

The Procurator in the Leniency System of Guilty Plea: Role Guarantee and the Boundary of Power

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Abstract

In order to solve the problem that the pre-trial diversion function is not obvious, the spirit of lenient and strict policy is not clear, and the contradiction between the many cases is increasingly prominent, the state has opened up the reform of the Leniency System of Guilty Plea in the field of criminal litigation. Procurator plays an important role in program leader, negotiation participant, and legal supervisor. To ensure the role of Procurator, it is necessary to fully understand the purpose of reform, and correctly treat the relationship between confession and compensation, confession and punishment, and lenient; it is necessary to ensure Procurator's autonomy in handling cases, improve the non-prosecution process, and establish guidelines for sentencing reduction; it is necessary to strengthen the supervision of voluntariness, sensibility and investigative inertia. In order to prevent the abuse of prosecutorial discretion, it is necessary to regulate Procurator's prosecutorial discretion and sentencing advice from both the entity and the program.

Keywords

Leniency System of Guilty Plea; Procurator; Role; Guarantee; Boundary of Power.

1. Introduction

On September 3, 2016, the Standing Committee of the National People's Congress made a decision on authorizing the Supreme People's Court and the Supreme People's Procuratorate to carry out pilot work on the criminal case of the Leniency System of Guilty Plea in some areas (hereinafter referred to as the "Pilot Decision"). This marks the official launch of the pilot project of the Leniency System of Guilty Plea. On November 16, 2016, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of National Security, and the Ministry of Justice jointly issued the "Measures for the Pilot Project of the Criminal Case of Leniency System of Guilty Plea in Some Areas" (hereinafter referred to as the "Pilot Approach"), providing specific normative guidance for the operation of the system. One year after the trial, on December 23, 2017, President Zhou Qian represented the Supreme People's Court and was entrusted by the Supreme People's Procuratorate to make an interim report on the reform of the Standing Committee of the National People's Congress. As of the end of November 2017, a total of 281 pilot courts and procuratorates were identified in 18 pilot areas. For the Leniency System of Guilty Plea, 91,121 criminal cases were concluded, 103,496, accounting for 45% of the criminal cases concluded by the pilot courts, of which 98.4% were recommended by the procuratorate. For cases of confession and punishment, the prosecution authorities spent an average of 26 days reviewing the prosecution. The Leniency System of Guilty Plea is in good shape during the inspection process. In order to better play the role of Procurator in the Leniency System of Guilty Plea, it is necessary to clarify its role positioning, improve safeguards, and draw a boundary of power.

2. Interpretation of the Reform Background of Leniency System of Guilty Plea——From the Perspective of Review and Prosecution

2.1. Pre-Trial Program Diversion Function Is Not Obvious

With the drunk driving, false litigation, the use of false identity documents, cheating in exams, etc., the criminal concept of criminal law in China began to turn to activism and functionalism. The main feature is that certain preparatory behaviors and help behaviors are defined as enforcement behaviors, which are intended to prevent greater legal violations that may occur in the future. At the same time, the abolition of administrative control measures such as reeducation through labor has made the behavior originally regulated by it also included in the scope of penal adjustment. The number of criminal cases continues to grow as a result of the increase in physical charges and the reduction of double pressures in program diversion measures. "In 1995, the number of court first-instance cases was 495,741. In 2014, this number reached 1.04 million. In 2015, it reached 1,126,748, an increase of about 127.29%." [1] In addition to the increase in the number of cases, the type of case also showed a "military crime" trend. "In 1995, the number of prisoners sentenced to more than five years in prison, life imprisonment, death penalty (including death penalty) accounted for 63.19%, and by 2014 only about 11%... the proportion of sentencing under three years of imprisonment It has exceeded 80% by 2013." [2] The reason why there are so many cases entering the trial stage is that except for criminal cases, which do not have such multiple dispute resolution methods as civil cases, the main reason is pre-trial procedures, especially the diversion and digestive functions of the review and prosecution procedures. In particular, the handling of guilty confession cases in the entity and procedure does not reflect the difference between the case of pleading guilty and the case of pleading not guilty, and there is a problem of "overkill" in the allocation of judicial resources.

2.2. The Spirit of Lenient and Strict Policy Is Not Clear

The core of the lenient and lenient criminal policy lies in "be loose and strict when necessary, keep a balance between being loose and strict, and punish when necessary". The humanistic spirit and rational care advocated by the policy are concrete manifestations of humanism in the field of criminal justice. The criminal policy of tempering justice with mercy is not only reflected in the simplification of substantive penalties, but also in the simplification and timely termination of the proceedings, reducing the accusation of the prosecutors. However, the implementation of this policy in practice is not ideal, especially in the review and prosecution, the spirit of the policy is not obvious enough. In the review and prosecution process, the spirit of the policy can best reflect the relatively non-prosecution system. However, based on the data of recent years, it can be seen that the overall applicability rate is relatively low. The reason is that, besides the long-standing tendency of prosecution by the procuratorate, the cumbersomeness and complexity of the relative non-prosecution process have also affected Procurator's enthusiasm for applying the system. In order to prevent the abuse of the relative non-prosecution right, within the procuratorial organ, the case of relatively non-prosecution is required to be discussed by the procuratorial committee and reported to the higher-level procuratorate for the record. This kind of administrative internal control mode, while undermining the autonomy of Procurator, also hinders the realization of the function of lenient and strict relative to the non-prosecution system.

2.3. The Contradiction between A Large Number of Cases and Few People Is Increasingly Prominent

The increase in the number of Procurators is small compared to the spurt of the number of prosecution cases. [3] The post system reform, which is one of the goals of the "eliteization" of Procurator, has increased the pressure on handling cases with a large number of cases. On

the basis of the number of existing Procurators, how to improve the efficiency of litigation, reduce the burden of handling cases, and alleviate the pressure of handling cases is a problem that needs to be resolved in order to achieve effective results in the reform of the post system. One of the paths lies in the partial transformation of the traditional criminal litigation model in our country. Through the simplification and differentiation of the litigation procedure, the accused person is encouraged to plead guilty and punish, thereby improving the applicability of the summary procedure and the expedited procedure. By establishing such a program incentive mechanism, the cost of Procurator's investment in pleading guilty cases is reduced, and the flow of case-solving resources is not pleaded guilty and major, difficult, and complicated cases are promoted, and the rational and optimal allocation of case-handling resources is promoted, and the pressure on Procurator is reduced.

3. Procurator's Role in the Leniency System of Guilty Plea

In modern criminal litigation, prosecution, as an intermediate link between investigation and trial, plays a similar role as a "hub" for the criminal justice case handling process. Whether in the Anglo-American legal system or in the civil law countries, this function is largely rooted in Procurator's discretion. In the United States and Germany, for example, "American Procurator rules the criminal justice system of the United States decide whether to accept or reject a case and decide the number of charges and counts of charges. It decides whether to participate in the defense negotiation and set the terms of the agreement reached in the negotiations... It essentially enacts and enforces the law and determines the crimes and penalties of those who are prosecuted by criminal proceedings." [4] In Germany, the Procurator, known as the most objective government agency, is plagued by the number of cases blown up under the shackles of statutory prosecution. "The reality of overloaded case and institutional resources continues to threaten deep-seated values and doctrinal assumptions in the criminal justice system." [5] With the comprehensive opening of the criminal punishment order and the reform of the sentencing negotiation system, the principle of statutory prosecution began to loosen, and the scope of application of the principle of prosecution was further expanded. The power of prosecutorial discretion began to have a substantial impact on the direction of the case and the outcome of the case. The practice of extraterritorial related systems shows that Procurator's role in the criminal proceedings process has become more active and proactive in response to the growing number of cases. This is undoubtedly the inspiration and thinking of the ongoing Leniency System of Guilty Plea reform in China, especially the role of Procurator in it.

3.1. Program Leader

In the Leniency System of Guilty Plea, the role of the Procurator program leader is mainly reflected in the two aspects of program shunting and maintenance of program justice. In terms of program diversion, in combination with the defendant's confession and confession, Procurator diversifies the criminal case by exercising the discretionary power, the sentencing suggestion right, and the procedure selection suggestion right. For example, Article 208 of the Criminal Procedure Law stipulates: "When the People's Procuratorate issues a public prosecution, it may recommend that the people's court apply the summary procedure"; Article 279 stipulates: "For the case of reaching a settlement agreement... The People's Procuratorate may make a proposal for a lenient punishment to the people's court; if the circumstances of the crime are minor and there is no need to impose a penalty, a decision not to sue may be made"; Article 6 of the "Measures on Piloting the Criminal Procedure of Criminal Cases in Some Areas" stipulates: "If the People's Procuratorate considers that the facts of the case are clear and the evidence is sufficient, it shall propose a quantitative punishment proposal and interrogate the suspect... The people's procuratorate may recommend that the people's court apply the

expedited procedure.” Leading the process of diversion and realizing the complexity of the case is an important manifestation and inevitable result of Procurator exercising the power of prosecutorial discretion; In terms of procedural justice maintenance, Procurator initiates the process of leading pleading guilty cases by regulating investigative behaviors, fulfilling litigation care obligations. Strengthening the legal control of investigative power is the basic law of modern criminal justice. Since the courts in our country do not intervene in the pre-trial proceedings, the control over the investigative power is mainly achieved through the procuratorial organs exercising the power to supervise the case, reviewing and approving the arrest right, and reviewing the right to prosecute. For example, Article 9 of the “Pilot Measures” stipulates: “If a criminal suspect voluntarily and truthfully confesses the fact of a suspected crime, if there is a major meritorious service or the case involves a major national interest and needs to be revoked, the public security organ handling the case shall report it to the Ministry of Public Security. The Ministry submitted the approval to the Supreme People’s Procuratorate.” In addition, in order to ensure the voluntary and authenticity of the defendant’s guilty plea, Procurator is required to fulfill the legal consequences of the defendant’s guilty plea and the legal rights of the defendant, and the fact that the defendant has the right to obtain legal assistance, so that the procedure is simple and the rights are not reduced to ensure procedural justice.

However, in practice, the understanding of the role of the procurator program leader is not enough. On the one hand, the majority of the news media’s propaganda reports focused on how the procedures were simplified, how much time was reduced, how much efficiency was improved, and how much sentencing recommendations were adopted after the trial of the Leniency System of Guilty Plea. And the introduction of Procurator’s leading role in program shunting is rare. [6] On the other hand, some procuratorial organs in the pilot area believe that the main function of Procurator in pleading guilty cases is to propose specific sentencing recommendations to the court and ignore the program diversion function undertaken by Procurator. Even prosecutors in some places have internal regulations for non-prosecution cases each year. This has limited the functioning of this function to a certain extent.

3.2. Negotiating Participants

Negotiation usually belongs to the civil field. It means that the parties reach a consensus on communication and negotiation on the basis of complete equality and voluntariness, and then dispose of their own substantive rights and procedural rights. Traditional criminal prosecutions and arguments are often tit for tat, and there is a heated debate on a number of issues such as crimes, crimes and penalties. Although this is conducive to the realization of justice and the protection of the rights of the accused, the cost is huge. This cost includes not only the economic cost but also the moral cost. The opposition of the victims is not conducive to the stability of society, but also the protection of the rights of victims. Nowadays, negotiating justice has broken through the barriers of the traditional legal system and has become the international trend of criminal justice. Even the civil law countries that have enshrined the principle of statutory prosecution have begun to explore and try. The Leniency System of Guilty Plea, which is being piloted in China, undoubtedly draws on and absorbs the results of this reform. The focus of Leniency System of Guilty Plea is not a simple reaffirmation of the confession of lenient, lenient and lenient criminal policies, but the Procurator’s change of the previous “condescending” attitude, “pushing down” and the defendant to conduct equal consultations on sentencing, listening and responding to the accused appeal. In the Leniency System of Guilty Plea, the defendant signed a book with Procurator, “transferred” part of his procedural rights, and reached a “consistent” with Procurator in order to obtain a lighter punishment. This program with a strong negotiating color takes care of the defendant’s desire to obtain a punishable interest by pleading guilty, and strengthens the subjective position of the accused. This embodies the equality between the prosecution and the defense, enhances

the acceptability of the referee's results, eases the confrontation and conflict between the prosecuted and the state, and highlights the spiritual core of humanism.

At present, in practice, Procurator participates in the sentencing negotiation process mainly in the following aspects: 1. there is a "formalization" phenomenon in the defense and defense negotiation. The key to the merits of pleading guilty to pleading guilty is whether the accused has obtained substantial help from a lawyer. In practice, in some places, based on efficiency and convenience considerations, the procurator ate and the accused reached a statutory book before notifying the duty lawyer to sign the "testimony" on the binding book. The duty lawyer rushed to sign the voluntarily and voluntarily confessed that the defendant pleaded guilty and did not participate in the entire negotiation process. The consequences of this practice are not the serious irresponsible performance of lawyers, but may be "endorsement" for the illegal acts of the case-handling authorities, and the falsehood that may occur in the future because the defendant is forced to plead guilty or plead guilty. The wrong case bears "joint and joint responsibility". The "negotiation" alienation into "witness" reflects that some procuratorial organs have inaccurate understanding of the Leniency System of Guilty Plea core, and their understanding of the spirit of prosecution and negotiation is not in place; 2. The applicability of prosecution and negotiation in ordinary procedures is not high. In summarizing the problems in the Leniency System of Guilty Plea pilot, the "Interim Report" mentioned that the types of pilot cases and applicable procedures were too concentrated and insufficient to explore the application of common procedures. The reason for this may be related to the type of case, complexity, social impact, and victim's requirements for the application of ordinary procedures. In the case of intentional homicide, which may result in life imprisonment or death penalty, Procurator and the defendant will have certain concerns and psychological burdens when conducting sentencing consultations; 3. The enthusiasm of the accused to participate in sentencing negotiations is not high. The main reason for this phenomenon is the lack of a specific sentencing concession guide, leading to two extreme practices in practice: Procurator does not distinguish between the time node of the defendant's confession and the specific confession behavior. The "one size fits all" punishment and the lack of difference and echelibility from the wide range cannot form an effective incentive for the accused to participate in the negotiation; Either the lenient punishment and the wideness of the arbitrariness and lack of unity make the negotiation result lack of predictability, thus affecting the enthusiasm of the accused to participate in the consultation.

3.3. Legal Supervisor

"The plea bargaining in the United States and the negotiating criminal justice in the European Union are all in the more mature legal environment, the 'corrective' movement of the over-corrected modern criminal justice system. China's deliberative criminal justice is not yet completed in the modernization of the rule of law. In the case of the expediency of the political environment, the judicial tradition and various realities." [7] Negotiated justice breaks through the conceptual boundaries of traditional due process of law, and the litigant's litigation rights are appropriately "derogated". In addition, China's Leniency System of Guilty Plea is still in the pilot exploration stage, and the relevant system design is still not mature and perfect, so there will be many legal risk points. These risk points are summarized in the following aspects: 1. Detection inertia. Since the "Pilot Measures" affirmed the confession and punishment consultation during the investigation stage. Therefore, the investigative organ is more likely to obtain the confession of the criminal suspect than before, and under the influence of the traditional confession centralism, some investigators misunderstood the standard of proof of the guilty plea case, and mistakenly believe that the proof standard of such case has reduce. The investigative work of the investigating agency is likely to stop here and declare its end. Instead of making full use of the criminal suspect's guilty confession, he continues to dig deeper into the objective evidence that may be hidden behind it. Once the evidence is destroyed, the

investigating agency misses the best time to collect, thus delaying the opportunity and convicting the next stage. The allegations have become more difficult. The Leniency System of Guilty Plea has in some cases exacerbated this detective inertia in the absence of complete clarification of the impact of confession centralism.

2. Reduce penalty by money. The Leniency System of Guilty Plea gives Procurator greater discretion, and the closedness of the negotiation process and the non-disclosure of the content of the consultation provide a breeding ground for corruption. In addition, the victim issued a letter of understanding after obtaining high financial compensation, and then imposed a penalty on the person being prosecuted. This approach seems to be fair in the case, but it is unfair to those who are unable to pay high compensation but have other true confession and confession. And it is easy for the public to feel that "penalty can be removed with money" and "the rich can be sentenced less". In this regard, the top-level designers have already discovered, and pointed out in the interim report summarizing the problems exposed by the pilot: "Some pilot areas have unclear understanding of the significance of reform, the content of reform, and the requirements for reform. For example, the "pending punishment" is simply equated with the compensation for the economic loss of the victim, or the "wideness" is absolute and simplified, and the specific circumstances of the case are not sufficiently differentiated. "

3. Forced confession. For some cases with unclear facts and insufficient evidence, the investigating agency is eager to close the case, and may plead guilty to confession and confession, forcing the accused to plead guilty, causing the accused to "falsely plead guilty" against his will. In the review and prosecution process, there may also be such a risk, "that is, when the prosecution provides an alleged transaction offer that is far more favorable than the possible outcome obtained in the trial, the innocent defendant may feel the coercion of accepting the guilty reply." [8]

The constitutional orientation of the procuratorial organs provides a legal basis for the legal supervision of the procuratorial organs, and makes the procuratorial organs have the subjective qualifications for the legal supervision of the Leniency System of Guilty Plea, which is a criminal lawsuit. The above legal risks of the Leniency System of Guilty Plea itself provide justification for the legal supervision of the procuratorate. Coupled with Procurator's own objective obligations and the ability to guard against police arbitrariness and judges' arbitrariness, Procurator plays an extremely important role as a legal supervisor in the Leniency System of Guilty Plea.

4. Specific Paths to Ensure Procurator Plays a Leading Role in the Leniency System of Guilty Plea

4.1. Raise Awareness and Accurately Understand the Core of The Spirit of Reform

4.1.1. Full Understanding of the Purpose of Reform

The "Pilot Decision" pointed out the purpose of the reform, namely, "to further implement the criminal policy of tempering justice with strictness, improve the criminal procedure, rationally allocate judicial resources, improve the quality and efficiency of handling criminal cases, and ensure that those who are not guilty are not subject to criminal prosecution. The guilty person is punished by justice, safeguards the legitimate rights and interests of the parties, and promotes judicial justice." It can be seen that the effective implementation of the supply of substantive and procedural rights to the prosecuted is the primary goal and potential demand of the Leniency System of Guilty Plea. The efficiency of the program is not the basic kernel of the Leniency System of Guilty Plea, but the accompanying effect of this system, at most a sub-attribute goal. [9] Therefore, Procurator should not simply position itself as a "case transfer machine" in the process of handling a case. It is considered that it is only a specific sentencing recommendation to the judge, and it is easy to pay attention to it. It should be the executor of

the criminal policy of lenient and stricter, fully exerting subjective initiative, fulfilling objective obligations, collecting evidence comprehensively, consolidating the factual basis of the case, standardizing investigation behavior, and safeguarding the legitimate rights of the prosecuted. Respect the defense opinions, ensure that guilty pleas are voluntarily and wise, and actively and equally participate in the prosecution and negotiation.

4.1.2. Correctly Treat the Relationship between Confession and Compensation, Confession and Punishment, and Lenient

Article 7 of the "Pilot Measures" stipulates: "When handling a confession and punishment case, the victim and the agent shall be heard, and whether the criminal suspect or the defendant has reached a settlement agreement with the victim or compensated the victim for loss, and obtains the understanding of the victim, which is important factor to be considered for sentencing." Obviously, the loss of compensation is only one of the important considerations for sentencing, not the only one. Because if it is unique, it is obviously unfair to those who are unable to pay compensation, and there are many manifestations of confession. In some cases, compensation is not the best way to punish. For example, in some cases that cause mental damage to the victim, it may be better to make an apology in person or in the media than to make up for it. In addition, simply equating compensation with confession is easy to give the public the wrong impression of "reduce penalty by money". When treating guilty confessions and lenient relationships, it is equally impossible to be absolute and simplistic. When deciding whether to be wide or not, Procurator should consider the social impact of the case, the subjective malignancy of the respondent, and the severity of the means. For those who are pleading guilty and pleading guilty to private retaliation, threatening victims and witnesses, they should be cautious.

4.2. Improve the Mechanism to Guarantee the Exercise of the Discretionary Power

4.2.1. Ensure the Relative Autonomy of Procurator

The key to the success of the Leniency System of Guilty Plea reform is whether it can motivate Procurator to handle the case. On the one hand, we should conscientiously implement the "Guidance Opinions on Improving the Procurator Power List", scientifically formulate power lists, and correctly handle the relationship between procuratorial integration and Procurator's independent handling of cases, procuratorial committees and Procurator. Eliminate artificial restrictions on the number of non-prosecution cases, reduce improper intervention in Procurator's autonomy in handling cases, emancipate the mind, let go of the hands and feet, and dispel the concerns of "defending power and fearing abuse of power"; On the other hand, the relevant provisions should be refined to further clarify the rights, obligations and responsibilities of Procurator in the Leniency System of Guilty Plea, to provide a basis for the manner, content and scale of the prosecution and negotiation, and to ensure that Procurator exercises discretion in the legal framework.

4.2.2. Improve Non-Prosecution Procedures

Out of the prevention and vigilance against the abuse of the right to sue, the procuratorial organ's internal control over the right to sue mainly adopts the administrative management mode of reporting to the procuratorial committee and filing with the higher authorities. This has caused the cumbersome and complicated non-prosecution procedures, which has affected the normal exercise of Procurator's discretion. To mobilize Procurator to handle the pleading guilty of pleading guilty, on the one hand, it should appropriately simplify the non-prosecution procedure, activate the function of lenient and strict, and program diversion carried by the non-prosecution system; On the other hand, we should improve the transparency of the non-prosecution process, procedural reform of the non-prosecution procedure, and introduce a hearing system to ensure that the "fairness" of the fair, fair and open "not to prosecute"

procedures and avoid black-box operations.

4.2.3. Formulate Guidelines for Sentencing

The prosecution and defense consultation is not an unfounded “unreasonable pricing”, but the prosecution and the defense are negotiating and negotiating according to the law under the guidance of the specific sentencing concession rules. The following three “clear” should be made when formulating guidelines for sentencing: First, clearly confirm the crime, the specific circumstances of the punishment and the different sentencing preferences and scope, and set the confession and punishment as an independent sentencing plot; Secondly, it is clear that the different sentencing points corresponding to different time points are wide-ranging, giving the sentencing a wide-ranging progressiveness and layering, and releasing the signal to the respondent that “the sooner you plead guilty, the greater the width”. To stimulate the functional vitality of the Leniency System of Guilty Plea “reasonably allocate judicial resources, improve the quality and efficiency of case handling”; Third, clearly confirm the correspondence between confession and punishment. In addition to some social influences, bad criminal methods, serious crimes, and the case where the prosecutor is not really guilty of confession and punishment, he should be cautious. In the general case, the accused should be given a lenient punishment, that is, the principle of lenient is not the exception of the lenient, the predictability of the confession of the confession of the confession is enhanced, and the accused is encouraged to plead guilty. To a certain extent, this can prevent the investigating agency from taking improper means of interrogation in order to obtain a confession.

4.3. Strengthen Supervision and Effectively Control Potential Legal Risks

4.3.1. Supervision of voluntarily and Wisely Pleading Guilty

The key to preventing guilty pleadings from pleading guilty to false and wrongful cases lies in the voluntary and sensible review of the acquitted confession of the accused, and the exclusion of the acquitted person from confessions by torture or other threats, inducements, deceptions statement, etc. For the voluntary and sensible review of the pleaded guilty of the prosecuted at the investigation stage, Procurator should make full use of the simultaneous audio and video recording of the interrogation, and focus on verifying whether the investigating agency has informed the accused of the legal consequences of the confession and the duty lawyer in the recording and recording. The right to provide legal assistance is to be more consistent with whether the content of the audio and video recordings is consistent with the written guilty statement. The guilty confession obtained through illegal means should be resolutely excluded; In addition to the above-mentioned rights notification obligations, Procurator must ensure that the duty lawyers participate substantively in the guilty plea negotiation and fully listen to and respect the lawyer's opinions. In addition, Procurator should fulfill its objective obligations and collect evidence in a comprehensive manner to ensure that guilty pleas are based on solid facts.

4.3.2. Supervision of Investigation Inertia

The investigation inertia that may arise in pleading guilty cases may result in the collection of key evidence in the case not being timely, artificially increasing the difficulty of conviction and sentencing; and seriously causing the case to be reduced to a case of public security punishment. Ensure Procurator's effective supervision of investigation inertia. First of all, it is necessary to extend the supervision tentacles, move the supervision forward, establish a unified supervision platform within the investigation agency, conduct remote review and tracking of the case information and evidence entered by the investigators, and promptly remind the investigators to continue to supplement the evidence collected. Procurator shall promptly issue an early warning for the case of filing a case or not making a case, and realize the transformation of the past case supervision and supervision, the passive supervision to the prior supervision, and the active supervision; Secondly, Procurator should fully exercise the

power of investigation and verification given by the law after the case is filed and after the case is returned to the supplementary investigation, the Procurator should fully exercise the power of investigation and verification given by the law to reduce the risk of insufficient collection of evidence caused by the “failure” of the investigation right; Finally, for investigators' investigation inertia, Procurator should issue procuratorial suggestions and correct violation notices in a timely manner. If necessary, it may recommend that the investigation organs replace the case handlers. Procurator shall promptly transfer the criminal clues to the supervisory committee for further investigation of the alleged dereliction of duty and power transactions.

5. Procurator's Boundary of Power in the Leniency System of Guilty Plea

The exercise of power should have its boundaries. The power without borders is like a wild horse, which will not only undermine the rule of law, but also breed corruption. Specific to the Leniency System of Guilty Plea, in addition to the “unbundling” of the Procurator on the one hand, reducing unnecessary restrictions and interventions, and appropriately expanding the rights, on the other hand, applying the law to delineate the boundaries of power exercise to prevent the inconvenience of power. However, there have been cases of infringement of the parties' litigation rights and even false and wrongful cases.

5.1. Prosecution Discretion

Article 18 of the UN Guidelines on the Role of Procurator clearly states: “According to national law, Procurator shall, with full respect for the human rights of suspects or victims, properly consider exemption from prosecution, conditionally or unconditionally suspend proceedings, or Transfer some criminal cases from the formal justice system to other methods. The aim is not only to alleviate the burden of excessive courts, but also to avoid the stigma of pretrial detention, prosecution and conviction and the possible negative consequences of avoiding imprisonment.” Therefore, giving Procurator the right to sue discretion is not only a realistic need to resolve the contradiction between the “explosion” of litigation and the limited resources of the judiciary, but also a powerful measure to protect the human rights of the prosecuted. When the traditional concept of punishment is changed from retribution to target punishment, when Procurator decides whether to prosecute, in addition to considering whether the crime is established, it is also necessary to consider whether the crime is destructive to the social order, whether the prosecution is beneficial to the transformation and the costs to correct criminals and the perpetrators, including imprisoned offenders, may have to pay for this, that is, the need to consider whether or not to initiate a public prosecution.

Giving Procurator the right to sue discretion is important for building a negotiated justice, but the exercise of that power should also have its boundaries. In the United States, for example, the extreme admiration of individual rights, the relative trust in the popular Procurator, and the reality of prison overcrowding have contributed to Procurator's greater discretion in plea bargaining, including “transactions on crimes and counts”. At first, plea bargaining did not live up to expectations in improving the efficiency of litigation, but a series of unjust and false cases disclosed by the “Innocent Movement”. [10] However, people have doubts about whether Procurator has reasonably exercised the power of prosecution in the plea bargaining. In response, some scholars criticized the abuse of Procurator's prosecution discretion in the plea bargaining as “discretionary justice” and pointed out that Procurator often has excessive accusations in plea bargaining. [11] Some scholars have carried out profound reflections, suggesting that non-fact-based plea bargaining should be prevented, and that unacceptable coercion should be imposed on innocent defendants in order to obtain guilty pleas. Unrestricted discretion is arbitrarily and even biased, largely because of the invisibility that discretion is not publicly monitored and censored. [12]

Although China's Leniency System of Guilty Plea has many differences with the US plea bargaining system, in order to achieve the system's pre-set goals, it is required to properly expand Procurator's prosecutorial discretion. Therefore, scholars' criticism and reflection on the abuse of Procurator's discretionary power in plea bargaining have implications and mirroring significance for our ongoing reforms. The author believes that in delineating the boundary of the prosecution discretion in the Leniency System of Guilty Plea, to prevent the abuse of prosecutorial discretion, the following two points should be done: On the one hand, the entity should adhere to the principle of the crime of punishment and the principle of adaptation of crimes and punishments. If it does not constitute a crime, it shall resolutely not prosecute; if it constitutes a crime, it shall decide whether to prosecute by considering factors such as the circumstances of the crime, the subjective viciousness, the social effect of the prosecution and the cost of litigation; On the other hand, the procedural basis of the case should be consolidated to prevent the case from being "sickly ill", and to prevent the case of non-prosecution and suspected non-prosecution. Adhere to the standard of proof that the facts of the crime are clear and the evidence is sufficient, and the standard of proof cannot be reduced in disguise on the basis of the simplification of the method of proof. Procurator should fulfill the obligation of evidence disclosure to protect the lawyer's right to read and investigate and collect evidence. In view of the closed shortcomings of the non-prosecution procedure, Procurator can hold public hearings on some discretionary matters, and convene investigators, criminal suspects, victims, lawyers, people supervisors, and deputies to participate in hearings and listen to relevant opinions, publicize and non-prosecution statement to improve the transparency of the non-prosecution process. The defendant's right of appeal is guaranteed, and the defendant lodges an appeal on the grounds of innocence. The confession of the guilty plea in the review and prosecution process for the lenient punishment cannot be directly used as evidence.

5.2. Sentencing Power

The lenient punishment is the final destination of the Leniency System of Guilty Plea and the most important concern of the prosecuted. Out of the vigilance of neglecting the objective truth of the plea bargaining and the resentment of the "transaction" crimes and crimes, the civil law countries rooted in the "realistic realism" of the authoritarian tradition have focused more on the reforms. Sentencing negotiation.

Germany established a sentencing negotiation system in 2009. The German Code of Criminal Procedure stipulates that if it is conducive to advancing the proceedings, the court may discuss the proceedings of the proceedings with the participants of the proceedings; The court may negotiate with the participants of the proceedings on the development and outcome of the procedure, and integrate the case and sentencing considerations to give the interval of the penalty; If the defendant and the procuratorate agree to the court's recommendations, the agreement is established.[13] In order to ensure the impartiality and transparency of sentencing negotiations, the presiding judge is obliged to announce to the public whether or not to conduct a sentencing consultation. If an agreement is reached, there is also an obligation to disclose the content of the agreement, and at the same time, the negotiation is stated in the judgment. Even though there is sentencing negotiation, the judgment can still be appealed. [14] In 2004, France created a pre-trial pleading procedure. In terms of sentencing recommendations, Procurator has a large discretion, "may suggest one or several principal or additional penalties." [15] However, the law also sets a number of restrictions, including factors and magnitudes to be considered in sentencing recommendations. If the defendant accepts Procurator's sentencing recommendations, the pre-trial pleading process enters the review phase. The review judge should focus on the following three basic points: first, the authenticity of the facts of the crime; second, the appropriateness of the sentencing recommended by Procurator, that is, whether the proposed sentencing matches the circumstances of the crime

and the personality of the defendant; Third, whether the operation of the pre-trial pleading procedure is in accordance with the requirements of the fair procedure, such as whether Procurator fulfills its obligation to inform and whether the defendant is autonomous, explicitly confessed to guilt and not subject to external pressure. If the audit judge approves the sentencing recommendations made by Procurator, an approval decision should be made. The ruling has the effect of immediate execution. However, if the audit judge refuses to approve Procurator's sentencing recommendations, Procurator should file a public prosecution or a formal investigation procedure in a misdemeanor court in accordance with the general indictment procedure. The various statements and transcripts of the previous pleading pleadings before the court shall be invalid and shall not be submitted to the Pre-Trial Chamber or the Trial Chamber as evidence.[16] It can be found that Germany and France have some commonalities in the regulation of Procurator's sentencing suggestion rights. For example, they all have relatively clear guidelines for sentencing concessions, all of which emphasize the substantive review of sentencing recommendations by judges, all of which focus on ensuring sentencing recommendations. The legitimacy of the procedure, such as the protection of lawyers to provide effective legal assistance, the openness of the procedure and the defendant's right to appeal.

As an important reference, the practice of the Procurator sentencing suggestion in the pleading pleadings of the civil law countries such as Germany and France has important reference significance for the reform of China's criminal justice system with the same "authority" of authoritarianism. To regulate the sentencing proposing rights of Procurator in the Leniency System of Guilty Plea, the same should be done from both the program and the entity: Entity, attention should be paid to the "conformity" between the proposed sentence and the subjective malignancy of the respondent and the seriousness of the criminal act, which will be controlled within a reasonable range from the wide range. "Excessive consideration of the value of pleading guilty in reducing the complexity of the case and saving judicial resources, giving punitive punishment and excessive punishment discount stimulation, will make the referee's results deviate from the basic principles of the crime. In short, policy considerations should not go beyond the basic principles of criminal rule of law, and thus shake the foundation of the legitimacy of punishment." [17] Procedurally, the first, the provision of sentencing recommendations should be based on the voluntariness and truth of confession, that is, the sentencing concessions should not be easily proposed as a "leverage" to induce guilty pleas; Second, formulate detailed and specific guidelines for sentencing concessions, and clarify the types and extents of sentencing preferences corresponding to different plots; Third, strengthen the judge's responsibility for reviewing sentencing recommendations, strengthen the judgment of the judgment on the adoption or non-adoption of sentencing recommendations, and prevent the judge's review from becoming a "rubber stamp"; Fourth, to ensure the presence of lawyers during the negotiation of sentencing and to provide effective legal assistance; fifth, publicizing the results of sentencing negotiations, public sentencing negotiation process. This is not only a realistic need to monitor the fairness of the negotiation process, but also enables the participants and the public to have a clearer understanding and understanding of the factors affecting the outcome of the consultation, which is conducive to enhancing the credibility of the Leniency System of Guilty Plea.

6. Conclusion

According to the principle of institutional science, in addition to the object factors such as value objectives, operational procedures, and supporting measures, the function of the system needs to consider the main factors such as the role orientation, rights and obligations of the system participants. This paper explores the role of Procurator, an important participant in the Leniency System of Guilty Plea, and its actual state. The goal of the Leniency System of Guilty

Plea reform points to the legal character of Procurator's "born", which together determine Procurator's role as a program leader, negotiation participant, and legal supervisor in the Leniency System of Guilty Plea. To ensure that Procurator plays a leading role in the Leniency System of Guilty Plea, it is necessary to raise awareness, accurately understand the spiritual core of reform, improve relevant mechanisms, and guarantee the exercise of prosecutorial discretion. At the same time, strengthen supervision and effectively control potential legal risks. In order to prevent abuses after the moderate expansion of the discretionary power, it is possible to regulate and control both entities and procedures to ensure that they are properly exercised within the legal framework, maximizing the enthusiasm of confession and punishment.

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- [3] From 1986 to 2013, the number of prosecution cases in the country's procuratorial organs increased from 257,291 to 958,727, and the net increase was 3.73 times. The number of procuratorates increased from 140,246 to 250,879, and the net increase was only 1.75 times. See Chen Yongsheng, Bai Bing: "The Limits of the Reform of the System of Judges and Procuratorates", *Comparative Law Research*, No. 2, 2016, p. 24.
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- [6] For example, from September 4, 2016 to February 25, 2017, the Beijing procuratorial organs handled a total of 2792 cases of pleading guilty pleadings, accounting for 27.7% of the number of criminal cases handled during the same period, of which 86.9% were criminal cases. In the expedited procedure, 5.1% of cases are subject to summary procedures. See Peng Bo: "Pleasant confession is fast and wide", in the 18th edition of the *People's Daily* on May 17, 2017; Shanghai Fengxian District Procuratorate handles confession and punishment, and the average time for review and prosecution is nearly three-third shorter than other cases. Second, the rate of conformity between the sentencing proposal and the court's judgment reached 95.6%. There was no appeal. See Lin Zhongming: "Shanghai: pleading guilty and punishing the privilege from the wide-ranging system to fully realize the effectiveness - more than 95% of the sentence recommendations were adopted in the pilot three months" *The first edition of the Procuratorial Daily*, April 25, 2017.
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- [9] See Zuo Weimin: "Why is the confession of confession and punishment: misunderstanding and positive solution", in Law Research, No. 3, 2017, pp. 160-175.
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