

Identification and Governance of “Retaliatory Prosecution” under the System of “Confessing Guilt and Accepting Punishment with Leniency”

Jun Li¹, Wei Zhang^{2*} 

¹Law School, Guangzhou College of Commerce, Guangzhou, China

²Institute of Legal Psychology, Guangzhou College of Commerce, Guangzhou, China

Email: *criminal.minds@foxmail.com

How to cite this paper: Li, J., & Zhang, W. (2024). Identification and Governance of “Retaliatory Prosecution” under the System of “Confessing Guilt and Accepting Punishment with Leniency”. *Beijing Law Review*, 15, 638-663.

<https://doi.org/10.4236/blr.2024.152040>

Received: April 8, 2024

Accepted: June 4, 2024

Published: June 7, 2024

Copyright © 2024 by author(s) and Scientific Research Publishing Inc. This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).

<http://creativecommons.org/licenses/by/4.0/>



Open Access

Abstract

“Retaliatory prosecution refers to prosecutorial behavior driven by retaliatory motives or evident injustice, often disregarding due process requirements. This phenomenon remains largely unexplored in China, representing a legal void. Nonetheless, within the context of the lenient confession and punishment system, such prosecutions may find a legitimate basis.” Through an examination of the phenomenon of “retaliatory prosecution” in the judicial system, it becomes evident that issues such as the misuse of criminal compulsory measures during the investigation and prosecution process for ulterior motives, as well as the filing of lawsuits against defendants based on vague allegations and inadequate evidence, are prevalent. Failure to effectively address and regulate such behavior may perpetuate a culture of “retaliatory prosecution”, ultimately hindering the rational distribution of criminal justice resources and compromising the protection of the rights of the accused. Identifying and addressing the issue of “retaliatory prosecution” by the procuratorate is a crucial prerequisite for achieving a balanced prosecution and defense, as well as procedural justice for the accused. Therefore, this paper aims to delve into the unique manifestations and underlying causes of “retaliatory prosecution” in China. This analysis will be conducted by studying the litigation system related to “retaliatory prosecution” in foreign criminal proceedings and integrating it with the characteristics of the guilty plea and punishment system within China’s judicial framework and criminal justice process. The objective is to clarify the concept and negative consequences of “retaliatory prosecution”. Furthermore, while respecting the court’s central jurisdiction, we must refine the specific mechanisms of leniency in confession and punishment, establish procedural adjudication mechanisms, and introduce a graduated sentencing suggestion right. These enhancements aim to

bolster procedural relief and incentivize the accused to voluntarily confess their guilt and accept punishment.

Keywords

Retaliatory Prosecution, Plea Bargaining Leniency System, Sentencing Recommendations, Prosecutorial Discretion

1. Basic Theory of “Retaliatory Prosecution” in Plea and Penalty Leniency Cases

1.1. The Concept of “Retaliatory Prosecution” under the Leniency Plea System

The concept of “vindictive prosecution” refers to the malicious or aggravated pursuit of legal charges against the accused by the public authority, motivated by a desire to retaliate against the accused for exercising their constitutional rights or other lawful entitlements (Zhao, 2017b: p. 58). The concept of “vindictive prosecution” initially emerged within the context of the United States’ “plea bargaining system”. The practice of “plea bargaining,” which originated in the 19th century, is a reciprocal negotiation mechanism between the prosecution and the defense. This system respects the rights and interests of criminal suspects, allowing them to exercise discretion and voluntariness to the fullest extent (Meng, 2022: pp. 157-164). In the plea bargaining system, the prosecuted individual voluntarily and rationally exercises their discretion to maximize their interests. Should they choose not to plead guilty, the public authorities cannot reject their decision and levy further charges. This system grants prosecutors extensive discretion, including their near-absolute and unreviewed right to choose whether to initiate charges and the types of charges to file. Contrastingly, American prosecutors, upon finding a defendant guilty, not only determine whether to indict but also select the charge type, negotiate the number of offenses, and establish the sentence for the transaction. Evidently, a prosecutor’s discretion is significantly greater in criminal cases involving negotiation than in ordinary criminal cases. In return, the prosecuted individual voluntarily pleads guilty to the charges and waives their constitutional right to a court trial. Naturally, most prosecuted individuals are willing to negotiate with the prosecutor in order to obtain a reduced sentence (Li, 2020: pp. 51-61). However, it is noteworthy that some criminal suspects may refuse the prosecutor’s offer for a plea bargain. In such instances, the prosecutor ceases further negotiations with the prosecuted individual and refrains from offering any substantive or procedural concessions. Instead, the case is promptly transferred to the court for prosecution in accordance with standard procedures (Li, 2020: pp. 51-61). In response to such a scenario, certain prosecutors, considering the circumstances surrounding the crime committed by the prosecuted individual, may, motivated by vengeance, enhance the charges or penalties imposed. Furthermore, if the prosecuted party appeals

or petitions for a retrial due to an involuntary guilty plea or punishment, some prosecutors may lodge a protest (Guo & Gao, 2021: pp. 153-160). It is evident that when a prosecutor replaces the original charges with more severe ones, they are effectively exerting “soft pressure” to coerce the accused into self-incrimination. Such conduct is fundamentally contrary to the principle of voluntary confession. This represents an abuse of prosecutorial discretion and constitutes a form of “vindictive prosecution,” as Zhao Xuguang aptly points out (Gao, 2011: pp. 48-54).

China’s judicial system is different from that of the United States, so China is also different from the United States in the identification and governance of “retaliatory prosecution”. First of all, China’s procuratorate and court belong to the judicial system, and the procuratorate is the only public prosecution organ and legal supervision organ in China, which is very different from the separation of powers in the United States. Secondly, because our country adopts the principle of “legalism of prosecution is the main factor, and cheapness of prosecution is the auxiliary factor”, according to the law, except that “the circumstances are minor, there is no need to be sentenced or exempted from punishment according to the criminal law” and “conditional non-prosecution”, and the accused has made special contributions or the case involves national interests and is not prosecuted with the approval of the Supreme People’s Procuratorate, the procuratorate has no more free discretion to prosecute, so it must decide whether to prosecute or not in strict accordance with the law. Comparatively speaking, China’s procuratorate’s discretion is not as great as that of the United States. However, as a legal supervision organ, the procuratorate’s exercise of its right of public prosecution is not subject to judicial supervision by the court, but its trial activities are subject to procuratorial supervision by the procuratorate. Finally, the goal of the leniency system is to improve judicial efficiency and relieve the pressure of “more cases than people”. Among them, finding out the facts of the case and realizing the state’s penalty right is the highest goal of criminal proceedings, which means that leniency cannot be given at the expense of the facts of the case. However, it is undeniable that the system has expanded the prosecutorial discretion to a certain extent, which has not been effectively supervised and restricted at present (He, 2020: pp. 85-95).

In most criminal cases of pleading guilty and admitting punishment, the public prosecution organ and the accused held consultations on sentencing, and obtained supportive judgments from the court. However, in some cases, due to the lenient sentencing of the procuratorate, or because the confession is not voluntary, the defendant will withdraw his previous confession at the stage of review, prosecution or trial. Due to the two-way nature of confession and punishment (Report of the Supreme People’s procuratorate on the Application of the System of Pleading Guilty and Accepting Penalties for Leniency by the People’s procuratorates, 2020), when faced with this situation, the procuratorate often cancels the original lighter sentencing and replaces it with a more severe sentencing accusation. In this regard, the accusation made by the procuratorate should be

treated differently. On the one hand, because there is no consensus on sentencing, it is understandable that the procuratorate can make more severe charges, but on the other hand, it forces the accused to accept sentencing suggestions on the grounds of aggravating sentencing charges, so as to prevent the accused from making legitimate demands, in order to speed up the “rhythm” of litigation and improve the performance of the procuratorate. It is not difficult to see that this behavior seriously infringes on the legitimate rights and interests of the accused and violates the original intention of voluntary confession and punishment.

What is more alarming is that in China, the status of the accused in litigation is seriously unequal to that of the procuratorate, especially when the facts are clear and the evidence collection is sufficient, and the procuratorate is in an obvious position of information superiority (Ma, 2021: pp. 36-46). Due to various limitations in the collection of evidence in the investigation stage of criminal defense in China, it is difficult for the accused to grasp the evidence that is beneficial to him. This unfavorable situation is even more serious when the accused has not entrusted a defense lawyer and can only rely on the lawyer on duty (Lan, 2020: p. 4), in addition, according to the data (Wei & Meng, 2020: pp. 120-129). To sum up, this paper believes that how to protect the litigation rights of the accused who is being “retaliated” in the case of pleading guilty and lenient punishment has become the primary problem to be solved urgently.

1.2. Jurisprudence and Principles Involved in “Retaliatory Prosecution”

1.2.1. Due Process

In China’s criminal law system, due process is not only a basic legal system, but also a basic constitutional concept. In criminal trial, we should not only ensure the exercise of substantive law, but also ensure the justice of judicial process. As far as the connotation of due process is concerned, it can be roughly summarized into three aspects, namely, legal procedure, participation of parties and openness and transparency. First of all, the statutory procedure not only requires that the criminal procedure be clearly stipulated in advance, but also requires that the program host cannot have an interest in the outcome of the procedural case. When the prosecutor uses improper prosecution measures to carry out “retaliatory prosecution” and coerces the accused to voluntarily plead guilty or give up the appeal, this behavior obviously violates the legal rights of the accused. In addition, if the defendant withdraws his previous guilty confession, which has a negative effect on the performance evaluation of the prosecutor, whether the prosecutor can continue to participate in the case is also a problem that needs further discussion. At the same time, when there are differences between the attitude of pleading guilty and the punishment proposal put forward by the accused, they will generally reply by means of “aggravating the sentencing proposal if they don’t agree”, which is often just a form of listening, without paying attention to their expressed views (Han, 2023: pp. 112-122). In addition, because of the prosecutor’s lack of clarity in the formulation of penalties before

and after the leniency of the sentence, the person being prosecuted is unable to correctly recognize the difference between the specific consequences of pleading guilty and those of not pleading guilty. Lastly, while procedural openness ensures that the process and outcome of proceedings are open to the public, “retaliatory prosecution” does not necessarily translate into a final judgment, which makes it impossible for the public to effectively supervise the power of the procuratorate to make sentencing recommendations. At the same time, given the special nature of these cases, not all indictments and sentencing recommendations can be made public, and therefore the role of the law and lawyers in monitoring the process must be fully utilized.

1.2.2. Guaranteeing Human Rights

With the advent of contemporary democracies, human rights have been not just efficiently secured through national constitutions and legislations, but they have also attained a “delimited” position within national laws. This phenomenon is predominantly visible in constitutions and statutes, wherein the primary focus lies on safeguarding the human rights of a nation’s citizens, thereby converting “human rights” into “civil rights,” also known as fundamental rights (Chen, 2013: pp. 11-18). Human rights constitute an ethical and fundamental category, encompassing the entitlements of all individuals. Constitutionally speaking, they form the core of the human rights framework and are deemed indispensable for all people. When discussing the human rights of defendants in criminal proceedings—specifically, when the judiciary pursues an accused individual—it is imperative that the defendant possesses the legal rights to counteract the judicial process. In the event of unlawful actions, the defendant must have the capacity to mount a resolute defense to prevent their legitimate rights and interests from being infringed upon. In this paper, we argue that it is only through the legal endowment of reciprocal rights to the defendant and the safeguarding of their exercise that the criminal process can operate normally and play a positive role in advancing judicial fairness. Simultaneously, this approach can, to some extent, prevent the misuse of public power. Hence, overseeing and rectifying any instances of prosecutorial “retaliation” is not just an objective requirement for realizing the protection of defendants’ human rights, but also an essential step in implementing the fundamental precepts of criminal procedure.

1.2.3. Self-Incrimination Shall Not Be Forced

The principle of non-coercion of self-incrimination stands as one of the universally acknowledged tenets of criminal proceedings worldwide. (Fan, 2008. pp. 02) This principle, which has undergone nearly half a century of development and refinement, has given rise to various doctrines and practical standards. Indubitably, it has garnered global recognition and gradually evolved into an internationally accepted criminal legal framework, serving as a benchmark for assessing a nation’s judicial proficiency. This principle is intimately tied to China’s constitutional mandate for “the protection of human rights” and is intricately

linked with legal provisions such as the criminal procedure law, “illegal evidence exclusion rules,” and “the duty of truthful confession.” The principle of non-coercion of self-incrimination occupies a prominent position within China’s criminal procedure legal system, reflecting both the historical progression of the country’s criminal procedure law and the scholarly research outcomes from its theoretical circles. Underlying this principle is a rich tapestry of social values, echoing diverse cultural traditions, and distinguishing it from other criminal procedure rights and obligations (such as the obligation to provide a truthful confession). This distinction enhances the accuracy and efficiency of “fact-finding,” thereby better achieving the criminal procedure’s objectives: punishing crimes and safeguarding human rights. In the context of criminal proceedings, if the procuratorate resorts to “vindictive prosecution” to coerce a confession from the accused, it constitutes a blatant violation of this principle. Hence, the emergence of “retaliatory prosecution” must be mitigated to the fullest extent possible, to ensure the smooth and orderly conduct of criminal proceedings, to safeguard the legitimate rights and interests of the accused, to balance the litigation status of both the prosecution and defense, and to realize the original intent behind plea bargaining: to alleviate overcrowding and streamline case management.

2. Analysis of the Existing Problems and Causes of “Retaliatory Prosecution” under the System of Leniency of Guilty Plea and Punishment in China

2.1. The Performance of “Vindictive Prosecution” under the System of Lenient Plea and Punishment

2.1.1. Prosecutors’ Arbitrary Sentencing Recommendations

Recently, cases resembling the Beihai incident have surfaced, where defendants signed pleas of guilty and accepted punishment, only to have prosecutors appeal on the basis of excessively harsh sentences (Xiong, 2012: pp. 47-58). As argued by Chen Guangwu on his Lawyer’s Blog, such appeals by the procuratorate can lead to judges imposing harsher punishments, a practice that has generated significant impact and concern within the legal community. This paper is the first to explore the issue of “retaliatory prosecution” within China’s criminal indictment system, particularly at the level of “internal digestion.” Here, “internal digestion” refers to the fact that unlike criminal verdicts, criminal indictments in our country do not require public disclosure or public scrutiny. The indictment’s contents are known only to the litigants, and even if the court identifies an instance of “vindictive prosecution,” the prosecutor’s office can exercise its discretion to adjust sentencing recommendations, thereby circumventing any potential risks without facing adverse consequences. Judicial practice researchers contend that inappropriate sentencing often stems from prosecutors’ inexperience in handling cases, especially when exercising their sentencing recommendation rights for the first time, as “retaliatory prosecution” implicates the professional ethics of public prosecutors. In practice, when prosecutors engage in “retaliatory prosecution” behavior, it doesn’t necessarily result in a final verdict during the

prosecution phase. This loophole provides an opportunity for the prosecution to circumvent the system. If the judge deems the sentencing proposal inappropriate, they can request the prosecution to revise it. If the revised sentencing proposal remains inadequate, the judge will make a corresponding verdict based on the specific circumstances of the case. However, the public prosecutor handling the case won't face any penalties. Both legal frameworks and judicial practices identify this phenomenon as a failure by the Public Prosecutor's Office to effectively utilize its sentencing recommendation rights. As pointed out by Liu Shaojun in his study on improving the sentencing recommendation system, this lack of accountability allows the Public Prosecutor's Office to claim a "victory" even when its actions remain undetected (Liu, 2022: pp. 31-41). This creates a sense of fear among the prosecuted, who worry that refusing to plead guilty could lead to harsher penalties. This, in turn, can result in an undesirable situation where the prosecution holds all the power during the pleading process, leaving the prosecuted with no choice but to accept the penalty (Shi, 2018: pp. 95-102).

2.1.2. The Procuratorate Abused the Power of Arrest

According to the Criminal Procedure Law, the procuratorate possesses significant discretion in determining the application of arrest and other coercive measures, particularly for individuals who plead guilty and accept punishment. The procuratorate may opt to forgo arrest measures based on the guilty plea of the accused. The decision to plead guilty holds substantial weight in determining whether or not clemency will be granted; a guilty plea often prompts the procuratorate to refrain from implementing arrest measures. However, judicial practice has revealed certain extremes. For instance, when an accused is reluctant to plead guilty or expresses differing views on sentencing, the prosecutor's office may wield the power of arrest as a prosecutorial negotiation tactic, leading to the outright application of arrest measures. Conversely, in all instances where a criminal suspect pleads guilty, the specific nuances of the case may be overlooked, resulting in the blanket non-application of arrest or other coercive measures. These two extremes not only impact the prosecuted individual's rights and opportunities for leniency but also constitute a blatant misuse of prosecutorial power.

Currently, China's procuratorates are employing the "arrest and prosecution" mechanism, effectively integrating the powers of arrest and prosecution, and thereby significantly enhancing case-handling efficiency. Nevertheless, in practical application, subjective factors may lead relevant personnel to stray from the mechanism's original purpose. They may misuse the power to review and approve arrests as a prosecutorial lever to manipulate the rate of guilty pleas by the accused. This practice not only undermines the full exercise of the right to sue but also hinders the achievement of procedural justice. It runs counter to the principles of procedural justice and infringes upon the legitimate rights and interests of the prosecuted individual.

2.2. The Reason for “Retaliatory Prosecution”

Drawing upon the findings of “retaliatory prosecution” research in China and key insights from overseas studies, this paper posits that several factors underlie the emergence of “retaliatory prosecution.” These factors are primarily rooted in an inadequate incentive system, excessively powerful prosecution rights, and insufficient checks on those rights. The subsequent analysis primarily focuses on these three key areas.

2.2.1. Insufficient Incentives for Prosecuted Parties

In principle, it is not inherently unreasonable for prosecutors to elevate the severity of charges; it can often be a strategic prosecutorial decision. However, the criminal procedural tactic of escalating charges as a primary method should always be grounded in protecting the fundamental rights of the defendant. It should not unduly increase the defendant’s fear and anxiety, nor violate their legitimate procedural rights. In judicial practice, many defendants adopt the strategy of “false confessions” in an attempt to secure the most lenient sentence possible. When their sentencing expectations are not met, they may request the retraction of their original confession. In such instances, the leniency system for guilty pleas ceases to be a tool for conserving judicial resources and instead becomes a means for defendants to secure more favorable sentencing concessions. (Guo, 2020: p. 2). To prevent individual defendants from exploiting the system and to boost the rate of guilty pleas, the procuratorate must implement appropriate countermeasures. However, this also underscores the limited attraction of the procuratorate’s sentencing recommendations, which can foster a negative mindset during plea negotiations. Prosecutors, driven by the desire for procedural efficiency and expedition, may coerce defendants into confessing under the threat of harsher sentences. In the long run, this practice can lead to a vicious cycle of “retaliatory prosecution.”

In practical terms, the most notable aspect is that the utilization of non-custodial sentences remains relatively unchanged. The imposition of non-custodial penalties on criminal suspects who plead guilty and accept punishment serves as a tangible demonstration of procedural leniency. The earlier a prosecuted individual enters into a plea bargain agreement with the prosecutor’s office, the higher the likelihood of benefiting from lenient treatment. In this framework, leniency extends to both reduced sentences and more compassionate methods of punishment execution, as well as expedited trials and minimized pretrial detention durations. Augmenting the utilization of non-custodial sentences will enhance the appeal of the plea bargaining process for criminal suspects and defendants. Nonetheless, due to various factors—such as investigators’ concerns about criminal suspects evading justice or undue delays in legal proceedings—there is a tendency to favor coercive measures like criminal detention or arrest to restrain their freedom. This approach undermines the full potential of sentencing recommendations’ incentive effect, thereby significantly diminishing its efficacy.

At this stage, sentencing recommendations ostensibly appear to be derived from consultations with the prosecuted individual, yet they essentially reflect the subjective discretion of the procuratorate. In reality, most procuratorates refrain from engaging in repeated dialogue with the prosecuted regarding sentencing matters, instead unilaterally determining the content of the sentencing recommendation. The prosecuted individual is limited to expressing agreement or disagreement, unable to engage in more detailed negotiations or amendments with the procuratorate. Furthermore, upon hearing dissenting viewpoints from the prosecuted and defense attorneys, the procuratorate often responds with a curt “disagree, then face a harsher sentence.” Ideally, sentencing issues should involve thorough discussion between prosecution and defense; however, the current system has evolved into a one-sided “decision” by the prosecution, leaving the defense with little room for negotiation or objection. This unilateral formation of sentencing recommendations effectively transforms the prosecuted individual into a passive recipient, stripping them of their rightful voice. Inevitably, such an approach fosters resistance among criminal suspects towards the sentencing recommendations, thereby undermining their subjective willingness to plead guilty and accept punishment.

2.2.2. Integration of Prosecution and Arrest to Strengthen the Rights of the Prosecution

The “integration of prosecution and arrest” signifies the consolidation of the arrest and prosecution functions within the prosecution system, where both responsibilities are centrally managed by the same department or individual prosecutor. While this integration offers distinct advantages, such as enhancing litigation efficiency and facilitating information continuity between arrest reviews and prosecutions, it also poses potential downsides. Primarily, it can undermine the checks and balances inherent in separating arrest and prosecution functions. The involvement of the prosecution team might inadvertently introduce the strict criteria of public prosecution into the arrest review process, thereby evaluating the appropriateness of arrest measures against these stringent standards. This blurring of boundaries not only compromises the neutrality of the procuratorate but also risks the misuse of arrest measures, particularly in cases where such measures are not warranted. Consequently, while the integration brings about efficiencies, it also demands careful consideration to prevent any erosion of procedural safeguards and to ensure the procuratorate maintains its neutrality (Chen, 2019: pp. 14-25).

Given that the majority of cases eligible for plea bargaining involve straightforward facts, the procuratorate, drawing from its vast experience in prosecuting cases, can generally ascertain whether a criminal suspect is guilty or predetermine the penalty and sentence to be imposed. Despite China’s current laws specifying clear guidelines for the application of coercive measures, once a person is found guilty, the procuratorate’s decision to authorize arrests may not necessarily be deemed improper. This is one of the contributing factors to the

presently high arrest rate in China. In essence, the clarity of most plea bargaining cases enables the procuratorate to exercise its discretion in a manner that is generally accepted, even if it leads to a high arrest rate.

The law stipulates that in cases of guilty pleas, both arrest and other coercive measures can be employed flexibly. This not only encourages criminal suspects to voluntarily plead guilty but also grants the procuratorate significant discretionary power in making arrests. Statistics indicate that the arrest rate in guilty plea cases in a specific region stands at approximately 76%, which is lower compared to ordinary criminal cases. However, this arrest rate is still considerably high, potentially discouraging defendants from voluntarily pleading guilty and accepting punishment (Guo, 2020: p. 2). The “integration of arrest and prosecution” has reduced the duration of case trials and augmented the workload of procuratorates. Given the substantial workload of procurators, procuratorates may recommend to the court that the accused plead guilty and accept punishment, or they may employ arrest as a means to inform prosecutors of their intention to take compulsory measures against the accused. Due to the heavy workload of the prosecutor’s office, the prosecutor’s office may exert pressure on the prosecutor to accept the sentencing recommendation by communicating the possibility of compulsory measures such as arrest. Under the “arrest and prosecution” system, the constraints between arrest and prosecution powers are eliminated, resulting in a lack of adequate supervision over the procuratorate’s arrest and prosecution actions.

2.2.3. The Defendant’s Right to Appeal Is Not Sufficient

Within the current legal structure, there exists a deficiency in mechanisms for acknowledging and rectifying violations of the sentencing expectations of the party being prosecuted. The present system only aims to revert to the pre-negotiation status prior to permitting the prosecuted party to retract their guilty plea. Regrettably, the concept of “anticipatory interest” remains unacknowledged in both our legislative framework and judicial practices. Additionally, there is a dearth of remedies and safeguards for the prosecuted individual’s rights. During the early phases of criminal proceedings, when the prosecuted party has not retained legal counsel, they are eligible to petition for the application of the legal aid system (Zhou, 2018b: pp. 123-133). Nonetheless, a substantial percentage of prosecuted individuals remain unaware of the legal aid system, resulting in a low number of applications for legal assistance. This, in turn, undermines the practical efficiency and relevance of the legal aid system. Despite its original intention of providing comprehensive coverage, the implementation of legal aid has proven to be less than effective in reality. Furthermore, it is a prevalent issue in the execution of the plea bargaining leniency system that the legal aid mechanism often exists in name only, failing to fulfill its intended substantive role (Yao, 2017: pp. 42-49). Simultaneously, during later stages of the proceedings, court sessions for plea bargaining are often scheduled too hastily in practice. The limited time allotted for case preparation has led to defenders lacking adequate

time for consultation or defense preparation. In such instances, requests for proceeding postponements may occasionally hinder the application of the plea bargaining process, thereby negatively impacting the prosecuted individual. Additionally, there are scenarios where, owing to the prosecuted person and their close relatives' unfamiliarity with legal proceedings and the litigation process, the defense is frequently unprepared and only appointed after the prosecuted individual receives a copy of the indictment (Min, 2017: pp. 48-56).

In the aforementioned context, the tension between safeguarding human rights and interests and enhancing litigation efficiency becomes apparent. In practical terms, a significant number of legal practitioners are only informed or assigned to participate in litigation proceedings after the investigation and indictment phase. When the expedited trial procedure is employed during court hearings, attorneys may perceive a reduction in the scope available for their defense, leading to severely limited opportunities for them to effectively contribute. Consequently, they are unable to fully exercise their adversarial role. Therefore, in situations where criminal suspects' right to take legal action is inadequate, the prosecution's capacity for "retaliatory indictments" becomes more feasible, resulting in a more direct infringement of the legitimate rights and interests of criminal suspects, who essentially possess no means of "fighting back."

3. Investigation and Comparison of "Retaliatory Prosecution" Abroad

3.1. "Retaliatory Prosecution" in Anglo-American Legal System

The United States, as the originator of the "retaliatory prosecution" rules, boasts a slightly richer degree of research on this legal system compared to other nations. This is particularly evident when considering the United States' judicial system in conjunction with the context of its numerous and pertinent cases, which confer significant advantages.

Through his exceptional research, American legal scholar Doug Lieb has presented a blueprint for understanding the concept of "retaliatory prosecution" and its potential for reform. In his book, "Clarifying Retaliation: Prosecutorial Discretion in Practice and Reform," Lieb delves deeply into the possible developmental paths of "retaliatory prosecution" employed by prosecutors during plea bargaining. What is particularly noteworthy in his work is the detailed exposition on the progression of "retaliatory prosecution" determination, from a lenient approach to a more stringent one (Doug, 2013: p. 123). Angela J. Davis, another prominent American legal researcher, has conducted profound research and analysis on the evolution of "retaliatory prosecution" from leniency to severity, particularly focusing on the abuse of power and its connection to injustice. In her book, "Arbitrary Justice: The Rights of the U.S. Attorney," Davis critically examines how U.S. attorneys abuse the prosecutorial discretion granted by law, leading to widespread wrongdoing and injustice. Through her in-depth exploration, Davis sheds light on another dimension of "vindictive prosecution,"

offering a valuable perspective on this important legal issue (Davis, 1998: p. 13). Furthermore, in his book “The Defense Prosecution,” George Fisher aligns himself with Angela Davis, discussing the topic of plea bargaining in relation to prosecutorial negligence and misuse of authority. He underscores the profound connection between plea bargaining and what he terms the prosecutor’s “vindictive prosecution,” explicitly highlighting how such practices violate the legal rights and interests of the accused (George Fisher, *The Triumph of Plea Bargaining: A History of Plea Bargaining in the United States*, 2012).

From an alternative viewpoint, Stephanos Bibas, another researcher, deserves special attention from anyone studying “retaliatory prosecution.” In his book “Beyond the Trial,” Bibas takes an unprecedented perspective, focusing on the fate of the accused as a starting point. He delves deeply into the relationship between the events that transpire for the accused and the prosecutor’s subjective influence on behavior, providing a profound discussion on the topic of “outside the courtroom plea bargains” (Stephanos Bibas: *outside the trial of the plea bargain*, 2018). On one hand, as the prosecuting party, the procuratorate bears the responsibility to proactively gather and organize case evidence *ex officio*. However, the transactional nature of plea bargaining itself can lead to a lack of motivation and incentive for prosecutors to reach an agreement with criminal suspects. This, in turn, can negatively impact the prosecutor’s own work. On the other hand, in the absence of adequate supervision and constraints, prosecutors may engage in negotiations with the prosecuted individual without proper checks and balances. Additionally, the prosecuted individual may face the risk of waiving their constitutional right to a public trial or exercising their constitutional rights, thereby increasing the chance of receiving a harsher sentence. In judicial practice, if the accused rejects the prosecutor’s sentencing recommendations, it can easily provoke retaliatory behavior from the prosecutor, ultimately leading to an increase in the defendant’s criminal responsibility.

This paper posits that “retaliatory prosecution” is not confined to a specific geographical legal context. Drawing from the aforementioned discussions, it is evident that “retaliatory prosecution” has progressively evolved into a worldwide legal concern that impacts the criminal justice process. Therefore, its investigation should not be constrained solely to the United States. This assertion also underscores the feasibility and original intention of this paper, which is to explore “retaliatory prosecution” within the Chinese context. This study confirms the relevance and importance of examining this issue in China.

Looking globally, non-American scholars have also conducted fruitful research on “retaliatory prosecution.” Among these, we must mention Janek Kucharski’s work, “Retaliatory Prosecution in Athens-Based on Recent Theory.” In this study, Kucharski, for the first time, carefully examines and analyzes the 31 extant oral records of public prosecutors for explicit indications of “retaliatory prosecution” rhetoric. Building on this analysis, the paper posits that retaliation, often perceived as contradictory to law enforcement, may not necessarily be so in Kucharski’s framework. It raises the intriguing point that prosecutors often

view the prosecuted individual as an enemy of society, and the shift from individual prosecutorial retaliatory motives to a broader communal rhetoric deserves deeper consideration. Simultaneously, the paper highlights that most prosecutors, as “non-professional prosecutors,” harbor preconceived notions regarding the informal neutrality of the narrow legal space when determining an accused’s guilt. This results in a significant imbalance between the prosecution and defense, even in the absence of prior animosity between the prosecutor and the accused, thus not preventing retaliatory motives and behaviors in the lawsuit (Doug Lieb, *Vindicating Vindictiveness: Prosecutorial Discretion and Plea Bargaining, Past and Future*, 2013).

3.2. “Retaliatory Prosecution” in Civil Law Systems

Germany, as a representative of civil law nations with highly developed legal frameworks, possesses a negotiation system in criminal matters that is distinctly different from the American plea bargaining mechanism. Initially, plea bargaining in criminal proceedings can occur at any phase of the litigation, encompassing not just the investigation, trial, and appellate stages. Secondly, the scope of discussions between the prosecution and defense is confined, solely permitting agreement on sentencing rather than the nature or number of charges leveled against the criminal suspect. Ultimately, the consultation primarily involves the judge and defense, contrasting sharply with the prosecution-defense consultation system prevalent in China and the common law system, where the prosecutor and defense are the primary negotiators (Hermann & Cheng, 2004: pp. 116-126).

Based on the aforementioned, this paper posits that the identified characteristics elucidate why “retaliatory prosecution is infrequent” in Germany. Alternatively stated, this phenomenon arises from the criminal consultation system wherein judges wield significant discretion in directly determining an accused’s guilt, the nature of charges, and sentencing, whereas prosecutors have a relatively minor role in this process. Notably, in German jurisprudence, judges often inform or advise defendants that refusing to plead guilty or accept charges may result in harsher punishments. This practice underscores the judges’ considerable influence in the criminal consultation system, thereby mitigating the occurrence of retaliatory prosecution (Yin, 2017: pp. 185-200). Hence, Section 257c of the German Code of Criminal Procedure stipulates that in the event of an unsuccessful consultation, the prosecuted individual’s statement cannot be admitted as evidence (Gao, 2017: pp. 152-172). This provision is not aimed at the prosecutor, but rather at the judge, who holds the discretion to determine whether or not the defendant faces capital punishment.

3.3. Enlightenment of Extraterritorial “Retaliatory Prosecution” to China

After analyzing research content and trends among scholars both domestically and internationally, it becomes apparent that across the world’s two primary legal sys-

tems, numerous nations have implemented judicial review mechanisms to oversee and restrict prosecutors' discretion in filing charges. Nonetheless, pinpointing the motivations behind a public prosecutor's decision to prosecute emerges as the pivotal challenge in identifying instances of "retaliatory prosecution."

Drawing upon research findings from foreign legal jurisdictions on "retaliatory prosecution" and aligning them with the specific context of our country, this paper posits that when a criminal suspect appeals against alleged "retaliatory prosecution," and the judge verifies the existence of such behavior, it not only violates procedural due process but also raises constitutional concerns. Consequently, the judge may declare the prosecution null and void, presenting a potential effective avenue to adjudicate instances of "retaliatory prosecution." This hypothesis will be further explored in subsequent sections of this paper.

In summation, the discussion herein highlights that, currently, our legal system lacks a comprehensive framework to address "retaliatory prosecution." This gap includes the absence of a clear definition for "retaliatory prosecution" and inadequate systemic constructs to tackle the issue. Within the context of the plea bargaining system, abuses by prosecutors in the form of "retaliatory prosecution" that infringe upon the legitimate rights of criminal suspects have yet to garner substantial academic scrutiny. While there is limited research in the academic sphere, legal scholars in China generally agree that violations of Article 16 of the Criminal Procedure Law, coupled with non-compliance with evidentiary standards, may constitute "retaliatory prosecution." However, it's important to note that "retaliatory prosecution" has not evolved into a standalone legal concept that automatically signifies procedural violations. Instead, its adverse procedural implications are often tied to breaches of other legislative provisions within the plea bargaining system.

Foreign theories can often be successfully implemented within their respective judicial frameworks, yet China's litigation structure diverges fundamentally from the world's two primary legal systems. Additionally, China's procuratorate holds the legally mandated position of "legal supervisors." This role, however, raises a contentious question that has sparked lively debate among theorists and practitioners: Who will oversee the supervisor itself? (Wang, 2021: pp. 64-85) and the rights protection of the accused, it is of practical significance and the needs of the times to study and analyze "retaliatory prosecution" and put it under the background of criminal judicial reform in China.

4. Suggestions on Identification and Governance of "Retaliatory Prosecution" under the System of Confession and Punishment

4.1. The Basic Idea of Standardizing the "Retaliatory Prosecution" of the Procuratorate

4.1.1. Clarify the Concept of "Retaliatory Prosecution" and Its Adverse Consequences

The United States and Britain clearly stipulate the adverse consequences of "re-

taliatory prosecution” in their legal provisions, which is supported by their right to review the constitutionality. In the plea bargaining in the United States, if there is a “retaliatory prosecution” by the procuratorate, at this time, the defendant enjoys the right of defense for violating the procedure because of the “retaliatory prosecution” according to law, and the judge thinks that the prosecutor has indeed implemented the “retaliatory prosecution” after hearing it. At this time, the court will directly cancel the prosecution, and the case will no longer enter the trial procedure, and the prosecutor will face severe punishment for serious abuse of power. Unfortunately, there is no judicial procedure for unconstitutional review in our country’s laws, so if there is a “retaliatory prosecution”, it is difficult for the defendant to get direct relief for the defense of this behavior. At present, there is no designated judicial supervision system in China. China is a litigation system with the procuratorate as the main body of supervision. The court cannot directly supervise and restrict the behavior of the procuratorate. Therefore, it is often very difficult for the accused to get direct and good relief once he encounters the “retaliatory prosecution” of the prosecutor in the case of pleading guilty and lenient punishment.

According to the legislative purpose of our country’s lenient system of pleading guilty and punishing, and referring to the practice of “retaliatory prosecution” in common law countries, we should improve the system of pleading guilty and punishing in more detail. This paper holds that it can be reflected in legislation or related guidance or even in guiding cases promulgated by the Supreme Law, and the adverse consequences of “retaliatory prosecution” by the procuratorate can be clarified. During the trial, once the court finds that there is a “retaliatory prosecution”, it should immediately suspend the trial of the case and immediately review and verify the prosecution behavior of the procuratorate. If the trial judge thinks that the prosecution of the procuratorate is unfair, he shall ask the procuratorate to explain the reasons. If the reasons are insufficient or not explained, he shall ask the procuratorate to bear the adverse consequences. The consequences should be divided according to the degree of abuse of power by the procuratorate, but the corresponding prosecutors must be punished. Only when the retaliatory behavior of the procuratorate is so serious that it seriously damages the legitimate rights and interests of the accused, will the case be directly withdrawn. Under normal circumstances, the prosecution of the procuratorate will not be revoked because of this, but the prosecution of the procuratorate is unfair and damages the legitimate rights and interests of the accused. In order to ensure the substantive justice and procedural justice go hand in hand, in this case, the circumstances of aggravating punishment should not have legal effect, and the accused should continue to receive lenient treatment in substantive law and procedural law. At the same time, we should give full play to the ability of the court to judge in the middle, and examine whether there is a “retaliatory prosecution” in the whole process of trial *ex officio*, so as to better protect the legitimate rights and interests of the accused. As for the burden of proof, the people’s procuratorate should give evidence to prove the legal prosecution. The

accused only needs to provide certain clues or materials to show that the prosecution of the people's procuratorate is obviously improper. If the people's procuratorate can't prove that there is no "retaliatory prosecution", it can be presumed that there is a "retaliatory prosecution" in the case of pleading guilty and lenient punishment.

4.1.2. Respect the Intermediate Jurisdiction of the Court

According to the provisions of the Criminal Procedure Law, only the court has the exclusive right to convict, and no one can find the defendant guilty without trial by the court. On the legislative level, this requires that the court should respect the opinions of the procuratorate on handling cases of pleading guilty and admitting punishment leniently in principle, ensure the balance of consultation between the accused and the procuratorate according to law, and ensure that the accused has a relatively clear psychological expectation of handling the sentence, thus improving the enthusiasm of the accused to plead guilty and admit punishment voluntarily. However, it should be clear that the procuratorate only has the right to make sentencing suggestions, and the criminal cases that plead guilty and admit punishment are dealt with leniently still belong to the jurisdiction of the court, and the court will conduct substantive trials according to the facts and make judgments according to law. In order to ensure the smooth development of the consultation procedure of confession and punishment, the law stipulates that the court should generally adopt the sentencing suggestions of the procuratorate. In the court hearing, the judge shall *ex officio* examine whether the accused pleaded guilty voluntarily, whether he agreed to apply summary procedure or expedited procedure, and whether the contents of the written statement are true and legal. If the court thinks that the defendant's behavior does not constitute a crime or does not need to bear criminal responsibility, or the defendant is forced to plead guilty against his will, the court should reject the sentencing proposal of the procuratorate at this time and change the litigation procedure. Furthermore, if the court thinks that the sentencing suggestion of the procuratorate is improper, it can ask the procuratorate to amend it. If the procuratorate refuses to amend it, or the revised sentencing suggestion is still unreasonable, the court can make a corresponding judgment in the trial. In view of this situation, it is necessary to properly handle the relationship between the procuratorate's sentencing suggestion right and the court's sentencing discretion, respect the court's right to judge in the middle, and give full play to the effectiveness of the trial. The procuratorate should not interfere with the court's sentencing discretion too much. Even if the procuratorate files a "retaliatory prosecution", the defendant can safeguard his legitimate rights and interests in the judicial process.

4.2. Improve the Specific System of Pleading Guilty and Admitting Punishment

The conflict between substantive justice and efficiency value is obviously ex-

posed in the implementation of the lenient system of confession and punishment. Based on this, the problem of prosecutor's "retaliatory prosecution" has become an urgent problem, and the reasons for its conflict and "retaliatory prosecution" lie in the above-mentioned dislocation. These dislocations lead prosecutors to "strive at all costs" to increase the punishment of the accused, which leads to not only increasing the work links in the stage of examination and prosecution, but also lacking the protection of the rights of the defense. As a result, the procuratorial organs lost their enthusiasm for consultation, and the defenders could not participate or delayed their participation in the proceedings. In the trial stage, the defender obviously felt that his defense space was squeezed; The original sentencing proposal of the procuratorial organ has lost its due effect, and it is difficult to speed up the trial procedure. In order to solve the above problems, we should start from the procedure, reduce the pretrial detention rate, and implement the application of illegal evidence exclusion rules throughout the process to ensure procedural fairness; From the substantive point of view, we should standardize the step-by-step sentencing incentives, implement the accountability mechanism of judicial staff, guarantee and strengthen the exercise of defenders' rights, and improve the defense system, so as to improve substantive justice and balance the rank between them.

4.2.1. Reduce the Pretrial Detention Rate and Strengthen the Application of the Exclusionary Rule of Illegal Evidence in the Whole Process of Litigation

In fact, non-custodial coercive measures are not only a feature of the proceedings of guilty plea cases, but also an essential link in the lenient system of pleading guilty and punishing. Confessing guilt and admitting punishment can be the reason for not detaining, and conversely, not detaining can effectively motivate criminal suspects and defendants to confess guilt and admit punishment (Yan, 2017: pp. 82-96). More application of non-custodial coercive measures to criminal suspects and defendants will help to accurately evaluate and judge the necessity of their later detention. In the process of pleading guilty and admitting punishment, most of the suspects and defendants are first-time offenders and occasional offenders, and their crimes are usually minor, with less harm to society and less subjective malignancy. In this case, the criminal suspect and the accused generally have no motivation to leave the tube, so the necessity of detention is not high. Therefore, taking non-custodial compulsory measures and sentencing them to non-custodial punishment can reflect the principle of adapting guilt and punishment, and reflect the retribution and special prevention function of punishment. At the same time, the reasons for the arrest put forward by the investigation organ should be examined in detail, and direct evidence that the criminal suspect is harmful to society should be required to ensure that the criminal suspect is arrested correctly by the investigation organ according to law. When approving the arrest, the procuratorial organ shall examine whether there is any illegal means such as extorting a confession by torture to force him to confess his

guilt. Once it is found or in doubt, the procuratorial organ shall immediately start the illegal evidence exclusion procedure *ex officio* to protect the legitimate rights and interests of the accused according to law.

According to the law, the final evidence must be examined and judged by legal procedures. Therefore, the prosecutor's motive for prosecution and the corresponding evidence for reasonable prosecution should be strictly and carefully examined and judged in accordance with legal procedures. The process of evidence review and judgment should run through the whole litigation activity, but the review center is still placed in the trial. If the defense puts forward or the court finds that the prosecutor's prosecution behavior is improper or doubtful, the prosecutor should produce corresponding evidence at this time, which should be used as the basis for the prosecutor's reasonable prosecution, publicly presented in court, and fully cross-examined by both the prosecution and the defense, and finally the discretion is handed over to the judge. In the process of discretion, we should also follow that the evidence as a confirmed fact must meet the legal proof standard after comprehensive review and judgment, that is, there is no evidence to prove that the prosecutor's prosecution is justified or doubtful, and the evidence is excluded because the content or the crime does not meet the legal requirements, which is equivalent to no evidence. At this time, we should determine that the prosecutor is suspected of "retaliatory prosecution" (Chen & Zheng, 2011: pp. 3-12). After the court finds out, it immediately stops the trial activities, reviews the behavior, and makes a decision appropriate to the finding.

4.2.2. Cultivate a High-Quality Legal Work Team and Ensure Strict Law Enforcement and Fair Justice

"Exclusion of illegal evidence is a systematic project, which runs through every link of the litigation procedure. Cultivating a high-quality judicial team is a powerful guarantee for doing this work well" (Gong, 2017: pp. 42-45) in a judicial work team with excellent quality and super ability in determining "retaliatory prosecution" cannot be ignored. In judicial practice, whether judicial personnel can adhere to the concept of paying equal attention to substantive justice and procedural justice is the rule of excluding illegal evidence and the key to identifying and managing "retaliatory prosecution". This paper holds that we should ensure the practical application of legal norms in complex and changeable cases, improve the professional quality of judicial staff, "change the past practice from finding facts to proving facts, and shift the focus of work from investigation-centrism to trial-centrism" (Ma & Ren, 2015: pp. 12-18).

Specifically, first of all, when selecting talents, we should consider both their political quality and their professional application ability, and adhere to the principle of paying equal attention to both. Political quality refers to an individual's moral accomplishment and political attitude, which is an important basis for judging whether a person has correct ideas. Professional application ability refers to a person's professional knowledge and skills, which is a key factor for a person to achieve in-depth development in a certain field. Therefore, when se-

lecting talents, we should combine the two to comprehensively inspect and analyze the comprehensive quality of talents. Secondly, judicial personnel should be regularly organized to participate in legal practice training to improve their legal literacy and ability and meet the requirements of judicial work in the new period; At the same time, it is necessary to strengthen the understanding of judicial ideas in the new period and grasp the key, difficult and hot issues of judicial work in the new period, so as to improve the efficiency of judicial work. Finally, judicial personnel should strictly follow the existing laws and regulations, standardize evidence collection procedures, strictly grasp the conditions of prosecution, and put an end to “retaliatory prosecution” from the source. At the same time, we should strengthen the awareness of human rights protection, strengthen the ability to examine and verify the facts and evidence of the case, use professional knowledge, start from the perspective of judicial practice, and use professional technical means to completely stifle the “retaliatory prosecution” from the source.

4.2.3. Standardize the Step-by-Step Sentencing Incentives and Implement the Accountability Mechanism

In the context of procuratorial authorities, standardizing the sentencing range emerges as an efficient strategy to address litigation proof challenges, abbreviate trial durations, and elevate litigation efficiency. For criminal suspects and defendants, this standardization not only safeguards their human rights but also fosters more favorable trial outcomes, thereby preventing sentencing disparities. As Zhang Jianwei aptly puts it, “Pleading guilty to leniency is an interpretation of connotation and a technical analysis that enhances the judicial process” (Zhang, 2016: pp. 2-8). From a game-theoretic perspective, it is rational to offer sentencing incentives to criminal suspects and defendants who opt for the plea bargaining procedure. This approach augments the appeal of plea bargaining and encourages procedural choices beneficial to both parties involved, as Liu Fangquan observes in his study on the construction path of the plea bargaining leniency system (Liu, 2017: pp. 88-109). Furthermore, the timing of procedural choices and the degree of sentencing leniency should exhibit variation, as highlighted by ZHOU Xin’s analysis on the basic principle of leniency (Zhou, 2017b: pp. 154-161). When determining the sentencing range for lenient plea cases, factors such as the timing of procedural choices made by the suspect or defendant, their attitude toward repentance, and the subjective malice displayed while pleading guilty, should be considered. This paper advocates for the adoption of a “321” mechanism. Specifically, this entails adjusting the base sentence range for plea bargaining procedures by conceding sentencing in three grades: 10%, 20%, and 30% (excluding these percentages) (Zhou, 2018a: pp. 86-95). The rationale behind capping the maximum discretionary concession range at 30% is twofold. Firstly, a concession of approximately 10% in sentencing does not significantly appeal to defendants pleading guilty in current plea bargaining cases. Secondly, increasing it to 30% ensures that the sentencing incentives offered

during the plea bargaining process are sufficiently attractive (Zhao, 2017a: pp. 128-140). Simultaneously, this approach establishes a hierarchical structure with a maximum leniency range of up to 40% for statutory sentencing circumstances, such as surrender and merit, thereby maintaining a balance in sentencing scenarios.

At the same time of standardizing sentencing, combined with the development requirements of the rule of law in Socialism with Chinese characteristics, the staff of judicial organs must exercise their power of sentencing suggestions in accordance with the law, be cautious in using their power, and be prosecuted for violating the law. In this process, it should be emphasized that the investigation of criminal responsibility of judicial staff should be based on intention or negligence, and that the determination of subjective negligence of judicial staff should not be ignored when the result of misjudged cases occurs. In determining negligence, the key lies in whether the judicial personnel have carefully judged it. The duty of care in legal norms is measured according to the cognitive ability and behavioral ability of ordinary people. That is to say, when establishing the accountability mechanism, judicial personnel should be forbidden to measure their behavior by the standard of ordinary people, and use it as a reason to judge their corresponding duty of care, or to avoid the occurrence of results on the grounds of what ordinary people call negligence and intention.

At present, China's judicial responsibility system is based on the accountability mechanism for misjudged cases caused by judicial staff's dereliction of duty, and the accountability mechanism for misjudged cases itself has fundamental logical defects (Zhou, 2017a: pp. 314). How to regulate and supervise the "wanton" behavior of judicial staff in litigation under the background of applying the system of pleading guilty and admitting punishment? In this regard, this paper intends to respond from the following aspects.

First of all, sentencing suggestions correspond to powers and responsibilities. For the accused who pleaded guilty, sentencing has always been the most concerned issue, and it is also the most critical link in the procedure of pleading guilty and admitting punishment. The court and the procuratorial organ bear the functions of final sentencing and sentencing suggestions respectively, so it is necessary to establish corresponding accountability mechanisms. Secondly, evidence review corresponds to power and responsibility. The procuratorate must examine cases of confession and punishment within its power. Before deciding to apply the procedure of confession and punishment, the prosecutor should first review the three characteristics of the main evidence to ensure that the facts identified are supported by evidence, and the evidence supported by it meets the standard of excluding reasonable doubt. During the trial, the judge should examine the authenticity, legality and voluntariness of the accused's confession. If a case is found that does not meet the legal proof standard of evidence, the judge will not start the procedure of pleading guilty and admitting punishment. For cases where the procedure of pleading guilty and admitting punishment has been applied, if the evidence is found to be in doubt, the procedure must be ter-

minated at this time to avoid further expansion of the harmful results caused by illegal acts. Finally, the trial powers and responsibilities correspond. Because the accused has reached a sentencing agreement with the prosecution, the judge's main duty is to preside over the trial in the case of applying the procedure of pleading guilty and punishing, carefully examine whether the accused's confession is voluntary, legal and true, and examine whether the sentencing suggestion is appropriate. In order to establish the judicial responsibility system of "the judge is responsible", we should establish a responsibility investigation mechanism with unified powers and responsibilities in the procedure of pleading guilty and recognizing punishment, strictly implement the principle of "accountability", ensure the fair handling of cases and ensure the effective implementation of laws and regulations. If the judge fails to examine the authenticity, voluntariness and legality of the accused's confession and punishment in court, or neglects to adjust the prosecution's obviously improper sentencing suggestions, or fails to take any measures for procedural violations, such as knowing or should know that the prosecution has improper prosecution, he should be held accountable at this time, which will play a deterrent role, supervise the judges to exercise their rights in time, and avoid the infringement of the legitimate rights and interests of the accused caused by lax behavior.

4.2.4. Guarantee and Strengthen Lawyers to Exercise Their Rights and Improve the Defense System

The issues stemming from the formal involvement of lawyers are apparent to both the case-handling unit and the legal fraternity in judicial practice. Whether engaging in persuasive work with an individual who is facing prosecution but has not yet admitted guilt, or assisting someone who has already pleaded guilty, lawyers must, based on a comprehensive understanding of the case, clarify the prosecuted individual's rights and obligations, elaborate on the evidentiary facts and circumstances pertinent to the case, and outline the potential penalties that may be imposed. Furthermore, from a professional standpoint, a thorough analysis of the benefits of applying the leniency system in plea bargaining to the defendant is imperative, along with motivating them to sign the plea bargain agreement. This serves the dual purpose of enhancing procedural efficiency and leveraging the system's advantages to the fullest. Hence, for effective defense to materialize, it is imperative that lawyers' rights are fully and effectively protected, while ensuring unhindered defense proceedings.

To achieve effective defense, we must focus not only on external formalities but also on its substantive aspects. Currently, the low rate and quality of criminal defense have led to the marginalization of lawyers in litigation activities, thereby undermining the full extent of their defensive role. Instead, judicial organs often perceive lawyers as adversaries (Sun, 2020: p. 7), resulting in an awkward position for lawyers during litigation. The reform of the trial center presents an opportunity for lawyers to fully exercise their right to defense, effectively serving as a litmus test for judicial reform. Improving the defense system is urgent and

holds profound significance in curbing prosecutorial retaliation. In this regard, this paper presents the following recommendations.

Firstly, it is imperative to broaden the scope of lawyers' defense rights. During the investigation process, lawyers must be granted the authority to investigate and gather evidence to a reasonable extent, alongside the assurance of their rights to review case files, meet with clients, and inquire about relevant details. In the investigation phase, when judicial authorities often impose coercive measures on the accused, defense lawyers can only exercise their rights through meetings, investigations, and file reviews. If these defense rights are not adequately safeguarded, realizing the accused's right to defense becomes challenging, thereby undermining the possibility of effective defense. Legislation should provide robust protections for lawyers' rights, and where the exercise of these rights is hindered, corresponding relief procedures and penalties should be established. Granting lawyers the right to investigate and collect evidence during the investigation phase facilitates comprehensive evidence gathering. This allows them to present evidence favorable to the accused, strengthening the confrontation during the trial phase. It also maintains the balance between prosecution and defense, ensuring that lawyers' defense has substance and better protects the legitimate rights and interests of the accused. In summary, providing lawyers with the right to investigate and obtain evidence during the investigation phase aligns with the principles of effective defense, meets the inherent requirements of modern rule of law, and addresses the objective needs of society.

Secondly, it is crucial to bolster the rights of duty counsel. In plea bargaining scenarios, efforts should be made to enable lawyers to observe the interrogation process, emphasizing the voluntariness, authenticity, and legality of the interrogation, as well as the signing of the plea bargaining statement by the individual being prosecuted. Given the limited trial time, it is often challenging for judges to conduct an objective review, and surveillance videos alone cannot guarantee the voluntariness and legality of the indigee's plea of guilty and punishment. Therefore, allowing lawyers to participate synchronously in the initial interrogation during the investigation phase is an ideal approach to safeguard the procedural rights of the defendant (Bian & Qian, 2022: pp. 99-107). In practice, numerous interrogations occur when the accused is first subjected to coercive measures, sometimes late at night, making it difficult for the duty lawyer to be present simultaneously (Yi, 2019: pp. 118-131). This paper posits that duty lawyers should clearly recognize their active role throughout the entire process of pleading guilty and punishment, rather than serving as mere "passive witnesses". Consequently, they must consciously take the initiative to enhance their effective participation and positively impact the overall case through meaningful assistance. Evidently, the synchronized presence of lawyers during interrogation emerges as a viable option. In summary, for certain types of cases, actively experimenting with a program where lawyers witness interrogation activities represent a novel approach conducive to protecting human rights and realizing judicial justice.

Finally, improve China's procedural relief system and punishment system. By establishing a procedural relief system, the rights of litigants can finally be guaranteed; through the punishment system, judicial staff can be prevented from abusing judicial power, so that every judicial staff can handle cases according to the law. At present, the punishment system in China's criminal proceedings is not perfect. In terms of litigation procedures, it is only reflected in the exclusionary rules of illegal evidence and remanding for retrial, but there is a lack of corresponding punishment measures for restricting lawyers' interviews and marking papers. Therefore, this paper holds that a set of procedural remedy mechanism and punishment mechanism should be established in legislation to protect lawyers' right to defense and impose legal sanctions on acts that infringe their legitimate rights and interests, which has a positive effect on improving the criminal justice system. This is conducive to the relevant judicial personnel to handle cases according to law, protect the rights of the accused, and make the infringed rights of the accused be remedied in time. At the same time, it can improve the quality of defense, prohibit the filing of "retaliatory prosecution" and prevent the occurrence of unjust, false and wrong cases.

5. Conclusion

The lenient system of confession and punishment is a major reform related to criminal substantive law and procedural law. Looking back at its process from a broad perspective, we will find that both effectiveness and controversy coexist. There are some defects in the formulation of specific legal measures, and there are also some legal risks. In the process of implementation, there are some common problems in many pilot areas, and the scope of problems to be solved is very wide. Therefore, we should not only pay attention to and solve the risks exposed in cases of pleading guilty and admitting punishment, but also guard against those problems that may arise at any time. And "retaliatory prosecution" is undoubtedly the first problem to be solved urgently. As mentioned above, "retaliatory prosecution" is extremely concealed. It is unilaterally taken by the procuratorate, so it is difficult to be detected by other judicial organs and lawyers. This behavior seriously damages the legitimate rights and interests of the accused, violates the basic principles of due process, safeguarding human rights, not forcing self-incrimination and balancing prosecution and defense, undermines the socialist rule of law, and is not conducive to the realization of the criminal procedure law.

Drawing upon benchmark measures from similar systems in other countries, we can effectively tackle issues such as the unequal status between the prosecution and defense in litigation, sentencing irregularities in guilty plea cases, and retaliatory actions against defendants exercising their lawful rights. It is imperative to deepen our comprehension of China's distinct legal framework and context, and subsequently refine the specific system of leniency in pleading guilty and accepting punishment. This refinement aims to uphold the legitimate rights

and interests of the prosecuted individual, maximize the intended function of the written statement, standardize graduated sentencing incentives, establish an accountability mechanism, bolster lawyers' procedural rights, and ultimately prevent "retaliatory prosecutions" at their root. By addressing the root causes of "retaliatory prosecutions," can we ensure that the reform of the guilty plea and punishment system proceeds in the right direction.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

References

- Bian, J. L., & Qian, C. (2022). Study on the Generation Mechanism of Sentencing Recommendation under the System of Leniency in Plea Bargaining. *Yunnan Social Science*, No. 1, 99-107.
- Bibes, S. (2018). *Plea Bargaining outside the Courtroom* (Translated by Yang Xiande and Liao Yu). China Law Press.
- Chen, G. Z., & Zheng, X. (2011). On the Principle of Judging Evidence in Criminal Proceedings—Another Discussion on Several Issues in the Revision of the Criminal Procedure Law. *Law*, No. 9, 312.
- Chen, S. (2019). On the Rational Application of the Integration of Arrest and Prosecution. *Law and Business Research*, 36, 14-25.
- Chen, X. G. (2013). The Relationship between the Constitution and Criminal Procedure Law and Its Transformation—Interpretation of China's "Human Rights into the Constitution" to "Human Rights into the Law". *Beijing Politics and Law Vocational College Journal*, No. 2, 11-18.
- Davis, A. J. (1998). Prosecution and Race: The Power and Privilege of Discretion. *Fordham Law Review*, 67, 13-25.
- Doug, L. (2013). Vindicating Vindictiveness: Prosecutorial Discretion and Plea Bargaining, Past and Future. *The Yale Law Journal*, 123, 2013-2014.
- Fisher, G. (2012). *The Triumph of Plea Bargaining: A History of Plea Bargaining in the United States* (Translated by Guo Zhiyuan, 2012 ed.). China University of Political Science and Law Press.
- Gao, T. (2011). On the United States Retaliatory Prosecution Rules and Its Reference to China. *Shandong Police Academy Journal*, 23, 48-54.
- Gao, T. (2017). The New Development of German Criminal Consultation System and Its Enlightenment. *Global Law Review*, 39, 152-172.
- Gong, Y. F. (2017). Illegal Evidence Exclusion Rules in the Judicial Practice of the Problem and Response. *Journal of Zhengzhou University (Philosophy and Social Science Edition)*, 50, 42-45.
- Guo, G. M. (2020). *Research on the Case Management Mechanism under the Vision of the System of Leniency of Guilty Plea and Punishment*. Shandong University.
- Guo, H., & Gao, H. (2021). Implementation Risks and Procedural Control of the Plea and Penalty Leniency System: An Expansion of the Implementation Risks Based on the U.S. Plea Bargaining System. *Law Forum*, 36, 153-160.
- Han, X. (2023). Sentencing Recommendations in the Plea and Penalty Leniency System:

- Determinate or Range Sentences. *Rule of Law Research*, No. 1, 112-122.
- He, J. H. (2020). Reconfiguration of Prosecutorial Discretion—Unfolding in the Context of “Plea and Penalty Leniency”. *Journal of Suzhou University (Philosophy and Social Science Edition)*, 41, 85-95.
- Hermann, J., & Cheng, L. (2004). Negotiated Justice-Plea Bargaining in German Criminal Procedure. *Chinese Journal of Criminal Law*, No. 2, 116-126.
- Lan, M. R. (2020). Negative Effects and Corrective Paths of Obstructing the Defense Function of Lawyers in Plea Bargaining Cases. *Journal of Yibin College*, 110, Article ID: 20230404.
- Li, J. D. (2020). U.S. Plea Bargaining Program Victims’ Rights Protection System and Its Revelation—The Perspective of Three Federal Typical Plea Bargaining Cases. *Journal of Henan Normal University (Philosophy and Social Science Edition)*, 47, 51-61.
- Liu, F. Q. (2017). The Construction Path of Plea Bargaining Leniency System—A Study Based on the Pilot Experience of Criminal Speedy Trial Program. *Chinese Journal of Criminal Law*, No. 3, 88-109.
- Liu, S. J. (2022). Problems and Corrections: A Study on the Improvement of the Sentencing Recommendation System in Cases of Pleading Guilty and Convicting to Punishment—An Appraisal of the Guidelines on Sentencing Recommendations Issued by the Supreme People’s Procuratorate. *Journal of Liaoning Normal University (Social Science Edition)*, 45, 31-41.
- Ma, T. J. (2021). Research on Prosecutorial Interpretation Issues under the Plea and Penalty Leniency System. *Journal of Fujian Police College*, 35, 36-46.
- Ma, Y., & Ren, N. N. (2015) Introduction and Reflection on the Exclusionary System of Illegal Evidence in England. *Applicable Law*, No. 3, 12-18.
- Meng, F. F. (2022). Comparative Analysis of Plea and Penalty Leniency System and Plea Bargaining System. In Shanghai Law Society (Ed.), *Shanghai Law Research Collection 2022, Volume 9. Lawyer Law Research Collection* (pp. 157-164). Publisher Unknown.
- Min, C. L. (2017). Simplification of Procedures in the Plea Bargaining Leniency System. *Journal of Soochow University (Philosophy and Social Science Edition)*, 38, 48-56.
- Report of the Supreme People’s Procuratorate on the Application of the System of Plea and Punishment Leniency by the People’s Procuratorates (October 15, 2020 at the 22nd Meeting of the Standing Committee of the Thirteenth National People’s Congress) https://www.spp.gov.cn/zdgz/202010/t20201017_482200.shtml
- Shi, Z.-M. (2018). Reinterpretation of “Voluntariness” of Plea and Punishment. *Journal of Yunnan Police College*, No. 6, 9-102.
- Sun, D. Z. (2020). *Research on the System of Leniency of Guilty Plea and Punishment*. China University of Political Science and Law Press.
- Wang, Y. L. (2021). The Construction of Prosecution and Trial in the System of Guilty Plea and Leniency of Punishment. *China Criminal Law Journal*, No. 6, 67-85.
- Wei, D., & Meng, J. (2020). Revisiting the Right to Presence of Lawyers: A Negativism-Oriented Possibility—Taking the Period of Investigative Interrogation as a Research Node. *Law Forum*, 35, 120-129.
- Xiong, Q. H. (2012). The Normative System of Criminal Defense and Its Operating Environment. *Politics and Law Forum*, 30, 47-58.
- Yan, Z. H. (2017). The Study of Non-Custodialization of Guilty Plea Cases. *Journal of Shanghai University of Political Science and Law (Rule of Law Series)*, 32, 82-96.
- Yao, L. (2017). The Role and Function of Duty Counsel in the Plea Bargaining Program. *Law and Business Research*, 34, 42-49.

- Yi, Y. Y. (2019). Recognition and Definition of Fatigue Interrogation—An Expansion Based on 817 Practical Cases. *Politics and Law Forum*, 37, 118-131.
- Yin, B. (2017). Returning to the Legal Text in the Name of the Constitution: The Beginning and End of the German Sentencing Negotiation and Recent Federal Constitutional Jurisprudence. *Legal Science (Journal of Northwest University of Political Science and Law)*, 35, 185-200.
- Zhang, J. W. (2016). Pleading Guilty and Accepting Punishment Leniency Treatment: Connotation Interpretation and Technical Analysis. *Law Application*, No. 11, 28.
- Zhao, H. (2017a). On the Justification Basis of Leniency. *Politics and Law*, No. 11, 128-140.
- Zhao, X. G. (2017b). Selective Prosecution of Environmental Crimes and Its Defense—Another Discussion on the Establishment and Improvement of Criminal Procedural Review Mechanism. *Journal of Capital Normal University (Social Science Edition)*, No. 1, 58.
- Zhou, E. (2017a). Reflection on the Accountability Mechanism for Wrongful Conviction—Another Discussion on the Improvement of China's Judicial Responsibility System. *Law and Business Research*, 34, 314.
- Zhou, X. (2017b). On the Basic Principle of Leniency and Its Types—An Analysis Based on the Pilot Criminal Speedy Dismissal Procedure. *Politics and Law*, No. 3, 154-161.
- Zhou, X. (2018a). On the Magnitude of Leniency. *Journal of Law*, 39, 86-95.
- Zhou, X. (2018b). Practical Reflection on the Pilot of Plea and Penalty Leniency System. *Contemporary Law*, 32, 123-133.