

## **Research on the Correlation and Application of Criminal Reconciliation and Confession and Punishment**

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### **Abstract**

Under the background that the criminal reconciliation system and the lenient system of confession and punishment have been written into the Criminal Procedure Law, and the applicable rate of criminal reconciliation is decreasing and the applicable rate of confession and punishment is increasing, it is urgent for judicial organs to clarify the relationship between criminal reconciliation and confession and punishment, and fully understand their "value crossing" relationship at sentencing level. The leading power of judicial organs in confession and punishment leads to the criminal reconciliation being gradually replaced by confession and punishment, the sentencing value of criminal reconciliation can not be demonstrated, and the victims can not participate in confession and punishment cases and many other problems. At the same time, applying the criminal reconciliation system and the lenient confession and punishment system can smoothly solve the problems that victims can't participate in confession and punishment cases, which is the primary choice for judicial organs to handle cases at present.

### **Keywords**

**Criminal Reconciliation; Confess Guilty and Confess Punishment; Relevance.**

### **1. Preface**

With the criminal reconciliation and confession and punishment successively written into the Criminal Procedure Law, the relationship between them has aroused extensive discussion in academic and practical circles. Some scholars believe that there is a "conceptual cross" relationship between criminal reconciliation and confession and punishment. The author agrees with this view, but it needs to be added that criminal reconciliation and confession and punishment also have a "cross-value" relationship at the sentencing level. Judicial organs urgently need to clarify the relevance between criminal reconciliation and confession and punishment, fully realize the great value of this relevance in sentencing, and successfully solve practical problems such as victims' inability to participate in confession and punishment cases through the simultaneous application of criminal reconciliation and confession and punishment.

## **2. The definition of criminal reconciliation and confession and punishment**

### **2.1 The background, legal provisions and applicable scope of the criminal reconciliation system**

Criminal reconciliation has become the darling of judicial practice since 2006, After six years of exploration and practice, it was officially written into the Criminal Procedure Law in 2012, Since then, the criminal reconciliation system has been established, which has become a powerful means to resolve social contradictions in the process of criminal proceedings.

Article 288, Article 289 and Article 290 of the Criminal Procedure Law stipulate that the judicial organs can give lenient punishment to criminal reconciliation cases. Therefore, criminal reconciliation is a judicial system with lenient sentencing level.

According to the regulations, criminal reconciliation is applicable to intentional crimes that violate citizens' personal and property rights and are sentenced to fixed-term imprisonment of not more than three years, and negligent crimes that are sentenced to fixed-term imprisonment of not more than seven years.

## **2.2 Sentencing value of criminal reconciliation system**

Criminal reconciliation is one of the important contents of restorative justice, Generally speaking, the latter includes the former. Criminal reconciliation aims at resolving social contradictions and restoring social stability by means of victims participating in criminal judicial proceedings, which is also the inherent requirement of restorative justice concept.

Criminal reconciliation is an effective way for victims to participate in judicial proceedings, which can effectively improve judicial fairness and effectively curb the abuse of rights of judicial organs. In judicial practice, in the trial stage of minor criminal cases, whether the offender and the victim can reach a settlement agreement will directly affect the judicial decision, and the sentencing value of criminal reconciliation can be highlighted.

## **2.3 The background, legal provisions and scope of application of the system of pleading guilty and lenient punishment**

In 2018, the Criminal Procedure Law formally established the system of pleading guilty and accepting punishment with leniency, aiming at promoting the simplification and diversion of cases and improving litigation efficiency, and providing institutional guarantee for "promoting the reform of litigation system centered on trial".

Article 15 of the Criminal Procedure Law stipulates leniency for the accused in cases of confession and punishment. Therefore, confession and punishment is also a judicial system with lenient sentencing level.

Article 15 of the Criminal Procedure Law stipulates that cases of confession and punishment can be dealt with leniently, but the scope of application of confession and punishment is not clearly defined. According to the theoretical research and practical experience in the practical field, the author thinks that the system of pleading guilty and lenient punishment is applicable to all criminal cases, so the system of pleading guilty and lenient punishment can be applied to all criminal reconciliation cases.

## **2.4 The sentencing value of the system of pleading guilty and lenient punishment**

The system of pleading guilty and accepting punishment leniently is a judicial system at sentencing level, which is led and vigorously promoted by procuratorial organs. In judicial practice, in some areas, the leniency of confession and punishment is greater than confession or even surrender. With the implementation and practice of confession and punishment, the number of cases of not pleading guilty has been decreasing, Compared with the abstract rhetoric of "confessing leniency", the sentencing proposal issued by the procuratorial organ is more concrete, which greatly improves the inner expectation of the accused.

The application of leniency system in pleading guilty promotes the quick handling of simple cases, improves judicial efficiency, saves litigation costs, and realizes the simplification and diversion of cases, so that judicial organs can have more time and personnel in complex cases and cases of not pleading guilty, and better serve the "trial-centered" judicial system reform.

## **3. The correlation between criminal reconciliation and confession and punishment**

### **3.1 The difference between criminal reconciliation and confession**

First of all, the scope of application of criminal reconciliation and confession and punishment is different. Criminal reconciliation is applicable to minor criminal crimes that violate personal and property rights, while confession and punishment are applicable to all criminal crimes; Criminal reconciliation should be based on the existence of victims, but there is no restriction on confession and punishment. Therefore, confession and punishment cases include criminal reconciliation cases.

Secondly, the starting time of criminal reconciliation and confession and punishment is different. Criminal reconciliation runs through the whole process of criminal proceedings, At all stages of the public security and judicial organs, as long as the injurer and the victim reach a settlement agreement, the judicial organs can start the criminal reconciliation procedure for the injurer and deal with it

leniently; Although the system of pleading guilty and lenient punishment is applicable to all stages of investigation, prosecution and trial. However, the procuratorial organ is the leader of confession and punishment, After listening to the opinions of the accused and his defenders or duty lawyers, it can make sentencing suggestions on whether and how to be lenient, which will generally be adopted by the court, Therefore, the initiation of confession and punishment is generally at the stage of examination and prosecution by the procuratorial organ.

Thirdly, the roles of criminal reconciliation and confession and punishment are different. Criminal reconciliation refers to the procedure and substantive method between the offender and the victim in criminal cases or through the third party, through which both parties reach an understanding, and by means of apology, economic compensation, etc., all or part of the committed crimes are resolved equally. Therefore, the participants in criminal reconciliation activities include the offender, the victim, or a third person. Pleading guilty and accepting punishment leniently refers to a judicial system in which the judicial organs treat the accused leniently on the premise that the accused recognizes the crimes accused by the judicial organs and puts forward sentencing suggestions. Therefore, the participants of confession and punishment activities include the accused and judicial organs, in other words, the victims cannot participate in confession and punishment cases.

Finally, criminal reconciliation is an irreversible litigation activity, while confession and punishment are reversible. Criminal reconciliation is a result-oriented activity, In judicial practice, compensatory behaviors such as compensation for losses and apology all occur before criminal reconciliation is reached. Once the criminal reconciliation procedure is started, it will not be interrupted or terminated because of the change of subjective will of the victim or the injurer; Confession and punishment are behavior-oriented activities, and the negotiation between the judicial organ and the accused runs through the whole litigation process. The confession and punishment process is reversible, Even if the judicial organ and the accused sign the confession and punishment statement, the accused can go back at any time, which makes the confession and punishment process turn around, the confession and punishment process ends, and returns to the ordinary case handling procedure.

### **3.2 The connection between criminal reconciliation and confession and punishment**

First, criminal reconciliation has the same source as confession and punishment. Criminal reconciliation and confession and punishment are both sentencing systems stipulated in the Criminal Procedure Law.

Second, criminal reconciliation has the same method and purpose as confession and punishment. Criminal reconciliation and confession and punishment both serve the purpose of "trial-centered judicial system reform" by improving litigation efficiency, saving judicial resources and realizing the simplification and diversion of cases.

Third, there is a cross relationship between criminal reconciliation and the scope of application of confession and punishment. The criminal reconciliation system is applicable to minor criminal cases where personal and property rights have been violated; Although the system of confession and punishment can be applied to all criminal cases, in judicial practice, confession and punishment are mostly applied to minor criminal cases with a fixed-term imprisonment of less than three years, In this range, there is a cross relationship with criminal reconciliation.

Fourth, criminal reconciliation has the same sentencing value as confession and punishment. Criminal reconciliation and confession and leniency are both lenient circumstances of sentencing stipulated in the Criminal Procedure Law. In judicial practice, the leniency of criminal reconciliation and confession and punishment can not be calculated repeatedly, nor can it be applied at the same time. The offender who reaches a criminal settlement needs to obtain the victim's understanding through voluntary confession, compensation for losses and apology. There is another premise to apply confession and punishment to perpetrators in criminal reconciliation cases, that is, voluntary punishment and recognition of sentencing suggestions made by judicial organs. If the offender in the criminal reconciliation case does not recognize the punishment, the judicial organ should deal with it leniently according to the relevant provisions of criminal reconciliation; If the offender voluntarily

pleads guilty and confesses punishment in a criminal reconciliation case, reaching a criminal reconciliation agreement or obtaining the understanding of the victim, it should be regarded as an important factor to improve the leniency of sentencing, and the judicial organ should not repeatedly calculate the leniency of criminal reconciliation and confession and punishment. If the injurer voluntarily pleads guilty and confesses punishment and fails to reach a criminal reconciliation with the victim, the judicial organ should find out the reasons for failing to reach a criminal reconciliation. If the injurer is capable and unwilling to apologize and compensate for the losses, his attitude of pleading guilty is generally problematic, and the judicial organ will not apply the system of pleading guilty and confessing punishment to him; If it is because the offender is in financial difficulty, unable to compensate the victim's loss or the victim bargains all over the sky, it will not affect the judicial organ's application of the system of pleading guilty and lenient punishment to the offender.

#### **4. The subjective and objective factors of criminal reconciliation being replaced by confession and punishment**

##### **4.1 The judicial organ's subjective inaction on criminal reconciliation**

The application conditions of the criminal reconciliation system are harsh, with the victim, the criminal suspect and the defendant reaching a reconciliation agreement as the essential element, and the agreement basically takes damage compensation as the content. In judicial practice, the probability of criminal reconciliation between the injured party and the injured party is low, and few third parties mediate from it. Therefore, the premise that judicial organs apply criminal reconciliation is that judicial organs act as neutral third parties to promote reconciliation between the two parties. In this case, whether the criminal reconciliation can be achieved depends on the negotiation results between the injuring party and the injured party. The judicial organ is in a neutral position, playing the role of mediation, and has no leading power over criminal reconciliation cases. This situation increases the work burden for the judicial organs, and even increases a lot of troubles when encountering harsh parties. In practice, in order to reduce the workload and avoid unnecessary troubles, judicial organs may subjectively ignore some cases suitable for criminal reconciliation, especially after confession and punishment are written into the Criminal Procedure Law, which is more common.

The system of pleading guilty and lenient punishment is a kind of "cooperative" judicial system, which is led by judicial organs, negotiated by defendants and witnessed by defenders or duty lawyers. Different from criminal reconciliation, the applicable conditions of confession and punishment are relatively loose, which can be applied when the judicial organ and the accused reach an agreement. Judicial organs play a leading role in confession and punishment cases, and can decide whether to apply confession and punishment system. In practice, in some areas, the leniency of confession and punishment is higher than that of confession, and even surrender. Defendants and their defenders or duty lawyers generally have little opinion on sentencing proposals issued by judicial organs, because confession and punishment, as a lenient sentencing system newly stipulated in the Criminal Procedure Law, is also a system vigorously promoted by judicial organs at present. In order to reach an agreement with the accused, the sentencing recommendations issued by judicial organs are generally wider than the normal sentencing results, which improves the inner expectations of the accused. Even if the accused has doubts, his defender or duty lawyer will popularize relevant legal knowledge or answer legal questions to the accused. There are few cases of confession and appeal in cases of confession and punishment, which reduces the work burden and improves the work efficiency for judicial organs. Therefore, compared with the criminal reconciliation system, judicial organs are more keen to apply the system of pleading guilty and lenient punishment.

##### **4.2 The criminal settlement agreement is objectively difficult to reach**

First of all, the participants in the criminal reconciliation system are the injurer and the victim, and reaching a reconciliation agreement between the two parties is a prerequisite for criminal reconciliation. The agreement generally includes the compensatory commitment of the injurer to

compensate the victim for losses and apologize, and the victim's understanding of the injurer's behavior. In judicial practice, the injurer and the victim do not understand the relevant laws and regulations, and are not clear about the behavioral consequences and legal consequences of criminal reconciliation. However, out of the mentality of avoiding troubles, the judicial organs do not take the initiative to organize both parties to reach criminal reconciliation through communication and coordination.

Secondly, criminal reconciliation may further worsen the litigant status of the offender. In the "negotiation" of criminal reconciliation, the victim holds the bargaining chip of whether the offender becomes a criminal or the severity of punishment, and the fate of the offender is in the hands of the victim. Criminal reconciliation is mostly applicable to minor criminal cases that violate personal and property rights, and the criminal circumstances are relatively minor. However, out of the psychology of "revenge" or the desire of "the lion opens his mouth", the victim asks the injurer for excessive economic compensation, which far exceeds the affordability or psychological expectation of the injurer, resulting in the failure of both parties to reach an agreement, and thus the "negotiation" of criminal reconciliation breaks down.

Finally, the establishment of confession and punishment only requires the judicial organ to reach an agreement with the accused, and the victim's opinion only serves as a consideration factor for the judicial organ's sentencing, which is not decisive for the trend of confession and punishment cases. In practice, the judicial organs aim at improving judicial efficiency and saving judicial costs, while the accused can get leniency, so the two sides are consistent in their efforts. Therefore, within the scope permitted by law, the judicial organ may give the accused a greater leniency in order to achieve the goal of pleading guilty and admitting punishment, and the accused will not have any objection to this. Judging from the personnel composition of the confession and punishment system, the victim is completely excluded and cannot participate in the litigation of confession and punishment cases. The victim's opinion is only considered as the sentencing factor of the judicial organs. The victim cannot get any compensation from the injurer in the confession and punishment cases, and may need to file criminal incidental civil litigation, which will bring greater litigation burden to the victim, thus causing greater social contradictions.

## **5. The sentencing significance of the simultaneous application of criminal reconciliation and confession and punishment**

Under the background that criminal reconciliation is gradually replaced by confession and punishment, with the continuous improvement of the applicable rate of confession and punishment, many problems are also highlighted, especially the problem that victims cannot participate in confession and punishment cases. The purpose of judicature is not only to fight crime, but also to protect human rights. If we fight crime blindly and pay no attention to the protection of victims' human rights, judicial activities will put the cart before the horse, procedural justice is not equal to substantive justice, and social contradictions will continue to intensify.

In cases of confession and punishment, we should not only take the criminal suspect's voluntary confession and punishment as the premise, especially in cases with victims, we should listen to the opinions of the victims at the same time. In judicial practice, in order to improve the applicable rate of confession and punishment and speed up the handling of cases, the judicial organs reached an agreement with the injurer and his defender or duty lawyer without the victim's knowledge. The injurer voluntarily pleaded guilty and was given leniency by the judicial organs, and both parties signed a confession and punishment statement. The handling mode of confession and punishment cases is different from that of criminal reconciliation cases, which is the structure of both sides. As long as the judicial organ and the accused reach an agreement, there is no need to listen to the opinions of the victims, and the law does not have relevant provisions in this regard. However, there are some problems in practice, and the rights and interests of victims cannot be fully guaranteed. Before the implementation of confession and punishment leniency system, in order to get the opportunity of



leniency, the injurer will take the initiative to obtain the victim's understanding by apologizing and compensating for losses, or ask the judicial organ to start criminal reconciliation.

The Criminal Procedure Law does not stipulate that criminal reconciliation is the precondition for starting the confession and punishment procedure. In order to improve the applicable rate of confession and punishment, judicial organs rarely inform victims of the handling of confession and punishment cases, for fear that it will bring trouble to the handling of confession and punishment cases. The victim's rights and interests can't be fully protected, but the injurer gets leniency through bargaining with the judicial organs, and doesn't need to apologize to the victim or compensate for the losses. The original contradictions have not been resolved, and even new contradictions may be intensified, and the credibility of the judicial organs will also be reduced.

The author believes that confession and punishment should not replace the status of criminal reconciliation. In criminal cases without victims, judicial organs can directly apply confession and punishment procedures to the accused; In criminal cases with victims, the judicial organs should mainly promote criminal reconciliation and resolve conflicts, or take criminal reconciliation as the precondition to start the process of pleading guilty and accepting punishment. If the offender doesn't even have the attitude of apologizing to the victim and compensating for losses, how can he be considered as a true "confession" and "accepting punishment"? In practice, there are also cases where victims ask exorbitant prices or make unreasonable demands. In this case, the judicial organs should not give up the procedure of pleading guilty and admitting punishment to the injurer because they have not reached a criminal settlement. This is the leading power given to the judicial organs by law and will not be transferred by the will of the victims. If the injurer voluntarily reaches a settlement with the victim, obtains the victim's understanding, and shows his attitude of "pleading guilty" and "acknowledging punishment", the judicial organ can consider it and give him a greater punishment.

## 6. Conclusion

Both criminal reconciliation and confession and punishment come from the Criminal Procedure Law. The confession and punishment system is not introduced to replace the criminal reconciliation system, and the correlation between them is doomed to have unique sentencing value. Judicial organs cannot blindly improve the applicable rate of confession and punishment, but neglect the protection of victims' rights and interests. The purpose of justice is to punish crimes and protect human rights. The purpose of punishing crimes is also to protect human rights, and we cannot put the cart before the horse in pursuit of efficiency. Applying criminal reconciliation and confession and punishment at the same time will be an effective means for judicial organs to pursue both procedural justice and substantive justice, and also avoid the embarrassing situation that victims cannot participate in confession and punishment cases.

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