

PLEA BARGAINING IN THE RUSSIAN CRIMINAL PROCEEDINGS

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Abstract

The article is devoted to the definition of the concept of a transaction of admission of accusation and of cooperation in Russian criminal proceedings. The practicality of fixing in the Russian criminal procedure legislation of the procedure for the implementation and implementation of a transaction on the admission of charges, which is widely known and often used in criminal proceedings in a number of countries.

Keywords: criminal process, criminal proceedings, admission of charges, deal on recognition of charges, exemption from criminal liability and punishment, special procedure legal proceedings.

Introduction

One of the most relevant novels of the Russian criminal procedural legislation should be recognized as transactions on the recognition of charges (guilt) and on cooperation. These criminal procedural innovations were often discussed in the legal literature the last time. Until 2009 in the Russian criminal procedure law agreements on recognition of the charge and cooperation in an explicit form did not exist. However, at present time there are defended dissertations on this topic [1, 2]. In addition, the Association of American lawyers proposed a legislative initiative to use the transaction procedure for guilty pleas for the European Union. A deal on the recognition of charges or on cooperation is understood as a process in which the accused (suspect)² (defence side) and accuser (side of the prosecution) in a criminal case work out a mutually acceptable solution in the form of a plea agreement or on cooperation in a case, which is then offered for judicial discretion.

At the same time, the court does not participate in the process of achieving such an agreement between the parties to the prosecution and protection, since, in accordance with the Code of

Criminal Procedure of the Russian Federation, the court (judge) performs the function of resolving the case and is neither on the side of the prosecution nor on side of the defense [3].

Deals on the recognition of charges and on cooperation in various interpretations (options) provide for the criminal procedural legislation of the United States, the countries of the European Union, and the states of the post-Soviet space. (Currently, this institution of the criminal procedure law is known to the laws of the United States, England and Wales, India, Italy, France, Sweden, Poland, Israel, Estonia, Georgia and other countries.)

In the Code of Criminal Procedure of the Russian Federation, a deal on the recognition of charges and on cooperation is fixed and successfully applied. However, the elements of a recognition transaction there were accusations about cooperation before and also actively pursued. In the Russian criminal procedure law elements of such there were deals before - surrender, compensation for the damage caused by the crime, sincere repentance, other circumstances contributing to the mitigation of punishment. And even before the entry into force of the recognition deal, accusations are a significant part of criminal cases terminated for non-rehabilitative reasons. This is a special form of recognition of being blamed for their guilt, when in exchange for such confession by the investigator with the consent of the prosecutor finds an opportunity to stop the criminal prosecution against this person.

Transactions on the recognition of charges and on cooperation are implemented in the Russian Federation and through the institution of exemption from criminal liability in connection with active repentance, provided for by Art. 75 of the Criminal Code of the Russian Federation and Art. 28 Code of Criminal Procedure.

In periodic criminal procedure In the literature, exemption from criminal liability in connection with active repentance is often referred to as a "deal with justice" [4]. This due to the fact that in the criminal procedure In practice, the implementation of active repentance takes the form in which the investigation suggests a person accused of a crime, terminate the criminal case and not send it to court, if he writes a "frank confession", in which he admits his guilt and in detail describe the perfect act [5].

A plea deal can take place only if the accused agrees to cooperate with the party's accusations through admission of guilt or refusal to dispute the charge brought against him and agrees to cooperate. The implementation of this agreement is possible in the event that the accused waives the right granted to him by the Constitution (Basic Law of the country) not to testify against oneself (art. 51) and the right to a trial (art. 47). At the same time, renouncing their main, enshrined in the Basic Law, rights, the accused pursues the goal of stopping criminal prosecution against him or rulings against him for a more lenient sentence. The defence party represented by a lawyer or himself accused (possibly jointly) with a representative of the prosecution discusses the option of possible agreement and seeks to draw up a mutually acceptable deal that takes into account the interests of all parties (the prosecution and the defence).

It must be assumed that the form of the agreement on confession of the prosecution should be only in writing (in most cases, the prosecution it requires and also offers a standard modified form of a written transaction on the recognition of the charge, which meets the tasks particular criminal case) oral form confession of the charges must be secured the relevant procedural act.

First time offender small or medium severity, voluntarily confessed (confession of guilt), agreeing to contribute to the disclosure of the crime and voluntarily compensating for the damage caused or otherwise making amends harm caused by the crime committed by him (offers a deal on cooperation with the prosecution) shall be exempted from criminal liability. Agreeing with this transaction (grounds for exemption from criminal responsibility), the prosecution decides to release from criminal prosecution, having convinced itself of the expediency of such release in view of the fact that the person who committed the crime has ceased to be a public danger.

The specifics of exemption from criminal persecution on the grounds of Art. 75 of the Criminal Code of the Russian Federation is that, on the one hand, in relation to a person who has committed a crime is not convicted, he is not assigned a criminal punishment and has no criminal record, with on the other hand, the prosecution authority does not deny the corpus delicti and does not recognize the person innocent. This exemption from criminal responsibility does not pursue the goal of forgiving a guilty person, his rehabilitation and release from all undesirable legal consequences of

committing a crime. Such a person may be brought to other types of legal liability (civil or administrative).

The set of conditions listed in Art. 75 of the Criminal Code of the Russian Federation, form a single legal basis for exemption from criminal responsibility of the person who committed the crime. However, it (this legal basis) does not oblige the body persecution unquestioningly release the person from criminal liability, which directly follows from the prescription of Article 75 of the Criminal Code "... a person may be released" (the prosecution may agree with the proposed side of the defense, deal, may or may not agree).

A person who has committed a crime of another category (grave or especially grave) may also be released from criminal responsibility in accordance with Art. 75 of the Criminal Code, part 2, in cases specifically provided for by the relevant articles of the Special Part of the Criminal Code (meaning so called incentive norms of criminal legislation formulated in the form Notes to the relevant articles of the Criminal Code). These are the following articles of the Special Part of the Criminal Code of the Russian Federation: 122, 126, 127.1, 204-206, 208, 210, 222, 223, 228, 275, 282.1, 282.2, 291, 307, 337, 338.

The provisions of Art. 75 of the Criminal Code of the Russian Federation are implemented through Art. 28 of the Code of Criminal Procedure of the Russian Federation, the disposition of which almost completely repeats the prescriptions of the criminal law. From the standpoint of criminal procedure legislation, this ground for criminal prosecution refers to a number of non-rehabilitating circumstances and not entails compensation for damage caused to a person, perpetrator of a crime, in connection with bringing him to criminal liability. Criminal prosecution, which can be terminated under Art. 28 Code of Criminal Procedure, first subject to excitation for an appropriate assessment with the side of the prosecution.

In the criminal procedural sense of the transaction may be in the form of a confession of guilt (guilt) (Chapter 40 of the Code of Criminal Procedure of the Russian Federation) and cooperation agreements (Chapter 401 of the Code of Criminal Procedure of the Russian Federation). The consent of the accused with the presented his accusation is a confession to them of their guilt [6].

At the same time, the accused has the right to file a petition for a special procedure for the trial and may declare in the process of familiarization with the materials criminal case, as well as at the preliminary hearing when it is required. It must be taken into account that the petition is filed by the accused voluntarily and after consultations with the defense counsel, and, in addition, he, the defendant must be aware of the nature and consequences of his application. The petition of the accused may be accepted by the court only if it is voluntary and the accused is aware that in case of a sentence without a trial proceedings, he is not entitled to appeal on appeal and classification grounds for discrepancy between the conclusions of the court and the actual circumstances of the criminal case.

The law establishes a rule on the obligatory presence of a defense counsel at the time of the application. Should have in mind that the accused should be able to hold preliminary consultations with a protector. It follows that the invitation or appointment of defense counsel must precede the application of the accused on sentencing without trial. In addition, ensuring the right of the accused to receive qualified legal assistance, including and free, and obligatory explanation to him the essence of the special order of the trial and its consequences before the start of the trial the meeting serves as a sufficient guarantee of protecting a person from the possibility of unfairly inducing him to an unjustified confession [7].

It seems that the accused has the right to file a motion for a sentence without conduct of the trial not at any moment of the criminal proceedings, but only after the end of the investigation, starting from the moment of acquaintance with the materials case and before the appointment of a court hearing to consider a criminal case on the merits.

The order of the court session and sentencing passes with exceptions from the general order of the trial and is conducted with the obligatory participation of the defendant and his counsel. Consideration of the defendant's petition for sentencing without trial begins with a statement presented by the public prosecutor, the defendant of the prosecution, and in cases of private accusations - with a presentation of the accusation in private.

Examination and evaluation of evidence collected in a criminal case, judge in general does not carry out in order. At the same time, the circumstances characterizing the personality of the defendant, and the circumstances mitigating or aggravating the punishment are examined. Thus, fixing in the Code of Criminal Procedure of the Russian Federation a deal on the recognition of charges and on cooperation significantly rationalizes the procedure for considering criminal cases in the court of first instance, and also significantly relieves the courts of the second and supervisory authorities.

The agreement of the accused with the presented accusation and cooperation agreement can be considered as positive innovations in criminal proceedings, however, there should be clarity in their legislative regulation. Chapters 40 and 401 of Title X themselves Code of Criminal Procedure of the Russian Federation and the articles included in them contain a number of contradictions already in the concepts themselves, and hence in their content. Thus, Section X is called "Special Proceedings", and Chapters 40 and 401 are called "Special Proceedings". decision-making process." As you can see, there are two concepts between which there is a significant difference. The word "trial" means detailed consideration, analysis. The term "decision" is understood as something that is accepted as a result of discussion, decision. As a result, a collision occurs, it is not clear that in this case, it is necessary for the court to do: to conduct proceedings or without trial of the case immediately make a decision in a special order of the process. It must be assumed that the criminal process, let even carried out in a special order (Here, the word "order" must be understood as the correct, well-organized, organized state of something, some phenomenon, and a special order of judicial proceedings is associated precisely with certain rules for holding a court session, when these rules themselves establish qualitatively new character of conducting criminal process.), requires certain regulation, which should be associated with all the norms of the criminal procedure legislation. It seems to us that section X of the Code of Criminal Procedure of the Russian Federation is an appropriate name and legislation in the following wording: "Trial in plea bargains and agreements on cooperation". And the titles of Art. Art. 40 and 401 of the Code of Criminal Procedure leave it as it is.

As for the order of the trial, the content of chapters 40 and 401 of the Criminal Procedure Code of the Russian Federation does not raise questions, since Art. Art. 316 and 317.7 of the Code of Criminal Procedure The Russian Federation regulates not only the resolution sentence, but also the procedure for holding a court session (previously, these articles determined only the sentencing procedure).

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