

## Research on the Path of Substantive Application of the Plea Leniency System

JIN Dan<sup>[a],\*</sup>

<sup>[a]</sup> Faculty of law, Dalian University, Dalian, Liaoning, China.  
\*Corresponding author.

Received 2 July 2023; accepted 12 September 2023  
Published online 26 October 2023

### Abstract

The plea leniency system reflects the thought of “harmony” in Chinese culture. Since its full implementation in 2019, the system has played a positive role in improving litigation efficiency and saving judicial resources. In order to further strengthen the effective diversion of cases and explore the introduction of the plea leniency system at the investigation stage at the source of cases, Inspection authority should intervene in the investigation cases in advance, and consider making a relatively non-prosecution decision for light cases where the perpetrators voluntarily plead guilty and obtain the understanding of the victims; for light cases without the victim’s understanding, Inspection authority puts forward a definitive sentencing proposal, which is confirmed by the court. The introduction of the plea leniency system in investigation stage is conducive to saving judicial resources to the maximum extent and realizing justice value. In exploring the path of introducing the plea leniency system in the investigation stage, it is necessary to strengthen the participation of lawyers in the investigation stage, explore and put forward certain sentencing suggestions, strengthen the judicial review of Inspection authority in advance intervention, and explore the realization of the court’s confirmation effect of the confession statement at the legislative level.

**Key words:** Plea leniency; Relative To non-prosecution; Certainty Of sentencing

Jin, D. (2023). Research on the Path of Substantive Application of the Plea Leniency System. *Canadian Social Science*, 19(5), 107-110. Available from: <http://www.cscanada.net/index.php/css/article/view/13220>  
DOI: <http://dx.doi.org/10.3968/13220>

## 1. THE PRACTICAL STATUS OF THE APPLICATION OF PLEA BARGAINING IN CRIMINAL LAWSUITS

### 1.1 The application status of the system of plea bargaining in criminal lawsuits

Since the comprehensive application of the trial areas, it has played a positive role in optimizing the allocation of judicial resources, strengthening the judicial protection of human rights, implementing the combination of mercy and severity, and promoting judicial justice. However, in the application process, the accused often confesses guilt in the stage of review and prosecution, changes the previous confession in the court hearing, and even appears innocent confession in the first trial and actively advocates guilty plea in the second trial. Although the system of plea bargaining in criminal lawsuits accounts for a relatively high proportion in the scope of cases application, the reconsideration review of innocent cases, the reconsideration and review of non-arrest cases and non-prosecution cases still occupy a higher proportion of cases. In view of many practical problems existing in the application process of the system of plea bargaining in criminal lawsuits, it is necessary to move the system to the investigation stage, and increase the application of confession punishment from the source of the case, so as to ensure the maximum realization of the justice value of the case.

### 1.2 The comparative study of law on the application of plea bargaining in criminal lawsuits in the investigation stage

In external judicial practice, plea bargaining is mostly carried out before litigation and during the litigation process. As a means of case diversion, 85% -90% of the disputes are resolved before the review and prosecution stage, and the remaining 10% -15% of the cases are

referred to the court for formal trial. The subjects of plea bargaining in America are prosecutors and defense lawyers, the judge does not interfere, and the consequences of the transaction will directly enter into the sentencing procedure instead of being incorporated in the formal trial. Once the prosecution and the defense have reached an agreement, the judge did not carry out substantive trial and only do formal confirmation. In June 2018, Japan introduced the plea bargaining into the Criminal Procedure Law. Prosecutors, suspects and defense lawyers need to sign the agreement before and during the lawsuit. From the analysis of the time stage of plea bargaining, the United States, the United Kingdom and Italy are all in the pre-litigation stage while Canada and Germany are in the pre-litigation and litigation stage. The comparative study of law shows that the timing of plea bargaining is mostly during the negotiation from the beginning of the investigation to the end of the trial.

### **1.3 Reasons for the application of the plea bargaining in criminal lawsuits in the investigation stage in China**

The application of plea bargaining in criminal lawsuits in China is based on the following reasons for the investigation stage. First, the application premise of the plea bargaining in criminal lawsuits is that the accused both confesses and accepts the punishment. The acceptance absolutely should be included in the investigation stage. Second, the accused should be encouraged to plead guilty as soon as possible and solve the case in time, which is also the true meaning of perfecting the system of plea bargaining in criminal lawsuits. Third, the main task of the investigation stage is to investigate and collect evidence. Encouraging the accused to plead guilty actively through the plea bargaining in criminal lawsuits, especially for cases with hidden means, is conducive to comprehensive and timely evidence collection.

## **2. FEASIBLE PATH FOR THE APPLICATION OF GUILTY PLEAS AND PENALTIES AT THE INVESTIGATION STAGE**

### **2.1 The feasibility of applying the judicial practice of pleading guilty and accepting punishment at the investigation stage**

“Leniency shall be granted to those who confess, severity shall be imposed on those who resist” has always been the criminal policy adopted by China. The third paragraph of article 67 of the China’s criminal law of China provides for confession, truthful confession of their crimes, can be mitigated, “confess to leniency, resistance to severity” is a typical bargaining plea game, in order to be able to prompt the suspect in the investigating authorities to

achieve effective truthful confession, the prosecution’s position, attitude and practice is extremely important, and in our judicial practice, due to the fact that the suspect is not a criminal, the prosecution’s position, attitude and practice, the prosecution’s position, attitude and practice. In China’s judicial practice, due to the investigating authorities’ handling of cases, only “v. out” and “v. not out” two kinds of results, investigators for the case of the discretionary scope and range is very limited, resulting in the investigation stage to facilitate the suspects’ truthful confession. As a result, in order to fully achieve the legal effect of “leniency in confessing and severity in resisting,” the system of leniency in pleading guilty and accepting punishment prior to the inquiry stage must be used.

### **2.2 The feasibility of applying the legal system of pleading guilty and accepting punishment at the investigation stage**

Under the current legal system in China, the system of leniency in pleading guilty and accepting punishment in the legal procedure is realized in a specific way and channel, the way and means of such realization are mainly the following two situations:

One of them is that the procuratorial authorities terminate the charge by making a relative non-prosecution of the case. The relative non-prosecution system is outlined in Article 177 of China’s Criminal Procedure Law: “Where the circumstances of the crime are minor, and the sentence does not need to be imposed or exempted from punishment in accordance with the provisions of the criminal law, the people’s procuratorate may make a decision not to prosecute.” This is for cases when the act constituted a criminal, but the procuratorate may decide not to prosecute due to minor factors. In the context of relative non-prosecution, whether or not a criminal suspect takes the initiative to plead guilty and accept punishment is a significant factor in determining whether or not to pursue a public prosecution. The right to make a decision not to prosecute in the procuratorial authorities, in order to achieve the suspect in the investigation stage can be truthful confession, take the initiative to plead guilty and accept punishment, we consider the proposal to make a decision not to prosecute the right to move forward to the investigative organs, in the process of the game, the investigative organs and the suspect to fully exchange views, and in the process of the two sides of the interests of the maximum optimization.

Second, the application of expedited criminal case adjudication procedures to promote the system of leniency in pleading guilty and accepting punishment. The speedy adjudication procedure for criminal cases refers to a court trial method that simplifies the trial procedure and quickly concludes the case on the premise that the criminal suspect takes the initiative to plead guilty and accept the punishment, and on the basis of clear facts and solid and sufficient evidence in the case.

However, there are some problems with the application of the speedy trial procedure, such as the limited effect and space for simplification of the procedure, the limited enhancement of trial efficiency, and the failure to achieve the expected effect of the function of serving the sentence and restraining the prosecution, and so on. Therefore, it is necessary at the source of the case - the investigation stage, with the public security organs to improve the plea and punishment cases fast processing mechanism, to promote the public security organs in the investigation stage to carry out the plea of guilty education work, guide the public security organs to do a good job in the conviction of the collection of evidence, at the same time, strengthen the collection of evidence on the sentencing of the evidence, to ensure the quality of the case of the plea of guilty and punishment at source, effectively and efficiently to promote and implement the plea and punishment case quality. Effectively promoting and implementing the system of leniency in pleading guilty and accepting punishment.

### **3. EXPLORATION OF THE PATH OF APPLYING GUILTY PLEAS AND PENALTIES AT THE INVESTIGATION STAGE**

Within the framework of the current legal system, and in the light of the current state of practice, it has made full use of the mechanism of early intervention by the procuratorial authorities, maximizing the guiding and supervisory functions of the procurator's office in the facility, and has attempted to push forward the pilot implementation of the system of leniency of pleas of guilty and penalties at the investigative stage.

First, for misdemeanor criminal cases in which the statutory maximum penalty is less than three years' imprisonment and criminal settlements have been reached, as well as for misdemeanor and microclimate cases in which the statutory maximum penalty is less than three years' imprisonment or in which there is no victim, the procuratorate establishes a joint system with public security authorities, whereby the procuratorate's speedy trial department or procuratorate inspectors from the procuratorate's in-house prosecutor's office intervene in advance of the investigative stage of the case to ensure that the criminal suspect is When the public security authorities transfer a case to the procuratorial authorities, they issue Relative Non-Prosecution Opinion, which is transferred at the same time as the Prosecution Opinion. The procuratorial authorities handle such cases with relative non-prosecution.

Secondly, for minor criminal cases where the statutory maximum penalty is less than three years' imprisonment, but no criminal settlement has been reached; also at the

investigation stage, after the defense lawyer has provided sufficient specific legal advice, the prosecution and the defense sign a Letter of Intent to Admit Guilty and Accept Punishment at the investigation stage; after the case has been transferred to the procuratorate, the prosecution and the defense sign a formal Plea Affidavit, and the procuratorate puts forward a definitive recommendation on sentencing; the court shall endorse the content of the Plea Affidavit and the definitive sentencing recommendation for such cases in a speedy trial procedure. After the case is transferred to the procuratorial authorities, the prosecution and defense sign a formal Plea and Penalty Agreement, and the procuratorial authorities make a firm sentencing recommendation; the court considers such cases in a speedy trial, and the content of the Plea and Penalty Agreement and the firm sentencing recommendation should be recognized. The premise of the expedited procedure for hearing guilty plea cases is that the prosecution and the courts jointly implement this type of trial, and the courts follow the sentencing recommendations of the prosecuting authorities in all trials. Therefore, the court should accept the letter of intent to plead guilty and to accept punishment at the investigation stage, as well as the letter of acceptance of the plea of guilty and to accept punishment at the stage of examination and prosecution, although in the form of speedy trial into the formal court hearing, but in fact, the court hearing is to a large extent formalized. This court trial mode of the speedy trial procedure is conducive to the standardization and substantiation of the plea bargaining system, has achieved substantive results at the level of improving litigation efficiency, and can be said to be an effective procedural channel for the plea bargaining system at the court trial stage at this stage.

### **4. INSTITUTIONAL SAFEGUARDS FOR THE APPLICATION OF GUILTY PLEAS AND PENALTIES AT THE INVESTIGATIVE STAGE**

Due to the varying levels of law enforcement by investigators in China, the application of the system of leniency in pleading guilty and accepting punishment at the investigation stage, in order to safeguard the legitimate rights and interests of criminal suspects and to ensure that the plea of guilty and acceptance of punishment is a true and effective expression of their will, it is necessary to strengthen the role of the procuratorial authorities in the investigation stage of legal supervision, and at the same time should be strengthened to ensure that lawyers can effectively intervene in the mechanism for the criminal suspects pleading guilty and accepting punishment, to provide them with timely, comprehensive and effective legal services.

#### 4.1 Strengthening legal supervision by the procuratorial authorities

Procuratorial authorities are the supervisory organs of the law, and in applying the system of leniency in pleading guilty and accepting punishment at the investigative stage, the legal supervisory role of the procuratorial authorities should be strengthened, and the mechanisms of the procurator's office in the premises and of early intervention in case investigation should be brought into full play. On the one hand, the authenticity and voluntariness of the suspect's confession should be examined to prevent investigators from inducing or enticing the suspect to plead guilty and accept punishment; on the other hand, the basic facts of the case should be examined based on the evidence of the case.

#### 4.2 Guarantee of effective legal services by lawyers

Criminal suspects and defendants who voluntarily plead guilty and accept punishment are exchanging a certain degree of derogation of procedural rights for a certain degree of leniency in sentencing, and, in keeping with the judicial philosophy of "simplifying procedures without diminishing rights", their rights should be more fully safeguarded. The introduction of a system of leniency for guilty pleas and penalties at the investigative stage should strengthen the effective involvement of lawyers. First of all, the effective intervention of lawyers in the investigation stage, can prevent the existence of improper investigation behavior, such as inducement of confession; Secondly, lawyers can rely on their professional legal knowledge and rich experience in court proceedings, for the suspect to make the correct legal guidance, to protect the wisdom of the plea.

#### 4.3 Strengthening the validity of court confirmation of guilty pleas and sentences

In the investigation stage signed in the letter of intent to plead guilty and punishment in the sentencing recommendations, in the examination and prosecution stage is also recognized, the sentencing recommendations in terms of its effectiveness, still belongs to the scope of the right to request, but still has its own characteristics, that is, the procuratorate's sentencing recommendations are based on the premise that the suspect plead guilty and give up certain procedural rights in exchange for the procuratorate's sentence concessions and the formation of the sentencing recommendations can be said to be the result of the agreement between the prosecution and the defense in order to encourage the accused party's plea of guilty, the practical implementation of the leniency and leniency of the criminal policy, the court for the procuratorate's sentencing recommendations should be adopted.

---

### REFERENCES

---

- Jia, Y., Wang, M. Y., & Han, Z. (2021). Three people talk about "Implementing Less Arrest and Careful Prosecution and Careful Detention to Promote Social Governance." *Inspection Daily*, (06).
- Li, Y. (2008). The Debate on Plea Bargaining in the United States. *Northern Jurisprudence*, (10), 42.
- Sun, C. B. (2020). Study on the Application of Plea-Bargaining System in the Investigation Stage. *Journal of Liaoning Police College*, (3), 96.
- Sun, C. B. (2023). Study on the Application of Plea-Bargaining System in the Investigation Stage. *Journal of Liaoning Police College*, (03), 93.
- Zhang, M. K. (2020). The Basic Position of Criminal Law. The Commercial Press, (7)95.