Research on the Protection of Victims’ Rights in the Chinese Plea Leniency System of Confession and Punishment

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Abstract

Since the plea leniency system was formally established in China in October 2018, it has greatly improved the efficiency of China's criminal proceedings and optimized the allocation of China's judicial resource. However, the protection of victims' rights in the legislative text and judicial practice is obviously insufficient. In order to further promote the wider application of the plea leniency system, strengthening the protection of victims' rights is a key concern for system reform. As the theoretical basis for the guarantee of victims' rights, the theory of restorative justice, the theory of procedural justice, and the theory of human rights guarantee have constructed strong support for the guarantee of victims' rights in the plea-bargaining system. This paper further explores the idea of system optimization through the analysis of the current situation and dilemma of victims' rights protection in China. Finally, it is concluded that the system can be optimized in terms of clarifying the victim's right to information, giving the victim a limited right to a sentencing recommendation, and guaranteeing the victim's right to legal assistance.

Keywords

Plea and leniency system, victims, restorative justice, procedural justice, human rights guarantee

1. Theoretical foundation

From the development of criminal proceedings, we can see that, with the deepening of the understanding of crime, the prosecution of crime from "private" to "public" gradually. Although the victim is an independent party in the criminal proceedings, it is mostly in a negative position in the proceedings (Damaška, M.R. & Fisher, S., 1983). With the rise of the "victim's rights protection campaign" in the last century, theoretical research on the protection of victims' rights has received increasing attention.

In criminal cases, the legitimate rights and interests enjoyed by victims protected by law have been damaged to some extent materially and morally by the actions of the suspect or defendant. Restorative justice encourages the parties involved in the case to actively participate in negotiations, pays attention to the needs of the victims in various aspects, and takes into account the balance of social, moral, and economic factors in the criminal proceedings, which can maximize the restoration of the victims and social losses so that the dignity and equality of each person can be fully respected. It can be argued that the theory of restorative justice provides theoretical support for the enhancement of the guarantee of victims' rights in the plea leniency system.

The theory of procedural justice requires that all parties involved in criminal proceedings should be given the
same opportunity to participate in the entire trial process, that the claims and opinions put forward by all parties should be treated equally, and that no reasonable and legitimate interests should be treated unfairly because of the difference in the identity of the subjects to which they belong (Bibas, S., 2012). The concept of "equality" contained herein is an important theoretical source for strengthening the protection of victims' rights in the plea-bargaining system.

On the one hand, optimizing the protection of victims' rights in the plea-bargaining system can not only effectively promote judicial justice, but also help deepen victims' trust in judicial trials. Obviously, in judicial practice, procedural due process and outcome justice are sometimes difficult to achieve at the same time. However, it is indisputable that due process provides the chance for the interested parties involved in the case to play with each other to promote the justice of the outcome to the maximum extent.

On the other hand, victims exist in criminal proceedings because they have been harmed by some kind of wrongful violation. However, since the right of action of crime victims is usually exercised by the prosecutorial authorities, they lack sufficient participation in the whole process of litigation. If the victim's rights are not adequately protected in the plea-bargain system, the victim is very likely to feel that his or her dignity as a human being is not fully respected in the criminal procedure. It is difficult to ensure that no secondary harm is caused to the victim.

Human rights guarantee theory is an important guarantee to control the constitutionality of the plea and punishment leniency system. China introduced the concept of "human rights" into the Constitution for the first time through constitutional amendments in 2004, explicitly stipulating that "the state respects and protects human rights," and since then, the enactment and revision of other Chinese sectoral laws have paid more and more attention to the value of "human rights. Since then, the value of "human rights" has become more and more important in the formulation and revision of other sectoral laws. The protection of and respect for human rights has been a constant feature of China's Criminal Procedure Law. Article 2 of Chapter 1 clearly stipulates "respecting and safeguarding human rights" and further explains the elements included in the "human rights" referred to and then clarifies the close relationship between the protection of human rights and the construction of socialist modernization. In other chapters, the concept of human rights protection is concretized and detailed, so that it is operable and not reduced to a paper of empty talk.

2. Current Status and Dilemma

China's current regulations on the implementation of the plea system of leniency pay some attention to the procedural rights of victims, but their practical value needs to be further enhanced. For example, Article 3 of Supervision and management of cases in which people's procuratorates admit guilt and punishments stipulates that the procuratorial authorities must consider the views of victims and their legal representatives in the process of pleading guilty and punishing. Nevertheless, there is no parallel provision for supervision and punishment, which makes the provision "flexible" and unenforceable, and whether it is complied with depends entirely on the will of the individual prosecutor. Compliance will depend entirely on the will of the individual prosecutor.

The indifference of prosecutors to the views of victims and their legal representatives is also evident in the text of the law. Article 5 of Supervision and management of cases in which people's procuratorates admit guilt and punishments, based on considerations of judicial efficiency and authority, focuses only on the protection of the rights of the defendant, while the opinions of the victim and his or her legal representative are essentially ignored, and the "sentencing of the defendant" is undoubtedly the most important aspect of the judicial process for the victim. The absence of the victim in this link will undoubtedly weaken their position in the entire plea process.

The defendant's compensation to the victim and the victim's forgiveness is a strong manifestation of the suspect's and the defendant's "repentance" for the harm they inflicted on the victim. In the normative documents on the application of the plea system, it is stipulated that the compensation made by the suspect or defendant to the victim and whether he or she is forgiven by the victim are closely related to the actual sentencing of the defendant (Chen, W., 2016). This provision is an encouragement for the defendant to actively compensate the victim to obtain the victim's forgiveness, which promotes the defendant's further understanding of the harm caused to the victim by his or her wrongdoing, and to a certain extent realizes the educational function of criminal law for the offender, and has a positive effect on bridging the conflict between the defendant and the victim. However, there is still a lack of specific and operable rules on how to identify the defendant's active return of stolen goods, compensate the victim, and obtain the victim's forgiveness, and how to use it as a basis for the procuratorial authorities to issue sentencing.
recommendations and the specific discretionary sentencing range that the defendant can obtain.

In the construction of China's leniency system, it is easy to see that the constructors of China's system uphold the idea of ex officio, insisting that "the interests of the victim are still advocated by the prosecutor on behalf of the state's criminal prosecution power," which has caused the problem of victims' rights not being effectively protected.

Although the victim's right to litigation is a legitimate right given to the victim by law, the "exercise of the victim's right to litigation" is nothing more than empty talk in most criminal procedures based on the victim's lack of knowledge of his or her right to litigation and other reasons originating from the victim himself or herself. In addition, in China's criminal procedure, the procuratorial authorities exercise the right of public prosecution in criminal cases, instead of the victim prosecuting the defendant, and based on the necessity and economic cost considerations, it is superfluous to hire a separate litigation agent. Thus, the victims mostly acquiesce to the state of their litigation rights and are willing to accept all the consequences of this choice. In the actual operation of the plea system, the defendant pleaded guilty, negotiation of sentences, and other important aspects of the game between the defendant and the prosecution, without any existing law to provide effective support for the participatory rights of victims. Eventually formed the victim's rights in the litigation process are almost in a "virtual position ".

The constructors of China's plea leniency system once held the view that efficiency was a priority in the initial stage of the system's conception. Even after continuous revision and adjustment, the basic principles of the application of the plea leniency system consisting of the principles of leniency and severity, the principle of adaptation of crime and punishment, the principle of evidence adjudication, and the principle of cooperation and restraint among the public prosecution and law enforcement agencies were established. However, the diversified value pursuit and multiple legislative purposes cannot conceal the basic core of the implementation of the system, which is still "efficiency" (Sarkin, J.J., 2021). When there is a conflict between judicial efficiency and the rights and interests of victims, based on the pursuit of litigation efficiency, judicial staff will probably be more inclined to take a more rational and objective attitude, to make a choice more conducive to the overall effectiveness of the case. The rights and interests of victims are often the ones sacrificed because they are considered, in most cases, not to have a significant impact on the fairness of the case.

The neglect of victims' procedural rights by public power organs is also one of the important factors affecting the protection of victims' rights. The current criminal proceedings in China show a relatively strong sense of authoritarianism, with the three organs of public prosecution and law cooperating to control all aspects of criminal justice. Most of the staff of the three organs also believes that if they pay more attention to the procedural rights of victims in criminal proceedings, it will most likely increase the burden of their work, waste judicial resources, reduce the efficiency of judicial operation, and not necessarily promote the realization of substantive justice. This is also an important reason why the system has not significantly improved the victims' right to speak in the procedure for several years of operation, and the procedural rights are still not fully guaranteed.

3. Optimized path

Based on the above study of China's plea-bargained leniency system, the system can be improved in three aspects: clarifying the victim's right to know, giving the victim the right to limited sentencing recommendations, and guaranteeing the victim's right to legal assistance.

The right to information is the prerequisite and basis for the protection of victims to exercise their legitimate rights and interests. If the victim does not know what rights he or she has, how can he or she exercise them? In China, the legal system related to the plea system provides that the procuratorial authorities must inform the victim and listen to the victim's opinion in the plea procedure. However, there is no relevant provision for any form of restraint and supervision of the prosecution's failure to fulfill this duty. The victim has a strong desire to know everything about the case based on the defendant's illegal harm. In the eyes of the victims, the staff of the judicial organs needs to deal with a majority of cases. It is inevitable that the pursuit of efficiency of the case, whether they will sacrifice a certain "justice" for the pursuit of efficiency of the case, is very disturbing to the victims (Beccaria, C., 1983). Therefore, the formulation of the relevant legal provisions, the right to information for victims to effectively protect, optimize the actual operation of the above-mentioned provisions, to allow victims to more effectively feel that their rights are protected, and justice is advocated. This is also more conducive to their effective participation in the process, actively defending their rights and accepting the final verdict (Wu, Y., 2020).

Victims, as parties in criminal cases, are often "forgotten" in cooperative justice. Their subject status and rights are often not fully respected and guaranteed. Giving victims the limited right to propose sentencing, giving them...
the opportunity to participate in the negotiation of sentencing, and promoting the generation of sentencing proposals together with other litigation subjects, can help achieve the purpose of restorative justice and meet the reasonable expectations of victims for procedural justice. It fully protects the human rights of victims, effectively resolves conflicts, repairs social relations, and achieves a balance between justice and efficiency (Li, E., 2022).

The focus of China's legal aid work has long been on protecting the rights of criminal suspects and defendants, with less attention paid to the protection of victims' rights. With the continuous improvement of China's legal aid system, the protection of victims' litigation rights is no longer excluded from the scope of legal aid. In the Legal Aid Law of the People's Republic of China, which was promulgated at the end of August 20, 2021, "victims" formally became an important subject of legal aid in China. Article 29 of the Law specifies the rights of victims in criminal cases to receive legal aid.

If the protection of victims' rights only stays at the legislative level, it will undoubtedly reduce the protection to a piece of paper. Therefore, after improving the legislative protection, there is a need to have supporting regulations and measures to put the victim's right to legal aid into practice. This is conducive to ensuring that victims know and exercise their rights in practice, in line with the requirements of the concept of procedural justice.

References