

Research on Lowering the Standard of Proof for Criminal Speedy Trial Procedure*

Shao Shao
School of Law
Hangzhou Normal University
Hangzhou, China 310000

Yixiao Li
School of Law
Hangzhou Normal University
Hangzhou, China 310000

Abstract—In recent years, the criminal speedy trial procedure has been operating well in China's judicial practice. However, in the theoretical and practical circles, there always remains a major dispute about whether to adjust the standard of proof of the speedy trial procedure. Through comparative investigation, the practice of the common law countries represented by the United States and the civil law countries represented by Germany on this issue has strong reference significance to the judicial practice of China. After analysis, it is concluded that since the "view of maintaining the standard of proof" is untenable, and in order to ensure the realization of the purpose and fairness of the procedure, the standard of proof for criminal speedy trial procedure should be lowered. Specific measures can be taken to adjust the standard of proof by distinguishing the standard of proof according to different cases, ensuring the authenticity and stability of oral confession, implementing the system of lawyer's assistance, and piloting written trial.

Keywords: *speedy trial procedure, standard of proof, lenient system of pleaded guilty and recognized punishment*

I. INTRODUCTION

On October 26, 2018, the Standing Committee of the National People's Congress (NPC) passed the "Decision to Amend the 'Criminal Procedure Law of the People's Republic of China'". One of the major innovations of the revision of the Criminal Procedure Law is the addition of the criminal procedural system for speedy trial procedure based on the experience of the pilot work in the past few years. After the review of the pilot experience of several years, it can be seen that the operation of the speedy trial procedure is not only conducive to building a multi-level litigation system, optimizing the allocation of judicial resources, but also conducive to building a system of misdemeanor litigation with Chinese characteristics, and strengthening the protection of judicial human rights. [1] Yet at the same time, the author also noticed that some of the shortcomings of the procedure cannot be ignored, among which, the contradiction about what kind of certification standard to adopt in the procedure is very prominent.

II. DIVERGENCE IN WHETHER OR NOT TO ADJUST THE STANDARD OF PROOF

As for the standard of proof, China's "Criminal Procedural Law" stipulates that if the facts of the case are clear, the evidence is true and sufficient, and the defendant is found guilty according to law, a guilty verdict shall be made. This is the legal standard of criminal litigation in China, and also the consistent criterion for the judge to find the facts of the case in the ordinary procedure. However, there remain many disputes over whether the standard of proof can be used in the speedy trial procedure or not.

There are many opinions about this problem in the theoretical circle. Professor Chen Guangzhong believes that no matter what kind of procedures should adhere to the identity of the standard of proof, and cannot lower the standard of proof because the procedure is simple, so as to avoid wrongful conviction. [2] Professor Fan Chongyi also made an in-depth analysis of this. He pointed out that as a typical procedure of admitting guilt and accepting punishment cannot sway the standard of proof of "clear facts and sufficient evidence". [3] However, Professor Wang Jiancheng believes that at this point, the standard of proof can be lowered appropriately, as long as it is still in line with the standard of "basic facts are clear and the basic evidence is solid". [4] Similarly, Liao Dagang, a doctoral student of criminal law at Jilin University, and Bai Yunfei, a judge of Tianjin Higher People's Court, also believe that the adoption of the standard of proof — "clear basic facts and solid basic evidence" will not affect the realization of judicial justice. [5] Professor Chen Ruihua proposed that differential treatment should be adopted according to different objects of proof, and while the standard of proof of criminal facts charged by the prosecution should not be lowered, the proof of sentencing facts should not be too severe. [6]

Practitioners often hold the view that standards should not be lowered, insisting on upholding the rule of "clear facts, solid and sufficient evidence". For example, the President of the People's Court of Pingyang, Zhejiang province thinks that the speedy trial procedure is only a judicial means to help improve the efficiency of handling cases, and the evidence should still be sufficient to prevent the public prosecution from being unprepared for the defendant's

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sudden confession in the trial. [7] Liang Yali, a senior partner of King & Capital Law Firm in Beijing, also spoke at the seminar, saying that judicial authorities are not allowed to make a judgment in the name of confession when facts are unclear and evidence is insufficient. [8] But several judges at the Tianjin High People's Court said it was not necessary to apply the exact same standards of proof to simple, minor criminal cases in which defendants plead guilty as in major complex cases. [9]

By summing up the majority of the academic field and practice field, it can be seen that most people opposed to lowering the standard of proof thinks that the statutory standard of proof in the legislation implies that all cases, whether the ordinary procedure or that applicable to speedy trial procedure, with guilty plea or without, should strictly comply with this standard. And if, in a minor criminal case, the activities of proof do not reach the level of "clear facts, solid and sufficient evidence", the possibility of a miscarriage of justice becomes considerable in such a procedure that omits many trial links. On the contrary, those who support lowering the standard of proof mainly hold that different judicial procedures applying the same standard of proof will cause the waste of judicial resources, which prolongs the time to obtain evidence, and thus leads to the difficulty in realizing the purpose of rapid judgment.

III. INSPECTION OF SIMILAR PROCEDURAL STANDARDS OF PROOF OUTSIDE CHINA

There are different opinions on whether the standard of proof for speedy trial procedure should be adjusted. In this regard, the author thinks that it can provide reference for the determination of the proof standard of speedy trial procedure in China by referring to similar design and operation outside the region.

A. Common law countries represented by the United States

In the criminal procedure system of common law countries, what is designed out of the same purpose with China's speedy trial procedure is their special plea bargaining system. Because the litigation mode in Britain and America is characterized by the judge being passive and neutral and not taking the initiative to investigate and collect evidence, all the burden of proving falls on the complainant. [10] The value of plea bargaining lies in the improvement of litigation efficiency and the rational allocation of judicial resources, which conforms to the Economic theory of litigation pursued by common law countries. Driven by these benefits, plea bargaining system has taken root in the United States and gradually been widely used. According to statistics, in 2012, 97 percent of criminal cases in the United States were resolved through plea bargaining rather than trial.

"Beyond all reasonable doubt" is the standard of proof for conviction in a formal trial of a criminal case in the United Kingdom and the United States. Once the accused and the accusing party reach a consensus on plea bargaining, it can be assumed that the accused waives the presumption of innocence and the protection of the standard of proof

"beyond all reasonable doubt" so that the accusing party no longer has to prove the accused guilty. In the United States, until the "Federal Rules of Criminal Procedure" was amended in 1966, guilty pleas did not rely on an adequate factual basis. It was not until 1966 that the "Federal Rules of Criminal Procedure" stated: "Before reaching a verdict on the guilty plea, the court must determine whether the plea has a factual basis. [11] However, the extent to which facts are to be proved is not clearly set out in the legislation. As a result of this, in the Alford Plea, apart from the defendant's guilty plea, the only evidence was the testimony of a policeman and two witnesses. The testimony of the witness in this case could not directly point to the criminal facts of the accused, but the Supreme Court of the United States believed that there was strong evidence to prove the accused's guilt in that case. In the case, the court's determination of the factual basis of plea bargaining obviously could not reach the degree of "beyond all reasonable doubt" when the jury decides the facts of the case. Thus it can be seen that the standard for finding facts in plea bargaining cases in the United States is lowered.

B. The civil law countries represented by Germany

All countries of the civil law system carry out the standard of proof of "inner conviction". In the civil law countries using the litigation mode based on authority, the judges assume the responsibility of investigating the facts of the case. Theoretically, the simple procedure similar to the plea bargaining system of the United States cannot survive. However, since the 1960s, the phenomenon of insufficient personnel for too many cases in Germany has intensified. Judicial practice has thus been inevitably influenced by British and American countries, and the system of plea negotiation is then established. There are three types of deliberative justice procedures in Germany, which are penalty order procedure, speedy trial procedure and plea negotiation procedure. The procedure for the order of penalty shall apply to a misdemeanor offense for which the maximum penalty is less than one year's imprisonment. In such cases, the judge usually reviews the case file to form a conviction that the accused person is guilty, and the court may issue a criminal penalty order at the request of the prosecutor in writing. [12] Germany's speedy trial procedure applies to cases where the case is simple, the evidence is clear and the sentence is less than one year. It is characterized by eliminating all intermediate procedures and simplifying the procedure of evidence investigation. [13] In the plea negotiation procedure, which is closest to plea bargaining, a judge can close the case by examining only a portion of the evidence to determine that the statement has merit and end the case proceedings. [14]

In addition, the procedure of brief trial in Taiwan is not restricted by strict rules of proof, nor is it restricted by the order, method, request and method in which witnesses are cross-examined, nor is the rule of exclusion of hearsay evidence applicable, and written testimony can be adopted. [15] In addition, similar procedures in countries including Italy and France do not require a level of "inner conviction". Thus it can be seen that the insistence of the civil law

countries, led by Germany, on "inner conviction" is no longer applied indiscriminately to all cases.

C. The inspiration of the proof standard of similar procedures outside China

Judging from the emergence and development of similar procedures outside China, both the standards of proof for "beyond all reasonable doubt" and the standards of proof for "inner conviction" are differentiated in the application of plea bargaining and plea negotiation procedures, that is, they are both wider than ordinary procedures. It is mainly manifested in the following aspects: part of the procedure, steps are simplified or even omitted; physically, Germany mainly adopts different standards of proof according to different types of cases, while the United States according to such conditions as whether or not the accused person confesses. The starting point of establishing the speedy trial procedure is the same as the plea bargaining system in the United States and the plea negotiation procedure in Germany. It is necessary to investigate from practice whether China's speedy trial procedure can learn from the measures taken by foreign countries to lower the standards of similar procedures to strengthen its own rationality.

IV. THE NECESSITY OF LOWERING THE STANDARD OF PROOF

By summing up the views of the current theoretical and practical circles, and investigating the relevant legislative and judicial experience outside the region, the author believes that lowering the standard of proof is more beneficial to the improvement of the speedy trial procedure.

A. The "view of maintaining the standard of proof" is untenable

On the one hand, although the practice of "one-size-fits-all" is beneficial to prevent the judges from abusing the free evaluation of evidence due to the inconsistent standards of proof, this also reflects the standards of proof in China are not scientific and rigorous enough. At the trial stage, the purpose of speedy judgment is mainly realized by shortening the time limit of case handling and omitting the links of court investigation and court debate. Compared with other trial modes, the time of speedy trial procedure is tight and the task is heavy. If the judge is still required to find the facts of the case by legal standards of proof in such a short period of time, it will undoubtedly increase the burden of the sole judge. In addition, the omission of court investigation and court debate seems to reduce the tedious trial time, but it forces judges to shift their work focus to pre-trial efforts in order to strictly control the statutory standards of proof, and the examination work outside the court increases rather than decreases. This is a far cry from the original intention of the design process of the speedy trial procedure. On the other hand, theoretically speaking, the standard of "facts are clear, evidence is solid and sufficient" is premised on the existence of demurrer between the two parties. However, the initiation of the speedy trial procedure is built on the basis of the accused's confession and acceptance of punishment. Once

the accused admits the criminal facts, the confrontation structure between the accused and the defense ceases to exist. After the collapse of the model which keeps running when one side attack and the other defend, the question of factual evidence loses its meaning if it is still measured in the same way

B. Guarantee of realizing the purpose of speedy trial procedure

In different cases, the value orientation of litigation procedure is not the same. In serious criminal cases that may affect the right to life of the accused, of course, the objective is the realization of the real entity. Yet in minor criminal cases, such as theft and dangerous driving, efficiency is taken as the value orientation. The establishment of criminal speedy trial procedure has gone through the balance between judicial justice and judicial efficiency. The ideal goal of the economic principle of litigation is to give consideration to justice and efficiency and to optimize the allocation of judicial resources. Lowering the standard of proof is the guarantee of saving judicial cost and improving judicial efficiency. In addition, as a procedure that can be applied to the criminal case most rapidly and simply, speedy trial procedure is efficiency-oriented. However, according to the investigation report on the application of quick-decision procedure in many regions, the author found that the application rate of speedy trial procedure in criminal procedure in most regions is far from the expected application rate of 30%-40% by the Supreme People's Court for each pilot. The practice proves that the strict standards of proof are still used, which will increase the burden of judicial work, prolong the process of evidence collection and increase the difficulty of evidence collection, so the purpose of rapid judgment cannot be achieved.

C. Equity and justice should be realized based on the overall situation

If there is enough time, human and material resources to deal with a case, it is indeed possible to obtain more evidence resources, to be more objective and realistic, and to deal with the case more fairly, but this is bound to be at the expense of judicial efficiency. If a case, especially a minor criminal case with clear facts, is delayed for a long time, and the substantive rights and litigation rights of the parties are always in suspense, it is bound to damage the credibility of the judiciary. Procedural injustice leads to the disappearance of substantive justice. This is what "justice belated is injustice" says. In the minor criminal cases where the procedure of speedy trial procedure is applied, the pursuit of justice will only result in "getting half the result with twice the effort" if the judges insist on the absolutely solid and sufficient evidence. Moreover, a country's judicial resources within a certain period of time are limited. It is not the direct cause of wrongful convictions that the standard of proof is lowered for minor criminal cases in which the guilty parties plead guilty. In fact, wrongful convictions are more often the result of heavy sentences. After the judicial resources originally used for minor criminal cases are saved through

the speedy trial procedure, efforts can be concentrated to tackle the major cases that need more judicial resources.

V. DESIGN OF THE PROOF STANDARD MECHANISM OF SPEEDY TRIAL PROCEDURE

To sum up, lowering the standard of proof is an inevitable trend to improve the criminal speedy trial procedure. However, the development and perfection of a program is bound to be symbiotic with risks, and how to make the best of the advantages and avoid the disadvantages is worth discussion. Here, in view of the opinions of scholars, judicial staff and lawyers of "insisting on the standard of proof", the author draws on the experience and lessons of foreign legislation and judicial practice, and puts forward some specific measures to adjust the standard of proof.

A. Differentiated standards of proof according to case types

In cases where the speedy trial procedure is applied, the defendants should have generally pleaded guilty. In practice, the standards of proof in different cases can be divided according to the evidentiary force of the defendant's confession. For example, in cases where a sentence of less than one year in prison may be imposed under the speedy trial procedure, only statements are required to be supplemented by "certain" evidence. In such cases, spending the remaining resources to collect other evidence does not significantly contribute to the fact finding, and the facts of the case are already clear. According to statistics, about 43 percent of all criminal cases in China are sentenced to less than one year's imprisonment by the courts, so lowering the standard of proof will replace considerable judicial resources. In cases where a sentence of one to three years in prison is subject to a speedy trial procedure, testimony must be supplemented by "strong evidence". Strong evidence includes two aspects: first, strong proof and second, close relation with the facts of the case. The definition of such evidence can be enumerated by public security and judicial organs according to different types of crimes. In practice, the proportion of cases sentenced to less than three years in prison has reached more than 80%, and the parties can basically plead guilty. If such cases can adopt the standard of "strong evidence" to reinforce the testimony, the efficient justice can undoubtedly be achieved.

B. Ensuring the authenticity and stability of oral statements

Lowering the standard of proof in the speedy trial procedure is equivalent to giving the oral statements higher proof force, but the premise must be that the statement is true and credible. In order to guarantee the freedom of expression of the criminal suspect and the defendant, the system of signing the letter of affidavit and entrusting the lawyer with the right to defend can guarantee the voluntariness of confession. Experience shows that if a criminal suspect or defendant experiences illegal evidence collection during the investigation stage, he or she is likely to have his or her confession revoked in the subsequent proceedings. And once the confession is overturned, speedy trial procedure cannot

be carried out again. In addition, often only in the case of difficult evidence, slow case progress will investigators be induced to obtain illegal evidence and the defendant make false confession. It is not enough for cases punishable by up to three years in prison to expose judicial personnel to the risk of obtaining evidence illegally, which also helps to ensure the authenticity of statements. In addition, in order to avoid the confession of the criminal suspect or defendant in the stage of investigation being withdrawn, the process of confession must be recorded and videotaped, and the tape and video should be given the evidence qualification and probative force for the fixed confession. In this way, even if the confession is withdrawn later, the facts of the case can also be confirmed according to the content of the audio and video.

C. Implementing the legal aid system

No matter what kind of procedure, the rights of the accused cannot be exercised without the help of lawyers, and the case of speedy trial procedure is no exception. As a procedure applicable to the lenient system of pleaded guilty and recognized punishment, the speedy trial procedure is the result that the accused gives up some litigation rights and substantive rights in exchange for leniency in sentencing. In judicial practice, the "price" to be paid by the accused should have a certain degree, and this scope especially needs to be closed by professional lawyers. On the one hand, defense lawyers need to explain the basic contents of the lenient system of pleaded guilty and recognized punishment to the suspects and defendants, and inform them of the consequences of choosing guilty plea and accepting punishment. On the other hand, the prosecution and the defense should reach a plea agreement and provide professional advice to the client to achieve the best possible leniency. [16]

D. Application of written trial in some cases

Both the civil law system and the common law system have the provisions that a written trial can be conducted in a confession case. In practice, in cases where the facts and evidence are quite clear and the prosecution and the accused have no objection to the conviction and sentencing of the case, the trial has become a "formality", lack of substantive significance. Written trial is feasible from this point of view, but written criminal trial may easily lead to wrongful convictions and thus be criticized as well. Therefore, when the written trial is introduced, it is necessary to strictly limit the scope of the cases with speedy trial procedure applicable to the written trial. For example, it can be stipulated that a written trial can be applied in minor criminal cases where the facts and evidence are clear, and the defendant may be sentenced to public surveillance, criminal detention or fined solely and exempted from criminal punishment.

VI. CONCLUSION

The application of the speedy trial procedure is applicable to minor criminal cases in which the accused has pleaded guilty. In these cases with less harm to the society,

on the one hand, there is the confession of the defendant with stronger proving force, and on the other hand, there is the existence of oral testimony to strengthen the evidence. If the statutory standard of proof is still adhered to in the cases where the speedy trial procedure is applied, its value cannot be reflected. Since the pilot work was launched in 2014, one of the major reasons that the application rate of the speedy trial procedure did not meet expectations is that the standards of proof for specific cases were not adjusted in practice. To solve this problem, it is necessary to distinguish the standards of proof in criminal cases with different procedures in judicial practice. Only by reasonably lowering the standard of proof can the function of speedy trial procedure be given full play to, and the purpose of efficiency and justice can be realized.

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