

Research on the Application of the Leniency System for Admitting Guilt and Accepting Punishment and Criminal Reconciliation

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Abstract: By comparing the similarities and differences between the leniency system for admitting guilt and accepting punishment and the criminal reconciliation procedure, this paper analyzes the differences in their practical application and their institutional defects, and explores the pathways for the coordination and improvement of the two systems. Methodologically, it adopts normative analysis and comparative research, and, in combination with the case-handling data published by the Supreme People's Procuratorate and the current legal provisions, systematically compares the applicable prerequisites, scope, effects, and defects of the two systems. The two systems are consistent in requiring criminal suspects to "admit guilt and repent," in running through the entire criminal procedure, and in improving judicial efficiency; however, they differ significantly in the subjects protected, the scope of applicable cases, and the predictability of the outcomes of leniency. The application rate of the criminal reconciliation procedure is far lower than that of the leniency system for admitting guilt and accepting punishment, mainly because of the narrow scope of its application, the difficulty of reaching reconciliation, and the pressure of public opinion arising from the suspicion of "buying punishment with money." Finally, the paper clarifies that the two systems should "seek common ground while reserving differences," complementing rather than substituting for each other, so as to construct a new order of criminal procedure centered on the leniency system for admitting guilt and accepting punishment, with criminal reconciliation as a supplement.

Keywords: Leniency for Admitting Guilt and Accepting Punishment; Criminal Reconciliation; Victims' Rights; Sentencing

Recommendations; Procedural Connection

1. Introduction

The leniency system for admitting guilt and accepting punishment and the criminal reconciliation procedure are important components of the Criminal Procedure Law for properly protecting the legitimate rights and interests of both the prosecuting and the defending parties. Since the comprehensive development of the leniency system for admitting guilt and accepting punishment in 2018, it has become an indispensable link in the litigation procedure, advancing step by step from the filing of a criminal case to the entry into force of the judgment, which has greatly increased the application rate of the leniency system. According to statistics, nationwide, among the persons whose cases were concluded at the review-and-prosecution stage, those handled under the leniency system for admitting guilt and accepting punishment account for the vast majority of the total. By contrast, with respect to the criminal reconciliation procedure, statistics from the case management department of the Supreme People's Procuratorate show that in 2023 alone, 24,000 criminal reconciliation cases were facilitated at the review-and-prosecution stage. Although the overall number of cases facilitated has increased, it still falls far short of the application rate of the leniency system, and this is even against the background of a year-on-year increase in the number of cases accepted.

2. An Overview of the Leniency System for Admitting Guilt and Accepting Punishment and the Criminal Reconciliation Procedure

2.1 The Concept of the Leniency System for Admitting Guilt and Accepting Punishment

The leniency system for admitting guilt and accepting punishment refers to a mechanism

under which criminal suspects and defendants voluntarily and truthfully confess their crimes, raise no objection to the alleged criminal facts, agree to the sentencing recommendation proposed by the procuratorial organ, and finally sign the statement of admission of guilt and acceptance of punishment, after which the case may be handled according to the lenient procedure as prescribed by law. The establishment of this system is an important part of the reform of the judicial system, and its original purpose is to resolve the judicial predicament of "too many cases and too few judges." As an expedited processing mechanism premised on the admission of guilt, it turns complexity into simplicity so that the accused can make an early guilty plea; in this way, the state can simplify the litigation procedures of ordinary criminal cases and resolve as many cases as possible with relatively fewer judicial resources, which prominently reflects the cooperative and communicative nature of the judicial process. Therefore, the leniency system for admitting guilt and accepting punishment is inevitably oriented more toward the efficiency of criminal proceedings, and it is constructed upon the two basic concepts of "admission of guilt" and "acceptance of punishment."

2.1.1 "Admission of guilt"

"Admission of guilt" means that the criminal suspect or defendant voluntarily and truthfully confesses his or her crime and raises no objection to the basic criminal facts alleged. The alleged criminal facts require the criminal suspect or defendant to admit the charges; that is to say, if the criminal suspect or defendant merely disputes individual circumstances of the crime committed, this does not affect the determination of "admission of guilt."

2.1.2 "Acceptance of punishment"

"Acceptance of punishment" means that the criminal suspect or defendant sincerely repents and is willing to accept punishment. The manifestations of "acceptance of punishment" differ at the various stages of criminal proceedings. At the investigation stage, it manifests as a willingness to accept punishment; at the review-and-prosecution stage, it manifests as accepting the decision to prosecute, endorsing the sentencing recommendation of the People's Procuratorate, and signing the statement of admission of guilt and acceptance of punishment; at the trial stage, it manifests as voluntarily signing the statement in court and expressing

willingness to accept the criminal penalty.

2.2 The Concept of the Criminal Reconciliation Procedure

Criminal reconciliation refers to a consensual settlement method in criminal proceedings whereby, on the principle of equality and voluntariness, the victim and the offender reconcile: in order to obtain the victim's forgiveness, the offender expresses repentance and apologizes to the victim, the parties negotiate the relevant issues and reach a reconciliation agreement, and both parties sign the agreement; the signed criminal reconciliation agreement is then submitted by an intermediary to the relevant judicial organ, serving as the basis for imposing a lighter, mitigated, or even exempted punishment on the offender. It prominently demonstrates the protection of victims' rights and interests by restorative justice.[1]

3. Similarities and Differences between the Leniency System for Admitting Guilt and Accepting Punishment and the Criminal Reconciliation Procedure

The leniency system for admitting guilt and accepting punishment is a reform carried out by Chinese legislators in light of China's domestic judicial environment by drawing on the experience of foreign judicial practitioners, and is embodied in the judicial system. The criminal reconciliation procedure, by contrast, was gradually formed and improved by judicial personnel through the summary of practical experience. Although both contain the judicial element of negotiated admission of guilt, because the two procedures differ in their degree of development and in their hierarchical position in the law, they give rise to certain conflicts and contradictions in some respects.[2] Therefore, against the background of the year-on-year increase in the application rate of the leniency system for admitting guilt and accepting punishment and the extremely low number of cases in which criminal reconciliation is applied, it is necessary to conduct a comparative analysis of the two systems, clarify their similarities and differences, and enable them to absorb and integrate with each other, "taking the essence and discarding the dregs," so as to facilitate the development of China's negotiated criminal justice system.

3.1 Similarities between the Two Systems

3.1.1 Applicable prerequisites

In terms of applicable prerequisites, the two systems are consistent in requiring criminal suspects and defendants to "admit guilt and repent." In criminal reconciliation, compensating and apologizing to the victim are also manifestations of "repentance," which may be regarded as genuine and sincere admission of guilt and repentance. In the traditional concept of criminal proceedings, there is a highly conflicting impact, both between the offender and the victim and between the procuratorate and the criminal suspect.

With the successive emergence of the two systems, the previously conflicting judicial model has been greatly mitigated. On the premise that the defendant admits guilt and accepts punishment, methods used in handling civil disputes are incorporated, and the conflicts between the parties and the confrontation between the litigants are regarded as resolvable through a series of non-coercive means. This outcome resolves disputes in a non-confrontational manner: the defendant receives a relatively lighter penalty, the victim receives timely spiritual and material compensation, and the judicial organs are able to conclude cases quickly, which is a win-win situation for all three parties.

3.1.2 Running through the entire criminal procedure

Several provisions of the Criminal Procedure Law as amended in 2018 contain explicit stipulations on the various stages of criminal proceedings in cases involving the admission of guilt and acceptance of punishment. In particular, as clarified in the Guiding Opinions on Applying the Leniency System for Admitting Guilt and Accepting Punishment issued by the state, the leniency system runs through every stage of criminal proceedings, which means that leniency for admitting guilt and accepting punishment is a complete litigation procedure applicable throughout the investigation, prosecution, and trial stages.

According to Articles 288 and 289 of the Criminal Procedure Law, the judicial organs are all entitled to preside over criminal reconciliation cases, to hear the views of both parties, and to observe the principles of voluntariness and equality as well as the duty of legality review. In addition, they are responsible for drafting the relevant reconciliation

agreements. For cases that meet the conditions and in which a reconciliation agreement has been reached, the public security organs and the procuratorate are entitled, according to the actual circumstances of the different litigation stages, to propose lenient treatment. Depending on the particularities of the case, different methods of disposal may be chosen: if the case is minor and does not constitute a danger to society, then no penal disposition is necessary; the court and the procuratorate have the power to decide not to prosecute in accordance with the law, or the people's court may adopt a discretionary lenient approach toward the defendant and impose a lawful and reasonable lighter or suspended sentence.

3.1.3 Effects in judicial practice

Against the background of China's current efforts to develop the rule of law and advance the reform of the legal system, the requirements for judicial personnel are increasingly elevated, with a view to improving the quality of case handling and effectively reducing the occurrence of wrongful convictions. In particular, the implementation of the "lifelong responsibility system for case handling" imposes stricter requirements on judicial personnel to handle cases seriously, fairly, and impartially. Even so, with the rapid development of the economy, the mobility of the population has greatly increased, and the incidence of related crimes has also grown rapidly, leaving judicial personnel increasingly overwhelmed, greatly reducing the efficiency of case handling and increasing its cost. It can be seen that the effective application of the criminal reconciliation procedure can, to a certain extent, make up for the institutional defects of the leniency system for admitting guilt and accepting punishment, alleviate related social conflicts, and thereby accelerate the effective implementation of the leniency system.

3.2 Differences between the Two Systems

3.2.1 Different subjects protected

In criminal proceedings, the core idea of the leniency system for admitting guilt and accepting punishment lies in imposing lenient punishment on defendants and criminal suspects, which means that, based on the defendant's attitude of admitting guilt and accepting punishment, non-coercive custodial measures may be adopted procedurally, and in practice the penalty should be made as light as possible, or even exempted. By contrast, the core idea of

criminal reconciliation lies in safeguarding the rights and interests of victims, focusing on the timely and effective repair of and compensation for the losses and injuries suffered by victims, while also attaching importance to restoring the damaged social system, that is, emphasizing the importance of restorative justice. The focuses of the two systems conflict and contradict each other to a certain extent.

3.2.2 Different scope of applicable cases

First, with respect to the leniency system, the Criminal Procedure Law contains no explicit provisions on the specific scope of applicable cases. Moreover, the leniency system for admitting guilt and accepting punishment runs through all stages of criminal proceedings and may be applied throughout the entire process, which means that it can be implemented in all kinds of cases.

The scope of application of criminal reconciliation is prescribed in Article 277 of the Criminal Procedure Law of the People's Republic of China with respect to public prosecution cases, and can be specifically divided into two categories. First, from the perspective of the nature of the case, it covers cases with a statutory penalty exceeding three years (such as extortion and illegal detention) and cases in which incidental civil compensation is permitted by law. Second, from the perspective of the applicable subjects, it may apply to minors and to adults who are negligent offenders, first-time offenders, or occasional offenders. Applying the criminal reconciliation procedure in such cases can effectively curb the intention to reoffend and is conducive to the construction of a harmonious society.

3.2.3 Different final outcomes

Under the leniency system for admitting guilt and accepting punishment, even if the criminal suspect or defendant has already admitted guilt and accepted punishment before the judicial organs, whether he or she will actually obtain lenient treatment according to law remains uncertain; the judge must still comprehensively consider various factors concerning the defendant to determine whether to grant leniency. Under criminal reconciliation, by contrast, as long as the criminal suspect or defendant, through a series of remedial measures, promptly obtains the victim's forgiveness, reaches a forgiveness agreement, and fully performs the obligations under the agreement, he or she can obtain a lighter or mitigated punishment.[3]

4. Defects in the Leniency System for Admitting Guilt and Accepting Punishment and the Criminal Reconciliation Procedure

Although the two systems are roughly the same in nature and purpose, in practical application the criminal reconciliation procedure is relatively difficult to implement, which also leads to its low application rate; therefore, the criminal reconciliation procedure suffers from certain problems in its application.

Since the criminal reconciliation system was formally introduced by the 2012 amendment to the Criminal Procedure Law, the operation of this procedure has displayed certain defects in concrete practice, the most prominent of which is its low application rate in judicial practice. The main reasons for this problem are as follows. First, the law has explicitly defined the scope of applicable cases, which greatly limits its operability in practice and makes judicial personnel more inclined to apply the leniency system for admitting guilt and accepting punishment. Second, when the criminal reconciliation procedure is applied, it is required not only that the offender sincerely repent and admit guilt and obtain the victim's forgiveness through compensating the victim's losses and apologizing, but also that the victim reconcile voluntarily and without coercion. In practice, the defendant's conduct often causes serious damage to the victim's lawful rights and interests, resulting in poor and broken relations between the parties, and there may even be fierce mutual gamesmanship between them; differences in the parties' attitudes, the amount of compensation, the method of compensation, and the degree of forgiveness all affect, to a certain extent, the success rate of reconciliation. Third, in light of traditional Chinese social thinking, the criminal reconciliation procedure is extremely prone to the suspicion of "buying punishment with money," which is especially sensitive in judicial work and is a sensitive area that judicial personnel try to avoid. If handled improperly in the slightest detail, it can easily give rise to public opinion; therefore, unless the case is minor, simple, and straightforward, judicial personnel are not strongly willing to proactively apply this procedure.

In criminal reconciliation, the low application rate is already a thorny issue; however, in the leniency system for admitting guilt and accepting punishment, the phenomena that may

arise, such as buying punishment with money, indulging crime, and abusing power, are even more complex, and the core difficulty lies in "how to ensure the victim's voluntariness." The essence of the leniency system for admitting guilt and accepting punishment lies in two words: voluntariness. Therefore, the practical effect of this system depends mainly on the reasonable examination of the defendant's voluntariness. According to the work report of the Supreme People's Procuratorate delivered by Procurator-General Zhang Jun at the Fifth Session of the Thirteenth National People's Congress, the data therein are themselves quite illustrative. In practice, it is quite possible that, because the work has not been done properly or the formalities are too simple, criminal suspects feel that they have admitted guilt and accepted punishment for no apparent reason. Of course, it cannot be ruled out that some defendants with subjective malice use this means to deliberately confuse judicial personnel in order to obtain a relatively lighter punishment. There is also the situation in which the defendant is an occasional or first-time offender whose crime is relatively minor and who cannot clearly understand the nature of his or her own criminal conduct; at the investigation and litigation stages, judicial personnel may, in accordance with the law, educate and guide such defendants to admit guilt and accept punishment based on the relevant facts, evidence, and related cases, so that the defendants are convinced. However, at the trial stage, especially when an objection suddenly arises during court debate and different opinions emerge, or when the defendant or criminal suspect pleads not guilty or claims that there were reasons for the conduct, the admission of guilt and acceptance of punishment previously made may, in his or her eyes, acquire a "coerced" and "non-voluntary" character.

In sum, in the current development of criminal proceedings in China, both the leniency system for admitting guilt and accepting punishment and the criminal reconciliation procedure have their own limitations; how to break through the predicament and integrate the two so as to jointly promote the development of criminal proceedings is the direction of our future efforts.

5. Improvement and Adaptation of the Two Systems

5.1 Improvement of the Leniency System for

Admitting Guilt and Accepting Punishment

5.1.1 Highlighting the status of the victim

In China's negotiated leniency system, if the leniency system for admitting guilt and accepting punishment and criminal reconciliation are to be integrated, the similarities and differences between the two must first be sorted out so as to further clarify the development direction of the two systems. The primary task should be to classify public prosecution cases under the leniency system and the criminal reconciliation procedure according to certain methods and criteria. For example, under the leniency system for admitting guilt and accepting punishment, the victim's opinions and suggestions concerning the procedure applicable to the offender have only reference value, and the real right of choice belongs to the offender.[4] This is because, from the perspective of the design of the two systems, criminal reconciliation mainly favors the preservation of the victim's damaged interests, whereas the leniency system mainly favors the defendant's faithful attitude of admitting guilt and accepting punishment; moreover, on the basis of cooperation between the prosecution and the defense, and in order to strengthen the judicial protection of human rights and promote social harmony, greater consideration should be given to litigation efficiency. Therefore, under the leniency system for admitting guilt and accepting punishment, overemphasizing the victim's participatory role would conflict with the criminal reconciliation procedure and cause the criminal reconciliation procedure to be shelved, which is detrimental to the protection of the victim's rights.[4] The Guiding Opinions jointly issued by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security, and the Ministry of Justice provide that the leniency system is one in which the procuratorial organ plays a key role and in which the prosecution and the defense make procedural choices; consequently, the room for the victim to play a role in this system is naturally limited. Accordingly, the victim's participation in misdemeanor cases should be restricted, and more such cases should be channeled toward the application of the criminal reconciliation system. Although the victim's participation in the leniency system for admitting guilt and accepting punishment has been reduced, this does not mean that the victim's claims should not

be given due attention. The victim may be allowed to independently put forward a sentencing recommendation, which means that when the victim's sentencing recommendation and claims concerning compensation and other matters are not adopted by the procuratorial organ, the victim may still submit a sentencing recommendation and related claims to the court. The court should accept and absorb the victim's lawful and reasonable claims, and should reasonably explain to the victim any claims that do not conform to the facts of the case, so as to obtain the victim's understanding and ensure the smooth operation of the leniency system for admitting guilt and accepting punishment.[5]

5.1.2 Reasonably setting sentencing

Judging the degree of reconciliation between the victim and the defendant on the basis of their reconciliation agreement is the most accurate source of sentencing opinions. The sentencing guidelines of the Supreme People's Court also clarify that, in cases where the offender voluntarily compensates the victim for economic losses and obtains the victim's forgiveness, factors such as the nature of the crime, the amount of compensation, and repentance and acceptance of punishment should be comprehensively evaluated. Moreover, whether the defendant sincerely repents, rather than merely putting on a superficial show for the purpose of reducing the sentence, should also be considered, and this should be stated in the relevant judicial documents, with corresponding judicial interpretations added to curb such "clever tricks" and to ensure that the defendant obtains lenient treatment because of a genuine admission of guilt.[6]

5.2 Improvement of the Criminal Reconciliation Procedure

5.2.1 Establishing and improving a work communication mechanism

In the criminal reconciliation procedure, the most important elements are the reconciliation between the two parties and the participation of and opinions offered by the relevant organs, namely the public security organs, the procuratorate, and the courts, which review the content and procedure of reconciliation and preside over the drafting of the criminal reconciliation agreement. However, in concrete application, the public security organs, procuratorate, and courts still lack effective communication concerning the specific

circumstances of reconciliation between the parties, so that relevant information can hardly be shared. Therefore, to ensure litigation efficiency, it is necessary to establish and improve a work communication mechanism, "introducing social forces and taking a multi-pronged approach to comprehensively carry out criminal reconciliation work,[7]giving full play to the positive role of non-governmental mediation institutions, absorbing specific persons to participate in the mediation mechanism, and exploring the formation of a professional criminal reconciliation workforce," so as to ensure efficient communication among the various organs, thereby improving litigation efficiency and better safeguarding the lawful rights and interests of both parties.

5.2.2 Optimizing participation at the grassroots level

We should appropriately reduce the pressure and burden on judicial personnel, increase the participation of both parties, and reduce the level of judicial personnel's involvement. For example, the weight of the reconciliation agreement can be enhanced: judicial personnel only need to examine the legality and reasonableness of the reconciliation agreement, assist in its drafting, simplify the procedure, reduce repetitive and burdensome work, and improve the supporting incentive and supervision mechanisms, so as to increase the enthusiasm of judicial personnel in applying the criminal reconciliation procedure, improve judicial efficiency, and increase the application rate of the criminal reconciliation procedure.

5.2.3 Optimizing specific operating procedures

It is necessary to standardize the criminal reconciliation procedure, add specific provisions on the methods, procedures, and participating subjects of criminal reconciliation, and improve the operability of the judicial procedure, so as to ensure that the parties can deeply understand and actively participate in the reconciliation process.[8] On this basis, a criminal reconciliation system compatible with China's litigation system should be established, and the monitoring of the reconciliation process should be strengthened, so that the judiciary operates in the sunshine, judicial personnel no longer act timidly and dare to apply criminal reconciliation, and the reconciliation between the parties is guaranteed to proceed on the track of the law.

5.2.4 Appropriately expanding the scope of application

The leniency system for admitting guilt and accepting punishment has no clear scope of application, which often leads judicial personnel to directly choose the more familiar leniency system rather than the less familiar criminal reconciliation procedure.[9] As for the scope of application of the criminal reconciliation procedure, this paper submits that it may be applied to some relatively minor criminal cases, which can not only maximize the compensation for the victim's material losses and soothe the victim's spiritual injury, but also greatly save judicial resources, improve judicial efficiency, and reduce litigation burden.

5.3 Prospects for the Two Systems

On the whole, the development path of the leniency system for admitting guilt and accepting punishment and the criminal reconciliation procedure not only reflects the diversified system of the reform of criminal procedure, but also does not lack overall coherence. In their future development, "seeking common ground while reserving differences" will inevitably become the core principle. Seeking common ground means not only that the two systems share the same origin, but also that they have the same supporting measures and value orientation. In particular, since the issuance of the Guiding Opinions on Applying the Leniency System for Admitting Guilt and Accepting Punishment, the realization of victims' participation and the protection of their rights and interests has undoubtedly been strengthened [10]. Reserving differences, by contrast, means that we should still maintain the respective uniqueness of the two systems. For example, in cases with victims, the admission of guilt and acceptance of punishment should neither be treated as a precondition for applying criminal reconciliation and granting lenient treatment, nor should criminal reconciliation be treated as a precondition for applying the leniency system to the defendant. The two should complement each other but not merge with each other.

In the future development of the two systems, it is undeniable that there are certain defects in the effect of the subjects identified in the procedure, the communication mechanism for grassroots application, and the scope of reconciliation in negotiated criminal cases. However, it must also be acknowledged that the legal effects currently established for the two systems by the Criminal

Procedure Law are indeed appropriate and consistent with reality. As can be seen from the year-on-year increase in the application rate of the negotiated leniency system, the current legal norms have already played an efficiency-enhancing role, which has greatly avoided excessive litigation procedures in judicial practice.[11] It may even be said that, at the level of overall norms, there is no need for large-scale reform for the time being; it is only in the specific procedures that continuous improvement is still needed, so as to combine the leniency system for admitting guilt and accepting punishment with the criminal reconciliation procedure, complement each other's defects, and establish a new order of criminal proceedings centered on the leniency system for admitting guilt and accepting punishment, with criminal reconciliation as a distinguishing feature, thereby avoiding litigation burden.

6. Conclusion

In conclusion, both the leniency system for admitting guilt and accepting punishment and the criminal reconciliation system are important components of China's criminal policy of combining leniency with severity. The basic purpose of the two systems is to solve the problem of too many cases and too few judges in China, save judicial resources, and improve the quality of case handling, and their basic value lies in protecting the human rights of defendants and criminal suspects, playing an important role in criminal proceedings in the new era. In their respective fields, the two systems also play different roles. Under the leniency system, the tripartite participation in negotiation allows the various claims of the parties to be heard to a greater extent, with a view to rendering an appropriate criminal judgment. Under the criminal reconciliation system, however, because the victim's opinions are taken into account to a great extent, the defendant's rights and interests are infringed upon to a certain degree, which is also why the application rate of criminal reconciliation is far lower than that of the leniency system for admitting guilt and accepting punishment. If the problems existing in the two systems are appropriately integrated and sorted out so that the two systems are coordinated, they can play a greater role; by gradually narrowing the boundary between the two systems and strengthening the application of

the criminal reconciliation system in judicial practice, it is possible both to realize the purpose of protecting human rights and to improve the efficiency of criminal proceedings to a certain extent, achieving a balance between human rights and efficiency.

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