

Protection of victims' rights in the system of leniency of guilty pleas and penalties in criminal proceedings in China

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Keywords: Victims' rights guarantees; plea bargaining system; United States plea bargaining system; sentencing negotiations

Abstract: The understanding and implementation of the Leniency for Confession and Plea System should be aligned with the practical realities of the judicial process. While the law ensures that the rights of defendants are sufficiently safeguarded, it must also pay heed to the protection of victims' rights. In the application of this leniency system, victims, as the direct sufferers of criminal acts, have both the reason and the right to participate in the sentencing process, exercising their legitimate rights. If the system is used merely to enhance efficiency and expedite case closure, the implications, both legal and societal, are evident. This paper examines the protection of victims' rights within the Leniency for Confession and Plea System from the perspective of legislative provisions and practical operations. It analyzes the current state of legislation and practice in China concerning the protection of victims' rights under this system, identifies existing issues, and explores the specific shortcomings in the implementation process. Furthermore, by studying and reflecting on the plea bargaining systems primarily represented by the United States, it offers suggestions for improvement in line with the development of our own system. These recommendations aim to promote the healthy operation of the Leniency for Confession and Plea System. By defining the baseline rights of victims within the application of this system, standardizing mechanisms for expressing victims' opinions, establishing a compensation system for victims, and enhancing mechanisms for protecting victims' interests, we can work towards a more equitable and just legal framework.

1. Introduction

The comprehensive implementation of the system of leniency for confessing and accepting punishment has further deepened judicial system reform, highlighting the superiority of this institutional setup in optimizing the allocation of judicial resources. By reasonably distributing the complexity and simplicity of cases, it enhances the quality and efficiency of case adjudication, ensuring the rational operation of the judicial system and maximizing the optimal benefits of combating crime. Overall, the introduction of the leniency system for confessing and accepting punishment is of significant importance, particularly in effectively integrating judicial resources,

efficiently diverting minor and serious criminal cases, and alleviating the workload and trial pressures of prosecutors and judges. While affirming the logic of the plea bargaining system, it is imperative not to overlook that the simplification of plea bargaining procedures will inevitably impact the exercise of some of the victim's litigation rights, and may even directly place the victim in a "forgotten corner." [1]

Currently, the issue of inadequate protection of victims' rights, whether at the legislative or practical level, is an undeniable reality. Firstly, in terms of institutional design, the Criminal Procedure Law does not adequately consider the rights of victims, fails to reasonably determine their role within the application of the system, and does not fundamentally adjust the rights allocation for victims within the system. According to the Supreme People's Court and the Supreme People's Procuratorate joint publication of the Guidelines for the Application of the Voluntary and Truthful Admission and Leniency System, the content related to the protection of victims' rights within the leniency system merely includes "listening to the victims' opinions" and "promoting the protection of victims' rights." Secondly, from a practical perspective, according to the major case data from the Shanghai People's Procuratorate, in 2023, Shanghai heard over 2000 cases involving victims who voluntarily admitted guilt and accepted punishments, among which 342 cases involved victim forgiveness, accounting for 17.5%; however, among the forgiven cases, only 0.75% involved cases of personal rights infringement that reached a settlement. [2]

Thus, it is evident that this markedly favors the interests of the injured party, to some extent impairing the rights of the victims. Whether in cases of retributive leniency or preventive leniency, the application of the leniency system in cases of voluntary and truthful admission of guilt requires the participation of the victims to realize the intended social effects of the system.

In the realm of scholarly research, as reflected by the statistical data on the leniency system for confession and acceptance of punishment from China National Knowledge Infrastructure, it is evident that the current theoretical discourse predominantly focuses on safeguarding the rights of the accused and defendants, dedicating substantial effort to investigating the voluntariness of the accused and defendants' confession and acceptance of punishment and the protection of their rights, while the attention given to the rights protection of victims remains significantly low. From the perspective of criminal justice theory, it is insufficient merely to emphasize the rights of the victims.

The focus on the voluntary confession and leniency of the defendants has unfortunately overshadowed the procedural and substantive rights of the victims.

2. Basic theory of the plea-bargaining system and safeguards for the rights of victims

As the plea-bargaining and leniency for confession system has been increasingly deeply implemented nationwide, certain issues have emerged in the protection of defendants' rights, such as the reasonable application of sentencing recommendations within this system, the superficial implementation of the duty lawyer system, and doubts about the protection of the rights of the accused. Based on the theory of interest balance, the rights of both parties should be appropriately balanced. However, in judicial practice, an overemphasis on "efficiency first" has, to some extent, suppressed the rights of victims, making the protection of victims' rights appear particularly narrow. On one hand, the smooth operation of the plea-bargaining and leniency system depends on the pursuit of the interests of prosecutors, public interests, and the value of efficiency; on the other hand, it cannot adopt a dismissive attitude towards the involvement of victims. [3]

2.1. Essential elements of a leniency regime for guilty pleas

To meet the increasingly diverse judicial needs of our citizens and establish a fair and just legal system, the system of leniency for voluntary confession and acceptance of punishment has emerged

in the context of the comprehensive advancement of the rule of law and the entry of socialism with Chinese characteristics into a new era. To define the essence of "leniency for voluntary confession and acceptance of punishment," it is necessary to clarify the concepts of "voluntary confession," "acceptance of punishment," and "leniency," along with their respective boundaries. "Voluntary confession" should refer to the sincere and voluntary admission and truthful confession of one's criminal acts by suspects or defendants, who have no objections to the criminal facts charged by the public prosecution authority. The system of voluntary confession and acceptance of punishment encompasses not only the substantive law provisions for frank disclosure and voluntary surrender (it is worth noting that not all cases of frank disclosure and voluntary surrender are eligible for this system; they must be handled reasonably based on the specifics of each case) but also the procedural law provisions for simplified procedures, which help to conserve judicial resources in terms of efficiency. "Leniency" carries distinct meanings in both procedural and substantive law. In terms of procedure, it primarily manifests as lenient handling of cases involving voluntary confession and acceptance of punishment; for such cases under the jurisdiction of basic-level people's courts, expedited or simplified procedures may be applied, whereas ordinary procedures are used for other cases. Substantively, the meaning of leniency is mainly reflected in the People's Procuratorate legally proposing a lenient sentencing recommendation based on the facts, nature, circumstances of the crime, and its degree of harm to society, as well as the situation regarding voluntary confession and acceptance of punishment.[4]

The evolution of the leniency system for plea and penalty acknowledgment has not been an instantaneous accomplishment. While inheriting the domestic institutional framework, it has also judiciously absorbed valuable practices from other nations, eschewing a wholesale adoption of the Western "plea bargaining" system. Instead, it is firmly grounded in the nation's realities, drawing the essence of its principles from traditional Confucian culture and evolving gradually from pertinent criminal policies. For instance, as recorded in the Book of Documents, "Kang Gao," "if the crime does not reach the ultimate degree of wickedness, then one cannot resort to execution." This means that even for serious offenses, if the offender has fully confessed to their crimes, punishment can be administered without resorting to the death penalty. This serves as a theoretical foundation for the leniency system for plea and penalty acknowledgment.

2.2. Historical evolution of the guarantee of victims' rights

2.2.1. Historical development of guarantees of victims' rights abroad

The historical evolution of rights protection for victims abroad can be broadly categorized into three distinct phases: the periods of slavery, feudalism, and capitalism. The study of victim rights protection can be traced back to ancient Greco-Roman times. During this era, the concept of private retribution virtually emerged alongside the inception of human society, serving as the sole pivotal tool for resolving conflicts and disputes in the absence of state and judicial institutions. With the advent of slave-owning states and the subsequent codification of law, the conditions for the redress of victim rights were significantly enhanced. The Twelve Tables of Rome, for instance, stipulated certain actions, including the right of accusation, which, by modern standards, would typically fall under the purview of judicial authorities, but were then the responsibility of the victim. In the early feudal period of France, the initiation of litigation required the consent of the victim, who had to submit an oath-bound written statement as proof of good character to the court. In modern Europe, many countries have instituted provisions within their legal frameworks to address the rights of victims, often tailored to their specific circumstances. For example, contemporary Germany's first criminal procedural code introduced several modern principles of criminal procedure, according to which the state's law enforcement and criminal justice systems are generally initiated by prosecutors,

though in some cases, the information provided by the victim or their legal representatives is also taken into consideration. Since the 20th century, the European Council adopted a recommendation in 1985 aimed at improving the status of victims within the realm of criminal law and criminal procedure. Subsequently, in 1996, the United Nations Commission on Crime Prevention and Criminal Justice passed a recommendation regarding the enhancement of victim status within criminal law and criminal procedure. This recommendation led to the adoption of a resolution for the implementation of the United Nations Declaration of Victim Rights, subsequently revised by a UN expert group into the "Rules for Implementation," which detail the diverse situations of victims across different countries, including the harm inflicted by crimes and the impact on the physical well-being of victims. Since the early 21st century, various countries have made strides in establishing provisions to safeguard the rights of victims in various legal proceedings, each tailored to their respective national contexts.[5]

2.2.2. Historical development of the protection of victims' rights in China

Prior to the enactment of China's Criminal Procedure Law on the 30th anniversary of the establishment of the People's Republic of China, the nation lacked a systematic criminal procedure law, and the scattered provisions for protecting the rights of victims were minimal, often found in various responses and directives from procuratorates and courts. For instance, victims could entrust lawyers to participate in litigation as agents, and had the right to file private prosecutions against actions that harmed their interests. However, the legal status of victims as parties in criminal proceedings was not firmly established, and the procedural rights they enjoyed were incomplete, equivalent only to those of ordinary participants in litigation. The revision of the Criminal Procedure Law in 1996 enhanced the status of victims in criminal proceedings, formally recognizing them as parties for the first time. With the establishment of market economy principles and legal concepts, the Criminal Procedure Law underwent further amendments in 2012, which explicitly defined victims' rights to designate litigation agents, including the agent's authority to raise objections, apply for recusal, and file appeals and complaints. Compared to previous amendments, the 2018 revision of the Criminal Procedure Law focused primarily on the reform of the national supervisory system and the needs of the trial-centric criminal justice system, emphasizing the system of leniency for those who confess and accept punishment, the connection between the Criminal Procedure Law and the Supervisory Law, and the establishment of the system for criminal trials in absentia. Specifically, Article 173 of the leniency procedure for those who confess and accept punishment requires that "the views of the victim and their legal representatives should be listened to," but there is no direct or explicit mention of the specific new provisions related to the protection of victims' rights.[6]

Undoubtedly, when examining the legal revisions from various periods throughout history, the provisions concerning the rights of victims have gradually evolved from simple and scattered to specific and clear. However, fundamentally, whether at the theoretical or practical level, the balance in the protection of victims' rights is significantly skewed compared to the protection of the rights of the accused, which has the potential to cause secondary harm to victims.[7]

3. Status, problems and issues in guaranteeing the rights of victims

From a holistic perspective, while China's Criminal Procedure Law has undergone numerous amendments, the accused person, who holds a position of centrality as a party to the proceedings, remains at the core of its focus. This is primarily reflected in the legal framework's "special attention" to the defendant, both theoretically and practically. On one hand, scholars continuously enhance their research on protecting the rights of the accused, and practical judicial channels for safeguarding such rights are continually expanding. On the other hand, victims remain in a marginalized position, with

persistent issues of inadequate protection of their procedural rights.[8]

3.1. Formal integrity at the legislative level

Crafting the Reconciliation and Leniency System. In October 2018, the Criminal Procedure Law was amended, explicitly stipulating that for suspects and defendants who voluntarily and truthfully confess their crimes, acknowledge the facts of the charged offenses, and willingly accept punishment, they may be legally subject to leniency. The Reconciliation and Leniency System has been comprehensively refined. On October 24, 2019, the Supreme People's Court, Supreme People's Procuratorate, and Ministry of Public Security jointly issued the "Guiding Opinions on the Application of the Reconciliation and Leniency System." On December 20, 2021, the "Guiding Opinions on the Handling of Reconciliation and Leniency Cases by People's Procuratorates and the Conduct of Sentencing Proposals" was issued. Currently, the regulations at the formal institutional level related to safeguarding the rights of victims include the following provisions:

Although there are provisions at the legislative level regarding the participation of victims in the leniency system for plea bargaining, the concretization of regulations on the protection of victims' rights at the institutional level remains limited. Firstly, concerning the rights of victims at the legislative level, the opinions of the victims and their representatives should be heard, with particular focus on whether the accused and defendants have reached a reconciliation agreement with the victims, and whether they have taken proactive and sincere measures to compensate for the victims' losses, expressed genuine remorse, and apologized, thereby gaining the victims' forgiveness. Secondly, according to the Sentencing Guidelines, when the People's Procuratorate proposes sentencing recommendations, it should listen to the victims' opinions and consider whether the accused has reached a mediation agreement, reconciled, or compensated the victims, whether they have obtained the victims' forgiveness, and whether they have voluntarily shouldered the burden of compensation and reparations for social public interests as factors related to mitigating the sentence. Lastly, the protection of victims' rights is primarily focused on their right to be informed, participate, and receive compensation within the leniency system for plea bargaining.[9]

Furthermore, provisions safeguarding the rights of victims are not reflected in other clauses, and within the system of leniency for confessing guilt and accepting punishment, the regulations protecting the victims' rights are not clearly delineated and are relatively simplistic. It is evident from the stipulations on safeguarding victims' rights that in the process of handling cases involving confessions of guilt and acceptance of punishment, it is imperative to hear the views of the victims. However, the act of listening to opinions and merely hearing them are two distinctly different concepts, often resulting in a situation where each party goes about its own way—victims may express their opinions or may not, but this makes little discernible difference in the nature of the case. In practice, the opinions of victims and their representatives have no substantial impact on how public security and judicial authorities handle leniency cases for confessions of guilt and acceptance of punishment. There is a lack of relatively clear regulations regarding how to reach reconciliation agreements with victims, how to compensate for victims' losses, and similar matters serving as the basis for lenient sentencing by public security and judicial authorities. The limited and simplistic nature of institutional provisions continues to underscore the inadequacies in the protection of victims' rights.[10]

3.2. Problems with the leniency regime for guilty pleas in safeguarding the rights of victims

3.2.1. Lack of jurisprudential recognition of the rightful place of victims

At the conceptual level of the Confession, Penalty, and Leniency System, its implications appear

to be somewhat ambiguous. While emphasizing the simplification of complexity and the overemphasis on expediting case handling efficiency, it has not effectively balanced the fundamental values of protecting victims' rights and punishing crime, nor has it accurately and effectively positioned the victims within the framework of the Confession, Penalty, and Leniency System. In the "Pilot Program," the "Pilot Measures," and the newly promulgated "Sentencing Guidelines," there is a strong emphasis on reflecting the protection of victims' legal rights, upholding public interests, and considering the opinions of victims. However, specific regulations aimed at ensuring and achieving this are lacking.[11]

Initially, the system of leniency for confessions and penalties obscures the significant role of the victim in negotiations. The scales of justice ought to be balanced, yet this system, to a certain extent, deliberately obscures the necessity of victim participation in negotiations, inevitably leading to a polarization of the nature of the system. Collaborative justice necessarily culminates in some form of transaction between state organs and litigants. In reality, the clear participation of victims in negotiations not only embodies procedural justice but also serves as an important basis for participation in sentencing. Although both legislative and judicial organs acknowledge the significant role of negotiations in the leniency for confessions and penalties system, the relationship between negotiations and this system has yet to be established in law. The "Pilot Plan," the 2018 revision of the "Criminal Procedure Law," and the "Guidelines" passed in December 2021 all avoid using the term "negotiation". Additionally, based on China's prosecutorial litigation model, parties are often relegated to a cooperative position, making it difficult to achieve genuine "negotiation" within the prosecutorial context.

3.2.2. Lack of detailed legislative provisions guaranteeing the rights of victims

The safeguarding of human rights constitutes a significant achievement in the construction of a nation governed by the rule of law. The concept of human rights protection in the field of criminal litigation encompasses two primary aspects: the protection of the procedural rights of suspects and defendants, and the protection of the procedural rights of other participants in the litigation, particularly victims. At the legislative level, the "Provisional Measures" delineate the provisions concerning victims' rights in two ways: firstly, the protection of victims' legitimate rights and interests in the handling of cases involving admission of guilt and acceptance of punishment; and secondly, the stipulation of the role of victims, their expression of opinions, and the circumstances under which the procuratorial organs listen to these opinions in the processing of such cases. However, the mere expression of a victim's opinion does not signify that it can influence the initiation and application of the system of leniency for confession and acceptance of punishment. Whether the victim's opinion can exert a substantive impact on the application of this system, whether in substance or in procedure, remains undefined and unclear. When sentencing a defendant, the victim's forgiveness is not a necessary condition for leniency, but rather an important consideration. In other words, the victim has no influence over the outcome of leniency.

3.2.3. Ignoring the procedural value of victim participation at the practical level

In practice, public security organs are preoccupied with the fact-finding and evidence-evaluation of cases. Due to the confidentiality and specificity inherent in investigations, details of the investigative process and circumstances are generally not disclosed to victims. During the course of handling cases, procuratorial organs are primarily engaged in effective communication with suspects and defendants regarding the application of the leniency system for confession and acceptance of punishment. Considering that the inclusion of victims in the entire process might hinder the application of the leniency system, which could in turn impede the progress of work. The introduction

of victims' full participation at this stage could potentially impede the application of the leniency system, affecting workflow. Within the framework of applying the leniency system for confession and acceptance of punishment, the court achieves a 90% rate of on-the-spot verdicts, with each trial now shortened from the previous 40 minutes to within 15 minutes, and the trial cycle reduced from one month to ten days. The likelihood of sentencing recommendations proposed by the procuratorate being adopted is high. Apart from low victim attendance rates, victims express significant interest in the trial procedures. Additionally, due to the low attendance of victims at trials, their involvement in the trial is weak, resulting in their opinions and rights during such a short and actual trial not being effectively safeguarded. It is evident that, driven by pragmatism, in the face of escalating conflicts over case volumes and the continuous increase in criminal cases, the partial sacrifice of victims' litigation rights is tacitly accepted by judicial authorities. This, in turn, marginalizes the victims' status within the leniency system for confession and acceptance of punishment.[12]

4. Impact of the United States plea bargaining system on the protection of the rights of criminal victims

Upon discussing the issue of plea bargaining systems, we cannot avoid mentioning the American plea bargaining system. In fact, the influence of plea bargaining in the United States extends far beyond this; it can be said to have impacted the development of criminal legal systems in many countries around the world. In our country, while the system of leniency for confessing guilt and accepting punishment is not identical to plea bargaining, both share the essential attribute of negotiated justice. At present, the issue of victims' rights is closely intertwined with the sustained and healthy operation of the leniency for confessing guilt and accepting punishment system. As the birthplace of this system, the United States, through its provisions on the improvement of victims' rights within the system, may perhaps offer valuable references for the construction of our own system.

In 1982, the United States enacted the Victims and Witnesses Protection Act, marking the first specialized legislation aimed at safeguarding the rights of victims. This Act primarily acknowledged the participation rights of victims in certain judicial proceedings. Subsequently, subsequent legal frameworks pertaining to the protection of victims' rights have been established, such as the 2004 Crime Victims' Rights Act, which further expanded the scope of victims' rights, encompassing participation in litigation, the right to consult with prosecutors, and the right to make statements. This Act concretized provisions regarding victims' rights to information, consultation, and remedies. Firstly, with respect to the right to know, in plea bargaining procedures, victims can, to a certain extent, influence the outcomes of plea bargaining. This indicates that victims possess certain rights that can substantively impact the results. On one hand, the acknowledgment of the right to know for victims no longer relegates them merely as sources of evidence, isolated from the plea negotiation process; it constitutes a significant step towards ensuring that victims, who are in a vulnerable position, are treated fairly and accorded due respect. Secondly, the victims' right to negotiate, as stipulated in the fifth article of the Crime Victims' Rights Protection Act, grants victims the right to engage in reasonable discussions with prosecutors, or the right to reasonable negotiation, thus symbolizing fair treatment and, to a certain degree, indirectly involves victims in the plea bargaining process.

In the context of plea bargaining in the United States, while victims do not qualify as parties to the plea negotiation, they are indeed endowed with certain substantive rights. Notably, in Florida, the rights of victims are even enshrined in constitutional amendments, a testament to the paramount importance placed on the protection of victims' rights.

As one of the parties involved in criminal proceedings, victims under China's system of leniency

for confessing and accepting punishment often merely play the role of understanding the defendant's inaction within the operational framework of the system. Therefore, in the construction of the prosecution-defense negotiation procedure, it is imperative to consider the interests and needs of victims, ensuring their effective participation and expression. From the perspective of procedural justice, parties who have a stake in the outcome of the procedure should have the right to decide whether to participate and to articulate their desired outcomes. In balancing the interests of all parties, neither the protection of victims' rights nor those of defendants should be compromised. Specifically, the right of victims to be informed is of crucial importance. In practice, before hearing the victims' opinions, procuratorial organs have already formed preliminary judgments on the sentencing of the accused or defendant. At this stage, hearing the victims' opinions may often result in a perfunctory approach.

5. Ways to Improve the Protection of Victims' Rights under the Plea Bargaining System

5.1. Jurisprudential Clarification of Victims' Bottom-Line Right to Participate in the Plea-Bargaining System

Victims are parties to criminal proceedings and have a direct stake in the outcome of the leniency system. From the perspective of safeguarding the rights of victims, it is necessary to clarify some of the basic bottom-line rights of victims in the system of leniency in pleading guilty and accepting punishment, so as to strengthen the institutional protection of the rights of victims in various aspects, to clarify the proper status of victims at the conceptual level, and to promote the benign operation of the criminal justice system.

5.1.1. Victims' right to know

Within the system of leniency processing, the victim's right to be informed finds expression in two primary dimensions. Firstly, the victim should be apprised of the progression of each node within the leniency process, encompassing whether the case meets the criteria for the leniency system, the developments regarding the defendant's application, and the ultimate outcome of its application. Secondly, the victim should be privy to the basic details of the accused and the defendant. As parties to the criminal proceedings, victims are entitled to assess the evidence put forth by the procuratorial organs in filing public prosecutions, and they also possess the authority to file complaints. This is because the victims' familiarity with the relevant evidence can aid the procuratorial organs in more effectively prosecuting the defendant and can facilitate the reconciliation between the victim and the defendant. This not only safeguards the interests of the victims but also fosters cooperation with the procuratorial organs, ultimately resulting in a robust accusation against the defendant and more effectively combating crime.

Affording victims the right to be informed is intended to enable them to more clearly assess, from the perspective of their own interests, the correctness of the procedures undertaken by this system in handling cases involving suspects and defendants. It also ensures that they can monitor and hold accountable any actions that fail to fulfill the obligation to inform the victim, thereby genuinely achieving procedural justice. This inclusion allows victims to maximally engage in the procedures related to leniency in admitting guilt and accepting punishment, thereby safeguarding their legitimate rights and interests more effectively.

5.1.2. Victims should have certain procedural options

In the context of the system of leniency for confessing guilt and accepting punishment, only the accused and the prosecuting authorities are granted the procedural choice. If the accused is not acting

voluntarily in confessing guilt and accepting punishment, or if they disagree with the sentencing proposal put forth by the prosecuting authorities, the accused has the option to forego the leniency procedures for confessing guilt and accepting punishment. However, there is no provision for the victim to exercise procedural choice. For instance, the defendant may consent to or object to the application of the summary procedure, provided that the defendant confesses guilt and accepts punishment. In such summary procedures, the expression of the victim's opinion is unquestionably excluded. The court should value the procedural choice of the victim and solicit the victim's opinion when applying the summary procedure to cases involving confession of guilt and acceptance of punishment. If the victim agrees to the application, the court should proceed with the summary procedure accordingly; if the victim opposes the application of the summary procedure, the court should appropriately respect the victim's opinion and not proceed with the summary procedure for the case. In essence, the efficiency-oriented philosophy pursued by the system of leniency for confessing guilt and accepting punishment has already encroached upon the rights of the victim. If the choice for the victim to express their opinion is not granted, it will exacerbate the victim's skepticism and opposition towards the judiciary, hindering the consolidation of judicial authority and the restoration of the victim's damaged social relationships.

5.2. In terms of legislation, victims should be allowed to participate in the sentencing negotiation process

Under the premise of confession and acceptance of punishment, plea bargaining has become a vital component of the leniency system for confessing and accepting punishment. Reasonable participation of victims in plea bargaining is a crucial step towards safeguarding the rights and interests of victims. Victims should be involved in the negotiation process between the prosecution and the defense, where they can present their own claims. According to the Guidelines, when the People's Procuratorate proposes sentencing recommendations, it should fully listen to the opinions of the accused, their defenders, or duty lawyers. This reflects the system of negotiation between the prosecution and the defense but does not include the participation of the victim. However, as parties to the criminal proceedings and the primary subjects directly affected by the crime, victims should not be excluded from the negotiation process. Introducing victim participation in plea bargaining not only creates a channel for negotiation between the defendant and the victim, making it easier for both parties to reach an agreement, but also, even if an agreement cannot be reached, enables public security and judicial authorities to monitor the genuineness of the defendant's confession and remorse through information exchange between the defendant and the victim. This ensures fair and accurate judgments, preventing the defendant from making false confessions and expressions of remorse merely to obtain leniency.

5.3. Regulating victims' sentencing opinions in practice

5.3.1. The significance of regulating the sentencing views of victims

At the level of legal efficacy, the effective participation of victims in sentencing procedures not only reflects their prosecutorial function but also embodies judicial fairness and transparency, thereby contributing to the legitimacy, impartiality, and objectivity of sentencing. Firstly, the lawful participation of victims is a prerequisite for judges to obtain comprehensive sentencing information during the trial. In the sentencing process, both the prosecution and the defendant present their views from their respective perspectives. The prosecution primarily emphasizes unfavorable sentencing factors by combining the primary facts of the crime, considering the consequences of the crime inflicted by the defendant, prior criminal records, and current admission of guilt. Conversely, the

defendant highlights mitigating circumstances such as genuine remorse, voluntary surrender, and meritorious conduct that warrant leniency. However, it must be acknowledged that for the victim, the series of damages inflicted by the criminal act—including material and psychological harm, physical and mental health damage, and negative impacts on their reintegration into society—are not fully understood or felt by the prosecution or the defendant. Therefore, the truly comprehensive foundation for sentencing should stem from the victim's testimony and participation in the sentencing process. Secondly, normalizing the participation of victims in sentencing can mitigate retaliatory actions by the victim against the defendant to a certain extent, achieving a social effect of conflict resolution. This emotional response cannot be completely suppressed by a single measure; instead, it is essential to grant victims the right to participate in sentencing, providing them with an opportunity to vent their suffering, which is conducive to their psychological recovery.

5.3.2. Specific actions to regulate victims' views on sentencing

Firstly, it is imperative to clarify the subject of sentencing recommendations. Within the context of the leniency system for admitting guilt and accepting punishment, the victim is unquestionably the rightful subject of sentencing requests. Secondly, the timing of the victim's presentation of sentencing opinions. The victim's sentencing opinions should be articulated during the prosecution stage of the plea bargaining process, as it is only at this juncture that the accused voluntarily confesses, enabling the prosecution and defense to reach a consensus on sentencing matters. At this point, the victim should be granted ample opportunity to express their sentencing views, including whether they support or oppose the prosecution's sentencing recommendations. If the victim has reservations about the handling of the sentencing recommendations, they must further specify the specific content of their objections. Finally, the content of the sentencing opinion statement. The content of the sentencing opinions presented by the victim differs from the sentencing recommendations proposed by the prosecuting authorities. The latter must be grounded in specific sentencing facts and evidentiary materials, reflecting both legality and reasonableness. Given that the victim belongs to the general populace, the requirements for their sentencing opinions need not be overly stringent; as long as the victim presents their views objectively and reasonably, it suffices. Specifically, the victim's sentencing opinions primarily encompass: one, the proposal of sentencing recommendations based on the facts of the crime; two, the negative impacts of the defendant's criminal conduct on the victim, including bodily harm, damage to reputation, and reductions in social evaluation; and three, the recommendation of the type, extent, and specific execution methods of the punishment. Secondly, the form in which the victim expresses sentencing opinions. The victim should be permitted to present their sentencing opinions in either written or verbal form, ensuring the facilitation of their exercise of procedural rights. Both written and verbal opinions should be documented in the trial transcript, ensuring the standardization of the victim's sentencing opinions.

6. Conclusion

The smooth operation of the leniency system for confession and acceptance of punishment hinges on the emphasis on protecting the rights of victims. This is not only a concrete manifestation of the Communist Party of China's national stance since the 20th Party Congress, which has strengthened respect and protection of human rights and emphasized the people-centered principle, but also a practical implementation of the leniency and severity combined criminal policy in the face of grave situations. Therefore, it is necessary to discuss the enhancement of victim rights protection from a theoretical perspective, analyze from a practical standpoint the multifaceted implications of victim procedural status and authority changes, and evaluate the effectiveness of victim participation in sentencing negotiations. These discussions serve as procedural guidelines for the smooth operation of the leniency system for confession and acceptance of punishment. To this end, it is essential to start with improving victim rights protection, proposing recommendations related to victim rights

protection at both the institutional and theoretical levels. However, the author is keenly aware of the difficulty in translating theory into practice, as cooperative judicial processes involve more multidimensional interests and more challenging institutional designs than ordinary procedures. Nonetheless, with the continuous development and improvement of China's criminal justice system, it is believed that an increasing number of scholars will focus on issues related to victim rights protection, and both legislation and practice will respond accordingly. It is anticipated that the practical application of the leniency system for confession and acceptance of punishment will also evolve in a more positive direction.

References

- [1] Yan Zhaohua: *The Logic of Restoration in "Cooperative Justice", Victim Participation in Plea and Punishment Cases and its Limits*[J]. *Law Review*, 2021, 39(05):185-196.
- [2] Wang Jing: *Guarantee of Victims' Rights in the System of Plea and Penalty Leniency*[J]. *Journal of East China University of Political Science and Law*, 2021, 24(04):138-147.
- [3] *Crime Victims: Rights during Criminal Investigations? Applying The Crime Victims' Right's Act Before Criminal Charges Are Filed*[J]*The Journal of Criminal Law and Criminology* (1973-), 20 14.104(1).
- [4] Roberts, Julian v. "Listening to Crime Victims: Assessing Victims' Views at Sentencing and Parole." *Crime and Justice* 38, no. 1 (2009): 347-412.
- [5] Supreme People's Court Criminal Division I Panel; Shen Liang. *The application of plea bargaining leniency system in criminal proceedings*[J]. *People's justice (application)*, 2018(34):4-11.
- [6] Qian Mou intentional injury case, in China Judicial Instruments Network <https://wenshu.court.gov.cn/>, accessed on 4 May 2024.
- [7] Liu Shaojun. *Research on the protection of victims' rights in the system of confession and leniency*[J]. *China Criminal Law Journal*, 2017(03):126-144.
- [8] Long Min. *Research on legal aid for victims under the system of confession and leniency*[J]. *Journal of Hubei University of Economics (Humanities and Social Sciences)*, 202017(01):103-107.
- [9] Manikis. Marie. "Victim Impact Statements At Sentencing: Towards A Clearer understanding Of Their Alms." *The University of Torn to Law Journal* 65, no.2 (2015): 85-123
- [10] Kipnis, K. (2019). *Criminal justice and the negotiated plea. In Controversies In Criminal Law* (pp. 243-255). Routledge.
- [11] Kurlychek, M. C., & Johnson, B. D. (2019). *Cumulative disadvantage in the American criminal justice system. Annual Review of Criminology*, 2, 291-319.
- [12] Feeley, M. M. (2019). *Two models of the criminal justice system: An organizational perspective. In Criminal courts* (pp. 201-220). Routledge.