Path analysis of procedural diversion in plea cases

Shize Zhang
Law School of Beijing normal university, Beijing, China
***Corresponding author, e-mail: 1162391703@qq.com**
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Abstract: *The judicial contradiction of many cases and few people objectively urgently requires the maturity and perfection of the procedure diversion system of guilty plea cases, and the continuous promotion of the leniency system of guilty plea and punishment also provides useful experience for the procedure diversion system of guilty plea cases. Different from the "negotiation mode under the triangular structure" presented by the procedural diversion of foreign plea cases, the procedural diversion of plea cases in China presents a "cooperation mode under the linear structure", which has the characteristics of convenient operation, smooth connection and cooperative diversion in the operation, connection and diversion of procedures. In practice, it has explored and formed a local procedure diversion model, including the special circulation of plea cases, the integration of diversion and case division system, the conversion and connection of plea cases and relevant supporting measures, including the simplification of litigation documents, which provides a Chinese solution to the world problem of many cases and few people.*
keywords: *plea cases; procedure diversion; localization*

Introduction

The balance and contradiction between judicial justice and efficiency caused by the "litigation explosion" is not only a common judicial problem in criminal practice in various countries, but also constitutes the internal main line of criminal justice system reform in modern countries. China is facing the same dilemma, and the research on the procedural diversion of plea cases originates from this. In fact, as early as the end of the last century, with the reform of the economic system, the increasingly active market economy and the popularization of the concept of the rule of law, social contradictions also developed in a diversified direction, and evolved into a large number of legal disputes, which were pushed to the court. The court could not bear it, so it began the reform of the burden of proof, and then began the reform of court trial mode, trial mode and litigation mechanism, the reform of criminal justice system with the court and judge system as the starting point began and continues to this day. [2] The diversion system of criminal trial procedure to improve the reform of plea system and realize the rapid trial of simple and minor criminal cases has also been put on the agenda. The difference is that compared with foreign countries, China is currently facing the judicial dilemma caused by "more cases and fewer people" and the research on the procedural diversion system seems to be more complex: on the one hand, the judicial centralism litigation system based on the concept of procedural justice in the traditional sense has not been perfect and mature at the beginning of China's establishment, and

numerous and complex criminal cases in practice follow one after another. It is really difficult to construct the system of procedural justice under the practical background of requiring efficiency; On the other hand, there is no precedent in foreign countries for the litigation mode of "file record centrism" and "flow-through linear litigation" , and it is also quite embarrassing to refer to the path choice of foreign practical experience, while the judicial systems and concepts such as "restorative justice" and "consultative justice" are still in the stage of research and introduction in China. Therefore, in the path selection of countermeasures, how to solve the world problem of "many cases and few people" under Chinese inherent litigation mode, and solve the problem of procedural diversion of confession cases in the reform of the leniency system of confession and punishment in practical departments, which undoubtedly needs Chinese localization scheme. Here, the author compares the simplified procedures and diversion characteristics of representative foreign countries with the procedural diversion under the leniency system of guilty plea and punishment in China, and summarizes, compares and reflects on the localized procedural diversion mode in China by taking the practical experience of the procedural diversion of guilty plea cases in city a and city B of G Province as an example. It is expected to be beneficial to the research on the procedural diversion of confession cases in China.

Comparative analysis of procedural diversion modes of plea cases inside and outside the domain

There is no lack of precedent in Chinese academic circles on the diversion of summary procedure in representative countries of civil law system and common law system. However, behind this comparative law research, there is little in-depth summary and summary of the current diversion mode of pleading guilty cases in China. If we study the procedural diversion system of the two legal systems as a whole, especially make a model comparative analysis between the procedural diversion system of representative countries of civil law system and common law system and Chinese procedural diversion system, and analyze the actual state of the procedural diversion of plea cases in China from the actual procedural system of China. It is not difficult to find that the procedural diversion mode under the leniency system of confession and punishment in China is unique and self-contained, which is in sharp contrast to the procedural diversion mode of extraterritorial confession cases. Here, the author summarizes the procedural diversion mode of extraterritorial confession cases as "negotiation mode under the triangular structure", and summarizes the procedural diversion mode of confession under the leniency system of confession and punishment in China as "cooperation mode under the linear structure".

From the perspective of the procedural diversion mode of extraterritorial plea cases, "triangular structure" refers to the litigation structure of extraterritorial countries, while "consultation" refers to the way to achieve (facilitate) the procedural diversion. "Triangular structure" is not difficult to understand. Because most representative countries of civil law system and common law system take "the principle of final judicial judgment" and "the principle of separation of prosecution and trial" as the theoretical basis, a triangular litigation structure with "judgment as the center" has been formed in the litigation: judges live at the apex of the triangle and remain neutral and impartial, and because of the existence of judicial review power, it controls the final and authoritative jurisdiction of the criminal judicial process; Based on the "equal armed theory of prosecution and defense" , the prosecution and defense are separated on both sides of the isosceles triangle and confront

each other equally. The trial standard under the separation of litigation and trial is the best interpretation of this "triangular structure" litigation structure. In this isosceles triangle litigation structure, the prosecutor and the defender are separated on both sides of the judge, equal confrontation and equal armed, which is an important guarantee for the realization of values such as the equality of adversarial judicial form and the discovery of truth. On the contrary, when a guilty suspect or defendant confessed to a criminal organization and reached a different degree of agreement with the prosecution, although the antagonism foundation of both sides of the accusation and defense had disappeared, the system of defense and counsel should be designed for the interests of the accused and the system of equal arms control. The two sides are still fighting for their own interests "Game stage": the defense is undoubtedly seeking to find a lighter charge and sentencing; while the prosecutor as the prosecution should win votes for himself from the personal success rate and the decline rate of term crime. Based on such interests, even in the plea case, the prosecution and defense will still be in a game state of mutual agreement and confrontation (this state is more prominent before the agreement on plea is reached). Therefore, the agreement on extraterritorial plea cases looks more like a "bargaining transaction" , which the author calls "negotiation mode".

In contrast, because China emphasizes the leading control of the prosecution and police institutions over the filing, investigation, review and prosecution activities in judicial practice, judges have no right to participate in pre-trial litigation activities; judges in China do not enjoy the final judicial review power, so public security organs and prosecutors can also be allowed to make a series of substantive or procedural decisions related to litigation; in addition, The Chinese criminal procedural law also clearly stipulates the procedural principle of "division of responsibilities, mutual cooperation and mutual restriction" among the public security organs, procuratorate and courts. Therefore, Chinese criminal procedure is essentially a "flow operation" with obvious litigation stage as the division standard of authority type judicial structure. Under this judicial structure, the court, procuratorate and public security organ divide their powers according to the litigation stage. The three are essentially parallel and equal in the litigation process, so they are called "linear structure". Compared with the way of achieving (facilitating) the distribution of pleading guilty cases abroad, China has failed to form a corresponding "negotiation mode", there are many reasons: first, although the tradition of inquisitorial litigation in China has been weakened, it still exists objectively. The adversarial litigation based on the theory of equal arms between prosecution and defense is underdeveloped in China ; second, the traditional role orientation of independent defenders in China makes defenders do not represent the interests of the accused, and their conflict of interests with the prosecution is limited; third, China pursues a more strict policy according to the principle of legality of prosecution and the principle of legality of crime and punishment, the prosecutors discretion is small and the game space is narrow; fourth, compared with the strong prosecutor, the defenses litigation rights and status are relatively weak and lack the ability of interactive game with the strong prosecutor, although China has failed to form the corresponding "negotiation model". However, in contrast, in the practice of the leniency system of guilty plea and punishment, a set of "cooperation model" dominated by state organs and supplemented by litigation participants has gradually formed. In the cooperation subjects are state organs represented by public security organs, people’s procurators and people’s judges and litigation participants represented by lawyers on duty, legal aid lawyers or defenders and victims. The three organs, as the main subjects of cooperation, are responsible for the division of labor, cooperate with each other and supervise each other at different stages of pleading guilty cases, and transfer relevant case procedures and case procedures. On the other hand, we should cooperate with the substantive aspects such as conviction, sen-

tencing and other aspects in order to coordinate the application of the procedure of confession and conviction and sentencing, and ensure the quality of handling cases from the prompt handling of cases. The relevant participants in the proceedings, as the auxiliary principal part of the collaboration, play a role in protecting the voluntary confession of the suspects and defendants while participating in plea cases. Authenticity and related litigation rights and interests are of great value in resolving contradictions between both parties and repairing social relations.

Realistic characteristics of procedural diversion mode under the leniency system of guilty plea and punishment

Linear litigation structure is convenient for case circulation

The start-up stage of the procedure diversion of guilty plea cases is divided into pre-trial start-up and trial start-up. These two diversion methods, by making use of the advantages of Chinese linear criminal structure, which is convenient for rapid circulation and linkage cooperation, build a diversion channel for special confession cases integrating three stages from investigation, examination and prosecution to trial, thus forming a unique diversion mode in practice in China.

Mode 1: criminal detention and direct prosecution. Specifically, in order to promote the diversion of complex and simple cases and realize the rapid handling of simple cases, the main focus is to simplify the procedures. Therefore, in the application of the guilty plea and punishment system, we should pay attention to the simplification of the case process from the investigation stage. Taking district a of city B as an example, the political and Law Commission issued measures for the implementation of the pilot work on the leniency system for guilty plea and punishment in criminal cases (for Trial Implementation) (hereinafter referred to as the measures for Implementation), standardizing the organizational division of labor of various organs, and taking whether the case has been examined and arrested as the boundary, the investigation and supervision department of the procuratorial organ is required to start the system of guilty plea and punishment for qualified cases in the process of examining and approving the arrest of cases, and "2+2+3" among the public, procuratorial and judicial organs within 7 days of detention. In order to achieve the goal of fast, efficient and convenient trial of simple and light punishment cases from investigation to conclusion, we should adhere to the concept of "litigation when litigation, and no litigation if improper litigation". It defines the standard of relative non prosecution of common crimes. For cases that meet the standard, the investigators are encouraged to make the decision of non-prosecution, and on the basis of not unilaterally pursuing the speed of handling cases and not putting too much pressure on the investigators, in order to realize the scientization and rationalization of case handling.

Mode 2: "labeling". Specifically, if the suspect or defendant pleaded guilty and pleaded guilty in the pretrial procedure, in order to protect the fluency of cases in different stages of litigation and avoid repetitive work in the next stage, investigators will attach special green notes to the suspects files and "plead guilty". In this way, the case handling personnel in the next litigation stage can clearly identify the type of case without looking through the case file, so as to realize the rapid connection of the confession and punishment procedure

and facilitate the timely and targeted development of the litigation work in the next stage. As for the procedure diversion only started in the trial, it is essentially the rotation of the procedure. The author puts it into the procedure connection part for details.

Diversion cooperation under linear litigation structure

The so-called formal diversion pattern, that is, procedural diversion, refers to the access diversion conditions applicable to different cases according to certain standards according to the differences of case circumstances and sentencing. Of course, in practice, the specific operation of the diversion of cases and the application of pleading guilty cases will be more detailed and complex.

In the stage of review and prosecution, the "labeling" transferred through the special channel of guilty plea cases, the prosecutor will examine the files and make a presentation of evidence and a written confirmation of the guilty confession. Through interrogating suspects and marking, the prosecutor will confirm the suspects pleading attitude while understanding the case and conduct a preliminary split of the case. If the suspects confession attitude is unstable but the evidence is indeed sufficient, it is suggested to apply the summary procedure; for traffic accident and intentional injury cases, if the contradiction between the defendant and the victim is acute, the prosecutor will delay the prosecution compared with ordinary cases and give both parties room for negotiation; for cases that may be sentenced to more than three years; imprisonment, the suspect is prone to repeated confession in practice. According to the attitude of the suspect to plead guilty, the prosecutor will, as appropriate, recommend the application of the ordinary procedure of pleading guilty and punishing or the summary procedure of pleading guilty and punishing. In addition, in practice, the procuratorate of city a also adopts the following measures to improve the accurate identification and circulation of case types: first, through the joint meeting of prosecutors, determine the specific standards and types of cases applicable to pleading guilty and punishing, which shall be implemented in the procuratorial system. First, the Ministry formed a consensus; second, the sole prosecutor handling the case of guilty plea and punishment shall not transfer the case procedure at will to prevent the case from changing at will; third, whether the case is transferred or not shall be examined and approved by the section chief or the Deputy Attorney General in charge, so as to do a good job in the management of case diversion, so as to promote the early diversion of cases.

In the trial stage, the judge needs to consider more factors for the procedural application of plea cases. In addition to the situation of the case itself and the guilty plea attitude of the suspect, the sentencing suggestions put forward by the Procuratorate are also the procedural application factors that the judge must consider. Due to the short trial limit of the quick adjudication procedure, in order to ensure the trial efficiency of the quick adjudication procedure of plea cases, the judge needs to consider the quick adjudication. The application of the procedure is generally more cautious. For suspects who may be sentenced to fixed-term imprisonment of less than three years and have a good attitude of pleading guilty, the judge will apply the expedited procedure when the sentencing suggestions of the procuratorate meet the provisions; while when the sentencing suggestions put forward by the Procuratorate are inappropriate or the evidence is in doubt, the judge will generally apply the summary procedure. In practice, a grassroots court of city A on the premise of clarifying the working standards of the case handling organs and the time limit for handling cases, the court strictly defines the conditions, scope and termination of the procedure. For some cases that obviously need a long process-

ing time, such as civil litigation incidental to intentional injury cases and the victims request for disability appraisal, the court requires that the expedited procedure shall not be applied, and stipulates the termination system of the expedited procedure. For cases that do not meet the applicable conditions and requirements of the quick adjudication procedure, the application of the procedure shall be changed in time, so as to realize "complexity and simplicity division". The diversion requirements have achieved the dual purposes of due settlement and case diversion. Through the case standards applicable to the above limited procedures, the refinement and right promotion of ordinary procedure trial are guaranteed. According to the data from 2016 to 2018, the proportion of criminal cases concluded by criminal expediting procedure in a district of city a in the total number of criminal cases concluded in the same period is about 30.12%, that is, the court sentencing rate is 96.12%, the complaint rate and protest rate of letters and visits are 0%, and the average trial days are within 7 working days. Taking dangerous driving as an example, the trial efficiency has been improved by more than 30% year-on-year after the application of criminal quick adjudication, and the diversion effect of complexity and simplicity is more obvious.

Besides, The Case division system, also known as the case distribution system, from an abstract and broad perspective, can refer to the distribution of cases at the jurisdiction level. From a micro and narrow perspective, the case division system is usually a system in which the case handling unit divides and distributes the cases accepted among the case handling personnel according to certain rules. The case division system at the micro level, as the traditional "internal judicial organizational affairs" and case distribution link, has not attracted enough attention, and there is little research in the academic and practical circles. However, with the proposal of improving the case division system in the fourth five year reform outline of the Court (2014-2018) in 2014, the opinions on further promoting the diversion of complex and simple cases and optimizing the allocation of judicial resources in 2016With the introduction of the provisions of "local courts at all levels, in accordance with the law, scientifically formulate the differentiation standards and diversion rules between simple cases and complex cases, and adopt the method of random case division, supplemented by case division", the role of the case division system in procedural diversion will be greatly strengthened".

Specifically, in the case handling organization mode in the review and prosecution stage, in order to solve the practical contradiction of "many cases and few people" and realize the diversion of procedures, a district Procuratorate of city B implemented the "special case office" according to the case division system. In the case handling mode, two case handling groups with a total of six prosecutors are arranged separately to handle cases of confession and punishment. It not only realizes the specialization of case handling personnel of confession and punishment, but also greatly reduces the switching between cases of confession and punishment and cases of non-confession and punishment, and integrates and optimizes judicial resources. More than 60% of the total number of cases and the diversion effect is remarkable. Coincidentally, a District Procuratorate of city A has also created a team case handling organization. Specifically, based on the big data analysis of the total number of cases accepted and the litigation applicable to various procedures, two independent prosecutors are appointed, and a total of six auxiliary judicial personnel are equipped. The team is especially responsible for handling the category of guilty plea and punishment cases. As of July 2017, the district Procuratorate plea and punishment handling team had accepted 710 cases, 750 person times, accounting for 53.03% of the total number of cases accepted by the court, 570 prosecution cases, 613 person times, accounting for 64.2% of the total number of public prosecutions filed by the court. 15% of the courts case handling

force had handled 50% of the total number of cases, laying a solid foundation for the diversion of complexity and simplicity of cases, and realizing the lenient system of plea and punishment and rapid adjudication. The procedure is separated from the simplified procedure and the ordinary procedure.

Fluency of program conversion and connection

The fluency of procedure transformation and connection is another feature of the procedure diversion mode of Chinese leniency system of guilty plea and punishment. The transformation and cooperation between litigation procedures is an indispensable and important link in the diversion of procedures. This link includes two aspects.

One is the transformation between guilty plea procedures and non-guilty plea procedure. The Quick determination procedure (also called the summary procedure) turns into ordinary procedure. The court shall not accept the suggestion of the Procuratorate on the application of expedited sentencing procedures, notify the procuratorate to turn to ordinary procedures to try the case, determine the specific trial period, and inform the defendant when: Firstly, If the suspects or defendants will not admit the crime during the trial stage; Secondly, if the confession of suspects and defendants in the pretrial stage is unstable, and there may be inquisition by torture; Thirdly, if the suspect may have the possibility of extorting confessions by torture. Ordinary procedure is converted into pleading guilty class. It includes two situations: first, for cases that have been transferred to the court, the suspect and defendant in the pretrial stage do not confess or punish, and do not make a confession. But before the trial, the court will be in court (or in court) before the court is active in the conviction and punishment of the judge, prosecutor and law teacher. Legal aid lawyer (or defense lawyer) on the premise of being present, the defendant is required to sign a written confirmation of a confession of guilty, and to apply the summary procedure to hear the case. He may apply the fast cutting procedure to the procuratorate and apply the procedure of quick judgments. Secondly, he does not plead guilty or plead guilty to the suspects and defendants in the pretrial stage, but he does not make a confession of sin. In case of pleading guilty to punishment, the court will try the case according to the ordinary procedures under pleading guilty to punishment, and simplify the links of court investigation and court debate during the hearing.

The other is the cooperation within guilty plea procedure. The rotation between confession procedures is called cooperation, because the procedure is based on the premise that the suspect and defendant plead guilty. There is no dispute or controversy in conviction and sentencing. The procedure is also mainly for the technical adjustment of suspects; accusation and sentencing range. The reason behind this is that the judge believes that the quick adjudication procedure is a very simple procedure, with almost no court investigation and court debate, and the defendant lacks the necessary protection of litigation rights in the process of court trial. Therefore, the application of the quick adjudication procedure must be a case with clear circumstances, sufficient evidence and stable attitude of the defendant to plead guilty. Moreover, according to the practice of the judges' experience, it can only be applied only if the defendant has signed the written confirmation of the plea of guilty and the evidence disclosure form. This undoubtedly requires a lot of work ahead of schedule. In practice, the judge has little room for the application of the procedure. Generally speaking, the judge decides to use the proposal according to the recommendations of the prosecutor. However, there are exceptions to the corresponding procedures: according to the case handling experience of the judge of a district court in city a,

the judge will use summary procedure to try the cases that can be subject to the expedited procedure under the following circumstances: first, the sentencing suggestions of the Procuratorate are inappropriate; second, the circumstances of the case are in doubt; third, the defendants confession is unstable in the investigation stage and the examination and prosecution stage. In the case of repeated or even retraction of confessions in court, the judge will not apply the expedited procedure, but apply the summary procedure. Similarly, the judges of a District Court of city B believes that the conversion between the expedited procedure and the summary procedure should be carried out under the following circumstances: first, the court believes that there is a dispute over the nature of the charges of the prosecutors or the sentencing proposal is not very reasonable; second, the court believes there are doubts about the facts and circumstances; third, the defendant's confession in the investigation stage and the examination and prosecution stage is unstable, and there are repeated or even retraction of his confession in court. At this time, the court shall notify the procuratorate of the corresponding procedural changes to ensure the smooth progress of the court session.

Problems and disputes in the procedure diversion mode of the leniency system of confession and punishment in China

The diversion standard is not clear

Generally speaking, the procedural diversion under the leniency system of guilty plea and punishment is divided into two levels: the former is the distinction between guilty plea and punishment cases and non-guilty plea and punishment cases (procedures), and the latter is the internal distinction of guilty plea and punishment cases. As for the latter, there is little difference in the procedural diversion of guilty plea and punishment cases in various regions. Taking a district court of city a as an example, its promulgation Article 33 of the operating procedures of the district court stipulates that "summary procedures shall be applied to the trial of cases of guilty plea and punishment that may be sentenced to more than three years of fixed-term imprisonment; summary procedures shall be applied to the trial of cases of guilty plea and punishment that may be sentenced to less than three years of fixed-term imprisonment." However, in terms of the former, there are different views among the practical departments in various regions on how to divide the cases of guilty plea and punishment from the cases of non-guilty plea and punishment. For example, the court of city A holds the view of "fact theory" on the judgment of the cases of guilty plea and punishment. According to Article 5 of its operating procedures, "The suspect or the defendant acknowledges the main facts of the crime, only objection to individual details, or no objection to the facts of the crime. Only objection to the conviction of the offense does not affect the determination of the confession." that is, as long as the recognition of the main criminal facts is recognized as "guilty pleading and punishment". Correspondingly, the judges of the B City hold the fact that they plead guilty. Only when the suspect and defendant recognize the facts and accusations of the accusation, can they be classified as pleading guilty and punishment. There are similar controversies in the academic circles. The above problems expose the need to further study and understand the leniency system for pleading guilty and punishment, whether in the practical sector or in the practical departments. "Fact theory or fact confession theory", which reflects the different degrees of agreement reached by the prosecution and the defense through negotiation: in the "fact theory", the prosecution and the defense have reached agreement on the basic facts of the case, but there are still differences on how to apply the law; but the "fact

confession theory" reached both. The difference in the degree of agreement, although there is no difference in the identification of substantive issues such as evidence and circumstances, will affect the specific application of the case procedure from the procedural level: in cases where both the prosecution and the defense have no objection to the facts and applicable charges, the trial shall be conducted by applying the quick adjudication procedure; for the cases where the agreement is only reached on the determination of facts and there are still disputes on the application of charges, only the summary procedure can be applied if the conditions are met. If the defendant and the defender do not think their behavior constitutes a crime, even the general procedure may be applied. It can be seen that the difference in the degree of agreement between the prosecution and the defense does not affect the crime in substance. The substantive sentencing of criminal suspects and defendants is lenient, but it may change in the application of specific procedures. Therefore, in the pre-trial stage of procedural diversion of plea cases, it is particularly important to clarify the degree of agreement between the prosecution and the defense according to the specific circumstances of the case and divide the procedural diversion standard of the case on this basis.

Litigation documents need to be further simplified

The premise of the diversion of complicated and simple procedures is that the complicated ones are more complicated and the simple ones are simpler. Therefore, the simplification of the quick adjudication procedure of guilty plea and punishment and the summary procedure is also an important prerequisite for the diversion of complicated and simple procedures. Although the practical departments have made unremitting exploration to simplify the litigation documents and saved and optimized some judicial resources, it goes without saying that the litigation judgment documents in China are still not simplified enough. For the quick adjudication procedure and summary procedure under the guilty plea and punishment system, the total amount of litigation documents has not been simplified and reduced, but increased slightly. From the aspect of review and prosecution, the original litigation documents, such as review report, indictment, service documents and other litigation documents, have not been simplified or omitted, and the relevant guilty plea and punishment system is not suitable. The new documents used are also constantly increasing. According to the information fed back by the practical departments, the prosecutor of city a suggested that the indictment, sentencing proposal, evidence discovery form, affidavit and procedure proposal should be handed over when prosecuting the cases applying summary procedure and expedited procedure. This practice not only did not simplify the relevant litigation documents, but increased the thickness of the case file. In recent years, although the procedure has been simplified on the surface, the litigation documents and the workload behind them have not been reduced at all. This can be seen from the workload of the case handling personnel of the research pilot unit: many regional judges and prosecutors have reflected that their litigation workload has not been significantly reduced since the pilot of guilty plea and punishment, and some prosecutors and judges even reflect their workload. It has become the norm for the staff of the legal prosecution system to work an average of about 1.5 hours a day, and many judges and prosecutors are "self-conscious" due to the requirements of the time limit for handling cases on weekends Overtime experience. From the purpose of system creation, it is one of the original intentions of the system of confession and punishment that simple cases can be simplified. Simple cases should be simplified in procedure setting and document handling. On the contrary, if simplified procedures and their litigation documents are not different or even no different from ordinary procedures in procedure handling and litigation documents, it will not only make Chinese procedure. The failure of the diversion system makes the

division of complicated and simple procedures meaningless, and for the procedure, there are "many cases and few people" in our country. One disaster after another is that the judicial status is no doubt worse. In addition, the evidence displayed in the prosecution stage is presented to avoid the interrogation of the court and show the list of evidence that the prosecution has obtained from the suspect and defendant. This form helps to simplify the cross examination procedure and improve the efficiency of the court hearing. However, the evidence shows that the evidence is only displayed to the parties. Whether this formal cross examination method can replace the cross examination process in court and the risk of unjust and wrong cases behind the application of this instrument need to be further discussed and evaluated.

Procedural circumvention

The establishment and construction of the system depends on the implementation of the procedure. However, in practice, the author found that there are very few artificial evasion phenomena in the local practice of the diversion system of pleading guilty cases. Specifically, a very small number of case handling personnel should have tried the cases that meet the conditions of guilty plea and punishment through procedural diversion and applicable simplified procedures, but artificially avoided the signing of the statement of guilty plea and punishment, and applied the ordinary procedures to try the cases that should have applied the expedited procedure, while the original circumstances of guilty plea and punishment should be given a lighter or mitigated punishment in sentencing. Needless to say, the seriousness of the consequences of this procedural evasion phenomenon is analyzed. There are many reasons behind it: first, under the background of "many cases and few people", it is difficult to close the case in a short time by applying the simplified procedure; Second, the application of the confession and punishment procedure needs to add the signing of the confession and punishment affidavit, the mediation and reconciliation procedures between the parties, and the intervention of legal aid (help) lawyers on the basis of the original procedure. The above procedures and the corresponding document processing undoubtedly need the additional judicial resources and human input of the case handling personnel, and it is difficult to simplify the handling of simple cases; Third, the investigators believe that some recidivists, recidivists and other suspects should be severely and severely punished, and hold a conflicting attitude towards their application of the confession and punishment procedure. On the premise of admitting that the number of black cases in practical handling does exist, the solution of the phenomenon of improper avoidance of the application of the procedure of guilty plea and punishment cases needs to be followed up by the improvement of the guilty plea and punishment system and its related supporting measures. A series of problems exposed behind it, such as the leniency system of guilty plea and punishment is not simplified and perfect, are also worthy of our further reflection and vigilance.

References

See Yang Yu-guan, Liu Cao-Zhen: brief discussion on plea bargaining system, published in people's procuratorial work, No. 11, 2016;Yuan Yi: Italian criminal procedure reform from the perspective of procedural diversion, published in comparative law research, No. 5, 2011;Pierre Pindar: criminal procedure in Canada, graduate law, No. 4, 1999.

Ma Ming-Liang: compromise of Justice: the rise of Deliberative justice in China, Chinese and foreign law, No. 1, 2004.

See Chen Rui-Hua: Chinese model of criminal procedure, Law Press, 2008 edition, page 107.

See Li Xin-Jian: on the structure of criminal procedure, China University of political science and Law Press, 1992 edition, page 287.

See Chen Rui-Hua: from "flow operation" to "judgment as the center" -- a reflection on Chinese's criminal justice reform, law, No. 3, 2000.

See Yang Yu-Guan, Liu Cao-Zhen: a brief discussion on plea bargaining system, published in the people's Procuratorate, issue 6, 2016.

See Zhang Jian-Wei: Justice in plea bargaining and bargaining system, published in the application of law, No. 3, 2004.

See Chen Rui-Hua: from "flow operation" to "judgment as the center" -- a reflection on Chinese criminal justice reform, law, No. 3, 2000.