

## **An Interpretation of Leniency System of Confession and Punishment from the Perspective of Cost-Benefit Theory**

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### **Abstract**

**Leniency system of confession and punishment refers to the system in which the accused voluntarily confesses his crimes, admits the accused criminal facts, is willing to accept punishment, and can be dealt with leniently according to law. Under the inducement of leniency, the accused should not only measure the cost and loss of "admission of guilt" or "non-admission of guilt", but also consider the profit and gain of "admission of punishment or non-admission of punishment". The implementation of leniency system of confession and punishment involves multiple choices of "Plead guilty" of the accused, and also involves the cooperative interest game between the accused and judicial authority. Therefore, from the perspective of cost-benefit theory, we can better understand the connotation and internal relationship of "confession", "admission of punishment" and "Leniency" in leniency the system of confession and punishment.**

### **Keywords**

**Costs; Benefits; To plead guilty to punishment; Leniency; game playing.**

### **1. Introduction**

When conducting trading activities, social subjects will consider the gains and losses of specific behaviors in a certain value, so as to have a scientific estimate of the relationship between costs and benefits of their own behaviors, as well as the "confession" and "plead guilty" behaviors of the accused in the leniency system of confession and punishment. Since the leniency system of confession and punishment refers to the case in which the accused voluntarily confesses his crime, confirms the facts of the accused crime without any objection, agrees with the sentencing opinion and signs a letter of affidavit, and can be dealt with leniently according to law. The system contains three elements of "confession", "admission of punishment" and "leniency". It plays a balancing role of "three-branch" and contains the spirit of cost-benefit balance. Therefore, from the perspective of cost-benefit balance, an in-depth interpretation of the leniency system of confession and punishment is conducive to people's intrinsic knowledge and understanding of the system, so as to facilitate the judicial practice and procedure improvement of the leniency system of confession and punishment.

### **2. Whether the Accused Pleads Guilty or Not Is A Measure of the Cost**

From the perspective of economics, the expectation that benefits exceed costs is the basic starting point of human behavior and the primary rational principle of human society. The term "cost" refers to the price that must be paid in order to obtain some kind of benefit. In general, people prosecuted after committing a crime may suffer different adverse consequences for their "whether the defendant pleads guilty". In other words, "whether the defendant pleads guilty" requires a certain "price" and faces "different adverse costs".

What is "confession"? A confession is a confession of a crime. It means that the prosecutor voluntarily and truthfully confessed his crime. It should include "confession" and "surrender" and other possible circumstances. The "confession" focuses on two levels: First, the prosecutor's confession should be voluntary. "Voluntary" means "I am willing and not forced by others", which means that the person prosecuted should have the right to choose whether or not to confess his crime, that is, whether the confession should be voluntary, and no one should be forced to prove his guilt, and whether the confession is guaranteed Voluntary. The second is that the defendant's confession needs to be truthful. "According to the truth" means "reflecting the situation truly in accordance with the actual situation", that is, the criminal facts confessed by the prosecutor should be true. In other words, the guilty statement of the prosecutor must be voluntary and true, otherwise it will lose the value of the litigation. Therefore, when the "confession" is determined, as long as the prosecutor truthfully confessed the facts of the alleged act and reached an agreement to admit the crime and accusation in the subsequent negotiation process, it should be deemed to meet the requirements of the "confession". However, in the process of judicial activities, we must not only pay attention to the basic elements of the establishment of the "confession", but also consider the factors that affect the sincerity of the "confession". After investigation and analysis, it is believed that the following three aspects reflect the sincerity of the "confession": First, the time period of the crime. The different stages of the confession of the crime have different levels of value. The earlier the confession of the crime is conducive to saving time and improving judicial efficiency; second, the completeness of the confession of the crime. Under normal circumstances, the completeness of the crime confession should be directly proportional to the sincerity of the confession. A complete crime confession can better reflect the sincerity of the prosecutor's confession; third, the attitude and performance of the confession. The attitude of the prosecutor to confess the crime is a kind of psychological tendency. A good and sincere confession attitude usually better reflects the prosecution's true self-repentance.

Besides, why did the prosecutor plead guilty? If the accused did not commit the crime, of course there is no need to confess guilt. However, even though the prosecutor is indeed the person who committed the crime, he can also choose to "not plead guilty" and be tried and punished by the state according to procedures. However, in the leniency system for confessing guilt and punishing, a favorable mechanism for "confessing guilt" to obtain "leniency" is set up, which implies the benefits of "leniency". Under normal circumstances, when the respondent is faced with the choice of "confessing guilt" or "not confessing guilt", he will inevitably consider the size of the unfavorable consequences of the two, that is, estimate the cost of measuring the two in order to decide whether to "plead guilty". Without the prosecutor's "confession" as a prerequisite, the existence and implementation of the leniency system for confession and punishment will not be discussed. Therefore, "confession" is a prerequisite of the system of confessing guilt and confession, and it is affected by the balance of cost and benefit. Besides, why does the accused plead guilty? If the person accused did not commit the crime, there is certainly no need to confess. However, even if the person accused is indeed the perpetrator of the crime, he or she may choose not to plead guilty and be tried and punished according to state procedures. [1] However, in the leniency system of admission of guilt and punishment, a favorable mechanism of "leniency" is set up, which implies the benefits of "leniency". In general, when the accused is faced with the choice of "plead guilty" or "not guilty", it is inevitable to consider the size of the adverse consequences of both, that is, the size of estimating the cost of measuring both, in order to decide whether to "plead guilty". Without the premise of "confession" of the accused, the existence and implementation of the leniency system of confession and punishment is out of the question. Therefore, "confessing guilt" is the prerequisite of the system of admission of guilt and punishment, which is affected by the cost-benefit balance factor.

### **3. The Prosecutor's "Admission of Punishment" of the Person Prosecuted Is the Recognition of Benefits**

What is "admission of punishment"? In short, it means "recognition penalty". In fact, it refers to the person prosecuted according to their own crime situation and the interest of the situation, through comparison and measurement of the formation of the inner state can accept the expected punishment. Without the performance of "confession and punishment", it is difficult to reflect the accused's understanding of the harm of the crime and the determination of sincere confession and repentance, nor can it show that the social harm of the accused has been reduced, let alone the possibility of weakening the social harm again. That is to say, the accused has no deep level of "confession", has not yet formed the inner "harmony" state. If there is "confession" but no "punishment", there is no meaning of applying the leniency system of confession and punishment. Therefore, "admission and punishment" is the key condition of leniency system of admission and punishment, which is also affected by cost-benefit balance factors.

The recognition and understanding of "recognition and punishment" should be analyzed from the two levels of entity and procedure. First of all, at the substantive level, "confession of punishment" should be understood as that the accused should realize the adverse consequences of his crime in substantive law on the basis of confession, and accept the sentencing recommendations of the judicial authorities. Therefore, on the premise of pleading guilty, the judiciary should propose a lighter sentence for refusal to plead guilty in accordance with the provisions of the substantive law. If the prosecutor agrees to accept the punishment and reach an agreement, it can be regarded as a substantive "confession"; At the procedural level, the "confession of punishment" should include the recognition and acceptance of the "simplification" of the litigation procedure by the prosecutor, agreeing to convict and sentence himself by derogating certain procedural litigation rights, that is, abandoning what it has in ordinary procedures Some of the statutory rights of litigation, [2]such as court investigations, debates and other litigation links, can be regarded as procedural "confession and punishment"; in addition, the apology, return of stolen goods, compensation for losses, etc. of the prosecutor after the crime are at least regarded as confession The external manifestation of the confession should also be the proper meaning in the "confession of punishment". That is because the system of confession and punishment needs to reflect the contrite nature of the prosecuted person, and the proactive actions such as apologizing, returning the stolen goods and compensating for losses are just The manifestation of penitence can also be regarded as the substantive "confession" of the prosecutor. [3]

From the perspective of psychology, the prosecutor has an expectation of "punishment" after the crime occurs, that is, the "punishment" that he or she can accept, so the prosecutor's "confession" is right Recognition of expected benefits in one's heart. If the "punishment" expected by the prosecutor is close to or coincides with the punishment opinions put forward by the judicial authority, the prosecutor is more likely to be willing to "admit the punishment", which is more conducive to promoting the negotiation and agreement between the two parties.

### **4. The "Leniency" of Punishment Is the Result of the Game of Interests between the Judicial Organ and the Accused**

What is "leniency"? Among them, "conformity" means "adopt and follow"; "Leniency" is the opposite of "strict" and generally refers to "tolerant". Therefore, the original meaning of "leniency" should mean adopting or following a tolerant principle. In the field of criminal procedure law, the so-called "leniency" means that on the basis of the prosecutor's plea and punished, the public security and judicial organs shall substantively lighten, mitigate or waive

punishments in accordance with the law, and make corresponding procedural measures. The judgment is either not to prosecute, or is transferred to the competent authority for administrative penalties or administrative sanctions. [4]The principle of "tolerance" is embodied in both entities and procedures. It can be seen that "leniency" is the result of the game of interests in the leniency system of confession and punishment.

In the leniency system of confession and punishment, the practice of lenient treatment of the prosecutor based on "confessing guilt and punishing" not only involves a series of substantive laws, but also concerns the application of procedural law. Specifically, when the prosecutor "confessing and punishing", the public security and judicial organs will give appropriate leniency, mitigation or exemption according to the provisions of criminal law on conviction and sentencing, which is the "leniency" in substantive law. If the accused asks or is willing to choose the most concise and convenient case handling procedure after "confession and punishment", to handle the case in the shortest time and avoid long compulsory measures, and the public security and judicial organs agree to the procedure selection of the accused, this is the "leniency" in procedural law. Although the system of leniency of admission of guilt and punishment puts forward "leniency" in theory, the current law does not clearly specify the specific matters such as the type and range of leniency, which is not conducive to the specific operation of judicial practice. Therefore, the construction of leniency system of admission of guilt and punishment should design relatively clear procedures, especially for the "leniency" norms, should set clear provisions. In short, since legal admission of guilt and punishment can be "lenient", "leniency" must have an established reference standard, otherwise it will be at a loss for "compliance", and I don't know where to "leniency" is. In addition, "leniency" is not only an actual lenient, mitigation or exemption of punishment, but also a procedural "simplification" and "expediency". Both are indispensable.

In the implementation of the leniency system of confession and punishment, both the prosecuted and the case handling personnel are rational people, will do a variety of trade-offs. If the accused neither admits his guilt nor accepts the punishment, it is impossible for the public security and judicial organs to give him lenient punishment or deal with him. On the contrary, if there are no provisions for leniency or treatment or if these provisions are not implemented, the person prosecuted will generally not voluntarily confess his crime, nor will he be able to turn himself in or confess to the crime, nor will there be the possibility of punishment. [5]For the accused, they are also considering cost-benefit analysis such as "whether to admit guilt or punishment", "how much crime to admit", "how much punishment they can bear", "how much leniency they may get" and "whether the admission of guilt or punishment is worth", so as to constantly measure their costs and benefits. From the national level, the construction and implementation of the leniency system of admission of guilt and punishment must consider the balance between the input of judicial cost and judicial benefit. If the judicial cost of a legal system is much higher than the judicial benefit, the construction and implementation of the system is questionable and people will oppose it.

## 5. Conclusion

It is not difficult to find that the three major elements of "confession", "admission of punishment" and "leniency" are progressive relationships. Confession is the prerequisite, confession is the key, and leniency is the result. The three are closely related, mutually conditional, and mutually promote. In order to achieve the goal and achieve the judicial effect, one of the three is indispensable. At the same time, the author thinks that the balance between cost and benefit is the invisible backbone of the leniency system of admission of guilt and punishment, which runs through the whole system of leniency of admission of guilt and punishment. In fact, the leniency system of admission of guilt and punishment is a cooperative

game process centering on the balance of costs and benefits between the accused and the public security judicial organs in the judicial process of "admission of punishment" and "leniency". Therefore, the balance of cost and benefit is an important factor that must be considered in the construction and implementation of the leniency system of confession and punishment. In the construction and implementation of leniency system of admission of guilt and punishment, we should not only consider the balance of costs and benefits of national justice, but also explore the balance of costs and benefits of the accused, so as to promote the voluntary "admission and punishment" of the accused.

## References

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