment is applied, the fairness and scientificity of the final sentencing recommendation is highlighted. In order to release a greater degree of judicial goodwill to criminal suspects, it can be explored that the procuratorial organs formulate relevant processing results before the discovery of evidence, that is, if the criminal suspect admits guilt and accepts punishment, the procuratorial organ will make a specific sentence and sentence for sentencing recommendations in advance, in order to achieve equal consultation with criminal suspects and ensure the voluntary and equal nature of consultation. Second, show evidence of the legitimacy of the procedure when necessary. Procedural materials for relevant decisions to prove the legality of investigation and evidence collection, the legality of the application of compulsory measures, etc. (Bar-Gill, O., & Ayal, O. G., 2006)

The defense also has an obligation to present evidence. In order to avoid the occurrence of "evidence raids" due to unilateral possession of information, undermining the negotiation agreement and hindering the procedure of admitting guilt and accepting punishment, the discovery of evidence should be mutual. First, Article 42 of the "Criminal Procedure Law" stipulates that defense lawyers also have corresponding disclosure obligations, "The suspects collected by the defenders are not at the crime scene, have not reached the age of criminal responsibility, and belong to mental patients who are not criminally responsible according to law. The public security organs and the people's procuratorate should be notified in a timely manner." In the leniency system for admitting guilt and accepting punishment, expedited procedures are often used, and the trial time is relatively short. At present, the role of court trials in discovering the truth is relatively limited. This requires that defense lawyers' disclosure

obligations should be strengthened in confession and punishment cases, and should be informed of the existence of three specific situations in a timely manner, so as to avoid reverse proceedings and the occurrence of unjust, false and wrongful convictions. In addition, the efficiency of the flow of litigation procedures in plea cases is relatively high, requiring defense lawyers to promptly disclose clues or evidence about illegal or procedural flaws generated by the police and judicial organs in the process of investigation and evidence collection. This enables the public security and judicial organs to investigate and verify relevant clues as soon as possible, correct flawed evidence, and exclude illegal evidence. On the premise of fully protecting the rights of the criminal accused, the efficiency of litigation will be improved, and the case will be concluded as soon as possible.

4. Conclusion

The establishment of the leniency system for admitting guilt and accepting punishment is an important measure to improve the mechanism for triaging criminal cases and optimize the allocation of judicial resources. We should adhere to the procuratorial-led model. Some people believe that the prosecutor-led model makes the court trial formalized, and the court has to make judgments based on the facts and evidence found in the review and prosecution stage and even sentencing recommendations. We think this view is inaccurate. The facts of the case and the sentencing recommendation must be reviewed by the court. The court has the right to change the crime and adjust the sentencing. Therefore, the leniency system for admitting guilt and accepting punishment still adheres to the "trial-centered", but it is different from the traditional "trial-centered" focus. In the case of admitting guilt and accepting punishment, the court must review the voluntary nature and the content of the affidavit. It is necessary to examine whether the defendant constitutes a crime, whether the sentencing recommendation is appropriate, etc. The change of the focus of the procuratorial-led model is a consideration of efficiency, but the trial activities are still the core of the whole process of criminal proceedings.

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