

A Study on the Right of Criminal Procedure Participants to Consent

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Abstract. In the context of China's emphasis on the pursuit of "protecting human rights" in criminal proceedings, the rights of participants at various stages of litigation have been continuously improved. However, there still exist certain deficiencies regarding the establishment of the right to consent to procedures. At the level of values, the establishment of the right of procedural consent for parties is a full embodiment of the freedom to safeguard human rights, supported by specific legal principles. In current legal texts, the right of procedural consent for parties is reflected to some extent in relevant provisions such as expedited procedures and simplified procedures, with different application modes in different scenarios. Addressing the problems existing in the legislation and practice of the right of procedural consent for parties, it is proposed to improve the current setup and application of the right of procedural consent for parties in criminal proceedings.

Keywords: Criminal Procedure; Parties; Right to Consent to Procedures.

1. Introduction

The current Criminal Procedure Law of China was enacted in 1979 and has undergone three revisions since then. Among its provisions, there are a total of seven articles pertaining to whether the parties and other participants in litigation consent to a specific matter.[1] From the legal text perspective, China's Criminal Procedure Law only stipulates the right to consent to procedures in a few applicable procedures and has not yet formed a systematic establishment regarding the "right to consent to procedures." From a textual interpretation standpoint, "consent" refers to expressing agreement with a certain claim or proposition.[2] Within the Criminal Procedure Law, consent generally refers to a specific expression of intention made by a party, authorizing a certain party to dispose of their own interests.[3] It can also be understood to some extent as allowing or accepting decisions made by one party that are related to one's own interests. The granting of the right of procedural consent to parties in criminal proceedings is not limited to China. Countries like the United Kingdom have established the concept of "either-way offenses," while the United States has procedures such as "plea bargaining" and "plea denial," which grant parties extensive rights of procedural consent. Research indicates that unlike the systematic theoretical framework of procedural consent rights in Western countries, the discourse on the right of procedural consent for parties in China's criminal procedural law is relatively dispersed. Most discussions revolve around the overarching concept of procedural choice rather than focusing specifically on procedural consent rights, primarily concentrating on the procedural choices of defendants under the leniency system for admitting guilt and accepting punishment.[4] In addition, there are also discussions concerning the right to consent to procedures in various stages of litigation, including polygraph testing procedures,[5] Remote litigation[6] and Absentee trial.[7] Existing research has played a crucial role in advancing the study of procedural consent rights. However, it is important to note that much of the existing research tends to focus on specific procedural arrangements or litigation methods, leading to a narrow perspective and a mixing of substantive rights with procedural rights, thus lacking comprehensive consideration. This paper aims to address the procedural consent rights of parties as its research object, conducting a holistic study and exploration of the procedural consent rights of parties. Firstly, it will clarify the theoretical basis of the procedural consent rights of parties and then proceed to discuss them. Subsequently, it will focus on analyzing the main existing applications of procedural consent rights of parties. Finally, it will propose optimization suggestions for procedural consent rights in China, with the aim of promoting the establishment and development of procedural consent rights for parties in criminal proceedings.



2. The theoretical basis of the right of criminal procedure participants to consent

Whether establishing or revoking a right, it must adhere to some inherent principles within the law. If a right lacks a certain theoretical basis behind its existence, theoretically, such a right would lose its legitimacy; in practice, the exercise of the right and the operation of its associated system would encounter varying degrees of hindrance. As part of criminal procedural law, the establishment of the right of criminal procedure participants to consent is inseparable from the theoretical foundation of criminal procedural law. The theories of the balance between prosecution and defense and the subject of criminal proceedings provide a solid theoretical basis for the establishment of the right of criminal procedure participants to consent.

2.1. The inherent significance of reflecting the theory of balance between prosecution and defense

In the criminal litigation process, entities such as the prosecution represent the accusing party, while the suspect, defendant, and defense counsel represent the defense. Ideally, the court occupies a central adjudicating position. Together, these three parties form a litigation structure resembling a triangle. The balance between prosecution and defense refers to the equal legal status, rights and obligations, and comparable abilities to present arguments and defenses enjoyed by the prosecution and defense, situated at the two corners of the triangle base in the equilateral triangle-shaped litigation structure.[8] The balance between prosecution and defense is an ideal state of the criminal litigation structure. However, in practice, this balance is often not achieved. The issue of imbalance between prosecution and defense in China's criminal litigation has long been criticized by many.[9]

The balance between prosecution and defense is a necessary condition for achieving procedural justice and protecting the rights of the parties involved. This principle includes at least two parts: Firstly, both prosecution and defense should enjoy equal legal status. The prosecuting party should not hold a superior position merely because it represents the state; instead, both sides should engage in an equal adversarial relationship without any hierarchical differences in status. Secondly, the litigation rights and obligations of both prosecution and defense should be equal or corresponding. In theory, the information accessed and the rights possessed by both sides should be roughly equivalent. However, in practice, the inherent imbalance of power between prosecution and defense in criminal litigation is unavoidable. The prosecuting party represents state interests, backed by the power of the state, while the defense is typically composed of ordinary citizens whose access to information and exercise of rights inherently lag behind that of the prosecution. Even with the assistance of lawyers, their power is significantly inferior to that of the prosecuting authority. The original intent of legal systems is to protect the weaker party, enabling them to utilize the rights granted by the law to safeguard their interests. Therefore, ensuring the balance between prosecution and defense should involve creating conditions that empower the weaker party. This can be achieved by granting the weaker party certain special rights, providing them with more attention in litigation, and offering opportunities to exercise their rights to protect their legitimate interests and dispose of their inherent interests. Thus, it is evident that establishing the right of procedural consent for parties is essential for promoting equality between prosecution and defense. The expression of "consent" by the parties becomes a necessary condition for the application of procedures, and seeking their opinion is a prerequisite for initiating specific litigation procedures. Within this framework, the rights of the prosecuting authority, representing state interests and the interests of the victim, are limited when initiating certain procedures. Therefore, when initiating certain procedures, the prosecuting party should not only obtain the consent of the defendant but also consider the opinion of the victim in the case. This rational expansion of the litigation rights of the parties ensures the realization of their interests. Consequently, the existence of procedural consent rights gains theoretical legitimacy because it aims to achieve procedural justice and is based on the principle of balancing prosecution and defense.

2.2. The theory of criminal procedural subjects is a necessary foundation

The theory of criminal procedural subjects emerged and developed gradually during the transition of criminal proceedings from “officialdom” to “partyism”. In the past “inquisitorial” litigation system, the defendant was merely a “tool” used by judges to uncover the substantive truth, lacking independent rights. With the development of criminal procedural doctrine and systems, and the establishment of principles such as “non-entrenchment” and “open trial,” the defendant, representing the party, has become the subject of criminal proceedings. They can enjoy basic rights such as the right to defense and can influence the progress of criminal proceedings. Parties involved in litigation can fully exercise their rights and choose their actions according to their own will.

The core of the subject lies in its “subjectivity,” whereby through its own consciousness and rationality, the subject plays a leading, dominating, and decisive role in the relationship with the object.[10] This concept, when applied to the exercise of rights in criminal proceedings, encompasses at least two aspects: Firstly, respecting the procedural subject status of the parties involved. Given the inherent imbalance in procedural rights between the prosecution and defense, investigative and prosecuting authorities, especially the courts as adjudicators, should provide full protection to the rights of defendants, victims, and other parties involved. This ensures that they have the right to assert or waive certain rights concerning their own interests, reflecting their status as procedural subjects. Specifically, regarding the victim, although the criminal litigation process may be seen as a balance between state interests and individual interests,[11] the interests of the state are an integral part of the litigation process. However, the prosecuting authority cannot solely express its own opinions and exercise its procedural rights based on its own will. Doing so would neglect the procedural subject status of the victim, and their interests would not be adequately considered. Regarding the accused, the prosecuting authority cannot unilaterally select or suggest the application of a procedure, and the court cannot automatically apply such a procedure. The application of procedures directly affects the accused’s most immediate litigation interests, and direct application clearly violates the core essence of the theory of procedural subjects. Secondly, safeguarding the exercise of the parties’ rights. Procedural justice and substantive justice are inseparable; therefore, whether the parties agree to the application of procedures is related to whether the trial outcome aligns with their perspectives of justice. Thus, litigation procedures should be based on rational negotiation and fair negotiation between the prosecution and defense. Under this framework, whether the rights of the parties can be effectively exercised determines whether the procedure is fair and whether the procedural subject status of the parties is respected.

Granting a party litigation rights and recognizing its procedural subject status are closely related. Only by giving them certain litigation rights and corresponding interests can the confirmation of their procedural subject status be meaningful. If the emphasis is solely on protecting the interests of the relevant parties but also limits the exercise of their legitimate rights, it essentially contradicts the essence of the theory of procedural subjects in criminal proceedings. Setting the right of procedural consent for parties precisely achieves the essence of respecting the procedural subject status by granting them certain litigation rights. It reflects the subjectivity of the parties, conforms to the disposal intentions of the parties regarding their interests, and prevents the litigation process from being dominated solely by the prosecuting party. It expands the influence of the parties on the litigation process, strengthens their procedural subject status, and better achieves the objectives of criminal proceedings in punishing crime and safeguarding human rights, making justice visible.

The above discussion provides a preliminary exploration and argumentation for the theoretical foundation of the right of procedural consent for parties in criminal proceedings. However, the rationality and value of a right cannot merely remain at the conceptual level. It also requires specific design and analysis of its practical scenarios. Only when a right is applied within a reasonable system can its value be fully realized.

3. The application scenarios of the right of procedural consent for parties in criminal proceedings

In recent years, both criminal and civil cases in China have faced the challenge of having too many cases and too few personnel. Despite the implementation of specific reform measures such as the “quota system” for judicial personnel, the pressure on judicial work persists and the situation is not optimistic.[12] Therefore, streamlining procedures has become one of the directions of judicial reform in China. However, the simplification of procedures and the protection of the rights and obligations of parties in litigation are inevitably in conflict. Therefore, in this context, it is necessary to ensure the appropriate protection of the rights of parties while weakening procedural safeguards. This requires strict regulations on the application of relevant procedures in legislation, thus giving rise to the right of procedural consent. In civil litigation in China, the right of procedural consent is often applied within the framework of procedural simplification.[13] Similarly, in China’s criminal procedural system, the establishment and application of the right of procedural consent also exhibit this characteristic. Within this framework, the author will analyze several common scenarios of the application of procedural consent in accordance with the provisions of the Criminal Procedure Law.

3.1. The right of procedural consent in summary procedures

Practice has shown that summary procedures effectively alleviate the pressure caused by the increasing number of criminal cases, adapting well to the diverse allocation needs of judicial resources while striving to ensure their economy without compromising procedural justice. However, the simplification of procedures should not come at the expense of the legitimate rights and interests of the parties involved. As the subject of application in summary procedures, safeguarding the rights of the accused is particularly crucial. According to Chinese law, the application of summary procedures requires three indispensable steps: submission for review by the court or the procuratorate, consent of the accused, and application by the judge. Among these three requirements, obtaining the consent of the accused is the most critical, as it is a necessary condition for the application of summary procedures.[14] Specifically, according to Article 217 of China’s Criminal Procedure Law, which addresses the consent of the accused to the application of summary procedures,[15] the procedural consent right of the accused is reflected in summary procedures. When the judicial authority proposes the application of summary procedures, the accused has the right to express their consent or objection to the proposed procedural simplification plan. The exercise of this right is closely related to whether the summary procedure can be initiated.

Ensuring the consent right of the accused is crucial, especially when procedural simplification may potentially reduce the original litigation rights of the accused. Within the framework of procedural consent, it is essential to first ensure that the right of the accused to be informed is fully protected. There exists an imbalance in information acquisition between judicial authorities and the accused. Therefore, the accused has the right to obtain comprehensive information related to procedural simplification, changes in their own interests, and other relevant issues, laying the foundation for them to make reasonable and accurate decisions. Secondly, it is necessary to ensure that the exercise of the consent right by the accused is entirely voluntary. The application of summary procedures affects various aspects of the accused exercising their rights. Hence, the expression of consent by the accused must be consistent with their subjective intentions to maximize the protection of their interests. From a values perspective, this affirms the procedural subject status of the accused and embodies the concept of human rights protection. It is worth noting that existing institutional designs still have obvious flaws. For example, the lack of specific regulations on how rights should be informed leads to a superficial implementation of the notification procedure by judicial authorities. Additionally, after procedural simplification, the criminal trial process tends to become “streamlined,” lacking sufficient protection for the litigation rights of the parties involved. Therefore, there is a continued need for research and improvement in the setting of procedural consent rights in summary procedures.

3.2. The right of procedural consent in expedited proceedings

While undergoing procedural streamlining reforms, China's trend towards the "lightening" of criminal offenses is gradually becoming more pronounced.[16] Therefore, the application of expedited proceedings becomes increasingly important. It serves as a significant manifestation of improving litigation efficiency and constructing a distinctive Chinese system for managing minor offenses. As the usual trial procedure following the confession and acceptance of punishment by the accused, the application of expedited proceedings is closely related to the confession and acceptance of punishment by the accused. However, the expression of "consent" by the accused is also a prerequisite for the application of expedited proceedings. Compared to summary procedures, the exercise of rights by the accused in expedited proceedings is more limited. For example, expedited proceedings can only be presided over by a single judge, and the trial period is shortened to ten days.[17] As previously mentioned, in this procedure, the accused's right of procedural consent mainly manifests in whether the accused, who has already confessed and accepted punishment, agrees to the application of expedited proceedings for trial. In the two conditions for the application of expedited proceedings, the accused has made different degrees of concession, making the accused's consent right regarding procedural application even more crucial. Agreeing to the application of expedited proceedings implies further disposition of one's own interests, so the accused must have a more complete understanding of their rights status to make a rational decision. Additionally, it should be ensured that the application of the accused's consent right has a significant degree of freedom, preventing the prosecution or the court from coercing the accused to agree to the application of expedited proceedings merely to expedite the litigation process and enhance efficiency. China's relevant laws explicitly stipulate the accused's consent as a necessary condition for the application of expedited proceedings, which reflects the cautious handling of the application of this procedure. However, in practice, there are still many issues with the application of the accused's procedural consent right in expedited proceedings. For instance, there is a formalization issue in examining the voluntariness and legality of the accused's exercise of rights, which hampers the full realization of the accused's substantive procedural rights. This is a significant reason why the accused's procedural consent right cannot be fully effective in expedited proceedings at present.

3.3. Procedural consent rights in the trial of juvenile criminal cases

In accordance with the principle of open trial in criminal proceedings, on the one hand, unless otherwise provided by law, the people's courts shall conduct trial and pronounce judgments publicly, allowing the public to attend the trial and the media to report on it. The purpose of this principle is to promote judicial fairness, uphold procedural justice, and constitutes a fundamental element of criminal adjudication.[18] On the other hand, based on the special developmental patterns of physiology and psychology in minors, after experiencing specific stages of growth, they possess inherent resilience and adaptability,[19] allowing for their reintegration into society through intervention by relevant entities. Therefore, based on the "best interests of the child" principle,[20] China has specially established criminal proceedings tailored for juvenile offenders, with an emphasis on education as the primary approach and punishment as a supplementary measure. Under this procedural framework, with the aim of better educating juveniles and facilitating their reintegration into society, China adopts the principle of absolutely non-public trials for cases involving juvenile defendants during trial proceedings. This ensures the protection of the legal rights and interests of juvenile defendants. However, within this framework, considering that relying solely on court proceedings for education and subsequent supervision by legal guardians may not always achieve ideal corrective and educational outcomes, and to balance the right to public information with the protection of the interests of minors, the Criminal Procedure Law stipulates the right to attend proceedings with the consent of the juvenile defendant and their legal guardian. Specifically, both parties can agree to have representatives from the defendant's school and juvenile protection organizations present at the trial. This represents a special procedural consent right established for juvenile defendants, further improving the system of appropriate adult presence. The purpose is to strengthen the education and protection of juvenile offenders, ensure the effective implementation of

corrective measures, better achieve the reintegration of juvenile offenders into society, and simultaneously safeguard public oversight to a certain extent. However, in the current practice, there are still areas for improvement regarding this right. Against the backdrop of a general increase in the number of cases involving juvenile offenders in China,[21] the purpose of this right's establishment is to help juvenile offenders return to society more quickly, thereby making educational correction more precise and effective. However, the law lacks a specific accountability system when such monitoring parties fail to effectively protect the confidentiality of information concerning juvenile offenders.[22] In such cases, if relevant parties fail to fulfill their confidentiality obligations, it not only damages the rights of juvenile offenders but also leads to concerns when exercising this right, hindering the full realization of its practical effects.

4. Optimization Path of Procedural Consent Right for Parties in Criminal Proceedings

Optimizing the exercise of procedural consent rights for parties in criminal proceedings in China is related to several aspects such as judicial system reform, implementation of the rule of law, and improvement of the existing trial system. It is also an urgent issue that needs to be addressed. Regarding how to improve the procedural consent rights of parties in criminal proceedings, the author has the following specific ideas.

4.1. Expanding the scope of the procedural consent rights is essential

Looking at the development of criminal procedural systems in China, a model of authority has been prevalent. Under this framework, the status of litigants such as defendants and victims has been greatly weakened, and their legitimate interests have not been sufficiently respected. Focusing on the current criminal procedural legal system, it's evident that not only has the concept of "procedural consent rights" not been formally introduced into China's legal framework, but the existing provisions that could embody procedural consent rights are also sparse and ineffective in covering all litigant subjects. There's undue emphasis on the defendant's side, such as the procedural consent rights in summary procedures and expedited procedures, while neglecting other litigant subjects including victims, private prosecutors, and plaintiffs in civil incidental actions.

Regarding victims, there should be procedural consent rights concerning appeal procedures and public trial procedures. Victims, as parties whose rights have been infringed and whose mental well-being has been harmed, often find their rights overlooked. Take the appeal procedure for example: after the first instance trial concludes, the prosecution can independently initiate an appeal in the second instance procedure. However, victims lack the consent right regarding the application of this procedure, leading to their opinions being ignored to a certain extent. This is unreasonable and could expose victims to further harm. Similarly, for private prosecutors who are usually victims themselves, the disregard for their rights is reflected in the neglect of their opinions and thoughts in the current system. In self-prosecution procedures, where the private prosecutor initiates the case, the choice of trial procedures significantly affects their interests. However, the current setup only requires the defendant's consent for the application of simplified procedures, disregarding the private prosecutor's opinions.

Though criminal proceedings require a balance between justice and efficiency, this balance should not come at the expense of indispensable interests of certain subjects. It's crucial to ensure that litigants enjoy basic rights and meet minimum standards of justice. For plaintiffs in civil incidental actions, their procedural consent rights should be aligned with the concept of victim rights in public prosecution procedures. Civil incidental actions concern compensation for victims' losses due to the defendant's criminal acts. Therefore, granting them corresponding procedural consent rights is necessary. In such a setup, plaintiffs in civil incidental actions are no longer entirely subject to the court's coercive decisions, but have a certain degree of right to choose the applicable procedure, which promotes the realization of their own interests.

The premise for exercising procedural consent rights is that judicial authorities propose the application of procedures based on legal requirements. However, in many scenarios, judicial authorities may neglect or arbitrarily use this right based on their own interests, often hindering the effectiveness of procedural consent rights. Therefore, it is necessary to clearly define the legal status of litigants' procedural consent rights in the Criminal Procedure Law and its related judicial interpretations, providing a necessary basis for the exercise of these rights. The scope of procedural consent rights should be expanded to include the litigants' consent to open trial procedures, the defendant's consent to undergo polygraph tests, and the litigants' consent to use remote litigation procedures, among others, ensuring a more comprehensive exercise of litigants' procedural consent rights.

4.2. Strengthening coordination and constraints of public security, procuratorial, and judicial organs in the application of procedural consent rights

In the entire criminal litigation process, involving multiple parties such as the procuratorate, court, investigative agencies, and parties, the smooth exercise of procedural consent rights depends on the effective operation of coordination and constraints among the parties in the litigation process.

From the perspective of investigative agencies, it is necessary to strictly ensure lawful evidence collection and adhere to procedural fairness. As the first stage for parties to exercise procedural consent rights, the investigative stage not only contributes to the subsequent operation of the process but also respects the rights of the parties themselves. However, the persistence of issues such as the use of illegal methods, such as coercion during interrogation of the accused, and the crude methods of evidence collection for victims, in practice has not completely disappeared. The existence of such phenomena often forces parties to yield to the decisions of investigative agencies. Specifically regarding the exercise of procedural consent rights, when investigative agencies use their authority to coerce parties into accepting a certain procedure, parties often dare not resist, resulting in procedural consent rights becoming merely formal. Therefore, there should be strict supervision of interrogation procedures, lawful recording, and emphasis on objective evidence collection, thereby reducing reliance on subjective expressions from the accused, victims, and other parties. This would allow them greater latitude to express their own thoughts and facilitate the examination of voluntariness of relevant parties in subsequent procedures.[23]

From the perspective of the procuratorate, it is necessary to actively exercise supervisory functions and respect the subject status of the parties. As mentioned earlier, in the current litigation framework in China, the status of the public prosecutor and the accused is still not completely equal. Therefore, when facing the accused, the public prosecutor often communicates with them from a "superior" perspective, using the authority of the public power to exert pressure on the accused. This power oppression often induces fear in the accused. Additionally, due to the imperfect regulations, the procuratorate may not fully fulfill its obligation to inform, leading the accused to default or implicitly consent to their decisions without fully understanding the relevant circumstances. Such a model can foster adverse outcomes like false confessions, while also reducing the accused's acceptance of subsequent trial results and hindering the smooth progress of the trial process. Therefore, the power of the procuratorate in the stage of examination and prosecution should be limited to negotiate with the accused on an equal footing. For example, in the context of the system of confessing and admitting guilt, if the accused did not confess during the investigation stage, the procuratorate should negotiate with the accused and their lawyers on evidence, conviction, and sentencing, adhering to the "spirit of the contract," providing the groundwork for the exercise of procedural consent rights, and ensuring that the accused have the right to information on case information and evidence to make decisions that align with their interests. From the perspective of the victim, after the procuratorate initiates public prosecution, the victim becomes an "invisible party." By setting procedural consent rights for victims, it emphasizes the victim's status as a party, urges the procuratorate to respect the victim's opinions during the criminal litigation process, prevents the procuratorate from suppressing the victim's reasonable expressions of intention with its public power, and ensures effective balance

between individual and state interests. At the same time, the procuratorate should also pay full attention to the behavior of the investigative agencies during the investigation stage, restrain the power of the investigative agencies within the framework of cooperating with the operation of the procedure, and safeguard the subject interests of the parties.

From the perspective of the court, the court should ensure a neutral attitude towards the case and not excessively favor the requests and opinions proposed by the prosecution. Additionally, even after double supervision and filtering during the investigation and prosecution stages before the trial stage, the court still cannot neglect the voluntary examination of the parties' exercise of procedural consent rights. It should maintain a strict and serious attitude towards screening matters related to the interests of the parties to prevent the aforementioned issues of "superficial examination" from arising. The three authorities, in their respective application of procedural consent rights, should not only cooperate with the smooth progress of other procedures but also rigorously constrain the relevant procedures to achieve the balance between justice and efficiency.

4.3. Improving the supporting mechanisms for procedural consent rights

As mentioned earlier, it is evident that there is still a gap between the theoretical aspects and the practical implementation of procedural consent rights, with issues such as unclear notification from judicial authorities and insufficient assistance from lawyers. Therefore, it is necessary to establish a comprehensive supporting mechanism to ensure the exercise of this right.

Firstly, it is essential to refine the standards and procedures for notifying rights. As mentioned before, there are problems with the notification process, such as unclear timing and vague content. To address these issues, adjustments to the notification process are necessary. This includes: (1) optimizing the connection between the notification process and the prosecution review process. For example, in the plea bargaining process, suspects should be immediately informed of their litigation rights and relevant legal provisions upon receiving the case, rather than being informed only after the decision to review the prosecution, which would render the notification process meaningless; (2) specifying the content of the notification to avoid formalism by the authorities, ensuring that the parties fully understand the procedural significance before making decisions. This should be tailored to the specific case, providing thorough explanations of any unfamiliar aspects to ensure the voluntary exercise of rights.

Secondly, fully leveraging the role of lawyers in assisting parties is crucial. Firstly, ensuring the defense rights of lawyers enables them to utilize their expertise, effectively intervene in criminal cases, and provide assistance to parties in making decisions to consent or not. Prosecutorial authorities should not harbor any animosity towards lawyers' involvement but should work together with them to safeguard the legitimate rights of the parties. Secondly, regarding the duty lawyer system, there is still a significant gap between the rights granted to duty lawyers and their actual exercise. Duty lawyers often face obstacles in exercising their rights to visit and access case files. As mentioned earlier in the context of summary procedures and expedited procedures, duty lawyers often only play a witnessing role and do not actively assist the accused in exercising their rights, which undermines the effectiveness of the duty lawyer system. It is necessary to address these issues from the following perspectives: Firstly, increasing the number of duty lawyers to alleviate the current shortage and ensure that every suspect has the opportunity for legal assistance,[24] rather than it being just a formality. Secondly, ensuring the effective exercise of duty lawyers' rights by implementing provisions related to their rights to review case files, meet with clients, and provide opinions, to safeguard the legitimate rights of the accused.

5. Conclusion

Introducing the establishment of the parties' procedural consent rights into the research and practice of criminal procedural law aligns with the current direction of judicial reform. Based on the legal background analysis rooted in the principles of balance between control and defense and the theory

of party autonomy, the existence of procedural consent rights for parties in criminal proceedings is justified. Additionally, an analysis of the current legal system of criminal procedural law in China reveals various deficiencies in the setting and application of this right in different scenarios. Therefore, the optimization of the path for the use of procedural consent rights can be improved from three aspects: scope of application, application process, and supporting mechanisms. However, beyond the scenarios discussed earlier in the text, the use of procedural consent rights by parties in other scenarios still requires further research, as the protection of procedural consent rights in these scenarios remains incomplete. It should be emphasized that the expansion of procedural consent rights and the improvement of their application system play a crucial role in China's rule of law and judicial reform. How to improve the existing system settings to ensure the effective exercise of procedural consent rights by parties in criminal proceedings requires further research by the academic community.

References

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- [3] See Lingyong Kong, "Definition and Guarantee of Defendants' Voluntariness in Pleading Guilty and Accepting Punishment: An Analysis Based on the Theory of Defendants' Consent", *Law and Business Studies*, Vol. 36 (2019) No. 3, pp. 63-75.
- [4] See Lintao Dong, "On the Consent of the Accused in Plea and Penalty Procedures", *Journal of Law*, Vol. 41 (2020) No. 9, p. 111-119.
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- [14] See Lintao Dong, "On the Consent of the Pursued Individual in Plea and Penalty Procedures", *Journal of Law*, Vol. 41 (2020) No. 9, p. 111-119.
- [15] Article 217 of the Criminal Procedure Law stipulates: "When trying cases under summary procedure, the judge shall inquire about the defendant's opinion on the alleged facts of the crime, inform the defendant of the legal provisions on the application of summary procedure, and confirm whether the defendant agrees to the application of summary procedure."
- [16] Beijing Haidian District People's Procuratorate: "White Paper on Misdemeanour Governance (2018-2023)", in WeChat public number "Haidian Procuratorate", 12 December 2023.

- [17] Article 225 of the Criminal Procedure Law stipulates: “When trying cases under expedited procedure, the people’s court shall conclude the trial within ten days after accepting the case; if the possible sentence involves imprisonment for more than one year, it may be extended to fifteen days.”
- [18] See Hongwei Zhang, “Reflection and Transformation of Minors’ Criminal Cases Tried in Camera”, *China Youth Social Science*, Vol. 40 (2021) No. 6, p. 110-119.
- [19] See Yinghui Song, Na Li, “The Implementation of the Principle of Maximising Children’s Interests in Criminal Proceedings”, *China Youth Social Science*, Vol. 41 (2022) No. 1, p. 117-129.
- [20] See Hongwei Zhang, “Reflection and Transformation of Minors’ Criminal Cases Tried in Camera”, *China Youth Social Science*, Vol. 40 (2021) No. 6, p. 110-119.
- [21] From 2020 to 2022, the number of juvenile crime suspects accepted for examination and arrest by procuratorial organs was 37,681, 55,379, and 49,070 respectively, while the number of juvenile crime suspects accepted for examination and prosecution was 54,954, 73,998, and 78,467 respectively. See “White Paper on Juvenile Prosecution Work (2022)” published by the Supreme People’s Procuratorate on June 1, 2023.
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