Legal Thinking for The Lenient System for Admission of Guilt and Acceptance of Punishment in China: From the Perspective of the Accused's Right to Repent

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Abstract

The accused has the right to repent in application of the Lenient System for Admission of Guilt and Acceptance of Punishment. The procuratorial organs and courts do not need to separately examine the reasons for repentance, but these reasons can be used as basis for convicting and sentencing. The problem issue is an eternal theme—fairness and efficiency. The author holds that the Lenient System for Admission of Guilt and Acceptance of Punishment does not apply to cases of statutory sentence for life imprisonment or death penalty. At the same time, the court should issue the sentencing standards for relevant crimes as soon as possible. In addition, in cases where the procuratorial organs recommend applying to the system, the court has the power to decide not to apply.

Keywords: *Lenient System for Admission of Guilt and Acceptance of Punishment, repentance, appeal, protest*

I. Context

On November 16th, 2016, the Supreme People's Court of the People's Republic of China, Supreme People's Procuratorate, Ministry of Public Security, Ministry of State Security and Ministry of Justice have published the *Measures for Piloting the Lenient System for the Admission of Guilt and Acceptance of Punishment in Criminal Cases in Some Areas*. The Lenient System for Admission of Guilt and Acceptance of Punishment (hereinafter referred to as the System) has been piloted in 18 cities in China since its publication. Based on the pilot, the Standing Committee of the National People's Congress deliberated and passed the *Draft Amendment to the Criminal Procedure Law* in October, 2018 and formally established the System. It stipulates the lenient principle for admission of guilt and acceptance of punishment in accordance with law. It improves the criminal procedural rules for the lenient system. It increases fast-track sentencing procedure. It enhances the protection for the rights of the parties. During the pilot program, the author holds views that China still lacks the judicial environment for plea-bargain. To promote it for relative egalitarian, long-term

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planning and exploration must be carried out from both the legislative and judicial levels.[1] The following will be focused on new problems arising from the implementation of the System.

II. The accused has right to repent in the phase of examination and prosecution

In the Lenient System for Admission of Guilt and Acceptance of Punishment, cases that the suspect or the defendant repent after signing a recognizance often happen. There are different opinions between theory and practice on how to deal with the problem. Zhu Xiaoqing, former deputy procurator of the Supreme People's Procuratorate, has long been concerned about the prosecution system. He states that "Differences should be told from whether there is justification for the accused's repentance for signing a recognizance to admit guilt and accept punishment. If there are justifications, the judiciary should support the act of repentance and then are responsible for finding out the reasons why the accused will repent. If there are no justifications, the judiciary shall restrain the accused's action. Besides the invalidation of the recognizance, the System shall not apply. In case where repentance is made before prosecution, the procuratorial organs shall make sentencing recommendation in accordance with the facts and evidence on the basis of the repentance; In case where repentance is made in court of trial, the court decides whether to swift procedure based on the situation after repentance, and render a ruling according to the facts ascertained; If an appeal is filed after the judgment and no new facts or evidence are presented, the procuratorial organs shall file an appeal."[2] The author here holds that this view is debatable.

The main intentions of advancing the System are (1) to punish crimes timely and effectively and to maintain social stability; (2) to carry out a criminal policy of "punishment combined with Lenient" in order to strengthen judicial protection of human rights; (3) to optimize judicial resources allocation and to improve justice fairness and efficiency; (4) to deepen the reform of the criminal litigation system in order to construct a scientific criminal litigation system.[3] Despite the fact that all these four points are important, the public and the judiciary generally believe that the primary intention of the system is to improve litigation efficiency.

A party to the System is the accused, and the other is the investigative organ, the procuratorial organ responsible for reviewing and making a decision for prosecution, or the judicial organ. In practice, it is mainly based on an agreement between the procuratorial organ and the accused. The general mode of operation is that where both agree on the application of the System, the procuratorial organ produces

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[1] Wang Enhai, *Reflections on Lenient System for Admission of Guilt and Acceptance of Punishment – A Comment on the Related Provisions Under the Draft Amendment Criminal Procedures Amendment*, Journal of Oriental Law, No. 5, 2018.

[2] Zhu Xiaoqing, *How to Treat the Accused who Repent After Signing the Recognizance to Admit Guilt and Accept Punishment*, Procuratorial Daily, the third edition, 28 August, 2019.

[3] According to Zhou Qiang, President of the Supreme People's Court, *the Draft Interpretation to the Decision on the Authorization of Some Areas to Initiate the Pilot Program of The Lenient System for Admission of Guilt and Acceptance of Punishment,* on the 29th meeting of the Standing Committee of the 12th National People's Congress on 29 August, 2016.

recognizance for guilt admission and punishment acceptance. The accused signs it in the presence of a lawyer. In trial of court, the trial will focus on examining whether guilt and punishment are admitted and accepted voluntarily, thereby improving the efficiency of the trial, which is also the focus of media coverage during the initial pilot of the System.

Among the above mentioned three organs, the investigative organ is not much affected by whether the System is applied, because the rules of evidence of the two are not different. For the judicial organs, the System indeed improves the case-handling efficiency, especially in fast-track sentencing procedure that can be ended in a few minutes. However, as for the procuratorial organ who is also responsible for the procedure for the accused's signing the recognizance, the application of the System increases the workload to a certain extent and in turn reduces the efficiency of the examination and prosecution.

As the trial time is compressed, the workload of the public prosecutor in the court has decreased, but the workload throughout the whole stages of the prosecutor does not, or to some extent increased. It mainly lies in that:

(1) The application of the System requires the public procuratorial organ to offer a concrete sentencing recommendation, which requires the public prosecutor to be familiar with the case file before the trial, to determine the facts of a case, to clarify the standard of sentencing, and to add the rule of "Lenient" in the recognizance;

(2) The public prosecutor should explain sentencing recommendation, hear the accused's opinion, and explain the doubts of the accused;

(3) The lawyer must be present when signing the recognizance, which requires the public prosecutor to negotiate the time of signing with the lawyer and get the lawyer's approval of the recognizance. From this point of view, the work of the procuratorial organ in trial of court is just transferred to the pre-trial stage. For the public prosecutor, the workload is more and more cumbersome and demanding to some extent.

The foregoing arguments claim that if the accused repents, the public prosecutor and the judge shall identify the reasons for repentance and treat them differently. The author holds the opinion as follows.

First, the exploration on reasons for the repentance of the accused will inevitably increase the workload of the public prosecutor and the judge. "Repentance" is the subjective mentality of the accused. The repentance of the accused is mostly made after deliberation and comprehensive consideration. In the phase of reviewing and making a decision for prosecution, the public prosecutor and the accused are in the opposite position, which naturally causes the latter to have self-protection consciousness. Therefore, it is not easy for the public prosecutor to explore reasons to repent. This will inevitably increase the workload of the public prosecutor, which also explains why they are not keen on the application of the Lenient System for Admission of Guilt and Acceptance of Punishment. It is the same for judges who have no opportunity to communicate with the accused before trial. Thus, it is even more difficult to judge whether the reasons for the repentance are justified.

Second, exploration on the reasons for repentance will reduce the efficiency of litigation. As can be seen, exploration on the reasons for repentance increases the workload of public prosecutors and judges, and naturally reduces the efficiency of examination, prosecution and trials. This is contrary to the original intention of

introducing the System. In this regard, the public prosecutor may fully make statement on the fact, in court of trial, that the accused has repented. The judges may suspend the application of the System and transfer procedure. Reasons may be investigated in the converted procedure and be used as a basis for convicting and sentencing, which has little effect on the efficiency of litigation.

Third, the right of the accused to repent is the legal right. As mentioned above, the main intention of the System – to improve the efficiency of litigation – does not make much sense to the accused because the term of pre-trial custody shall decrease the term of punishment. The main difference in efficiency lies in the ratio of the time in jail and in the prison. It is due to this reason that if guilt and punishment are admitted and accepted by the accused, preferential treatment on sentencing shall be given. If this preferential treatment is not accepted, the most ideal state is to refuse to apply to the system at the early stage, but this does not mean that the right of the accused to repent is deprived of once the System is chosen. What may bring to the accused are unfavorable consequences, even though the accused is voluntary. There is no need for the public prosecutor to identify the reasons,[4] but to prosecute according to the provisions of the Criminal Procedure Law. The judge then renders a sentence based on the ascertained facts, evidence and in accordance with relevant provisions. The accused may present a statement in court, which may be decided as the basis of the judgment. In conclusion, there is no need to make special provisions on the issue.

Another reason for supporting estoppel is that repentance, if made casually, will undermine solemnity of the signed recognizance. However, this doubt may be solved from another point of view: if the accused denies the truth of the statement after signing, while the procuratorial organ opposed, which leads to the failure to reach an agreement again, the recognizance is invalid. In other words, the doubt may be solved if "repentance" is deemed as that no agreement is reached again. The key to this issue is, of course, whether the accused has the right to propose changing opinion. The author holds the opinion that whether to exercise or to give up the rights of the System depends on the accused. Any denials can be made on the accused's own will. The procuratorial organ shall identify the reasons for modification before "repentance" are made.

III. The motive to admit guilt and accept punishment shall not be used as reasons for the procuratorial organ's protest

Recently, attention has been drawn on the practices of courts and procuratorates across the country: Can the defendant appeal against the excessive punishment after the court makes a first-instance judgment in application of the System? Can the procuratorial organ protest against the accused's appeal to reflect the impureness of his guilty plea? The People's Procuratorate of Tianhe District of Guangzhou protested against Jiang in a drug trafficking case, saying that "without any change in the evidence, Jiang's appeal was based on excessive punishment. He intended to take the advantage of Lenient punishment system in exchange for lighter punishment, and then use the principle of no-adding penalty in appealing. His motive for pleading guilty is not pure. The Lenient punishment for guilt admission and punishment acceptance

[4] Of course, if the reason for repentance involves the exclusion of illegal evidence and other matters clearly stipulated by law, the judiciary should review the reasons.

applied in the first instance should not be applied herein. The accused shall be sentenced to a heavier penalty." The people's court of second instance upheld the appeal, and modified a sentence of imprisonment of 9 months in addition to a fine of 2,000 yuan to a fixed-term of one year and three months in addition to a fine of 10,000 yuan.[5] The People's Procuratorate of Bao'an District, Shenzhen Municipality, Guangdong Province filed an appeal almost on the same ground against the respondent Cheng charged with a crime for establishing or running casino. The people's court of second instance held that the grounds for the appellate case against the sentence of a people's court of first instance were not established. The appeal was dismissed and the original judgment was upheld.[6] In addition, there was a report that the people's court of second instance remanded the case to the original court for retrial, which resulted in the accused being sentenced to a heavier penalty, because the procuratorate held that the defendant's appeal showed "his refusion to plead guilty, so the System was not applicable."[7]

The aforementioned viewpoint advocates that "the appeal is filed after the judgment, and if no new facts or evidence are presented, the procuratorial organ shall file an appeal". How to correctly understand this issue involves not only the recognition and understanding of guilt-admission and punishment-acceptance, but also the procuratorial organs' right to appeal.

Article 216 of the Criminal Procedure Law stipulates that the defendant's ground for appeal is "Against a sentence or ruling of a local people's court at any level as a court of first instance." Article 217 thereof stipulates that the reason for the procuratorate's appeal is "Deeming that there is any definite error in a sentence or ruling of a people's court at the same level as a court of first instance." The two are detailed in *Rules of Criminal Procedure of the People's Procuratorate (for Trial Implementation)* published by the Supreme People's Procuratorate (hereinafter referred to as *the Supreme People's Procuratorate's Rules*). Six circumstances are stipulated in Article 584:

(1) Where the facts are unclear and the evidence is insufficient;

(2) Where the accused is acquitted even with hard and sufficient evidence to prove guilty, and vice versa;

(3) Where application of penalty is inappropriate as a lighter sentence for a serious crime or a heavy sentence for a minor crime;

(4) Where the charges are erroneously determined where a person convicted of more than one crime is convicted of one crime, and vice versa, which affect sentencing or cause serious social impact;

(5) Where exemption from criminal punishment or application of probation, prohibition order, or limiting commutation is wrong;

(6) Where the people's court seriously violates the legal procedures prescribed in the trial process.

From this point of view, the defendant does not need any reason in the initiation of the second instance. To guarantee the defendant's right to appeal, Article 226 of the

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[5] Zhang Chen, *Repent the Confession of a Drug Trafficking? Add to Another Six Months in Prison!*, Guangzhou Daily, the fifth edition, 9 April, 2019.

[6] Zhang wei, Li Lei, *Limitation of Appeal Right in Cases of Lenient Punishment for Guilty Plea*, People's Court Daily, 7th edition, 19 July, 2018.

[7] Wu Sunlin, *Multi-site Prosecutors Protested for the Accused's Appeal After Repentance for Pleading Guilty! Result is Either another Sentence or a Maintenance of the original judgment,* available at https://www.sohu.com/a/306231261_161795, accessed on 01.08.2019.

Criminal Procedure Law also establishes the principle of no aggravation of criminal punishment on the defendant, which can be regarded as a supplementary to the principle that a case is closed, after trial by a people's court of second instance. In contrast, the procuratorial organ shall protest based on hard evidence. This may explain why Article 223 thereof provides that where a case appealed by the people's procuratorate, people's court of second instance shall form a collegial panel to hear the following case in a court session. While cases appealed by defendant may not hold a court session to hear a case, unless a defendant thereof has raised any objection to the facts and evidence determined in the trial at first instance, which may affect conviction and sentencing. At the same time, Section 3, Article 216 thereof provides that a defendant shall not be deprived of the right to appeal under any pretext. In this way, regardless of application of the System, during the trial of a case in the court of first instance, the defendant has the right to appeal with excessive punishment.

As the case of Jiang mentioned in the preceding paragraph, the procuratorial organ protested in accordance with Item 3, Article 584 of *the Supreme People's Procuratorate's Rules* that "Where application of penalty is inappropriate as a lighter sentence for a serious crime or a heavy sentence for a minor crime". The reason is that the defendant's appeal reflected that the motive for pleading guilty is not pure, and the Lenient System for Admission of Guilt and Acceptance of Punishment is no longer applicable. The issue on whether the sentencing of the court of first instance is "evidently inappropriate" is not considered here, because the key point is whether the procuratorial organ's reasons for the conclusion are justified and can be inferred from this provision.

The author holds that whether a reason for appeal or protest is required, it shows any of parties' opposition to the first-instance judgment. The court of first instance renders a judgment based on the facts, evidence, relevant laws and regulations, and the guilty plea agreement reached between the procuratorial organ and the defendant. Whether the motive of the defendant and the procuratorial organ when the agreement is reached can influence the sentencing is not considered. Furthermore, as for the court of first instance, unless the defendant expressly states that his motive is not pure, the sentencing cannot be affected by sentencing, which is generally reached within the scope of sentencing agreed. That is the embodiment of the principle— to judge based on facts and guided by law. The original intention of the System is to improve the efficiency of litigation. Thus, it is obviously beyond judges' power to find out the impurity of the defendant's motive in such a short trial time.

Besides, if the accused's motive to admit guilt and accept punishment is considered to influence the sentencing, it is the procuratorial organ that is responsible for reviewing motive rather than the court of first instance. The defendant has no obligation to report his or her motive to the procuratorial organ. After all, this obligation violates common sense. Since the procuratorial organ believes that the motive to admit guilt and accept punishment influence the sentencing, it has the obligation to prove that the defendant's motive. In Jiang's case and Cheng's case, reasons are that the procuratorial organ is negligent in performing its duties. It is unfair if the legal consequences caused by the negligence were borne by the defendant and the court of first instance.

Furthermore, it is evidently inappropriate to deduce that the motive of the accused to sign the recognizance to admit guilt and accept punishment is not pure from his or

her post-act to appeal, without the support of related stipulation of law and judicial interpretation. Any modern society ruled by law advocates the determination of the criminal liability based on the causation, which means one's accused behavior should match with his/her liability. That is to say, the *mens rea* can only be determined by *actus reus* at that time, unless otherwise specified in laws or judicial interpretations that subjective fault can be inferred from subsequent conduct. Such exceptional circumstances are that the judicial interpretations specify that the defendant's squandering the victim's property can be used to determine that the defendant has the purpose of illegal possession. Therefore, if laws or judicial interpretations are not specified, it is obviously not appropriate to deduce that the motive to sign the recognizance is not pure only from the defendant' appeal after signing.

Finally, the premise and core of the System is to guarantee the voluntariness of the accused when signing the recognizance. However, in practices, whether the voluntariness can be effectively guaranteed remains to be seen. The difficulty to exclude that the accused will appeal with excessive punishment implies the possibility that the voluntariness to admit guilt and accept punishment will not be guaranteed.

On this basis, to better understand Item 3, Article 584 of *the Supreme People's Procuratorate's Rules*, that "Where application of penalty is inappropriate as a lighter sentence for a serious crime or a heavy sentence for a minor crime", the sentencing should be compared with the evidence on which the first-instance court judged, which means the defendant's action after the first-instance judgment cannot be used as the basis for protest. Otherwise, it will not only reduce the scope of application of the appeal without aggravated penalty, but also undermine the principle of the second instance as the ending instance. Most importantly, it will cause the court of first instance to be overcautious and indecisive in making a fair judgement.

In the process of drafting opinion and piloting the System, there is a view that the accused shall not appeal and the trial of first instance is the closed trial. At last, the opinion is not adopted. It reflects the intent of the legislator to guarantee the defendant's rights through the trial of second instance. *The Interim Report of the Supreme People's Court and the Supreme People's Procuratorate on the Pilot Program of the Lenient System for Guilt-Admission and Punishment-Acceptance in Criminal Cases in Some Areas* shows that the national defendant's appeal rate was 3.6% during the pilot program. It is understood that there is a considerable amount of the accused whose reasons for appeal was the delay of being sent to serve in prison because they are kept at the detention center. Some refer to it as a "technical appeal", which can be solved by speeding up the progress of the trial of the second instance. But the appeal of the defendant shall not be protested on the grounds that his or her motive is not pure. Otherwise, this practice will largely shake the foundation of the System.

IV. The elaboration on the lenient system for admission of guilt and acceptance of punishment

The Lenient System for Admission of Guilt and Acceptance of Punishment has been piloted with a term for 2 years since November 16th, 2016, but soon is coded into the Criminal Procedure Law on October 26, 2018. Various disputes on the System have been generated so far due to not full attention was paid to during the pilot and the failure to hear the both parties' opinions on the System. The author holds that all

these disputes are carried out around the key issues – justice and efficiency. Therefore, justice should be given priority and efficiency shall not be neglected. As everyone intends to avoid disadvantages, as the core that runs through the essay, the accused repentance on the signed recognizance is purely out of instinct. The accused shall not be deprived of the right to repent in pursuit of litigation efficiency.

The Criminal Procedure Law has expressly stipulated the Lenient System for Admission of Guilt and Acceptance of Punishment. Considering many disputes that exist at this stage, the author suggests refining the System in the following aspects.

Firstly, the aim of the System is to give preferential sentencing, one that the accused is more concerned about than convicting and sentencing. There are 469 charges in China's criminal law, but the Supreme People's Court has only carried out the reform of standardized sentencing for 23 common crimes in judicial practice.[8] This may be one of the most important reasons for repentance. Although the public prosecutor can elaborate the contents of the "preferential" sentencing to the accused, it is possible that even the prosecutor has no idea on how to apply the other crimes to the "preferential" sentencing, and fails to explain to the accused that the sentencing recommendations listed in the recognizance are "preferential" or beneficial. Thus, it is imperative that the Supreme People's Court introduce the guidelines for sentencing standardization of other common crimes as soon as possible. Before that, the local courts should enact guidelines for the sentencing of common crimes in accordance with the sentencing habits of the court and the tradition. This may help the public prosecutor to effectively explain to the accused in order to reduce the times of repentance.

Secondly, the System shall not apply in cases where the legally prescribed punishment is death penalty or life imprisonment. The standardized reform of sentencing mainly focuses on control, criminal detention, fixed-term imprisonment. It does not involve life imprisonment and death penalty. Although it would be easier and more direct for the accused to perceive how the System works out, it would also bring confusion to the public that it is a society where no matter how much danger was caused, the accused could escape any felony so long as they perform well in pleading guilty. For example, the public may believe that under the System, life-imprisonment could be modified to fixed-term imprisonment. The immediate execution of death penalty could be modified to death penalty with a reprieve or they may take it for granted that under the System, death penalty could be modified to life imprisonment. The author holds that this concept does no good to the rule of law. Based on the principle that justice must not only be realized, but also be realized in a visible way, a new mode is suggested by the author here. First, the accused shall be allowed to make statement in court even if guilty has been plead. Then, public prosecutor makes recommendations on sentencing to the court in its procuratorial opinion based on the

[8] There are 23 kinds of crimes determined by the Supreme People's Court's standardized reform of sentencing: crime of causing traffic casualties, crime of intentionally injuring another, crime of rape, crime of unlawful detention, crime of pillage, crime of theft, crime of swindling, crime of forcible seizure, duty embezzlement, crime of extortion, crime of disrupting public service, crime of affray, crime of picking quarrels and provoking troubles, crime of disguising and concealing the income or the proceeds generated from crimes, crime of smuggling, trafficking, transporting, and manufacturing drugs, crime of dangerous driving, crime of fraudulent and illegal fundraising, crime of credit cards fraud, crime of contractual fraud, crime of illegal possession of drugs, crime of harboring others who take or inject drugs, crime of seducing, harboring, or introducing prostitution.

accused's performance in the trial of the court. At last, it is the judge's job to decide the use of sentencing. This mode not only embodies the concept of judicial reform centered on trial, but also contributes to the formation of the rule of law in the public, and is of great significance to the rule of law in China.

Third, the status of duty lawyers shall be changed practically under the stipulated law. If the accused retains a defender, the defender shall be present when signing the recognizance.[9] Considering the duties of the defender, the prosecutor shall leave enough time for reading records and meeting the accused before signing, and hear the opinions of the defender or duty lawyer when submitting the opinion for recognizance. All of these are to ensure that the recognizance can stand the test.[10] If the accused does not appoint a defender, the recognizance shall be signed in the presence of the duty lawyer. However, compared with the appointed lawyer, the duty lawyers only "provide the criminal suspect or defendant with legal assistance including but not limited to legal advice, recommendations on the selection of procedures, application for the modification of compulsory measures, and offering opinions on the handling of the case." (According to Article 36 of the Criminal Procedure Law). They do not have the right to read records and meet the accused[11], which makes the duty lawyer become a "witness" to sign the recognizance. In a sense, the recognizance can be signed, even if the duty lawyer is not present. The court will also approve it, because the duty lawyer has no power to provide effective and practical legal services to the accused.[12]

Fourth, the relationship between the court and the procuratorate shall be dealt with properly in the Lenient System for Admission of Guilt and Acceptance of Punishment. As mentioned above, the System increases the workload of the public prosecutor, while the workload of the judge is relatively reduced. Some judges support this, but some hold that the public prosecutor's sentencing recommendation has reduced the judicial discretion to sentencing. Thus, the author suggests that the sentencing recommendations of the procuratorate should be enacted as a range of sentencing rather than a fixed point. Then, conviction and sentence will be made by judges within the range of sentencing in accordance with the facts and provisions. In this way, the exercise of the discretion of the judge can be guaranteed to some extent.

In addition, the question whether the judge could refuse the application of the System after the procuratorial organ and the accused reach an agreement on

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[9] In practices, there are cases in which the public prosecutor asks the accused to sign a recognizance in the presence of duty lawyers, even though knowing that a defender is retained. This practice severely deprived the accused of the right to defend and did not meet the position of the duty lawyer. The recognizance shall be invalid.

[10] Specified in Article 173 under the Criminal Procedure Law

[11] The right to read records and the right to meet the accused of a duty lawyer are deduced from the provisions of Article 36 under the Criminal Procedure Law. Otherwise, a duty lawyer cannot " offer opinions on the handling of the case " Article 173 thereof also stipulates that "Where the people's procuratorate hear the opinion of the duty lawyer under the preceding two paragraphs, it shall make necessary arrangements in advance to facilitate the duty lawyer's access to relevant case information." However, the duty lawyer did not have these rights during the pilot program. Even after the amendment of the Criminal Procedure Law, there is no relevant supporting measures, which results in duty lawyer not having these rights.

[12] Words came that, according to the author, the public prosecutor may gather defendant of different cases and then ask them to sign recognizances in the presence of one duty lawyer who may not know about the accused at all.

recognizance to admit guilt and accept punishment needs to be cleared. In the judicial practice, there are cases in which the court sent a letter to the procuratorate recommending that the relevant case is not applicable to the System. The author holds as follows.

Firstly, so long as the criminal suspect admits guilt and accept punishment at the stage of examination and prosecution, the procuratorial organ should initiate the System, which is both the right of the accused and the duty of the procuratorial organ.[13] This is in accordance with Paragraph 2, Article 173 of the Criminal Procedure Law stipulates that " Where the criminal suspect admits guilt and accepts punishment, the people's procuratorate shall inform the criminal suspect of his or her procedural rights and the provisions of law on admission of guilt and acceptance of punishment, " and Paragraph 2, Article 176 thereof that " Where a criminal suspect admits guilt and accepts punishment, the people's procuratorate shall offer a sentencing recommendation on the principal penalty, accessory penalty, and whether probation applies, among others, and transfer the recognizance to admit guilt and accept punishment and other materials along with the case."

Secondly, if the court doubts the authenticity and legality of the recognizance, the System shall not apply. This is in accordance with Paragraph 2, Article 190 of the Criminal Procedure Law that "Where a defendant admits guilt and accepts punishment, the presiding judge shall inform the defendant of his or her procedural rights and the provisions of law on the admission of guilt and acceptance of punishment, and examine the voluntariness of the admission of guilt and acceptance of punishment and the authenticity and legality of the recognizance to admit guilt and accept punishment. " This can also be inferred from Paragraph 1, Article 201 thereof.[14]

Thirdly, if the court has sufficient grounds to believe that the case does not meet the conditions for the System, it may not apply. This is in accordance with Article 226 thereof that " Where, during the trial of a case, a people's court discovers that the defendant's conduct does not constitute a crime or the defendant shall not be held criminally liable, the defendant admits guilt and accepts punishment against his or her will, the defendant denies the facts of the crime which he or she is charged with or the application of the fast-track sentencing procedure to the trial of the case is otherwise inappropriate, the people's court shall try the case anew in accordance with the provisions of Section 1 or Section 3 of this Chapter." The fast-track sentencing procedure is a newly set procedure at first instance for the System. This Article is

[13] Whether the procuratorate has the obligation to examine the authenticity of admission of guilt and acceptance of punishment, the criminal procedure law has not yet expressly stipulate, but Paragraph 2, Article 190 thereof stipulates that where a defendant admits guilt and accepts punishment, the presiding judge shall "examine the voluntariness of the admission of guilt and acceptance of punishment and the authenticity and legality of the recognizance to admit guilt and accept punishment." The author holds that it can be concluded that the procuratorate has this obligation.

[14] According to Paragraph 1, Article 201 thereof. For a case where the defendant admits guilt and accepts punishment, the people's court shall, when rendering a judgment in accordance with the law, generally adopt the charges filed by and sentencing recommendation from the people's procuratorate, except under any of the following circumstances: (1) The conduct of the defendant does not constitute a crime or the defendant shall not be held criminally liable. (2) The defendant admits guilt and accepts punishment against his or her will. (3) The defendant denies the facts of the crime which he or she is charged with. (4) The charges filed are inconsistent with those determined at trial. (5) The fair trial of the case may be otherwise affected.

shown up in Section 4 “Fast-Track Sentencing Procedure” of Chapter 2 “Procedures at First Instance”. Section 1, among Chapter 2, is about general procedure “Cases of Public Prosecution”. Section 3 is “Summary Procedures”.

To sum up, where the court believes that the case in trial shall not apply to the System, it has the right to decide not to apply. The procuratorial organs and the defenders have no right to question this. They can only file an appeal against the judgment of the first instance. In judicial practice, the court will generally notify the procuratorial organ in advance. The procuratorial organ should initiate consultations on disputes between the two parties. If it is impossible to negotiate, the opinions of the court shall prevail.

The implementation of the Lenient System for Admission of Guilt and Acceptance of Punishment lacks theoretical research, because the Criminal Procedure Law was revised before the ending of pilot of System, which was planned for two years. Thus, it results in a number of problems in judicial practice. How to treat these problems properly is an important issue in both field of theory and practice. Only through efforts can the original intention of launching the System be achieved and the strategy of "rule of law" be realized.

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