

# Research on the leading position of procuratorial organs in the process of applying the leniency system of guilty plea

Lu Tiandi

School of Humanities and Law, Zhejiang A & F University, Hangzhou, China  
lutiandi\_zafu@163.com

**Abstract:** In 2018, the Criminal Procedure Law of the People's Republic of China revised and improved for the third time the relevant provisions on the application of the leniency system of guilty plea in criminal cases, making it clear that procuratorial organs lead cases of leniency of guilty plea from the procedural and substantive levels. However, in this process, it is also difficult to guarantee judicial fairness and the conflict between public prosecution and trial power, so it is necessary to strengthen the coordination and communication between the court and the procuratorial organ, and build a corresponding supervision mechanism. This paper mainly focuses on the analysis and discussion of the leading position of procuratorial organs in the process of applying the leniency system of guilty plea.

**Keywords:** Procuratorial organs; Guilty plea; Sentencing recommendations; Dominant position

## 1. Introduction

In October 2018, the Standing Committee of the National People's Congress of the People's Republic of China adopted the Decision on Amending the Criminal Procedure Law of the People's Republic of China, establishing the system of leniency for guilty plea as a principle of criminal procedure and establishing specific procedures for leniency for guilty plea. After the implementation of the lenient system of guilty plea, the leading position of the procuratorial organ has been highlighted, and it is no longer only responsible for the prosecution and supervision. The procuratorial organ under the doctrine of authority can lead the whole process of leniency of guilty plea and has substantial influence in handling guilty plea cases and has specific power to decide the outcome of the case.

## 2. The theoretical basis of the new pattern of prosecutorial leading criminal procedure

In April 2021, the Supreme Procuratorate of the People's Republic of China stressed in the Development Plan for Inspection Work during the 14th Five-Year Plan Period that procuratorial organs should give full play to their leading role in applying the leniency system of guilty plea and comprehensively implement the criminal policy of combining leniency with severity<sup>[1]</sup>.

In cases where ordinary procedures are applied, the general sentencing recommendation made by the prosecution to the court is only a legal recommendation, which is not legally binding, and the sentencing power is the exclusive power of the court. However, plea cases are different, and the prosecution's sentencing recommendation basically determines the content of the sentence. Article 33 of the "Guiding Opinions on the Application of the Leniency System of Guilty Plea" states that "people's procuratorates should generally make recommendations for determinate sentencing." Article 40 on the adoption of sentencing recommendations: "The people's court shall review the sentencing recommendations made by the people's Procuratorate in accordance with law." Where the facts are clear, the evidence is reliable and sufficient, the charges are accurate and the sentencing suggestions are appropriate, the people's court shall adopt them." In the work report issued by the Supreme Procuratorate in 22 years, it was mentioned that "the adoption rate of sentencing recommendations in guilty plea cases last year exceeded 97%", and many grassroots courts reached 100%. It can be seen that in the case of applying the leniency system of guilty plea, the sentencing proposal made by the procuratorial organ has substantial binding force.

### **3. The procuratorial organ leads the application of leniency system of guilty plea**

In the case of unchanged workload in the investigation stage and obvious simplification in the trial stage, the procuratorial organ bears most of the substantive litigation work, the decision and application of the plea leniency system lies in the procuratorial organ, the most critical sentencing document is in the procuratorial link, and the sentencing suggestions of the procuratorial organ should be "generally adopted" by the court, all of which reflect the leading responsibility of the procuratorial organ. Many scholars have pointed out that with the application of leniency of guilty plea, the leading position of procuratorial organs in criminal proceedings will be established or strengthened [2].

#### ***3.1. The dominant position of the prosecution in the procedure***

The prosecution led the whole process of pleading guilty. First, the prosecution led the initiation of the plea in the pre-trial procedure, informed the rights, and listened to the opinions. According to the provisions of Article 15 of the Criminal Procedure Law of the People's Republic of China, the guilty plea of the prosecuted person does not necessarily lead to the initiation of the sentencing consultation procedure by the procuratorial organ, and whether to apply the guilty plea procedure and whether to carry out the sentencing consultation procedure is entirely decided by the procuratorial organ unilaterally. Secondly, the prosecution leads the negotiation process of plea. Negotiation is the key to the system of leniency of guilty plea, and reaching a consensus through negotiation is the prerequisite for the system to run. On the one hand, the criminal suspects and defendants need to voluntarily plead guilty, on the other hand, the procuratorial organs need to put forward lenient conditions and conduct an overall review of the guilty plea. The procuratorial organs listen to the opinions and suggestions of both sides of the defense, ensure that the criminal suspects and defendants voluntarily and truthfully plead guilty, make a sentencing recommendation after comprehensive consideration of the whole case, and put forward sentencing recommendations. Article 174 of the Criminal Procedure Law of the People's Republic of China stipulates that a criminal suspect has reached an agreement with the procuratorial organ through a plea offer and signs a plea offer statement. Negotiations mainly take place in the pre-trial stage, and it is up to the prosecution to decide whether to accept a guilty plea. Finally, the prosecution led the signing of the plea agreement. The result of plea negotiation is reflected in the law as a plea statement, which contains important contents such as charges, sentencing suggestions and procedure selection.

In the documents represented by Article 54 of the "Guiding Opinions on the Application of the Leniency System of Guilty Plea", protest is regarded as the main way for procuratorial organs to exercise the power of legal supervision [3]. In judicial practice, when the defendant appeals on the grounds that the sentence is too heavy, the procuratorial organ will protest, there is a situation of "protest against appeal".

#### ***3.2. The dominant position of the prosecution in the entity***

In the case of applying the leniency system of guilty plea, the sentencing recommendation of the procuratorial organ basically determines the content of the sentence. Article 33 of the Guidelines states that "people's procuratorates should generally make recommendations for determinate sentencing." Article 40 on the adoption of sentencing recommendations: "The people's court shall review the sentencing recommendations made by the people's Procuratorate in accordance with law." Where the facts are clear, the evidence is reliable and sufficient, the charges are accurate and the sentencing suggestions are appropriate, the people's court shall adopt them." These provisions make the sentencing recommendations of the prosecution substantially binding. The work report issued by the Supreme People's Procuratorate in 22 years mentioned that "the adoption rate of sentencing recommendations in guilty plea cases last year exceeded 97 percent."

If the People's Court of the People's Republic of China considers that the sentencing proposal is obviously improper, or if the defendant or the defender has objections, the court may request the procuratorate to adjust the sentencing proposal. Even if the people's court considers that the sentencing proposal put forward by the procuratorial organ is improper, it cannot directly modify the judgment, but let the procuratorial organ readjust, and the court has the duty to notify. And the jury is still out on what constitutes "manifestly inappropriate." In practice, it is relatively easy to grasp the so-called "legal misconduct" that has obvious criteria for violation of legal provisions, including the violation of the provisions on the application of sentencing circumstances and the application of legal provisions, the violation of the sentencing guidelines of the Supreme People's Court, and the omission or identification error of sentencing circumstances. What is prone to divergence is the "improper discretion" that deviates from the general judicial experience and violates the principle of the compatibility of crime and

punishment<sup>[4]</sup>.

The 2021 Sentencing Guidelines on Common Crimes specifically respond to controversial issues such as the proposal and adoption of sentencing suggestions in plea cases, and set up "Sentencing supervision" as the sixth chapter, clarifying that the procuratorate has the right to protest the court's wrong practice of not adopting sentencing suggestions in plea cases. So that the effectiveness of sentencing recommendations can be further enhanced.

#### **4. The risk of prosecutorial leading procedure model**

##### ***4.1. Judicial impartiality is difficult to guarantee***

First, it is difficult to guarantee the voluntariness and authenticity of guilty plea. Because the procuratorial organ dominates the whole process of applying the leniency system of guilty plea, the information obtained by both parties is asymmetrical. The procuratorial organs have an absolute advantage in understanding the case and collecting evidence, etc. In plea cases with simplified links and accelerated procedures, this asymmetric contradiction will be further aggravated, resulting in the imbalance between prosecution and defense [5]. Therefore, the process of representation will be more focused on the procuratorial organ to unilaterally put forward sentencing suggestions based on the case and the confession of the accused, and then the accused party will agree or not. The accused often passively accept the sentencing plan of the prosecutor without fully mastering the case materials, and there is no bargaining sentencing negotiation process. In addition, the humanization of duty lawyer witnesses will also lead to the suppression of defense function in essence.

Second, there is the risk of retaliatory prosecution. In practice, the prosecution can appeal against the defendant's repentance. And usually on the grounds that the defendant has objections to the sentencing proposal, the basis for guilty plea has no longer existed, the case is no longer applicable to the leniency system of guilty plea, and can no longer be given a lighter punishment, the defendant is afraid to raise objections by increasing the sentence. To deter the defendant, let it realize that the repentance appeal is not only no benefit, but will be deprived of leniency dividend, and even may be aggravated punishment, rendering a "punitive" causal relationship, so as to prevent the defendant from exercising the right to appeal and cooperate with the prosecutor to apply the guilty plea procedure.

##### ***4.2. The power of public prosecution conflicts with the power of trial***

The Criminal procedure law entrusts the procuratorial organs with the responsibility of supervising the whole litigation activity and shouldering the power of whether to initiate litigation or not. However, in the case of lenient plea, from arrest approval, prosecution to precise sentencing, the same prosecutor is responsible for the end, integrating athletes, referees and supervisors, and the disadvantage that the prosecution has the dominant power among the three parties, which challenges the principle of mutual supervision and mutual supervision of judicial power to some extent.

In the ordinary procedure, as the carrier of public prosecution power, the procuratorial organ shoulders the responsibility of reviewing the case, prosecuting on behalf of the state, and investigating the crime. The defendant and the defense are in the position of responding to the lawsuit, and through the exercise of the right of defense, they put forward litigation claims and relevant evidence materials, refute the accusations of the public prosecution, and safeguard their legitimate rights and interests. The judicial organ shall make a ruling according to law after hearing the opinions of both parties. Public prosecution power, judicial power and defense power have clear boundaries, mutual constraints, and generally maintain a relatively balanced state. In contrast, in the implementation of the leniency system of guilty plea, the content and nature of the power of the procuratorial organs have changed<sup>[6]</sup>.

The first is the transformation of the connotation of public prosecution right. In the traditional criminal justice system, sentencing power is the exclusive power of the court. Before the implementation of the guilty plea system, the procuratorial organs mainly performed the duties of charging crimes, showing evidence and proving crimes, but at this time, the procuratorial organs focused on litigating, which more reflected the right to seek punishment. After the implementation of the leniency system of guilty plea, the procuratorial organs are no longer simple prosecution organs, and the focus has shifted from single "conviction" to "conviction + sentencing", and the power of seeking punishment has a certain legal binding force on the sentencing power of the judicial organs. Based on the agreement reached between the two sides, the procuratorial organs gradually take the submission of sentencing proposals as

the main means to exercise the power of public prosecution. In the provisions of Article 39 of the Guiding Opinions on the Application of the Plea Leniency System issued in 2019 and Article 5 of the Supervision and Management Measures for the Handling of Plea Cases by the People's Procuratorates issued in 2020, the procuratorial organs are clearly required to "listen to the opinions of the defendants, defenders and duty lawyers" when determining and making sentencing recommendations. And try to achieve consensus. Based on this, the sentencing proposal has evolved into the result of consultation and agreement between the prosecution and the defendant. The sentencing proposal essentially embodies the consensus of both the prosecution and the defense, and has the color of "power + right", which changes the connotation of the right of public prosecution.

The second is the strengthening of pre-trial dominance. Considering that the main work of plea negotiation is concentrated in the review and prosecution stage, the procuratorial organs are not only endowed with the right to initiate plea leniency at the procedural level, but also have the power to negotiate with criminal suspects and defenders at the entity level, reach an agreement on substantive issues such as conviction and sentencing, and then put forward binding sentencing recommendations. The decision of whether and how to apply leniency to guilty plea is left to the prosecution, and the pretrial dominance has been greatly enhanced. This also makes the case of leniency of guilty plea in the process of handling, whether it is a matter of entity or procedure, the procuratorial organs submit materials and make decisions, and the judicial organs are only in the position of passive review. The change of the connotation of public prosecution power, the reaching of the agreement between the public prosecution and the defense and the reduction of the disputes have reduced the space for the exercise of the discretion of the judicial organs to a considerable extent.

### **5. Thinking of coordinating public prosecution power and trial power in the context of guilty plea**

The traditional theory holds that the right of sentencing suggestion is the subordinate power of the right of public prosecution, which has nothing to do with the result of substantive trial and the basic rights of criminal suspects and defendants, and only has the function of request in litigation, which belongs to the procedural right. Some scholars believe that the sentencing proposal of the procuratorial organ which has binding effect on the court is damaging the sentencing power of the court and violates the principle of separation of prosecution and trial. However, from the requirement of effective operation of the plea system, this provision is understandable and necessary. Because on the one hand, the guilty plea means that the suspect and the defendant give up the right of defense, and replace the defense with a predictable and relatively certain penalty concession; On the other hand, it means that the efficiency of national prosecution is improved, so it is necessary to ensure the relative certainty and predictability of the litigation results of suspects and defendants. Otherwise, it would be difficult for the system to operate effectively. Moreover, the confession of punishment means that the two sides have reached an agreement or contract, and the agreement of the two sides on a voluntary basis becomes the basis of the legitimacy of the sentencing proposal. If the sentencing proposal agreed by the prosecution and the defendant or suspect is not adopted by the court, then the suspect may have conflict and doubt about the guilty plea, which will damage the value of the guilty plea procedure. Therefore, judges should have a greater degree of respect for such recommendations than the sentencing recommendations based on ordinary case prosecutors.

Respect also does not mean that the court is fully bound by the sentencing recommendations of the prosecution, and does not require the court to abandon its independent jurisdiction and accept the order without review. The judicial power is still exclusive to the court, and the court needs to conduct substantive review of the sentencing proposal, the facts of the case and the voluntary nature of the guilty plea. If the sentencing proposal is obviously improper, the court needs to notify the procuratorial organ to adjust and explain in detail according to the statutory notification procedure. If the procuratorial organ refuses to adjust or is still obviously improper after adjustment, the court shall independently make a final judgment to achieve judicial justice.

Strengthen coordination and communication between courts and procuratorial organs, and formulate unified sentencing norms and guidelines. The court has more experience in sentencing, so it can formulate unified sentencing rules by holding joint meetings and symposiums, so as to provide reference for procuratorial organs when making sentencing recommendations. It can not only improve the ability of procuratorial organs to put forward accurate sentencing suggestions, but also eliminate the differences in the understanding of legal prosecutors to a certain extent.

Strengthen the reasoning between courts and procuratorial organs in litigation documents. On the one

hand, the procuratorial organs should fully reason and demonstrate when making sentencing recommendations, including the basis and reasons for making such sentencing recommendations, the facts and evidence based on the judgment, the opinions of the accused and their lawyers, the opinions of the victims and the situation of guilty plea, etc., so as to show the formation process of agreement and sentencing recommendations as far as possible, rather than just using the "formatted" statement. The prosecution should persuade the judge to adopt the sentencing recommendation through reasoning rather than forcing the judge to adopt the sentencing recommendation through legislation. On the other hand, the court should also fully explain the reasons for not adopting the sentencing proposal, and promptly inform the procuratorial organ to adjust the sentencing proposal, and give the prosecution and defense parties a chance to reach an agreement again. Positive and timely feedback not only respects both the prosecution and the defense, but also reduces the possibility of the defendant's appeal through the interpretation of the law, alleviates the opposing emotions between the prosecution and the trial, corrects the deviation of the understanding of the opposite of the right to seek punishment and the right to measure punishment in judicial practice, builds a harmonious relationship between the law and the prosecution, and promotes the joint force for the reform of the guilty plea system and the trial-centered litigation system.

Therefore, the restriction of the leading position of procuratorial organs needs to build internal and external supervision and restriction mechanism. Internally, the operation of procuratorial leadership should be regulated through clear power list, reasonable performance appraisal and effective case management mechanism. Externally, attention should be paid to the audit and gatekeeping function of the trial process [7].

## 6. Conclusions

As a new system, the leniency system of guilty plea still has some problems in the process of integrating into our criminal justice system, which needs process and time. Both prosecutors and judges should accept and adapt to the power allocation under the plea leniency system as soon as possible, and constantly strengthen the communication between each other. At the same time, internal and external supervision and restriction mechanisms should be established in a timely manner.

## References

- [1] Wu Hongyao, Feng Yikai.(2022). *Optimization path of criminal litigation diversion mechanism led by procuratorial organs*. *People's Procuratorate* (12),15-21.
- [2] Jia Yu. (2020). *Leniency system of Guilty plea and the leading role of prosecutors in criminal proceedings*. *Law Review* (03),1-11.
- [3] Lu Ziyi.(2022). *Evolution, Reflection and Reconstruction: The role of judicial organs in the perspective of lenient Plea Reform*. *Times Law* (04),56-72.
- [4] Long, Zongzhi. (2022). *How to realize "trial-centered" plea cases*. *Chinese Applied Law* (04),13-30.
- [5] Yan Zhaohua.(2021). *Plea of guilty without prosecution: Reflection and reconstruction of leniency path in procuratorial link*. *Journal of the National Academy of Prosecutors* (01),128-146.
- [6] Cui Wei.(2022). *Structural Defects of the protection mechanism of the rights of the accused and its correction: focusing on the case of guilty plea*. *Northern Jurisprudence* (03),109-120.
- [7] Yan Zhaohua.(2020). *Prosecutorial leadership: Construction of lenient procedure model for guilty plea*. *Modern Jurisprudence* (04),37-51.