

Discussion on Issues of Criminal Reconciliation System

Qiong Zhang

Hunan Judicial Police Vocational College
Changsha, China 410131

Abstract—The criminal reconciliation system mainly pays attention to the victim's entity right and promotes the victim's litigation status so as to weaken the penalty function. In order to prevent the unaccomplished crime of the perpetrators, this system has been applied and promoted in the judicial practice of China, showing a large judicial value and social value. This paper discusses the problems in the criminal reconciliation system and puts forward some suggestions on perfection of the criminal reconciliation system in China, hoping some contribution to the improvement of our criminal reconciliation system.

Keywords—criminal reconciliation system; system defects; suggestion

I. INTRODUCTION

Criminal reconciliation is also known as the reconciliation between the perpetrator and the victim, which means a procedure to make the perpetrator really face up to the harm for the victim and reach a compensation agreement between the perpetrator and the victim through their direct negotiation under the help of mediators after the crime occurs, and to achieve a final settlement of the criminal dispute. With the core concept of protecting the interests of the victims, and with the basic connotation of fully protecting the interests of victims, of perpetrators and of the public, it is purpose to achieve a small consumption of judicial resources and obtain the ideal substantive target.

II. THE PRACTICAL SIGNIFICANCE OF CRIMINAL RECONCILIATION SYSTEM

The establishment of a criminal reconciliation system will make the victim take a initiative from the passive position in the criminal proceedings, and under the mediation of the judicial organs between the parties, to make the criminal suspects, defendants and their relatives take a active material compensation and spiritual comfort to the victims and further reach a settlement agreement, so as to obtain the understanding of the victim and to make the suspects and the defendants remitted from criminalization. This is conducive to the reformation education of perpetrators, giving the victims with psychological comfort for sincere repentance of the perpetrators. After the establishment of criminal reconciliation system, if the victim's understanding is achieved at the investigation stage in some minor criminal cases, the investigating authorities can withdraw the case without having

to enter the stage of review and prosecution; if understanding achieved at the investigation and prosecution stage, the procuratorial organ can make a relative non-prosecution treatment without having to enter the stage of trial; if understanding achieved at the stage of trial, the parties will not make a appeal or complaint, which will greatly saves the litigation resources.

III. THE PROBLEMS IN CHINA'S CRIMINAL RECONCILIATION SYSTEM

A. Legislation Is Imperfect, with Large Arbitrariness in Applying Reconciliation

China's current criminal justice system and criminal legal system have no systematic and strictly integral institutional provisions on criminal reconciliation. On the one hand, non-custodial sentences have a limited application. At present, the non-custodial punishments in China have a limited and single type, while in the Western countries the participation in public welfare labor and the community service and other means have be separated and become the types of non-custodial sentences, not only the means of non-custodial punishment check; in our country, the non-custodial punishment is very limited not only in the legislative regulation and in the punishment types but also in the practical application, making the implementation of criminal reconciliation system lack of operability. On the other hand, the types of punishment are not clear. The limitation of our non-custodial punishment, particularly the treatment results such as apology, community service and life help are not determined, results in no legal basis for the final settlement way of criminal reconciliation.

There is also large flaw in the application of reconciliation. First there is large arbitrariness in the range of application for reconciliation case. On the one hand, some cases that do not meet the conditions of reconciliation are settled according to the reconciliation type; on the other hand, some minor criminal cases that can be dealt with through reconciliation are not settled according to the reconciliation type. Second, the application of reconciliation is not balanced. On the one hand, it is not balanced in the proportion of application and the regional distribution. At present, only a few provinces and cities in the whole country introduce this mode in the legislative and judicial practices, but there are still large regional differences in the applicable objects, applicable standards and applicable results. On the other hand, the

reconciliation cases are settled in an unbalanced way. The differences of settlement modes in different organs lead to an actually unfair settlement of parties, especially the suspects.

B. The Reconciliation Procedure Is Not Standardized, Lack of Compensation Standards

Criminal reconciliation system in the actual operation has no standardized procedure. First, the current law does not provide the applicable scope, objects, conditions and procedures of criminal reconciliation, resulting in a changeable crimination standard without authority in the actual application, and obliterating the boundaries between crime and non-crime. Second, mediators are disordered. In the case of private prosecution, judge presided over the mediation, and in the case of non-prosecution, prosecutor often served as a mediator, causing the public power of the judge and the prosecutor to have more or less influence on the parties, and leading to the failure of the parties in fully expressing their wishes. Third, the way of reconciliation is single. In the complex cases, if the case has multiple perpetrators or multiple victims, if the victim only agrees to reconciliation with part of the perpetrators, or if only part of the victims agree to reconciliation, it will be difficult to make reconciliation, and in the current practices, the procuratorial organs often use the principle of "unanimous consent". Fourth, there is one-sided understanding of criminal reconciliation connotation. The criminal reconciliation system is a system of litigation to make the perpetrator and the victim reach an agreement or understanding to prompt the state organs not to give criminal sanctions or give a lesser punishment. From the processing results, it includes no criminal sanctions but also lesser punishment to be given. But in practice, we often attach importance to the former and ignore the latter, and even the make a one-sided understanding of criminal reconciliation, thinking the perpetrators are not be prosecuted for their criminal responsibility.

C. The Procuratorial Organ Failed to Play the Role of Reconciliation, without Complete Supervision

At present, the criminal reconciliation of public prosecution case is mostly carried out on the basis of mediation with civil proceedings, and after the parties reached a mediation agreement, the court will legally make a lighter punishment of the defendant at their discretion. Public prosecution agencies only participate in the court trial but not in the reconciliation, which cause the absence of the role of procuratorial organ in the criminal reconciliation. At the stage of investigation, of examination of prosecution and of the trial, the parties can apply for reconciliation. Whether it meets the scope and conditions of reconciliation that the public security organs withdraw a case on the grounds of reconciliation at the stage of investigation, and whether the parties are willing to reach a reconciliation of their accord, all can't be known by the procuratorial organ, which results in an abuse of power of the public security and judicial organs as well as of the victim, and so a judicial corruption emerges. At the same time, the criminal reconciliation system expands the power of judicial personnel, and a small number of judicial personnel may use the power of criminal reconciliation to accept the parties' bribe, to seek personal gain, misrepresent the law, force the realization of reconciliation, or make a threat in place of

reconciliation, for which the procuratorate have no complete supervision.

D. There Is No Sound Supporting Measure

1) *There is not a compensation system for the victims and a personal interest and social interest protection system for the victims:* Under the existing criminal justice system, there is no perfect compensation system for victims. At the same time, in the criminal reconciliation, the victim has the great power to decide the fate of the perpetrator, and the potential danger of the perpetrator and its social network for the victim accordingly increases; the perpetrator often use the ways of threat, inducement and intercession to ask the victim to withdraw the complaint or provide a perjury, so the victim's personal interests and social interests are hardly protected.

2) *The procuratorial organ has a small power to make discretion and suggestion on sentencing:* There is no independent sentencing procedure in our country, and there is no effective restriction on the discretion of the judge to make sentence. It is stipulated in the Constitution that the procuratorial organs are responsible for legal supervision and carry out the right of legal supervision in the whole criminal proceedings,¹ but in the actual operation, the procuratorial organs have a small right to make a discretion and suggestion on sentencing, which affects the actual effect of criminal reconciliation to some extent.

IV. THE PROPOSAL FOR IMPROVING CRIMINAL RECONCILIATION SYSTEM

A. Improve the Criminal Reconciliation System in Legislation and Judiciary

Our current criminal justice system does not have a criminal reconciliation in the strict sense, but there is a relevant or approximate expression only in the criminal procedure law and criminal law. Our current criminal reconciliation system has no legal provisions, for which we should formulate the institutional and procedural rules of criminal reconciliation in a systematic and strict sense as soon as possible, to ensure that we have laws to abide by and have basis to follow for criminal reconciliation.

In the premise of no clear legal provisions for criminal reconciliation system, the judiciary authorities should try to furthest protects the interests of the parties all the way in the application. And the Supreme People's Court and the Supreme People's Procuratorate should also introduce a series of judicial interpretations or judicial cases, and formulate a specific standard applicable for criminal reconciliation.

B. Scientifically Define the Applicable Scope of Criminal Reconciliation

The foreign criminal reconciliation is originally applicable for juvenile delinquency, first offense and minor offense, and

¹ Liu Donggen: "Polarization - Choice of China's Criminal Policy " [J], contained in "China Criminal Law magazine" 2002, 6th .

later developed to be applicable for adult offenses and serious offenses. However, in China's current initial reform, the supporting system is not perfect, and it is proposed that it should be applicable only for minor criminal cases, but also the applicable scope of criminal reconciliation cases should strictly and scientifically defined, so as to make the parties and the public implement a extensive supervision for the cases settled through criminal reconciliation, and to ensure the lesser punishment at discretion is carried out within the limitation prescribed by law, to prevent the distortion of fact by use of this system, evasion of law or escape from legal responsibility, and further to enhance the public recognition of criminal reconciliation.

C. Strengthen the Supervision of Cases of Criminal Reconciliation

As legal supervisory organs, the procuratorial organs shall carry out a full monitoring of the whole process of reconciliation. In addition to the construction of proper, reasonable and sound monitoring system, the supervision other than justicial system is also necessary.

1) *Strengthen the supervision of procuratorial organ for the agreement of criminal reconciliation:* The agreement of criminal reconciliation is a kind of criminal contract in the view of public law. In order to prevent the contract of public law from deviating from the traditional classical theory and from being harmful to the interests of the state and society, the agreement must have the "purification of proper process"². The typical characteristic of the public law contract is the involvement of public power, which requires the use of specific rules under the due process to regulate the exercise of national public power. The effective supervision of the procuratorial organ on the agreement of criminal reconciliation can better protect the interests of the parties and strengthen the supervision of proper judgment of the court case.

2) *The supervision other than judicial system:* The criminal procedure law in our country does not stipulate the supervision of juridic work by other organs than the judicial system, but our state system and regime decide there is a lot of supervision from the people's congress and other social groups as well as democratic parties in the practice. In addition, the supervision from the media and the public is also necessary.

3) *Increase the discretion and suggestion on sentencing of the procuratorial organs:* The procuratorial organs shall exercise full discretion in the circumstances permitted by law, in accordance with the conditions set by law and their codes of conduct. However, the discretion of the People's Procuratorate given by our law is small, so it is necessary to expand the scope of discretion in the cases of criminal reconciliation so that the discretion can be carried out in a

wide range. At the same time, suggestion on sentencing is a form of the prosecutorial organs to exercise their functions of public prosecution, and we should correctly treat the relationship between the right of procuratorial organs to give suggestion on sentencing and the criminal discretion of the people's court, so as to avoid the abuse or misuse of judicial power in the criminal reconciliation.

At the same time, we should establish the right relief system of victims. After the agreement of criminal reconciliation is reached, if the offender refuses to perform or fails to perform within the prescribed time limit, the victim and his / her legal representative may again initiate a private prosecution or request the procuratorial organ to initiate a public prosecution so as to ensure the legitimate rights and interests of the victim.

REFERENCES

- [1] Zhao Ke et al.: "a social group in little consideration - criminal victims" [M], Mass Press 2002 edition.
- [2] Compiled by the Law and Policy Laboratory of Supreme People's Procuratorate: "Everyone's Justice" (British Judicial Reform Report) [R], Procuratorial Press, 2003 edition.
- [3] Yang Zhengwan. " Research on Problems of Criminal Victims " [M], the Chinese People's Public Security University Press, 2002 edition.
- [4] Li Yuguan. "American Criminal Trial System" [M], Law Press, 1999 edition.
- [5] Li Wenjian. " Theory of Criminal Action Efficiency " [M], China University of Political Science and Law Press, 1999 edition.
- [6] Guo Jianan, Zheng Xiaze. "General Theory of Community Correction" [M], Law Press 2004 edition.
- [7] Li Maochun, Li Zhiqiang. "Discussion on Establishment of China's Criminal Reconciliation System" [J], the "Learning Forum" 2005, 12th .
- [8] Tang Xiaotian. "Primary Discussion on Non-Prosecution System of Reconciliation " [J], contained in the "People's Procuratorate" 2005, 11th (the first volume).
- [9] Liu Mei. " Review on The Criminal Reconciliation Theory and Practices in Western Countries " [J], contained "Modern Law" 2001, 1st.

² Liu Ying: "The Criminal Non-Prosecution System" [C], contained in the "Collected Papers on Seminar of Non-Prosecution System in the View of Criminal Integration" compiled by the People's Procuratorate of Haidian District, Beijing, Page 78.