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Review Criteria for the Voluntariness of the Plea Bargaining

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Abstract

The Plea bargaining system carries the function of legal negotiation between the procuratorate and the person being prosecuted, and it is based on equality and voluntariness, which determines the centrality of voluntariness in the plea bargaining system. The voluntary nature of the plea system respects the subjective status of the person being prosecuted in the plea process and guarantees the authenticity of the person's procedural options, which on the one hand makes the legitimate rights and interests of the parties concerned realised and safeguarded, and on the other hand also confirms the important role of voluntary review in the system. At the same time, the voluntary nature of the plea bargaining system has a direct impact on the scope and effect of the application of the plea. The definition of the meaning of voluntariness needs to be considered from a number of perspectives, including subjective and objective, substantive and procedural. And on the basis of the definition of the connotation to determine China's plea voluntary review standards.

Keywords

Plea bargaining system ; Voluntariness ; Voluntariness review

1 Introduction

In criminal proceedings, the plea bargaining system is a bridge that carries the legal negotiation function between the judiciary and the parties, and the negotiation dialogue between the two parties should be based on equality and voluntariness, which inevitably leads to the issue of the voluntariness of the parties' plea confessions in the core of the system, while the voluntariness of the person being prosecuted is also a logical thread that runs through the plea system and the basis of the system's existence.However, as the voluntariness of a guilty plea is a theoretical concept that favours subjective factors, in China's judicial practice, unified standards for defining the connotation and reviewing the judgment of voluntariness and the degree of voluntariness have not yet been clearly defined. The judicial authorities have mostly adopted the rule of excluding illegal verbal evidence for the examination of individual plea cases, which is the same standard as the examination of the voluntariness of the defendant's guilty confession in general criminal cases.The focus of this standard is on the legality of the confession obtained by the relevant authorities, which also indicates that the confession of the accused must not be subject to any objective interference or coercion from outside, but must be made on the basis of subjective free will. This interference and coercion comes from two sources, the first being violent methods, which are used to force the accused to confess guilt by means of physical coercion, such as torture, freezing, starvation, roasting, fatigue interrogation, etc. The second is non-violent methods, which are mainly used to induce the accused to confess guilt by means of threats, inducement in the form of

substantial sentence reductions and deception.

At the same time, most of the existing review and judgment standards in China are only at the level of free will, but often ignore other factors at the subjective level when the suspect makes a voluntary confession, such as whether the suspect knows this standard.Therefore, such a review and judgment method cannot fully and effectively cope with the various complex situations that may arise under plea cases, and further construction and improvement of the review standard for the voluntariness of the pursued person's confession is needed.

In order to gain a deeper understanding of the issue of reviewing the voluntariness of plea confessions and to improve the current plea system, this article firstly explains the necessity of reviewing the issue of voluntariness. Secondly, a deeper analysis of the specific connotation of the voluntariness of a guilty plea is conducted on several levels. Finally, on the basis of the definition of the connotation, the review and appraisal standards of voluntariness in the plea system are improved, and the theoretical issues are put into practice in the specific litigation system, so as to address the problems of the plea system in judicial practice, develop and improve the scientific criminal procedure system, and promote the trial-centred criminal procedure reform.

2 The Need for Voluntary Plea Review

The plea bargaining system is an important element of the 2018 amendments to the Criminal Procedure Law, and with the introduction and application of the system, the procuratorial authorities are particularly prominent, playing a leading role in criminal proceedings, and the right of public prosecution has been further developed and improved. Fundamentally, the plea bargaining system carries the function of legal negotiation between the procuratorate and the person being prosecuted. The consultative dialogue is to be based on equality and voluntariness, which determines the centrality of the voluntary nature of the plea in the system. Improving the voluntary review mechanism of the plea bargaining system is the key to solving the problems that exist in the operation of the system and the key to promoting the effectiveness of the system in practice.

2.1 Voluntary review is an inevitable requirement to respect the subject position of the parties in the litigation and to safeguard their legitimate rights and interests

Looking back at the evolution of the criminal procedure system,under the inquisitorial model of litigation, which emerged after impeachment proceedings and prevailed in Europe in the middle and late Middle Ages, a system of torture was once prevalent. The judiciary can obtain a confession of guilt from the person being pursued by means of torture.The criminal procedure system in China since modern times has traditionally attached importance to the confessions of the parties.In order to get the suspect to confess to the crime as quickly as possible, investigators use varying degrees of coerced and induced confessions as a means of ascertaining the facts of the case.In this environment, the suspect, the defendant does not have the status of the subject of litigation, but the object of the prosecution, the prosecution is very passive in the process of litigation, the rights and interests of no way to protect.

However, modern criminal proceedings take "respecting and safeguarding human rights" as the basic con-

cept, and human rights protection has become one of the goals pursued in criminal proceedings. In order to protect the subject status of the person being prosecuted and to protect the legitimate rights and interests of the parties, most modern criminal justice systems in various countries have established the principle of "prohibition of forced self-incrimination", giving the defendant the right to refuse to confess his or her guilt, and the judicial authorities cannot use violence, threats and other illegal methods to force the defendant to testify against himself or herself, which fully guarantees the voluntary nature of the confessions made by the parties. The plea bargaining system should also follow the principle of "prohibition of forced self-incrimination" and respect for the subjectivity of the defendant in the plea bargaining system. This means that the defendant can express his or her opinion fully and independently as to whether his or her actions constitute an offence.In the face of the prosecution's accusations, the defendant, as an independent subject, can choose to plead guilty, not guilty or remain silent, depending on the actual situation and his or her own interests, in order to safeguard his or her legitimate rights and interests.

2.2 Voluntary review guarantees the authenticity of the pursued person's procedural options in the plea bargaining system

For the person being pursued to make a plea of guilty and plead guilty means that he admits to having committed the crime charged by the investigating authorities and accepts the possible consequences of the negative legal evaluation of that act.[1] According to Article 21 of the Opinions of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice on Promoting Trial-centred Criminal Litigation Reform, it is clearly stipulated that in minor criminal cases where the facts of the case are clear and the evidence is sufficient, or where the criminal suspect or defendant voluntarily pleads guilty and recognises punishment, the trial may be simplified by applying expedited, summary or ordinary procedures. At the same time, Article 14 of the 2018 Amendment to the Criminal Procedure Law stipulates that the right to choose the procedure to be applied in the trial of a case following a guilty plea is subject to the opinion of the suspect and the defendant.The pursued person intends to obtain a lenient sentence through a guilty plea at the same time to give up certain procedural rights, the choice of a simplified procedural trial means that the controversy and differences between the prosecution and the defence on the conviction and sentence have been resolved,[2] if the guilty plea is not voluntary, it means that the defendant has not really given up the procedural rights and a series of procedural safeguards, the prosecution and the defence still have disputes on the conviction and sentence, and the trial procedure cannot be applied against the will of the parties. Therefore, a review of voluntariness can help to clarify whether the defendant's choice of procedure is based on his true intention, to safeguarding the litigation rights of the parties.

2.3 Voluntary review sets procedural standards for the exercise of the procuratorate's powers and maintains the balance between prosecution and defence

Procedural propriety is the foundation of procedural law and a necessary safeguard for the maintenance of substantive justice. From the perspective of criminal judicial practice, the confessions of defendants in the course of criminal proceedings mostly originate from illegal methods such as coercion, inducement and tor-

ture by judicial organs.Confessions obtained by such means are clearly contrary to the voluntary nature of the defendant and the truthfulness of the plea, and are also an infringement of the defendant's personal rights. In the plea system, the procuratorial authorities are already in a dominant position and are prone to abuse of power and inadequate exercise of power by the procuratorial authorities, resulting in the pursued person not being clearly informed of their procedural rights and the legal consequences of pleading guilty and punishing them,and the Plea bargains made without the right to information can exacerbate the imbalance in the position of the prosecution and the defence.

Therefore, the court must conduct an objective and neutral voluntary review to ascertain whether the "plea agreement" between the prosecution and the person being prosecuted is genuine and whether the defendant has clearly and voluntarily accepted the facts alleged in the plea agreement. At the same time, the voluntary review is also for the exercise of the procuratorate's power to set procedural standards, and in an indirect way to review the procuratorate in the exercise of power whether to reach this standard, strictly limit the power of the prosecution, to maintain the status of the bilateral confrontation between the prosecution and the defence.

3 Definition of the meaning of the voluntary nature of a guilty plea

The leniency system of pleading guilty to punishment refers to cases in which the suspect or defendant voluntarily and truthfully confesses to the crime, does not dispute the facts of the alleged crime, agrees with the sentencing opinion of the procuratorial organ and signs a letter of acceptance, and can be treated leniently in accordance with the law. The voluntary nature of the person being prosecuted is the core of the system which directly affects the scope and effect of the application of the plea of guilty and punishment. The definition of voluntariness needs to be considered from a number of perspectives: subjective and objective, substantive and procedural.

3.1 Subjective and objective

At the subjective level, the voluntariness of a guilty plea means that after the person being prosecuted clearly knows and understands the nature of the acts he or she has committed, the objective evidence alleged by the prosecution, the procedural rights he or she enjoys, the legal provisions a of the plea system and the substantive legal consequences, the person pursued admits, of his or her own free will, the facts of the offence alleged by the prosecution and accepts the sentence proposed by the prosecution.The voluntariness of the plea system is essentially a value judgement, [3]which requires the person being pursued to be aware of the value object and his or her own situation, and to be able to make a choice by rationally assessing whether the value object meets his or her needs on the basis of freedom of will. Specifically, voluntariness is defined in three ways.

3.1.1 The person being pursued has to achieve cognitive knowledge

In the plea system, the object of value judgement is the facts of the case, which include both objective facts and legal facts.[4] The pursued person is already aware of the objective facts at the time of committing the act, however, the legal facts need to be clarified by the pursued person only after the prosecution alleges the

crime facts and provides relevant evidence. According to the law, the plea of guilty and penalty by the pursued person is made mainly in response to the facts of the offence charged by the prosecution and the proposed sentence. Therefore, if the pursued person lacks knowledge of the alleged facts and evidential materials, the guilty plea loses the object of value judgement and naturally cannot guarantee the voluntary nature of the response made by the pursued person.

3.1.2 The person being pursued has to make sensible considerations

The person being prosecuted needs to have the ability to distinguish between right and wrong, to know what is at stake and to control his or her own behaviour. First of all, the subject of the guilty plea must be qualified, which means that the person being prosecuted must be fully capable of criminal responsibility. For persons with limited capacity, blind, deaf or mute persons, who do not have the ability to distinguish right from wrong and control their own behaviour, the provisions of the plea of guilty and punishment cannot be applied. Secondly, the person being pursued has to consider two aspects on the basis of achieving knowledge: firstly, a correct understanding of whether his or her conduct constitutes a crime, what the act constitutes and whether the commission of the act is subject to criminal punishment; and secondly, an effective assessment of the legal consequences of entering a guilty plea and whether that consequence meets his or her own interests. The first aspect usually requires legal expertise to make a judgement, which in judicial practice most prosecuted persons do not have. Therefore, the effective assistance of a defence lawyer is needed to make up for the prosecuted person's lack of legal knowledge and practical experience, so that the prosecuted person can rationally consider the facts of the alleged crime, the evidence and the legal consequences of entering a guilty plea.

3.1.3 The person being prosecuted makes a choice of his or her own free will

After knowing the alleged facts and evidence and considering them rationally on that basis, the person being pursued is also required to make a choice based on free will. The suspect may choose to plead guilty or refuse to plead guilty to the alleged offence; in the case of multiple offences, the suspect may choose to admit to all the offences and accept the punishment, or to admit to only one or a few offences and accept the punishment; the suspect may either admit to the facts of the offence charged by the prosecution and the proposed sentence, or may simply admit to the facts of the offence without accepting the proposed sentence.The person being prosecuted makes his or her choice to plead guilty or to pay a penalty entirely of his or her own free will and may not be influenced by any violence, coercion, inducement, deception or other factors. The above subjective aspects are all present in the psychological activities of the person being prosecuted, which are often difficult to examine in practice, and the guilty plea may be based on rational considerations, or it may be made under insufficient knowledge or threat of violence. Therefore, while the subjective aspects of the pursued person are examined, they must also be combined with objective behaviour.

The objective aspect of determining voluntariness is the "factual basis", and the facts of the case are one of the elements in determining voluntariness, which is the basis of voluntariness.[5]First of all, it is necessary to determine whether the person being prosecuted has made a truthful confession to the crime after his arrest, because an active confession is more likely to reflect the offender's subjective attitude of repentance than a

passive confession.[6]At the same time, the confession of the person being pursued must be supported by corresponding factual evidence, otherwise there may be problems such as false confessions, trading in power and power-money deals. In the early stages of the application of the plea system, many questions were raised in the academic community.Such as the fact that pleading guilty increases the weight of confessions in evidence, which may conflict with the substantive truth of the case; The plea system may exacerbate the imbalance in the litigation position of the prosecution and the defence, with the prosecution communicating and negotiating directly with the person being pursued, which may lead to an abuse of the prosecution's power; It also gives rise to problems such as trading in power and power and money. A definition of the objective aspects of voluntariness would go some way to answering the above challenge. For individual cases, when measuring the voluntariness of the suspect's plea of guilty and punishment, it is also necessary to comprehensively measure whether the person being prosecuted has surrendered, made merit, made reparation and apology, compensated for damages, refunded and returned the stolen goods, etc. These objective acts can reflect the subjective state of mind of the perpetrator to a certain extent. At the same time, it is also necessary to examine whether the person being prosecuted has been informed of his rights and whether he has received effective legal assistance, etc. Only when these objective conditions are met can the voluntariness of the guilty plea be more accurately determined.[7]

3.2 Substance and procedure

In substantive terms, voluntariness is reflected in the acknowledgement of the facts of the crime alleged by the prosecution and the approval of the sentencing proposal made by the prosecution. Both the "crime" and the "punishment" are essential,the defendant should be clear about the facts of the case in which he or she has committed the offence and be aware of the legal consequences of pleading guilty to the offence.The People's Procuratorate shall also specify the charges and sentencing recommendations in the **"**Plea of Guilty and Punishment Form**"**, to inform the person being prosecuted of the facts of the crime charged by the People's Procuratorate and the sentencing recommendations made, thereby protecting the defendant's full opportunity to make a value judgement.

In terms of procedure, In terms of procedure, voluntariness is reflected in respect for the suspect's right to choose the procedure for hearing the case and the legal consequences of accepting a guilty plea after pleading guilty. [8]Under the current situation of promoting the reform of the trial-centred litigation system, it is a key step in deepening the substantiation of court hearings to ensure that the parties are given a fair trial in fair criminal proceedings and to respect and safeguard the litigation rights of the defendant. Article 14 of the amended Code of Criminal Procedure clearly stipulates that the choice of the procedure to be applied to the trial of a case after a guilty plea shall be subject to the opinion of the suspect or defendant. However, in practice, the choice of the plea procedure is usually the result of a compromise between the prosecuted person and the judicial authorities in order to reduce the crime and mitigate the punishment. If the person being prosecuted "agrees" to the investigating authority's procedural proposal by signing a plea of guilty agreement without legal expertise and without a clear understanding of the legal consequences, the false plea agreement should be withdrawn by means of a remedy and re-examined to determine the trial procedure.Procedural justice is the guarantee of substantive justice and the foundation of the litigation system.When choosing the procedure for hearing a case, the judiciary should respect the true intention of the parties, not only uphold the principle

of human rights protection of the procedural rights of the parties and adhere to procedural justice, but also take into account the relationship between efficiency and fairness, focusing on improving efficiency in view of the current pressure of litigation, but also safeguarding the quality of the case hearing, ensuring a fair trial and upholding judicial justice.

4 Improving the standard of reviewing the voluntariness of confessions in China's plea system

4.1 Combining the standard of voluntariness of confession with the standard of knowledge of rights and obligations

As mentioned earlier, in order to safeguard the voluntary nature of the guilty plea, the person pursued should be free from the oppression of violent external evidence and non-violent means of interference, and the judge should clarify the psychological stability of the party concerned when making the guilty plea at the pre-trial stage and during the trial, and check the sincerity of the motives of the party concerned in making the voluntary guilty plea and the existence of non-violent evidence taken by other authorities.

The benchmark of knowledge of rights and obligations refers to the fact that, when examining whether the confession made by the person being prosecuted is voluntary, it must be clear whether the defendant is aware of the main criminal facts and relevant charges charged by the procuratorial authorities, as well as whether he or she is aware of the Legal provisions for plea bargaining and the defendant's own rights and obligations.[9]The review can be divided into two aspects: form and content.On the one hand, in terms of the specific form, it should be examined whether the notice of rights and obligations drawn up by the judicial authorities clearly lists the procedural rights and relevant provisions to which the defendant is entitled in the case of a guilty plea.While at the same time, it is also necessary to indicate in the notice the relevant legal basis and the litigation obligations of the parties, and to standardise the procedural aspects of the notice. On the other hand, in terms of specific content, it is not only necessary to examine whether the defendant has been clearly informed of his or her procedural rights and whether he or she is aware of the possible mitigating effect of making a confession to a crime or punishment, but also whether the defendant has been informed of his or her procedural obligations. It is important to make it clear to the parties that they have an "active" or "positive" position in the plea system, but also that they are to a certain extent "negative" or "passive". This is to avoid the use of inducements and deceptions by public authorities in judicial practice to make the defendant make an involuntary confession.[10]

When reviewing plea cases, judges should combine the standard of voluntariness of the confession with the standard of clarity of rights and obligations in order to adequately address and effectively resolve the various subjective factors and other objective circumstances that may exist when a person makes a plea of guilty or punishment, so that the defendant is able to make a plea of guilty or punishment with full voluntary will, which must be strictly guaranteed.

4.2 Establishing a differentiated model of procedural disposal

The review of the voluntariness of confessions should not only cover the subjective factors of the parties at the substantive level, but also determine the criteria for reviewing the voluntariness of confessions from the perspective of procedural law. In the criminal procedure law, the review and judgment of voluntariness needs to be returned to the application of specific litigation procedures, so as to avoid the standard becoming a theoretical doctrine that is free from the system itself.[11]

4.2.1 Criteria for reviewing judgments in ordinary proceedings

If the ordinary procedures in criminal proceedings are applied to the trial of plea cases, the author is of the view that reference should be made to the procedures for the trial of mature ordinary cases when examining the voluntariness of the defendant's plea. In other words, the stage of measuring the voluntariness of the defendant's confession should be placed at the court trial, but the standard of review should be more stringent.
At the pre-trial stage, in other words at the investigation and prosecution stage, the investigating and prosecuting authorities are primarily concerned with the objective facts of the case and the collection and proof of other evidence. This is because only plea cases with special circumstances are tried under ordinary procedures. As a rule, Plea cases are usually heard using expedited procedures after effective consultation between the public authorities and the parties, And certain cases are so characterised by significant doubts and high sentencing ranges that they go out of their way to abandon the efficiency value of the plea-bargaining system at the trial stage to ensure a fair and impartial trial and ultimately apply ordinary procedures to the trial.
Therefore, when applying ordinary procedures, the focus of examination should be placed on the court trial, while the examination of the voluntariness of the confession should also adopt a more stringent standard of proof, It is important to examine not only the legality of the confession of guilt or punishment, but also to ask whether the person was aware of the facts and legal consequences underlying the voluntary confession..And at the same time, to ensure that the defendant has received adequate assistance from a lawyer so that he or she can realise all the procedural rights to which he or she is entitled in the fullest possible criminal proceedings and safeguard the defendant's legitimate interests.

4.2.2 Standard of review and judgment in summary and expedited proceedings

Unlike ordinary procedures, summary and expedited procedures are more efficient and therefore omit some of the procedures in the process of trial, and it is often difficult for the judge to conduct a comprehensive and detailed examination of the voluntariness of the accused's confession.[12] Therefore, the author believes that, when examining the voluntariness of the defendant's confession, the review standard of the summary and expedited procedures should be the opposite of the review standard of the ordinary procedures, that is, the process of reviewing and judging voluntariness should be mainly placed in the investigation stage or pre-trial stage.

For this conclusion, the author has the following two considerations.The first reason is that, at the trial stage, the judge's review of the person's plea confession often stops at the "plea agreement", making it difficult to fully and deeply understand whether the person has made the confession voluntarily.Secondly, an explora-

tion of the logical thinking from a consequentialist perspective leads to the following conclusions.If a case is already in summary or expedited proceedings, and the judge finds out in the course of the case that the defendant's confession was not made voluntarily, then all the proceedings at the pre-trial stage will no longer be meaningful, and it will be difficult to talk about the real implementation of the plea system.

Whether it is an ordinary procedure or an expedited or summary procedure, The examination and judgement of the voluntary confession of the person being prosecuted should be carried out throughout the entire process of investigation, examination and prosecution and trial of criminal proceedings.

5 Conclusion

The Plea bargaining system, as the focus of the current criminal litigation reform, can achieve the optimal allocation of litigation resources and alleviate the realistic contradiction of "too many cases and too few people", and is a system innovation that responds to the "court-centered" reform and the needs of judicial practice. The Plea bargaining system should take the issue of voluntariness as the core of the system, through the organic combination of subjective and objective, substantive and procedural, comprehensive review to determine the voluntariness of the suspect's confession.Build a logical framework for the review of the voluntariness of the defendant, and construct a perfect review system of the voluntariness of the plea from both the core elements and litigation procedures.

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