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Value and Risk: Concern and Perfection of Criminal Expeditious Adjudication Procedure

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***Abstract*—After making experiment during last two years, the criminal expeditious adjudication procedure was introduced into the Criminal Procedure Law in the form of amendments in 2018. From the connotation of leniency in substance and simplicity in procedure, it can be concluded that the criminal expeditious adjudication procedure is of great value in improving litigation efficiency and protecting the legitimate rights and interests of the parties. However, excessive pursuit of efficiency is likely to cause new worries. Therefore, cautious attitude should be taken in the scope of application. In specific application, the principle of individualization of penalty should be adhered to, and the voluntary review procedure of the defendant should be constructed. At the same time, attention should be paid to the demands of the victims. It is imperative to standardize the application of quick judgment procedure by procuratorial organs, to ensure an equal negotiation environment, and to construct a complete incentive system for lawyers on duty.**

Keywords—criminal proceeding; expeditious adjudication procedure; confession of guilt and leniency of punishment; litigation efficiency

I. INTRODUCTION

In 2014, the criminal expeditious adjudication procedure was conducted in 18 cities throughout the country, aiming at implementing the criminal policy of temper justice with mercy, further improving the efficiency of criminal proceedings and effectively safeguarding the legitimate rights and interests of the parties. Up to 2018, the criminal expeditious judgment procedure was introduced into the Criminal Procedure Law by amendment on the basis of the lenient method of confession and punishment. Undoubtedly, the legislative intentions of the criminal expeditious adjudication procedure, such as simplicity and diversion, litigation economy and flexible sentencing, are in line with the actual needs, but excessive pursuit of "speed" in the procedure may bring about corresponding worries. Therefore, in order to realize the presupposed value of the criminal expeditious adjudication procedure, it should also be relied on the perfect supporting system and prevention mechanism.

II. LENIENCY AND SIMPLICITY: LOGICAL CONNOTATION AND VALUE OF CRIMINAL EXPEDITOUS ADJUDICATION PROCEDURE

The procedure of quick criminal judgment is derived from the lenient system of confession and punishment. Chen Weidong believes that the two promotion dimensions of leniency of confession lie in leniency of entity and simplicity of procedure; Entity leniency and procedure simplification have become the consensus of academia: "Pleading guilty and confessing punishment has both the legal effect of entity leniency and procedure simplification". Therefore, this article will analyze the value of the procedure from two aspects: leniency of entity and simplicity of procedure.

A. Entity Leniency: to Protect the Legitimate Rights and Interests of the Parties

The criminal quick judgment procedure requires the defendant to plead guilty and confess punishment, that is, after signing the Concluding Instrument of Plea of Guilt and Punishment, he can get lenient treatment in substance. On the one hand, China has always had a criminal policy of "lenient confession and strict resistance". The defendant voluntarily confesses the crime to the judicial organs truthfully, which is also one of the circumstances of the court's discretionary light sentencing. The system of confession and punishment is a new development of the policy of lenient confession in the new era. From this point of view, the criminal expeditious adjudication procedure is the legal confirmation of the policy of "frankness and leniency" and the embodiment of the criminal policy of continuing the temper of leniency and strictness in China. On the other hand, the acquisition of the defendant's lenient interests comes from his voluntary abandonment of litigation rights. The lenient interests obtained by the defendant after giving up part of the litigation rights should be guaranteed through the procedure. From this point of view, the criminal expeditious adjudication procedure is essentially the institutional carrier of the protection of the rights of the parties.

Therefore, the criminal expeditious adjudication procedure continues China's consistent criminal policy, which is consistent with the basic criminal law system. It has important value to protect the legitimate rights and interests

of the parties to regulate the plea of guilt and punishment more carefully in the litigation procedure.

B. Simplification of Procedure: Improving the Efficiency of Criminal Procedure

The simplification of the procedure involved in the criminal expeditious adjudication procedure mainly refers to the simplification of the trial procedure. Specifically, courts generally do not conduct court investigations and court debates. The courts only examine the voluntariness of the defendant to plead guilty and the authenticity and legality of the contents of the Concluding Instrument for Pleading Guilty and Punishment. On the one hand, in recent years, the number of cases has increased, the structure of cases has changed, and the proportion of minor crimes cases has been high, which has exceeded 80% since 2013. On the other hand, courts and procuratorates are facing the predicament of "case many people less". In this case, the criminal expeditious adjudication procedure can effectively improve the efficiency of criminal proceedings by speedy adjudication of cases with clear facts, sufficient evidence and the accused pleading guilty and confessing punishment, which reduces the burden of court and procuratorate.

From the “Interim Report of the Supreme People's Court and the Supreme People's Procuratorate on the Pilot Situation of the Procedure of Quick Judgment in Criminal Cases”, it is seen that the criminal Quick Trial Procedure has achieved remarkable results in practice. According to sampling statistics, the prosecution review and prosecution cycle has been shortened from an average of 20 days to 5.7 days in the past; 94.28% of the people's courts have completed cases within 10 days, 58.40% higher than the summary procedure; 95.16% have delivered sentences in court, 19.97% higher than the summary procedure. These data fully illustrate that the criminal expeditious adjudication procedure has great value in improving litigation efficiency and rationally allocating judicial resources in practice.

III. CONCERNS AND POSSIBLE RISKS OF OVER-SPEED

The criminal expeditious adjudication procedure conforms to the historical evolution of China's criminal policy and the development trend of the times. Both theory and practice have proved that it is of great significance for the improvement of litigation efficiency and the protection of the legitimate rights and interests of the parties. However, excessive pursuit of the "expeditious" procedure may bring corresponding worries and risks.

A. Risks That Cannot Be Docked with China's System and Culture

Formally, the procedure of quick adjudication in China is very similar to that of plea bargaining in the United States, but it is worth pointing out that the main external factors contributing to the emergence and development of plea bargaining do not exist in China. Institutionally, legislation and judicial practice in China have always emphasized the pursuit of substantive truth and praised "come out in the wash ". However, in the United States, more attention is paid to procedural legitimacy than substantive truth. In addition, in the author's view, the pursuit of substantive reality in China is not only reflected in legislation and justice, but also in social culture and public concepts. The intervening of the quick judgment procedure and the shortening of the period of handling cases make it more and more difficult to find out the truth. The possible unjust cases and wrong cases will easily arouse public doubts, which will damage the authority of the public security and judicial organs and reduce the credibility of the government. However, there is no such problem in the United States where the procedure has become a consensus due.

Although China has carried out some localized reforms on the basis of plea bargaining in the United States, Chinese reform policy makers have clearly declared that the system should follow the principle of substantive truth and the principle of compatibility between crime, responsibility and punishment, emphasizing the need to improve judicial efficiency on the premise of "judicial justice". There are also scholars in the theoretical circle who have specifically analyzed the differences between China's expeditious adjudication procedure and the plea bargaining in the United States, to prove the feasibility of the quick judgment procedure in China. But these efforts cannot change the fact that China does not have the system and cultural soil rooted in American plea bargaining, and the practice of criminal expeditious adjudication procedure will inevitably encounter the risk of not docking with our system and culture.

B. The Risk of Failure to Achieve the Purpose of Penalty

Generally speaking, the purpose of penalty is general prevention and special prevention. Special prevention is mainly aimed at criminal suspects and defendants to prevent them from committing crimes again. General prevention is to prevent other crimes besides criminal suspects and defendants. Some scholars objected that the purpose of penalty is special prevention rather than general prevention. The reason is that empirical analysis shows that the tendency of perpetrators to commit crimes is positively related to the risk of arrest, but not to the supposed deterrent factors of punishment. But even without considering the deterrent effect of penalty on ordinary people, the application of the quick judgment procedure may also produce a sense of commutation of sentence among the defendants, especially among recidivists and repeat offenders. For such suspects and defendants, the quick judgment procedure can be leniently dealt with after each plea of guilt and punishment for a long time. The adjudication procedure is only a means to mitigate the penalty, but it cannot really achieve the purpose of the penalty.

C. The Risk of Not Guaranteeing the Defendant's Voluntariness

The defendant trades for lenient sentencing at the expense of impairing his own litigation rights, while the reduction of court investigation and debate during the trial stage makes it particularly important to examine the defendant's right to abandon litigation and sign the Concluding Instrument of Confession and Punishment. In

reality, the defendant may not fully understand the sentencing proposals of the procuratorate or sign the Concluding Instrument of Plea of Guilt and Punishment under the pressure of the procuratorate. In this regard, the new Criminal Procedure Law not only stipulates that the court has the duty to review, but also sets up a duty lawyer to protect the voluntary nature of the defendant. However, the simplification of the trial links makes the judges have to read the papers adequately before the court, which may lead to a preconceived mentality, and the defendant's voluntary review cannot be completely objective and neutral; moreover, the lawyers on duty are far from in place, and the positioning of the lawyers on duty is not clear, which makes the lawyers on duty unable to read the papers and meet the right to understand the case in detail. Many lawyers on duty have become helpers and witnesses to help procuratorial organs advance the process of litigation. This makes it more difficult to guarantee the defendant's willingness to plead guilty and confess punishment.

D. Neglecting the Victim's Claim and Upgrading the Risk of Social Contradictions

Under the procedure of quick adjudication, the accused plead guilty and plead guilty to punishment can be dealt with leniently. The range of leniency varies from region to region. At present, according to the provisions of Hangzhou Intermediate People's Court "Guidelines for sentencing the pilot work of leniency system for guilty plea and punishment in criminal cases", the maximum range of leniency can reach 30%. However, in this case, the victim has no right to deny. The new Criminal Procedure Law stipulates that the procuratorate should listen to the victim's opinions, but the victim's opinions cannot influence the application of the quick adjudication procedure. The author believes that criminal procedure is not only for the protection of national interests, but also for the response of victims, such as traffic accident crime. According to Article 133 of the Criminal Law of the People's Republic of China and Article 2, paragraph 2, of the Interpretation of the Supreme People's Court on Several Questions Concerning the Application of Law in Trial Criminal Cases of Traffic Accidents, the victim usually dies or is seriously injured. In this case, the application of the system of quick adjudication is likely to be unacceptable to the relatives of the victims. In this case, there is a risk of self-reliance and endangering social stability.

In Britain, studies have shown that the plea bargaining system represented by sentencing negotiation is not popular with the public. In 2011, the Sentencing Committee conducted a wide-ranging survey on the attitude of all parties to the commutation system of guilty plea. The study shows that the public is more inclined to stand in the same camp as the victims, and that the punishment of the perpetrators is too slow. This fully demonstrates that the neglect of the victim's claims may lead to public opposition and thus escalate social contradictions.

E. The Risk of Prosecutors Abusing the Procedure

In the whole procedure of quick adjudication, the prosecutor is in the absolute dominant position, and the prosecutor has a relatively large power of prosecution discretion. Although the popularization of post prosecutors under the judicial system reform will possibly fundamentally improve the quality of the judicial team, the improvement of prosecutors' ability to handle cases does not mean that they can reasonably exercise their right to choose the right to apply the procedure of quick adjudication. Since the rate of handling cases is included in the annual performance appraisal, it is possible for prosecutors to apply the quick judgment procedure as far as possible in order to improve the rate of handling cases, but neglect the recognition of the defendant's voluntariness and the adoption of the victim's opinions. In addition, retaliatory prosecution under the mode of plea bargaining in the United States deserves our attention and prevention.

F. Risks of Conflict with Procedural Defence

According to the new Code of Criminal Procedure, there are no court debates and court investigations in the procedure of quick adjudication. Firstly, in the case of simplified trial, the role of lawyers in issuing cross-examinations and defense opinions in court trial is impossible to play. Secondly, at present, the position of duty lawyers is vague, and their functional rights are not clear. In a few cases involving defense lawyers, they simply express their opinions on whether to accept the application of the criminal expedited adjudication procedure and the criminal facts and sentencing suggestions charged in the indictment of the procuratorate during the trial process, which cannot adequately defend. Finally, the quick judgment procedure generally adopts the formatted documents, but the formatted documents cannot express clearly in favor of the sentencing circumstances of the accused and the defense counsel's relevant defense opinions, which makes the defendant's right to defense impossible to exercise at all.

IV. PROMOTING PERFECTION OF THE SYSTEM

A. Being Close to the Reality

Although the criminal expeditious adjudication procedure which absorbs the beneficial factors of plea bargaining in the United States has been incorporated into the criminal procedure system of China, the pilot data also prove that it has an inestimable value in guaranteeing the legitimate rights and interests of the parties and improving the efficiency of the proceedings, people should not only relax our vigilance, transplant foreign things directly, and then expand the application of the expeditious adjudication procedure range. Faced with the risk that China's system and culture cannot be docked, it is believed that the first thing people have to do is to put a normal attitude and recognize the fact that our system and culture have been pursuing the real reality of the entity. It should be noted that in the context of China, the basis of case settlement lies on fairness, while blindly pursuing the so-called logic of efficiency and theory while ignoring the bottom line of fairness is left unaffected. Nowadays, there are obvious differences and estrangements between the theoretical and practical circles of China and the general public on some basic legal issues. The general theory

is sometimes not accepted by the public. For example, it is difficult to imagine that the "trial only lasts six minutes" reported by many previous news reports can arouse the attention and praise of the general public. Therefore, after understanding the complex social situation of China and fully interpreting the law, it is necessary to consider how to use the reasonable factors of foreign systems for reference. After all, increasing the public's high recognition of the law is more conducive to the implementation of the law.

B. Playing the Role of the Principle of Individualization of Penalty

As for the risk that the quick judgment procedure may not reach the purpose of penalty, the author believes that the full application of the principle of individualization of penalty is the key to reduce the risk. The principle of individualization of criminal law emphasizes that different criminal suspects and defendants should be treated, and different penalties should be given according to the specific circumstances of different cases. Some scholars analyzed 217 judgments of theft cases in Hangzhou City, Zhejiang Province, and found that 47 of the defendants were recidivists or had been legally punished for illegal acts, accounting for 21.66%. Individual defendants even had previous convictions. However, in most cases, no matter whether the defendant has a criminal record or not, whether he evades investigation or obstructs trial, as long as he can confess and agree to apply the procedure, he can almost get lenient punishment. As far as recidivists and recidivists are concerned, lenient treatment of the application of the quick adjudication procedure cannot prevent them from committing a crime again, but can easily become the means and tool for them to carry out the punishment and continue to commit a crime at an early date. In this case, it is necessary to try to limit the application of the quick adjudication procedure or limit the leniency or even increase its punishment, rather than apply the lenient treatment principle of the quick adjudication procedure consistently.

C. Constructing the Procedure of the Defendant's Voluntary Review

Many scholars have noticed the importance of guaranteeing the defendant's voluntariness. Chen Ruihua proposed that the voluntariness of the defendant to abandon his right should be guaranteed from three aspects: right informing, lawyer guarantee and defendant's right to repent. The author thinks that it can be further refined. In order to protect the defendant's voluntariness, the duty to inform the right of the procuratorate and the duty lawyer's duty to inform are indispensable. However, the lack and unclear location of the duty lawyer make it difficult for the duty lawyer to give reasonable legal opinions and gradually become a witness to help the procuratorial organ "interpret the law". So it is the premise of the defendant's "voluntary" to position the defendant, give him the right to read papers, meet and defend in court, help the defendant to get as comprehensive legal help as possible, and form an equal consultative environment between the two sides. In addition, the trial process is also very important. Judges should judge whether there is "involuntary" situation according to the performance of the defendant in the trial, rather than mechanically operating the procedure according to the provisions and then directly sentencing according to the sentencing recommendations.

D. Reflecting the Victim's Appeal in Procedure Choice and Sentencing Suggestion

As for the attitude of the victim, the new Criminal Procedure Law of China clearly stipulates that the victim's opinions should be heard, but the victim's opinions do not have a substantive binding effect on the application of the expedited adjudication procedure and sentencing suggestions. However, there are also views that disagreement with the views of the victims as an important reference factor, the victims may overcharge the price, resulting in unfair results, should not take into account the views of the victims in the application of procedures, the application of penalties to refuse the victim kidnapping justice. Although the above viewpoint has its rationality, it should be noted that it is totally unreasonable to exclude the victim from the criminal procedure itself.

As the victim of a crime, the loss may be property or physical. The author believes that the victims can be classified according to the different victimization situations. Property claims and general bodily injuries can usually be compensated through criminal incidental civil proceedings. It is more appropriate to express opinions on the application of procedures and sentencing, but not decisive. But part of the physical injury may be permanent and irreparable, and the mental damage caused by it is relatively serious. At this time, lenient punishment to the defendant may aggravate the pain and discontent of the victim. In this case, the victim should have the right to decide whether the criminal suspect and the defendant can get preferential sentencing through the application of the procedure of quick adjudication.

E. Standardizing the Application of the Procedure

As far as procuratorial organs and courts are concerned, they should more standardize their application of the procedure of quick adjudication. Firstly, they should standardize the scope of application of the procedure of quick adjudication, restrict the application of recidivists, and formulate a uniform range of lenient sentencing. Secondly, the negotiation process should have a formal procedure to facilitate the court to review the legality of the negotiation. Finally, it is possible to imitate the punishment order system in Germany. It emphasizes the openness and transparency of the consultation, such as the important process, content and results of the consultation should be recorded in the court's trial records. Even if no agreement is reached, informal, preliminary communication outside the main trial process needs to be documented. Where no consultation has taken place, the transcript should also be noted.

F. Constructing a Complete Incentive System for Duty Lawyers

For China, the quantity and quality of defense lawyers are obviously insufficient to meet the needs of rapid adjudication procedure, and the absence of lawyers is serious.

Some scholars have found in practice that the position of duty lawyers is unclear, their rights are severely limited, their responsibilities are too heavy and their risks are too high, but their remuneration is very limited. These problems greatly reduce the enthusiasm of the lawyers on duty. Therefore, to construct a complete incentive system for on-duty lawyers is the key to the smooth operation of the quick adjudication procedure. In this regard, the author believes that people can consider from the following aspects: first, clarify the position, function and rights of duty lawyers, and the existence of legal risks or loopholes may reduce the attractiveness of duty lawyers to legal practitioners. Secondly, it is the issue of funds. At present, the working expenses of lawyers on duty are included in the special funds for legal aid, providing legal consultation and guidance for the parties concerned, and according to the expenditure of "legal consultation". As duty lawyers have the right to choose procedures, change the right to apply for coercive measures, and participate in sentencing consultation, the workload of duty lawyers has increased greatly, far beyond the scope of "legal consultation". It is imperative to properly increase the remuneration of lawyers on duty and the funds for handling cases. Finally, consider other incentives. For example, it is necessary to strengthen policy support and assessment of rewards and punishments, and use legal aid lawyers on duty as a reference standard for reporting and rewarding, so as to give incentives to law firms and lawyers' professional reputation, and encourage more social forces to participate in and enrich the legal aid team.

V. CONCLUSION

The connotation of criminal expeditious adjudication procedure lies in leniency of entity and simplicity of procedure. It can be proved in theory and practice that it has important value in improving litigation efficiency and protecting the legitimate rights and interests of the parties. However, excessive pursuit of efficiency is likely to lead to new problems. Therefore, it is necessary to carefully expand its scope of application, adhere to the principle of individualization of penalty in specific application, at the same time, construct the voluntary review procedure of the defendant, pay attention to the demands of the victims, standardize the application of the expedited adjudication procedure by the procuratorial organs to ensure an equal consultative environment, and construct a complete incentive for duty lawyers. The supporting measures such as the system make it possible to give full play to the role of the criminal expeditious adjudication procedure and ensure the fairness and efficiency of criminal proceedings.

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