

Research on the Rationality of Punitive Protest in the Leniency System

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Abstract: The judicial interpretation of the Supreme People's Procuratorate's introduction of the judicial interpretation of the sentencing recommendation on confession and punishment has put forward three kinds of protest situations, which affirms the protest of the procuratorate against the defendant's unreasonable appeal. Disciplinary protest is a mode of incidental protest based on the defendant's appeal. The criticism that punitive protest is the abuse of the right of prosecution and irrational justice always exists. In view of this, this paper intends to take the types of defendants' appeals in China's practice as samples, analyze the rationality of disciplinary protests in the system of pleading guilty and accepting punishment from multiple dimensions and angles, reveal the relationship and existing problems between appeals and protests in the current system of pleading guilty and accepting punishment, discuss the shortcomings in the operation of this system, summarize the objective obstacles faced by China in introducing the system of pleading guilty and accepting punishment, and put forward targeted suggestions.

Keywords: Leniency of guilty plea; Legal appeal; Protest

1. Introduction

Since the establishment of the system of leniency on admission of guilt and acceptance of punishment in China, it has made great contributions to criminal attack and ecological restoration, but its problems still cannot be ignored.

In the *Notice of the Supreme People's Procuratorate on the Issuance of the Sentencing Supervision* (hereinafter referred to as *Opinion*) issued on December 3, 2021, three types of protests were raised: first, protests against people's courts for violating legal procedures; second, the protest against the people's court sentencing error; third, the protest against the defendant's appeal only on the grounds of excessive sentencing. The first two are the protests made by the people's procuratorate against the criminal judgment and ruling of the first instance, while the third protest is not against the judgment and ruling of the people's court. Literally, it is against the defendant's appeal, which does not belong to the situation that the people's procuratorate exercises legal supervision over the trial of the people's court, but more like a disciplinary act against the defendant's repentance. What is the rationality of this protest? Is there a restriction on the basic rights of the defendant? All need to be considered.

2. Parsing problem

According to the provisions of the *Criminal Procedure Law of the People's Republic of China* (hereinafter referred to as the *Criminal Procedure Law*), protest is the first-instance judgment and ruling of the people's procuratorate against the people's court that has indeed been wrong. For the defendant, there are three types of protests that are not conducive to the defendant, are conducive to the defendant and have no impact on the defendant.

The first type of protest against the defendant, to "Gao et al. organize, lead, participate in underworld organizations, opening casino houses and other crimes" as an example, the first review of the prosecution period and the court trial stage, the defendant Gao and others pleaded guilty to punishment, the court adopted the sentencing recommendations of the procuratorial organs, in accordance with the law on Gao and others leniency. After the judgment of the first instance, Gao and other defendants filed an appeal on the grounds of excessive sentencing. The Shaoyang Municipal People's Procuratorate supported the Wugang Municipal People's Procuratorate to file a protest with the Shaoyang Municipal Intermediate People's Court in accordance with the law. The court of second instance adopted the protest opinion and

made an aggravated sentence against Gao and other people in accordance with the law.

The second kind of protest is beneficial to the defendant. Taking the case of "Zhang Tinggui intentional homicide protest" as an example, the Jiangyou Intermediate People 's Court of first instance sentenced the defendant Zhang Tinggui to death for the crime of intentional homicide. After the judgment of the first instance, the Mianyang People 's Procuratorate believed that the defendant 's attitude of pleading guilty and accepting punishment was good, and the judgment of Zhang Tinggui 's death penalty in the first instance was improper, so it filed a protest with the Sichuan Provincial Higher People 's Court. The court of second instance adopted the protest opinion and commuted the death sentence according to law.

Protests in favor of the defendant usually occur when the people 's court does not adopt the sentencing recommendation of the people 's procuratorate or the sentencing is wrong. In the case of confession and punishment, the procuratorate takes consultation as the main tone. ^[1]The protest should be a presumption of ' for the interests of the defendant ', and the attitude is to seek the fair judgment of the court and carry out legal supervision. *Code of Criminal Procedure* stipulates that no penalty shall be imposed on appeal, but at the same time provides for exceptions to the case of a protest by the Public Prosecutor's Office or an appeal by the private prosecutor, so that an appeal by the Public Prosecutor's Office may result in an increase in the penalty, and thus an increase in the penalty following an appeal for leniency upon admission of guilt and acceptance of punishment is possible under the law. However, whether the appeal can lead to its protest needs further demonstration.

Different from plea bargaining in the western legal system, the leniency system of confession and punishment is a discretionary leniency in China's criminal law. The defendant in the Alston case mentioned in the book, *American Trap*, is imprisoned in American criminal proceedings. The prosecution has greater discretion in conviction and sentencing. After the defendant and the prosecution reached a deal on plea and light punishment, it is clear that there is no further appeal. In China, whether from theory or from jurisprudence, through the attitude of all parties can be very clear that China fully guarantees the defendant 's right to appeal, the right to appeal is the basic right of the defendant. It is not difficult to conclude that when the defendant faces trial, he faces public power, and the full protection of private rights is also the protection of public power. As the so-called "wind energy enters, rain can enter, and the king cannot enter". The defendant pleaded guilty and pleaded guilty in the first instance, and then appealed against the first-instance judgment. In the absence of a protest by the procuratorate, the principle of no additional punishment on appeal is applied. There are two modes of the defendant 's appeal: factual appeal and legal appeal. Legal appeals include detention appeals, sentencing appeals, and sentencing appeals also include malicious appeals. ^[2]Since the factual appeal needs to cause the court to review the facts of the original trial, there are errors in the fact determination. The procuratorate will also file a protest to correct the error, so it does not focus on the discussion.

The appeal of the detention center refers to the fact that the defendant has no substantive objection to the conclusion of the first-instance judgment. The purpose of the appeal is to use the trial period of the second instance and the principle of appeal without additional punishment to prolong the litigation cycle and extend the detention period, so that the remaining sentence after the commutation of the sentence period meets the conditions for remaining in the detention center to serve the sentence, so as to achieve the purpose of avoiding prison labor. ^[3]The defendant 's appeal for the purpose of detention is accompanied by different practices. Some directly request for detention on the grounds of detention appeal, some conceal the true intention of detention on the grounds of excessive sentencing, and some on the grounds of excessive sentencing but clearly indicate the true intention of detention and wish to withdraw the appeal. No matter how it is done, the appeal for the purpose of detention is undoubtedly a waste of judicial resources. Justice needs to be humanized, but it cannot be conceded without a bottom line. For the defendant, whether from a psychological point of view or from a legal point of view, to defend their own behavior, that they do not commit a crime or committed is not the crime should have the right. But when the defense is evaluated as not to plead guilty or even not to repent, it has a substantial impact on its own consequences. In the game of rights and consequences, in the face of the powerful state apparatus, they have to choose to limit their own rights, which not only makes the suspect 's guilty plea just a compromise to the system, but also makes the justice advocated by the criminal procedure law can not be achieved. The judiciary is a public power against private rights, individual rights should not be limited. But when the law recognizes and affirms the rights of the accused, can not abandon the criminal law and procedural law of the original intention of the criminal acts of punishment and prevention.

The purpose of the leniency system of confession and punishment is to improve judicial efficiency and promote the reform of criminals. The existence of the detention appeal violates the purpose of

supervision of the appeal system and the purpose of the leniency system of confession and punishment. To a certain extent, it makes the defendant despise the value of the confession and punishment system and reduces the seriousness of the confession and punishment.

Sentencing appeal refers to the defendant's appeal on the grounds that the original sentencing is too heavy, which may include the original judgment is higher than the sentencing proposal, the original judgment is higher than the defendant's psychological expectations and malicious repentance. The first kind of original judgment is higher than the sentencing recommendation. The people's court should adopt the sentencing recommendation of the procuratorate. If it is not adopted, the procuratorate can protest on the grounds of violating the procedure.

The second kind of original judgment is higher than the psychological expectation. The *Opinion* clarifies the standard of the sentencing proposal of the procuratorate, but it puts forward a relatively clear sentencing range for the requirement of fixed-term imprisonment. Although the judicial interpretation limits the range, the length of the sentence for the defendant needs to be strived for no matter how long it is. At the same time, there are also defendants do not plead guilty to punishment, and even the emergence of deception, information asymmetry. The admission of guilt and acceptance of punishment requires the defendant to recognize both the crime and the penalty. The non-recognition of the penalty reflects that the defendant itself should not apply the leniency system of admission of guilt and acceptance of punishment. Direct disciplinary protest will also suppress the defendant's true thoughts and fail to achieve the purpose of correcting behavior and educating criminals. Moreover, the prosecutor's office acts as a consultative relationship with the defendant, and the non-recognition of the penalty also means the non-recognition of the 'agreement' itself. The 'agreement' is not established, and the court may not adopt the prosecutor's sentencing recommendation judgment without the prosecutor's office's protest. At this time, it is necessary to discuss whether the appeal of non-recognition of crime and punishment is an appeal based on 'excessive sentencing only'. Whether the sentencing proposal is a range penalty or a definite penalty, it should be presumed that the defendant accepts the judgment within this range. The final judgment determined for the adoption of the sentencing proposal should be within the scope of the defendant's acceptance. The defendant's disapproval of the 'agreement' is not an objection to the excessive sentencing but a disapproval of the scope of the sentencing, and therefore does not belong to the appeal on the grounds of 'excessive sentencing alone'. Punitive protest does not lie in the supervision of protest but in the balance of protest.^[4]The defendant's right to appeal is guaranteed by law. It cannot be deprived or restricted because of the admission of guilt and acceptance of punishment, nor can it be increased because of the violation of the commitment of admission of guilt and acceptance of punishment. Punitive protest is not necessary for cases that do not really admit guilt and acceptance of punishment, and it can be directly decided by the court.

The third type of malicious repentance, that is, after the defendant has obtained leniency through confession and punishment, without any change in the factual evidence, based on the principle of 'appeal without additional punishment', malicious appeal, trying to seek further substantive leniency through the second instance procedure. The purpose of non-penalty on appeal is to encourage appeal and protect the defendant's right of appeal, so that the correct judgment can be upheld, the wrong judgment can be corrected, and the defendant's concern that even if the original judgment is wronged, the appeal will increase the penalty will be dispelled, so as to balance the asymmetry and asymmetry between public power and private rights.^[5] However, the protection of rights is limited. The original trial pleads guilty and accepts punishment. After the judgment, it appeals on the grounds of excessive sentencing. It is in the form of pleading guilty and accepting punishment in exchange for lighter punishment, and then uses the principle of no additional punishment on appeal to appeal, reflecting its impure motive of pleading guilty and accepting punishment, which is contrary to the spirit of judicial integrity and the legislative purpose of the system of pleading guilty and accepting punishment. Its deep meaning is not the non-recognition of pleading guilty and accepting punishment but the use of the system. The original intention is not to reach an 'agreement' but to exchange for light punishment. From the results point of view, in the face of 'strategic appeals', the supervisory organ checks and balances through disciplinary protests to form a warning effect, indicating that the supervisory organ's opposition to the abuse of rights is due. In essence, malicious repentance is a superficial admission of guilt and acceptance of punishment that is not recognized in essence and intends to seek a lower or even no penalty. It cannot achieve the legislative purpose of the system of admission of guilt and acceptance of punishment, and does not meet the constituent elements of admission of guilt and acceptance of punishment. The procuratorate's disciplinary protest to correct it is conducive to fair judgment and maintains the judicial effect of the system of leniency on admission of guilt and acceptance of punishment. However, at the same time, we should also be alert to the fact that in practice, the procuratorate often punishes and checks and balances the defendant's right to appeal on the grounds of "wasting judicial resources"^[6] which is tantamount to

putting the legal basic rights in the embarrassing situation of wasting judicial resources. What is more, the abuse of the right of prosecution highlights the lack of reasoning of the procuratorate's protest, which also requires the procuratorate to be more fully justified in the face of the restriction of private rights.

3. Feasibility Suggestions on the Problems of Punitive Protest

3.1. Pleading guilty and accepting punishment cases carry out causative appeal

In cases of admission of guilt and acceptance of punishment, especially in fast-track sentencing cases, the defendant has pleaded guilty to serve his sentence in the first instance and obtained the practical advantage of lenient punishment. Although the right of appeal is inalienable as the basic right of the defendant, the limitation of the defendant's right of appeal does not require the defendant to transfer his rights. On the contrary, it is conducive to the judiciary to more accurately locate the defendant's claims and improve judicial efficiency. The relevant protest provisions in the *Opinions* also reflect the judicial tendency to plead guilty and accept punishment cases for appeal, and to protest against appeals filed only on the grounds of excessive sentencing in order to avoid dishonesty in the judicial process. On the other hand, we should also pay attention to the humanistic care of penalty execution. It is a problem that cannot be ignored to put forward the appeal of detention due to old age, disease and other problems. Although it is not encouraged to seek through appeal, we can give the defendant humanistic care from the root, face up to the needs of this group, and be alert to the situation where the defendant benefits from the system.

3.2. Improving the quality of cases handled by judicial organs

The main reason for the appeal is the dissatisfaction with the results of lenient sentencing. The quality and efficiency of handling cases should be improved, and the fair results need not be proved by protest. Pleading guilty and accepting punishment is not the reason to reduce the requirements of evidence and the standard of proof, nor should it accommodate criminal suspects or defense lawyers because of the one-sided pursuit of application rate. In the process of handling the case, we should explain the law in detail, be alert to the defendant's use of the system, and violate the commitment to appeal. First of all, to prevent the admission of guilt and punishment to reduce the standard of conviction, to comply with the principle of evidence referee. Efficiency is not the highest value of justice. Secondly, accurately grasp the conditions of protest and eliminate emotional protest. The defendant's guilty plea does not mean giving up the right to appeal, nor does it mean that the appeal will fail.

In the defendant pleaded guilty to appeal cases, the procuratorial organs exist irrational to protest against the appeal, even in the court failed to adopt sentencing opinion, the defendant did not appeal. The former shows that the procuratorial organs can not tolerate the defendant's repentance and emotional justice, the latter shows that the procuratorial organs can not treat the court's decision with the right attitude. No matter what kind of mentality, it should not be a psychological attitude when a national judicial organ exercises the right of prosecution correctly.

3.3. Perfection of duty lawyer system

Criminal Procedure Law stipulates that if a criminal suspect pleads guilty and accepts punishment, the people's procuratorate shall listen to the opinions of the defender or the lawyer on duty and record them. The duty lawyer stands in the defendant angle, defends the defendant's right, should shoulder to the defendant's responsibility, manifests the professional ethics. The cognitive level and legal literacy of different defendants are different. The duty lawyer can not only be a witness to prove whether the defendant voluntarily pleads guilty and accepts punishment, but also help the defendant to clearly understand the guilty and accepts punishment. In-depth understanding of the evidence and facts of the case, put forward specific and correct sentencing recommendations.

4. Conclusions

Punitive protest is a common situation in the judiciary. Relevant departments should implement different countermeasures according to different types of appeals. In the case of detention appeals, cause appeals are instituted. For the three cases of sentencing appeal, if the original judgment is higher than the sentencing proposal, the procuratorate will file a protest; if the original trial judgment is higher than the

defendant's psychological expectation, it should be improved from the direction of improving the quality and efficiency of the judicial organs' handling of cases and improving the duty lawyer system; if there is malicious repentance, the procuratorate will file a disciplinary protest and fully explain the reasoning.

References

- [1] Cheng Long.(2021). *How to punish protest: Normative interpretation of non-penalty appeal——"Yu case"-based discussion*. *Journal of Gansu University of Political Science and Law* (04), 101.
- [2] Ju Mingliang.(2021). *On the ought-to-be mode of the relief procedure of confession and punishment*. *Journal of Northeastern University (Social Science Edition)* (04),77-78.
- [3] Dong Kun.(2019). *Research on retention appeal in leniency cases*. *Inner Mongolia Social Sciences (Chinese Version)* (03),118.
- [4] Bu Yangyang.(2021). *On the Relationship between the Right of Appeal and the Right of Protest under the Leniency System*. *Law Magazine* (04),122.
- [5] Zhang Jun.(2012). *Speech at the teleconference on the implementation of the decision of the national court to amend the criminal procedure law*. *Criminal Trial Reference* (02),153-154.
- [6] Zhang Wei, Li Lei.(2019). *The Defendant's Repentance Appeal Should not Increase the Penalty after Applying the System of Guilty Plea*, Wechat public number " Criminal Memorandum ",Uploaded on 5 April 2019.