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Research Article

ENSURING THE RIGHT OF THE SUSPECT AND ACCUSED TO A DEFENCE IN THE USE OF THE INSTITUTIONS BY A PLEA AGREEMENT

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ABSTRACT

The article considers the positive and negative sides of the institution of plea agreement, as well as gaps in the legislation related to this institute. Proposals have also been developed that will lead to more efficient functioning of the incentive rules in criminal cases.

KEYWORDS

Ensuring the right to a defence, plea agreement, leading criminal cases, defender, institution of reconciliation.

INTRODUCTION

On May 14, 2018, the decision PD-3723 of the President of the Republic of Uzbekistan "On measures to fundamentally improve the system of criminal and criminal procedural legislation" was adopted. It was noted that the non-application and ineffectiveness of the incentive norms in the criminal process are an obstacle to the reliable protection of human rights and freedoms. . The plenum of the Supreme Court of the Republic of Uzbekistan described the right to protection in its Decision No. 17 of December 19, 2003 "on the application of laws relating to the protection of a suspect and a defendant". According to him, the right of protection of the suspect, the accused is the sum of the procedural possibilities (means and methods) that are given to him by law in order to deny the suspect, the charge laid, or soften the liability and punishment. Маълумки, мазкур процессуал имкониятларга айбга иқрорлик тўғрисида келишув институти ҳам киради.

A plea agreement is an agreement concluded with the prosecutor who supervises the conduct of the criminal case based on the petition of the suspect, who agreed to the charge, actively assisted in the discovery of the crime, and eliminated the harm caused.

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According to several authors, the main goal of introducing the plea agreement into the legislation is to reduce the time of criminal investigation and reduce the volume of court proceedings and emphasize that it is to facilitate compensation for property damage caused to victims.

B. Stefanos believes that an agreement on confession of guilt allows, first of all, to accelerate the Proceedings of a criminal case, reduce procedural costs, expand the scope of application of dispositive principles, anticipate the type and measure of punishment.

B. A. Saidov was more focused on the economic aspects of the compromise Institute. He believed that the application of the institution would result in "a dramatic reduction in the expenditure of government bodies at the stage of conducting the case before the court; a decrease in the pre-trial, even in the period of the trial, of prosess participants' conceit and extravagance....".

V. Yu. In Melnikov's study, too, B. A. We will see a close look at Saidov's opinion.

B. B. Murodov points out the following in this regard:

— "the opportunity arises to quickly and completely expose them, without spending a lot of effort and time of the relevant authorities responsible for investigating crimes of a serious and extreme type committed...".

Other authors have pointed out the shortcomings of this institution. For example B. X. Toleubekova and T. B. Hvedelidze believes that this institution is contrary to the presumption of innocence due to the fact that the inquiry, preliminary investigation and trial are not fully carried out in cases where a plea agreement is concluded.

In a plea agreement, procedural actions are not carried out to the extent that the person can be fully proven guilty.

In our opinion, the inclusion of this institution in the CCP has a positive value for the officials responsible for criminal proceedings, the participants in the proceedings and the state as a whole. However, it should be taken into account that the main goal of conducting criminal proceedings should be to fulfill the tasks of the criminal process. We know that it is one of the main tasks of the criminal process to solve crimes quickly and completely, to ensure that every person who commits a crime is given a fair punishment, and that no innocent person is held responsible and convicted. That is why the conclusion of the plea agreement itself should not free the investigator, investigator, prosecutor from the obligation to fully and comprehensively investigate the crime, and the court to carefully discuss each incident. Only then will it be possible to ensure that all guilty persons are punished, and innocent persons are not held accountable.

It is of particular importance to ensure the mandatory participation of a defense attorney when concluding a plea agreement, because the defense attorney is an additional guarantee that the rights of the person under his protection will not be violated in the plea agreement. In such cases, the defense attorney must determine the voluntariness of the plea agreement, and that no harassment or violence has been committed against the suspect or the accused. Because it is possible that various pressures and coercion were applied to the suspect and the accused by the state bodies responsible for criminal proceedings.

For example, in 2021, the representative of the Oliy Majlis of the Republic of Uzbekistan on human rights

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(ombudsman) received one of the largest number of appeals related to the restriction of individual rights.

Based on the above, we can say that in plea bargain cases, the independent participation of the suspect and the accused in the criminal case, without any legal knowledge, without a defense, may lead to illegal restriction of his rights. That is why, even if the suspect, the accused in such cases renounces the defense, the investigator, the investigator should not accept it.

Based on international experience in this field, in the United States, a defense attorney is required to be present when a plea agreement is made. Under UK criminal procedure, a plea agreement is made between the prosecutor and the defense. In this case, the accused confesses to the charges specified in some clauses of the indictment, and the prosecutor stops the criminal case on other clauses of the indictment. In France, the initiator of the plea agreement can be not only the accused and his defense, but also the prosecutor and the investigating judge. German Federation and in the Republic of Kazakhstan, the participation of the defender is mandatory when this agreement is being concluded.

In the current JPK of the Republic of Uzbekistan, it is not clearly defined from when the defense attorney must participate in the cases where the plea agreement is being drawn up. This creates some misunderstandings in the practice of judicial investigation and diversity in the practice of law enforcement.

One of the main tasks of the defense attorney in relation to the plea agreement is to determine whether the suspect or the accused correctly understands the essence of this institution and the legal consequences that will arise after the agreement is concluded. Therefore, it is appropriate to ensure the participation of the defense counsel from the time when the investigator, the investigator expresses the desire to enter into a plea agreement. If the person under protection has misunderstood the nature of this institution, the defender must explain it to him again and plan the next sequence of actions depending on the result. This procedure is currently the JPK of the Republic of Kazakhstan (Article 67) and in the Criminal Code of Ukraine (Article 52).

Based on the above, we propose to supplement the second part of Article 5862 of the CCP with the following words:

"From the time when the suspect, the accused expressed a desire to enter into a plea agreement, the participation of the defender is mandatory."

One of the problems with plea bargaining is that it is rarely used in practice. Despite the fact that the above institution has been included in the CCP for three years, it has only been used 85 times in 2021, whereas, during this period, 84,100 crimes were committed in our country. It can be seen that the level of use of this institute was only more than 0.10% of the crimes committed during the year. In 2022, a plea bargain was used for about 0.21 percent of all crimes tried in court. This number is very low compared to foreign countries where plea bargaining is provided for in the legislation. For example, up to 90% of criminal cases in the USA, In Germany, more than 70% are processed in this way.

It is important to note that when analyzing the data on the persons who used this institution in our country, it was found that most of them have a legal education or work in law enforcement agencies. For example, citizen A. He worked as a lawyer of the Bar Association for International Legal Affairs, intentionally committed crimes such as defamation, falsification of documents and use of forged documents. The court, after listening

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to the conclusion of the public prosecutor, the testimony of the defendant, found that citizen A.'s guilt was proven by his statements, explanatory letters, the conclusion of the main expert-criminology center, the decision to approve the plea agreement, and other evidence collected in the criminal case. found Court approves plea agreement and convicts defendant.

In our opinion, the following two factors are the reason for the underuse of this institution:

the first is that the investigator, investigator, prosecutor, court and lawyers do not have enough information about this institution. In a survey conducted on the knowledge of the content of the institution of plea bargaining, it was found that 71% of them do not have enough information about this institution. . In order to solve this problem, it is necessary to focus in detail on the content of this institution during the training of officials responsible for conducting criminal cases, lawyers, create video tutorials that fully reveal its essence, and provide practice staff with them;

the second is that the suspect, the accused, is unaware of the existence of this institution. In the current CCP, the question of which entity explains to the suspect and the accused the right to request a plea bargain is left open. Pursuant to Article 360 of the CCP, the investigator must acquaint the suspect with the rights set forth in Article 48 of the CCP. Among the rights defined in the above articles is the right to file a petition, but telling a suspect who does not have legal knowledge that he has the right to file a petition is not enough to ensure his rights. Because there are requests given at the stage of the preliminary investigation and inquiry, which directly affect the punishment assigned to the person found guilty in the future, and it is impossible not to explain them separately.

A motion to enter into a plea bargain is one of those motions that require explanation. The investigator should explain to the accused that he can make a request to enter into a plea agreement, its essence, that in the event that he enters into this agreement with the prosecutor, he may be sentenced in the future in the amount or up to half of the maximum sentence provided for in the relevant article of the Special part of the Criminal Code. Failure to do so will result in the institution of plea bargaining not working across the board and for everyone. Because, in accordance with Article 5861 of the CCP, the plea agreement is made for crimes of low social risk, minor crimes and serious crimes. It is not necessary for the defender to participate in such cases. If the investigator, the investigator, the defense attorney does not explain the nature of the plea agreement to the suspect and the accused, they will not even know that such an institution exists. In our opinion, at present, the institution of plea bargaining is applied only to persons who have a defense attorney or who have sufficient knowledge in the legal field. From the practical example given above, we can see that the institution of the plea agreement was applied to the lawyer.

In our opinion, the investigator should explain to the person not only the institution of the plea agreement, but also other motivational norms that may affect him in sentencing, including articles of the CC 55, 571, 661. For example, in Article 55 of the CC, mitigating circumstances are indicated, which are as follows:

a) to plead guilty, sincerely repent, or actively assist in solving a crime;

b) voluntary elimination of the damage caused;

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c) committing a crime due to difficult personal and family conditions or in other difficult situations;

g) committing a crime due to coercion or financial, service or other dependence;

d) committing a crime in a state of strong emotional excitement caused by violence, severe insult or other illegal actions of the victim;

e) commiting a crime beyond the reasonable limits of necessary defense, last necessity, causing harm in the case of apprehending a person who has committed a socially dangerous act, taking a reasonable risk related to professional or economic activity;

j) committing a crime by a minor;

z) crime committed by a pregnant woman;

i) committing a crime under the influence of the victim's illegal or immoral behavior.

Also, Article 571 of the current CC provides the following provision:

The term or amount of the punishment in the event that the person pleaded guilty, sincerely repented or actively helped to solve the crime, voluntarily eliminated the damage caused, and there are no aggravating circumstances of the punishment provided for in the first part of Article 56 of the Criminal Code shall not exceed two-thirds of the maximum penalty provided for in the relevant article of the Special Part of the Criminal Code .

The fact that a person who has committed one of the crimes specified in Article 661 of the current CC may reconcile with the victim and close the criminal case against him is not reflected in Articles 46, 48 of the CCP.

In 2022, 15,315 persons were released from criminal responsibility as a result of the use of the institution of reconciliation. Otherwise, in 2018-2020, the criminal cases closed by reconciliation made an average of 22.6% of the total closed criminal cases, while this indicator reached 58.5% in Russia in 2019.

Explaining the provisions of the above articles to the suspect and the accused will lead to the following positive results:

first, articles 55, 571, 572, 661 of the CC are widely used in practice. This is A. J. As Saidov rightly noted, it will lead to a reduction in the state budget spending;

secondly, it has a positive effect on the effective implementation of the right to defense;

thirdly, compensation of the mentioned damage is achieved in a short period of time. In 2021, it was determined that 1,293,932,797 soums of damage were caused to individuals in the criminal cases investigated by the IABs, so 956,773,034 soums were collected before the criminal case was completed. . From these statistics, it can be seen that the issue of damage recovery is one of the most severe problems that exist in practice. B. A. During his study, Saidov conducted an interview with more than a hundred victims and found that the compensation of material (spiritual) damage to most of them was the first and main factor in making them "agree";

fourth, leads to time savings in conducting criminal cases. In 2022, 39,555 criminal cases were completed by the preliminary investigation bodies of the IIO, of which 19,120 were investigated for up to 1 month, 14,466 for up to 2 months, and 5,931 for up to 3 months. This situation and the fact that there are still many criminal cases under investigation show that our suggestions are extremely relevant.;

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fifthly, it allows all citizens to use the benefits available in the law equally. For example, in the present case, the investigator may or may not introduce the suspect or the accused to the motivating norms. Therefore, such benefits are currently known mainly to those who hire a lawyer, because the lawyer can explain to his client that there are incentive norms in the CC. But we know that not always a person has the desire or opportunity to hire a lawyer. Such suspects and defendants cannot fully and effectively use all the opportunities provided to them under the law. In our opinion, this is unfair. After all, as the President of the Republic of Uzbekistan Shavkat Mirziyoyev noted, "people can tolerate everything, but they cannot tolerate injustice";

sixth, it serves to prevent possible corruption cases by the Inquirer and the investigator. For example, in the case of the current interrogator, the investigator can "help" the suspect, to alleviate the punishment, as if he were a person who would make the way for something seemingly impossible, from which some kind of material benefit can be fulfilled. And when the incentive norms are directly explained to the suspect and the accused, the perpetrator of the crime realizes that the easing of punishment is not the authority of the Inquirer or investigator, but a privilege granted to him by legislation.

B. A. In his study, Saidov put forward the idea of supplementing articles 46, 48 of the current SSR with the sentence "participation in the trial of procedural agreements, but it was not mentioned that the essence of the procedural agreement should be explained to the suspect and the accused. In our opinion, By putting B. A. Saidov's proposal into practice, it is impossible to achieve widespread use of incentive norms in criminal proceedings. Because stating that the suspect, the accused has the right to "participate when procedural agreements are considered in court" has the same general meaning as the right to "participate in sessions of the court of first instance and appellate instance". That is, the suspect, the accused cannot get answers to the questions of what is the agreement on the confession of guilt, what kind of crimes such an agreement is made for, whether this agreement can be applied to the crime he committed, what reliefs are available for him.

Now let's pay attention to the accumulated international experience in explaining the motivational norms to the suspect and the accused. In the Republic of Kazakhstan (CCP, Articles 64, 65) it is established that the suspect, the accused should be explained the rights to appeal to the prosecutor about reconciliation with the victim, as well as the conclusion of a procedural agreement. In the Republic of Azerbaijan (CCP, articles 90, 91) it is stated that the suspect and the accused should know that they can use the right to reconcile with the victim, as well as be fully aware of their rights specified in the CCP. If we focus on the CCP of the Republic of Estonia (Article 34), we can see that it is stipulated that the official of the state body responsible for conducting the criminal case must explain the suspect's rights, such as making an agreement.

Based on the analysis of the current CCP, judicial investigation practice and the experience of foreign countries, the first part of Articles 46 and 48 of the CCP after the words "that his testimony can be used against him as evidence in a criminal case" is replaced by "Articles 55, 571, 572, 661 of the Criminal Code - We believe that it is necessary to fill in the words "require that the content and essence of the articles be explained" and impose the obligation on the inquirer and investigator to explain the content and essence of these institutions to the suspect and the accused.

CONCLUSION

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In conclusion, it can be said that the timely and complete explanation of the rights established by the law to the person serves to more effectively implement the right to protection, has a positive effect on the application of principles such as truth-finding and legality.

REFERENCES

1. Ўзбекистон Республикаси Президентининг қарори. Жиноят ва жиноят-процессуал қонунчилиги тизимини тубдан такомиллаштириш чора-тадбирлари тўғрисида (2018 йил 14 май, ПҚ-3723-сон) // URL: https://lex.uz/docs/3735818 (мурожаат вақти: 06.06.2022).
2. Ўзбекистон Республикаси Олий суди Пленумининг қарори. Гумон қилинувчи ва айбланувчини ҳимоя ҳуқуқи билан таъминлашга оид қонунларни қўллаш бўйича суд амалиёти тўғрисида (2003 йил 19 декабрь, 17-сон) // URL: https://lex.uz/docs/1453755 (мурожаат вақти: 01.08.2022).
3. Юрченко Р. Процессуальные соглашения и законодательное поощрение их заключения // URL: https://online.zakon.kz/Document/?doc_id=31669999&pos=6;-118#pos=6;-118 (мурожаат вақти: 26.04.2022).
4. Прокопова А.А. Процессуальное соглашение о признании вины в уголовном судопроизводстве Республики Казахстан: каких целей оно достигает? //URL:https://cyberleninka.ru/article/n/protsessualnoe-soglashenie-o-priznanii-viny-v-vgolovnom sudoproizvodstve-respubliki-kazahstan-kakih-tseley-ono-dostigaet/viewer (мурожаат вақти: 26.01.2022).
5. Ахпанов А.Н. Процессуальные соглашения в уголовном судопроизводстве: законотворческий опыт Республики Казахстан / А. Н. Ахпанов, В. А. Азаров, А. О. Балгынтаев // Криминологический журнал Байкальского государственного университета экономики и права. — 2015. — № 2 — С. 344 // URL: https://cyberleninka.ru/article /n/protsessualnye-soglasheniya-v-ugolovnom-sudoproizvodstve-zakonotvorcheskiy-opyt-respubliki-kazahstan (мурожаат вақти: 26.01.2022).
6. Саидов Б.А. Ишни судга қадар юритишда шахснинг конституциявий ҳуқуқ ва эркинликларини таъминлашни такомиллаштириш: Юрид. фан. д ри (DSc) ... дис. — Т., 2020. — Б. 198.
7. Мельников В.Ю. Обеспечение и защита прав человека при применении мер процессуального принуждения в досудебном производстве Российской Федерации: Автореф. дис. ... канд. юрид. наук. — М., 2014 // URL: https://lawtheses.com/obespechenie-i-zaschita-prav-cheloveka-pri-primenenii-mer-protsessualnogo-prinuzhdeniya-v-dosudebnom-proizvodstve-rossiys (мурожаат вақти: 11.08.2022).
8. Муродов Б.Б. Жиноят ишини тугатиш институтини такомиллаштириш: Юрид. фан. д ри (DSc) ... дис. — Т., 2018. — Б. 217.
9. Прокопова А.А. Процессуальное соглашение о признании вины в уголовном судопроизводстве Республики Казахстан: каких целей оно достигает? // URL: https://cyberleninka.ru/article/n/protsessualnoe-soglashenie-o-priznanii-viny-v-ugolovnom-sudoproizvodstve-respubliki-kazahstan-kakih-tseley-ono-dostigaet/viewer (мурожаат вақти: 26.01.2022); Толеубекова Б.Х. Алогизмы нового уголовно-процессуального

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(ISSN – 2771-2214)
VOLUME 04 ISSUE 08 PAGES: 32-39
OCLC – 1121105677
Crossref doi Google Scholar WorldCat MENDELEY
Publisher: Oscar Publishing Services

10. Ўзбекистон Республикасининг Жиноят кодекси // URL: https://lex.uz/acts/111453 (мурожаат вақти: 10.03.2023).
11. Судлар томонидан 2022 йилда кўриб чиқилган жиноят ишлари юзасидан ахборот // URL: https://sud.uz/1801-4/ (мурожаат вақти: 09.02.2023).
12. Ушбу статистик рақамлар қуйидаги манбадан олинди: Пайзиев Д.Ю. Ярашилганлиги муносабати билан жавобгарликдан озод қилиш институтини такомиллаштириш: Юрид. фан. бўйича фалсафа д ри (PhD) ... дис. — Т., 2021. — Б. 5.
13. Саидов А.Ж. Жазо тайинлашда рағбатлантирувчи нормаларни қўллашнинг ўзига хос жиҳатлари // URL: https://zenodo.org/record/6480997#.Yp2y3qhByUk (мурожаат вақти: 06.06.2022).