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The Effectiveness of Sentencing Recommendations in Chinese-Style Plea Bargaining

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Abstract

Although the provisions of article 201 of China's Criminal Procedure Law ensure that sentencing recommendations made by the procuratorate have a substantial impact on the outcome of the trial, thus ensuring the smooth implementation of the leniency system based on acknowledgment of guilt and acceptance of punishment. However, there is neither a firm theoretical basis nor a necessity to stipulate the rigid effect of sentencing recommendations in the law. In order to avoid the procuratorate's right to make sentencing recommendations from infringing on the court's right to adjudicate, and at the same time to safeguard the fairness and justice of the case, the court should have the right to substantively review the sentencing recommendations, and at the stage of adjudication to examine whether the procedural rights of the accused are infringed upon, and whether the sentencing recommendations are reasonable. Where the court considers the sentencing recommendation to be manifestly inappropriate, it is authorized to make a direct decision. In addition, the Supreme People's Court and the Supreme People's Procuratorate should further jointly issue judicial interpretations stipulating the specific lenient sentencing ranges corresponding to the different circumstances of the accused's plea of guilty and admission of punishment, so that the sentencing recommendations made by the procuratorate can be basically in line with the court's final decision, and so that the expectations of the accused regarding the outcome of the lenient sentencing can be met. At the same time, the procuratorate should explain the law and reasoning to the person being prosecuted in connection with the sentencing recommendation.

Keywords: the leniency system based on acknowledgment of guilt; acceptance of punishment; sentencing recommendations; lenient sentencing standards.

1. Introduction

In 2014, *Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law* put forward the task of reforming the leniency system based on acknowledgment of guilt and acceptance of punishment, the system was piloted in the regions in 2016, and the system of leniency of guilty pleas and penalties was formally stipulated in Criminal Procedure Law of the PRC (2018). Since the introduction and implementation of the leniency system based on acknowledgment of guilt and acceptance of punishment, the academic community has been discussing issues surrounding this system, including the value positioning of the leniency system based on acknowledgment of guilt and acceptance of punishment, the nature of affidavit of guilty admission and punishment acceptance, and whether the pursued person who has already pleaded guilty and accepted the punishment has the right to appeal. *Amendment (XI) to the Criminal Law* included drunk driving and throwing objects from a height as criminal offenses, and China has entered the era of misdemeanors, which will lead to a significant increase in the number of criminal cases, and the court and procuratorate are under tremendous pressure to handle cases. The mismatch between the caseload and the number of judicial staff has been resolved through the application of the guilty plea program, which has resulted in the rapid conclusion of cases.

The leniency system based on acknowledgment of guilt and acceptance of punishment in China is similar to the plea-bargaining system in the U.S. Because of the different social backgrounds of China and the U.S. and the different criminal procedure models adopted,

there are many differences in the operation of these two systems. Although the leniency system based on acknowledgment of guilt and acceptance of punishment is newly created in China, it has been widely used in a large number of criminal cases. The plea-bargaining system in the United States has a history of many years, and the vast majority of criminal cases in the United States are resolved using this system. The subjects of the leniency system based on acknowledgment of guilt and acceptance of punishment and plea bargaining are the procuratorate and the person being prosecuted. In a plea bargain, the prosecutor can basically ensure that the accused will ultimately receive a lighter punishment by changing the charge or the number of offenses, so the prosecuting authority has the ability to exchange the guilty plea of the person being prosecuted. In China, the procuratorate have limited discretion in making charges, and cannot negotiate with the person being prosecuted on the charges, and the recommendation for lenient sentencing must be in accordance with the principle of appropriateness of crime and punishment. Although the specific content of these two systems is different, they have the same basic kernel. Both of these systems are through the sentencing of the accused on the benefit of leniency, to obtain the accused plea of guilty, so as to achieve the simplification of the procedure. Both systems are designed to give the accused a speedy trial on the premise that the accused is willing to do so. Different criminal procedure models correspond to different system designs, and the leniency system based on acknowledgment of guilt and acceptance of punishment can be referred to as Chinese-style plea bargaining.

In every case of Chinese plea bargaining, the sentencing recommendation arises at the stage of review and prosecution and is submitted to the court by the procuratorate. The content of the sentencing recommendation includes the type of sentence to be applied to the person being pursued, the range of the penalty and the manner of execution. Article 201 of Criminal Procedure Law of the PRC provides that the court shall generally adopt sentencing recommendations, a statement that makes the adoption of sentencing recommendations mandatory. Sentencing recommendations will constrain the court's discretion, and the *Guiding Opinions on the Application of the Leniency System for Admitting Guilt and Accepting Punishment*, which was implemented in 2019, suggests that sentencing recommendations should be based on the principle of determining the sentence, and that the percentage of accurate sentencing recommendations has subsequently been incorporated into the assessment indicators of procuratorate, requirements that will further constrain the court's discretion. Scholars have debated whether sentencing recommendations should be precise. But the problem with sentencing recommendations in Chinese Plea-Bargaining cases is not just the form they should take, but the attributes and effectiveness of the recommendations themselves. The effectiveness of the sentencing recommendation is related to the final sentence of the court and the personal interests of the prosecuted person, involving the boundaries of the power of the court and the procuratorate. Under the current provisions of Criminal Procedure Law of the PRC, sentencing recommendations in cases of Chinese plea bargaining have a rigid effect; this legislative design is intended to ensure that the procuratorate have a substantial influence on the

outcome of the sentencing, and is more conducive to the procuratorate obtaining a guilty plea from the person being prosecuted; however, it may lead to difficulties in harmonizing the relationship between the court and the procuratorate, and the fairness and justice of the case may also be affected.

2. Analysis of The Rigid Effectiveness of Sentencing Recommendations in Chinese Plea-Bargaining Cases

In order to induce the accused to plead guilty at the stage of review and prosecution, the procuratorate will make a lenient sentencing recommendation, and the procuratorate also need to ensure that this recommendation is basically consistent with the final sentencing outcome, otherwise the plea will not be attractive to the accused. In China, the law directly stipulates that the sentencing recommendation in the case of Chinese plea bargaining has a rigid effect, through this means to support the operation of Chinese Plea Bargaining. Academics have different views on this legal provision, and the main problem with the rigidity of sentencing recommendations is that they may infringe on the court's right to adjudicate and may create the risk of affecting the fairness and justice of the case.

2.1 Controversy over the Rigidity of Sentencing Recommendations

The substantial influence of the procuratorate on the outcome of sentencing is an important basis for the implementation of Chinese plea bargaining. Article 201 of the Criminal Procedure Law of the PRC provides that the courts shall generally adopt sentencing recommendations, ensuring that the lenient sentencing results proposed by the procuratorate to the accused at the stage of review and prosecution are basically realized, thereby motivating the accused to plead guilty and accept punishment, and enabling the system of Chinese plea bargaining to be successfully implemented. According to the provisions of the Criminal Procedure Law of the PRC, the sentencing recommendations made by the procuratorate of the court binding with a certain degree of mandatory, in addition to the statutory exceptions, the court should generally adopt the sentencing recommendations, the academic community on the criminal procedure law article 201 how to understand there are different points of view, the provisions of the article embodied in the effectiveness of the sentencing recommendations whether it will infringe on the court's right to adjudicate the same problem, the practice of the procuratorate and the court there are also There is also a difference of opinion between the procuratorate and the courts in practice.

There are views in the academic community that it is reasonable for Article 201 to provide for the rigid effect of sentencing recommendations. Some scholars have suggested that since the sentencing recommendation is a carrier of litigation consent, it will have a binding effect on the court's conviction and sentencing, which is also the reason why Article 201 adopts the expression "generally should be adopted". Sentencing recommendation belongs to the right of public prosecution on the right to trial constraints, the court in exceptional circumstances do not adopt the sentencing recommendation, then belong to the right of trial on the right of public prosecution constraints. Some scholars have suggested that Article 201 is a clear restriction of the right to prosecute on the right to try by

giving the sentencing recommendation a mandatory force, and that such a provision is to lay the foundation for the realization of the interests of leniency of the prosecuted person. In addition, in the case of Chinese plea bargaining, the final decision is still made in the court, in line with China's "trial center" requirements. (Yan Zhaohua)[1] There are also views that do not agree with the binding effect of sentencing recommendations on the courts. Some scholars believe that the binding effect of sentencing recommendations in the legislation is a violation of the basic principle of the court's independent exercise of judicial power in accordance with the law. (Wei Xiaona)[2] Some scholars believe that the sentencing recommendation is the result of communication and negotiation between the prosecutor and the prosecutor's office, which should be respected by the court, but needs to be examined by the court and adopted on the basis of the legality and reasonableness of the sentencing recommendation. (Xu Fangdi. 2023)[3] Some scholars have suggested that the generation of sentencing recommendations is not based on the consultation between the prosecution and the defense, so from a contingent point of view, the sentencing recommendations do not have a rigid effect, so they cannot bind the court, and thus do not give rise to the problem of squeezing the court's right to adjudicate.

There is still no agreement between the courts and the procuratorate on the effectiveness of sentencing recommendations. Justice Hu Yunteng of the Supreme People's Court suggested that sentencing recommendations are only a procedural right of the procuratorate, and cannot bind the courts, which are not obliged to "accept all" of the sentencing recommendations because of the provisions of article 201. (Hu Yunteng. 2019)[4] The procuratorate, on the other hand, were of the view that the recommendation of a sentence did not exceed the scope of the exercise of the right to seek a sentence, and that, in accordance with the Constitution, the relationship between the court and the procurator's office was one of mutual control, and that the recommendation of a sentence would bind the court's discretionary power, in line with the requirements of the Constitution.

2.2 Rigidity of Sentencing Recommendations Constitutes an Infringement of the Court's jurisdiction

According to the provisions of the Criminal Procedure Law of the PRC, the court should generally adopt the sentencing recommendation; if the sentencing recommendation is clearly inappropriate, the court needs to recommend to the procuratorate that the sentencing recommendation be adjusted, and cannot make a ruling directly. The law lists several situations in which the sentencing recommendation is clearly inappropriate, all of which are cases that do not meet the conditions for the application of the Chinese Plea Bargaining, at which point the sentencing recommendation loses its binding force on the court, not because of any problems with the sentencing recommendation itself. It can be seen that the sentencing recommendation has a rigid effect on the court. In addition, article 201 adopts the expression "generally should be adopted" rather than "may be adopted", so that the sentencing recommendations made by the procuratorate, especially the sentencing recommendations for determinate sentences, are basically equivalent to the pronouncement of the sentence, the procuratorate in fact acted on behalf of the court's

sentencing power, which of course constitutes an infringement of the court's jurisdiction. Certainly constitutes a violation of the court's jurisdiction.

The court should generally adopt the sentencing recommendations made by the procuratorate to a certain extent violates the court's right to trial, and may affect the realization of fairness and justice. Because in the Chinese plea-bargaining system, although improving the efficiency of the criminal procedure is the main goal of the system, but the accused to get the substantive leniency is equally important, some scholars have suggested that, compared with the substantive results of leniency, further simplification of the criminal procedure is not the goal of Chinese Plea Bargaining. (Zuo Weimin.2017)[5] The Chinese Plea Bargaining reflects China's criminal policy of combining leniency with severity. The sentencing recommendation reflects how leniency is to be applied, and the court should review the sentencing recommendation, review the factual findings and legal application of the lenient circumstances, and review the range of leniency to ensure that the outcome of the leniency decision is in line with the principle of consistency between punishment and crime and the requirements of fairness and justice. Although the procuratorate is a legal supervisory organ, it cannot directly replace the court to make a trial, and the sentencing recommendation can be used as a reference basis for the procuratorate to carry out legal supervision. The work of the procuratorate should be recognized and respected at the trial stage, but the final decision on sentencing is still made by the court, which is the only judicial authority. The right to impose a sentence is one of the core powers of the court's trial power, and the right to impose a sentence is the exclusive competence of the judge, who has the responsibility to ensure that the sentence is appropriate, and is therefore not obliged to be consistent with the sentencing opinions of either the prosecution or the defense when imposing a sentence. At the normative level, giving sentencing recommendations in the law a rigid binding effect on the court's sentencing decisions is a formal denial of the judge's right to review the substance of the sentencing recommendations, and also results in an infringement of the court's right to adjudicate.

According to article 201 of the Criminal Procedure Law of the PRC, in cases where the sentencing recommendation is clearly inappropriate, the court can make a decision only after the procuratorate has gone through the prior procedure of adjusting the sentencing recommendation. Some scholars believe that if the court directly adjudicates without going through the prior procedure, it is a procedural violation, and the procuratorate may carry out legal supervision in accordance with the law. (Bian Jianlin.2022)[6] Some scholars believe that the court does not go through the procuratorate to adjust the sentencing recommendations, but directly exceeds the sentencing recommendations to increase the sentencing of the defendant, belongs to the surprise decision, constitutes a procedural violation. (Long Zongzhi.2022.)[7] The law requires that the sentencing recommendation must be adjusted by the procuratorate before a decision can be made, is intended to formally ensure that the sentencing recommendation made by the procuratorate and the trial results are basically the same, reflecting the substantial influence of the procuratorate on the outcome of the sentencing. This is actually also the rigid effect of

sentencing recommendations infringement of the right to trial. The court as long as the prosecution and defense to ensure the exercise of procedural rights, the right to direct trial, which is the court to exercise the right to trial. Moreover, the provision of a preliminary procedure will make the criminal procedure more complex and is not in line with the goal of simplifying the procedure under the system of Chinese plea bargaining.

3.LACK of Reasonableness and Necessity of Rigid Effectiveness of Sentencing Recommendations in Chinese Plea-Bargaining Cases

According to China's criminal procedure model, there is no solid theoretical basis for the law to give rigid effect to sentencing recommendations from the perspective of reasonableness. In addition, in the light of China's judicial practice, it can be concluded that, in the face of enormous pressure on cases and appeals, the procuratorate and the courts have basically the same goal, both wishing to conclude the case quickly on the basis of no objections from the person being prosecuted, and therefore there is no need to stipulate the rigidity of the sentencing recommendations in the law.

3.1 Weak Foundations for the Rigid Effectiveness of Sentencing Recommendations in Chinese Plea-Bargaining Cases

Most of the scholars who believe that the court should adopt the sentencing recommendations of the procuratorate are of the view that the court should respect the sentencing recommendations that reflect the views of the prosecuted person and are the result of the agreement between the prosecution and the defense. However, in the process of Chinese Plea Bargaining, the accused are not on an equal footing with the prosecutor, and the accused does not have the ability to negotiate with the prosecutor. Although the Criminal Procedure Law of the PRC stipulates that the procuratorate should listen to the views of the prosecuted person, there is no way of knowing the extent to which they do so, and the law does not provide for disciplinary measures against the procuratorate. In addition, pressure from higher-level procuratorate may cause lower-level procuratorate to induce or force the prosecuted person to plead guilty and accept punishment. Procuratorate, in order to meet the requirement that sentencing recommendations should be made as consensual as possible, as stipulated in the *Guiding Opinions on the Application of the Leniency System for Admitting Guilt and Accepting Punishment*, may also force the prosecuted person to plead guilty to a crime by making a harsher sentencing recommendation. As a result, sentencing recommendations are not the result of communication and consultation, but are often unilaterally made by the procuratorate. Under such circumstances, there is no good reason to require the court to respect the sentencing recommendation.

Sentencing is the competence of the courts, and sentencing recommendations are not binding on the courts, as is proper in an ex officio trial. In China, after the revision of the Criminal Procedure Law in 1996, China's criminal procedure model evolved into a hybrid model with a strong ex officio approach, i.e., it has weakened strong ex officio and absorbed clientelism. (Wang Haiyan. 2008.) [8] Under the current provisions of China's Criminal Procedure Law, the charges brought by the procuratorate do not bind the

courts, which have the power to hand down sentences in accordance with the charges determined by the trial, and are not limited by the charges brought. In Chinese plea-bargaining cases, the inconsistency between the charges and the trial's determination of guilt is an exception to the court's adoption of a sentencing recommendation, and is consistent with the above general provisions. Article 53 of China's Criminal Procedure Law clearly stipulates that where there is only a confession by the defendant and no other evidence, the case cannot be decided on that basis. It can be seen that a confession of guilt is not binding on the court, much less exempt from the court's obligation to examine and make a judgment. Similarly, in the examination and prosecution stage of the formation of sentencing recommendations are not binding on the court. This is different from the United States, where in the plea bargaining system, the waiver of a plea of not guilty by the person being pursued has independent procedural value and can bind the court, and the judge will directly pronounce judgment on the sentence.

In addition, with the development of society, the circle of criminality is expanding in all countries, leading to decriminalization and a corresponding increase in the number of criminal cases. Several countries around the world have decriminalized through prosecutorial power. The power configuration of prosecutorial and adjudicative powers has also changed. The consensual nature of the prosecution and defense limits the power of the judge. Prosecutors, on the basis of a guilty plea by the defendant, are given the power to prejudge the outcome of the case, which the judge is only required to review and confirm, thus allowing for the expeditious disposal of criminal cases. (Erik Luna,2012)[9]The widespread application of consensual justice in various countries has contributed to the emergence of procedural truth.(Erik Luna,2010)[10] Since China's criminal procedure still adheres to substantive realism, the truth formed by the procuratorate in the prosecution stage in agreement with the accused cannot replace the truth of the case obtained by the judge through the trial process, and therefore the sentencing recommendation should not necessarily be binding on the court.

3.2 It is not Necessary for the Law to Provide for the Rigid Effect of a Sentencing Recommendation on the Court.

It is not necessary to stipulate in the law the rigid effect of sentencing recommendations, which may not only infringe on the court's right to adjudicate, but also make some judges psychologically reluctant to accept sentencing recommendations, which is not conducive to positive interaction between the court and the procuratorate. Even if the rigidity of sentencing recommendations is not stipulated in the law, the system of Chinese plea bargaining can still be successfully implemented. The leniency system based on acknowledgment of guilt and acceptance of punishment is similar to the plea-bargaining system in the United States. There is no provision in the U.S. law that obliges judges to accept sentencing agreements formed by the prosecuting authority and the person being prosecuted in a plea bargain, but the plea-bargaining system still operates in the United States. Prosecutors achieve substantial influence over sentencing outcomes primarily through the power they enjoy in criminal proceedings, the structure of

the sentence, and the will of the judge. In the book *Plea Bargaining's Triumph*, the author points out that the triumph of plea bargaining in the United States lies in the choices of the participants involved. In criminal proceedings, not only do prosecutors favor the use of plea bargaining to handle cases, but judges also support plea bargaining, thus making plea bargaining the dominant system of criminal justice in the United States. (George Fisher, 2012)[11] In the early days of the development of plea bargaining, judges were not involved in plea bargaining, and prosecutors used the discretion they enjoyed to conduct charge bargaining by dropping some charges or reducing them to charges of lesser offenses, thereby obtaining guilty pleas from defendants on other charges. During this period, it was the structure of penalties in prohibition and murder cases that allowed prosecutors to achieve sentencing manipulation by manipulating charges, and prosecutors were able to plea bargain by vouching for the fact that a defendant entering a guilty plea could obtain a lesser penalty. In the last decade and a half of the nineteenth century, the increase in civil cases put case pressure on judges, and the creation of probation reduced the sentencing pressure on judges, so judges also began to support plea bargaining in criminal proceedings, and the number of cases in which plea bargaining was possible was expanded to include all areas of criminal offenses. Although prosecutors in fact share the sentencing power of judges, this is not due to a legal imposition, but rather to the will of the judges.

In fact, in Chinese plea-bargaining cases, the courts are usually willing to accept sentencing recommendations made by the procuratorate. On the one hand, given the current dramatic increase in the number of criminal cases in China and the relatively light penalties imposed in most cases, the courts are willing to accept sentencing recommendations in order to achieve speedy resolution of cases. In the face of enormous case pressure, the courts and prosecutors have the same interest in getting most cases dealt with quickly, so when it comes to sentencing, the courts generally choose to accept sentencing recommendations. On the other hand, the court's acceptance of a sentencing recommendation in a Chinese plea-bargaining case can reduce the pressure on the judge to appeal. In Chinese plea-bargaining cases, although sometimes the defendant is forced to plead guilty, the sentencing recommendation generally gives the defendant the substantive benefit of leniency in sentencing, and the defendant therefore anticipates the outcome of the sentencing, and the court's adoption of the sentencing recommendation reduces the defendant's appeals and avoids the pressure of review.

A lower appeal rate can reduce the judicial burden and improve the efficiency of litigation. It is suggested that the appeal rate for Chinese plea-bargaining cases would much lower than that for non-Chinese plea-bargaining cases during the same period. Although there are different views in the academic community on whether defendants in Chinese plea-bargaining cases should have the right to appeal, there are currently no explicit provisions in Chinese law restricting the right to appeal in Chinese plea-bargaining cases, and the right to appeal remains the right of the person being pursued. From the existing defendants' reasons for appeal, it can be seen that some defendants have already received a lenient decision, but utilizing the

principle of no increase in sentence on appeal, they speculatively expect the second instance procedure to further reduce the sentence through appeal. Some defendants appealed in order to delay the entry into force of the decision so that they could serve the remainder of their sentence in a detention center within three months. In addition, there are still cases in which the defendant, despite the fact that the court of first instance has already adopted the sentencing recommendation of the procuratorate, still believes that the sentence is too severe and appeals. (Zhang Qi, 2023)[12] In response to these situations, some scholars have proposed a number of measures to prevent abuse of the right to appeal. Despite the fact that some defendants have appealed in order to obtain more benefits after pleading guilty and accepting punishment, the appeal rate in cases of Chinese plea bargaining is still relatively low, and the low appeal rate also indicates that the defendants are obedient to the outcome of the trial, which is conducive to the stabilization of the social order.

Practice has shown that the Chinese plea bargaining can still operate and serve the purpose for which it was created, even if the rigid effect of sentencing recommendations is not stipulated in the law, which also avoids disputes about the boundaries of authority between the courts and procuratorate.

4. System Design to Improve the Effectiveness of Sentencing Recommendations in Chinese Plea-Bargaining Cases

Chinese scholars have put forward a number of proposals to improve the mechanism for generating sentencing recommendations, including strengthening the participation of victims in the Chinese plea-bargaining process, and ensuring that duty counsel can provide effective assistance to the accused by improving the professional competence of the duty counsel and by granting more rights to the duty counsel. These recommendations can strengthen the rights of the defense in the process of Chinese plea bargaining, to ensure procedural justice, but cannot solve the dispute between the court and procuratorate over the validity of the sentencing recommendations. In the U.S. plea bargaining system, no matter who actually determines the subject of the penalty, acceptance of the agreement between the prosecution and the defense is not the obligation of the court, and the law provides for the court to have the power to reject the agreement between the prosecution and the defense, which fully embodies only the court has the right to determine the sentence. In Chinese plea-bargaining cases, in order to safeguard the courts' right to adjudicate, the rigid effect of sentencing recommendations should not be stipulated in the law; the predictability of the judge's acceptance of the prosecution's recommendation on sentencing can be enhanced by other means, and the court's right to review the substance of the recommendation is safeguarded, so that fairness and justice in the case can be realized.

4.1 Ensuring Procedural and Substantive Justice in Chinese Plea-Bargaining Cases through Court Trials

Giving rigidity to the sentencing recommendations made by the procuratorate was appropriate when the leniency system based on acknowledgment of guilt and acceptance of punishment was first introduced, and was conducive to

the smooth implementation of the system. However, after the system has been stipulated in the Criminal Procedure Law and widely applied to criminal cases, it is not appropriate to give rigidity to the sentencing recommendations in the law, and the court's power to review the substance of the case should be clarified at the legal level. The statutory exclusion currently provided for in the Criminal Procedure Law is not a problem with the sentencing recommendation itself, but rather that the case should not be subject to a Chinese plea-bargaining case. It is also clear from this provision that the court conducts a substantive review of the Chinese plea-bargaining cases at the trial stage.

It is the defendant's right to be tried by the court and the need for a fair trial. The court should review the fairness of the Chinese plea-bargaining process. The content of the review includes whether, at the prosecution stage, the procuratorate have fully listened to the views of the accused, whether the accused has voluntarily pleaded guilty and accepted the penalty, whether the duty lawyer or legal aid lawyer has given the accused adequate and effective assistance, and whether he or she has taken any action to seek a more favorable sentence for the accused, and so on. The fairness of the review process is a means of realizing and guaranteeing the democracy of litigation through court trials, as well as fully respecting the rights of the prosecuted person, and safeguarding the procedural value of the leniency system based on acknowledgment of guilt and acceptance of punishment. Although the criminal procedure model in the United States is adversary system, the prosecution and defense are still in a state of imbalance of power, and the same problem of coercion to plead guilty exists in plea bargaining. Additionally, plea bargaining can have the problem of innocent defendants pleading guilty. The ability of the prosecution to use its power to create large sentencing disparities between the penalties received in a plea bargain and the penalties that may be incurred if the defendant chooses to go to trial can induce an innocent defendant to plead guilty in exchange for a determinate and lesser sentence.

The court should also examine whether the case meets the requirements of substantive justice. The prosecuting authority, as the prosecution, pursues the prosecution of crimes, and the prosecuting authority may carry out litigation activities with some bias, while the prosecutor also has his or her own cognitive limitations. In obtaining a confession from the defendant, the defendant may be induced to make a confession that conforms to his or her perception. Guaranteeing the court's substantive review and discretion can ensure the plurality of cognitive subjects in the case, thus guaranteeing the realization of fair justice in the case. (Xie Shu. 2022)[13] In addition, the truthfulness of the guilty plea should be examined. A person being pursued may falsely plead guilty because of technical interrogation methods and ineffective assistance from lawyers, etc., at which point it is difficult to correctly determine the facts of the case, and it is easy to produce wrongful convictions.

4.2 Further Harmonization of the Range of Lenient Sentences for Chinese Plea-Bargaining Cases through Judicial Interpretation

Whether and how the leniency system based on acknowledgment of guilt and acceptance of punishment

should be incorporated into the criminal law is a matter of debate in the academic community. At the level of procedural law, the leniency system based on acknowledgment of guilt and acceptance of punishment closely combines procedural and substantive justice, constituting a "complete and perfect judicial democratic process". (Fan Chongyi,2019) [14] According to article 15 of the Criminal Procedure Law of the PRC, there is a statutory basis for the leniency system based on acknowledgment of guilt and acceptance of punishment. Under the existing legal provisions, whether or not the criminal law provides for the leniency system based on acknowledgment of guilt and acceptance of punishment does not affect the operation of the system.

Sentencing recommendations are just that: recommendations, which need not be given mandatory effect by law, and the courts have the right to decide whether or not to accept them after reviewing them. The implementation of the leniency system based on acknowledgment of guilt and acceptance of punishment can be achieved by standardizing the specific criteria for leniency in sentencing. In order to be able to respond to the needs of judicial practice in a timely manner, judicial interpretations should be jointly formulated by the Supreme People's Court (SPC) and the Supreme People's Procuratorate (SPP) to stipulate specific leniency margins for guilty pleas and penalties, and to provide normative guidance for the courts and procuratorates in terms of sentencing. The SPC formulated the *"Guiding Opinions of the Supreme People's Court on Sentencing for Common Crimes (II) (for Trial Implementation)"* in 2017, and although it also provides guidance for sentencing, this document would raise the question of whether it is binding on procuratorate. The courts have rich experience in sentencing and can provide some sentencing methods and techniques for the procuratorate. In order for the courts and procuratorate to recognize and comply with the judicial interpretation, it should be jointly formulated by the Supreme People's Court and the Supreme People's Procuratorate, thus effectively reducing the differences between the courts and procuratorate in sentencing in Chinese plea bargaining cases, and making the courts' and procuratorates' understanding of how to sentence in plea bargaining cases more consistent and the sentencing recommendations more binding on the procuratorate. The courts and procuratorates' understanding of sentencing in cases of Chinese plea bargaining in practice will become more consistent, the rate of adoption of sentencing recommendations will naturally increase, and the accused will more actively and voluntarily plead guilty and accept punishment.

In 2021, the Supreme People's Court and the Supreme People's Procuratorate issued the *Guiding Opinions on Sentencing for Common Crimes (for Trial Implementation)*, which stipulates specific margins of leniency for circumstances such as self-surrender, confession, meritorious conduct, return of stolen goods and restitution, compensation and understanding, and criminal reconciliation, in the context of the recommendation of sentencing and the court's determination of the sentence. At the same time, it is made clear that there is no duplication in the evaluation of the sentencing circumstances of guilty pleas and penalties, as well as those of self-surrender and confession. Whether the guilty pleas and penalties can be

used as an independent lenient sentencing circumstances, there are different views in the academic community. In addition, the sentencing guideline also specifies that voluntary confession of guilt in court, return of stolen goods and compensation, compensation and understanding, criminal reconciliation, and good behavior in custody are not to be evaluated repeatedly with guilty pleas and penalties. Academics on the plea of guilty and punishment should be a separate mitigating circumstances of the controversy, the judicial interpretation of the plea of guilty and punishment and the relationship between self-surrender and confession of the issue of a response. The current judicial interpretations, which provide for a wide range of leniency, should be more precise and highlight the difference in sentencing between a guilty plea and a plea of not guilty. According to the principle of the necessity of punishment, the fact that a person being pursued pleads guilty shows that he or she has a good attitude of repentance and is able to reduce the need for punishment. However, the courts and procuratorate may differ in their judgment of repentance as a basis for leniency, as well as in their understanding of the baseline sentence and the starting point for sentencing, and the judicial interpretations need to be further improved in this regard. By improving the judicial interpretations, the predictability of the benefits of leniency will be made more certain, and the implementation effect of the leniency system based on acknowledgment of guilt and acceptance of punishment will be ensured.

With regard to the form of sentencing recommendations, it should not be a mandatory requirement to make precise sentencing recommendations. When the procuratorate make recommendations on sentencing in the form of range sentences, they may propose sentences of larger ranges, resulting in the benefits that can be gained by the pursued person by pleading guilty and penalty to a crime not being obvious. While the precise sentencing recommendation is too certain, if the final decision of the court is heavier than the sentencing recommendation, the prosecuted person will think that the expected benefits of his plea of guilty have not been realized, which is not conducive to the speedy conclusion of the case. Some scholars believe that precise sentencing recommendations can assist judges in sentencing, ensure the accuracy and certainty of sentencing, and contribute to litigation stability. The current development trend in the form of sentencing advice in Chinese plea-bargaining cases is precision sentencing advice. Some scholars, on the other hand, have argued that the precision of sentencing advice does not necessarily lead to desirable results, including the realization of judicial justice and the improvement of litigation efficiency. (Wang Gang,2021)[15] Some scholars have suggested that the scope of cases in which precision sentencing recommendations should be applied should be limited. It is more appropriate to make precise sentencing recommendations for misdemeanor cases and only range sentencing recommendations for felony cases, and to differentiate between misdemeanors and felonies in accordance with the severity of the penalties.(Han Xu,2023)[16] The requirement for precise sentencing recommendations has actually increased the burden on the procuratorate; before the implementation of the leniency system based on acknowledgment of guilt and acceptance of punishment, the making of sentencing recommendations

was not the focus of the work of the procuratorate, whose level of sentencing was limited, and whose sentencing capacity needed to be upgraded. After the introduction of more specific judicial interpretations, the procuratorate should, in accordance with the range of lenient sentencing stipulated in the judicial interpretations, combine with the specific circumstances of the case, and put forward a sentencing recommendation that is closer to the real judgment of the range of sentences, that is, based on the sentence that the court may ultimately impose, and with the smallest possible range of sentences, put forward a sentencing recommendation. At this time, the form of the sentencing recommendation belongs to the precise range of punishment. If only the procuratorate is required to make a sentencing recommendation for a range sentence, the procuratorate may make a sentencing recommendation directly in accordance with the range provided for in the law or judicial interpretation, at which time the range of the sentencing recommendation is too large. Although the court's discretion is guaranteed to the greatest extent possible, it is impossible to determine the extent to which the final sentence will be reduced for the person being prosecuted. The precise range of punishment can ensure that the sentencing expectations of the prosecuted person based on the sentencing recommendation are relatively clear, and also reflects the respect for the court's discretion. At the same time, the procuratorate should strengthen the reasoning of the sentencing recommendations. Reasoning is not just to persuade the court to adopt the sentencing recommendation. If the law removes the expression that the court should generally adopt the sentencing recommendation, the prosecuted person may not be sure that the lenient sentence in the sentencing recommendation can be realized in court, at this time the prosecuting authority should explain the relevant provisions of the law to the prosecuted person, and strengthen the reasoning. The prosecution should emphasize to the prosecutor that, according to the judicial interpretation, the court and the prosecutor's office will arrive at basically the same sentencing results, and that the prosecutor's expected interests in pleading guilty and accepting punishment can be safeguarded, thus ensuring the smooth progress of the case of pleading guilty and accepting punishment. At this point, the prosecutor's office should improve its own ability to ensure that the sentencing recommendation is close to the final court's sentencing result, as the defendant's guilty plea will be based on his or her trust in the prosecutor's office.

5.Conclusion

The current leniency system based on acknowledgment of guilt and acceptance of punishment is designed in such a way as to give rigidity to sentencing recommendations, so that the system can have room to operate and achieve good results in its implementation. However, there is no solid theoretical basis for the rigidity of sentencing recommendations, and in the light of China's practice, it is not necessary to provide for the rigidity of sentencing recommendations in the law. Through the judicial interpretation in the unified leniency sentencing standards, can realize the sentencing recommendations and the final decision can basically maintain the same result, so that in the case of sentencing recommendations do not have the rigid effect of the law, but still can realize the goal of

creation of the leniency system based on acknowledgment of guilt and acceptance of punishment. At the same time can ensure that the court can exercise judicial power independently in accordance with the law, such system design is more reasonable, but also conducive to ensure the fairness and justice of the case.

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