WEB OF SCIENTIST: INTERNATIONAL SCIENTIFIC RESEARCH JOURNAL
ISSN: 2776-0979, Volume 3, Issue 12, Dec., 2022

PROCEDURAL ASPECTS OF THE APPLICATION OF THE INSTITUTE OF A PLEA AGREEMENT AT THE PRE-TRIAL STAGE

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ABSTRACT

In the article, the author analyzes the procedural aspects of the application of a plea agreement at the pre-trial stage, specific roles and tasks, the rights and obligations of the suspect, the accused and the defendant, the prosecutor, the defense counsel as parties to the conclusion of this agreement, as well as the main provisions of the procedural law regarding the plea agreement, the existing views and ideas in science and practice are studied. The nature of the agreement on the recognition of guilt during the inquiry and preliminary investigation is highlighted. The author also presents scientific conclusions regarding the procedural aspects of the institution of a plea agreement.

Keywords: guilt, guilty plea, plea agreement, procedural agreement, prosecutor, accused, defendant.

ПРОЦЕССУАЛЬНЫЕ АСПЕКТЫ ПРИМЕНЕНИЯ ИНСТИТУТА СОГЛАШЕНИЯ О ПРИЗНАНИИ ВИНЫ НА ДОСУДЕБНОЙ СТАДИИ

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АННОТАЦИЯ

Встатье автором проанализированы процессуальные аспекты применения мирового соглашения на досудебной стадии, конкретные роли и задачи, права и обязанности подозреваемого, обвиняемого и подсудимого, прокурора, защитника в качестве сторон при заключении данного соглашения, а также основные положения процессуального законодательства касательно соглашения о признании вины, изучены существующие взгляды и представления в науке и практике. Освещен характер соглашения о признании вины в ходе дознания и предварительного следствия. Также автором

представлены научные выводы относительно процессуальных аспектов института соглашения о признании вины.

Ключевые слова: вина, признание вины, соглашение о признании вины, процессуальное соглашение, прокурор, обвиняемый, подсудимый.

Introduction

Today, as a result of the rapid development of Science, Science and technology, the types and scope of social relations between people are expanding. Criminal legal relations are no exception. Consequently, there is also a need to reform the procedure for exposing, investigating and considering crimes in court.

One of the characteristic features of Criminal Procedure is the rapid disclosure of crimes, the application of effective procedural forms for the purposes of rational use of procedural means, and the Institute of procedural conciliation is considered precisely one of the effective procedural forms. In sync with existing social relations, the development of strategies for the development of national legal systems, the search for new methods of resolving social conflicts, including the implementation of Justice, led to the formation of a stable trend aimed at improving the conduct of criminal cases [1].

Purpose of the Study

The main purpose of the study of this criminal-procedural Institute is to scientifically-theoretically identify its main signs, to conduct a scientific analysis of existing views and perceptions in science and practice in this regard, and to comprehensively scientific-theoretical coverage of the procedural aspects of the confession agreement on the result.

Literature Review

There are not many scientific studies and presentations in the national procedural science about the institution of plea agreement, which is a novel for the criminal procedure of Uzbekistan. In particular we can mention such scientists as U.A. Tukhtasheva, G.Z. Tulaganova, B. Salomov, D. Bazarova. However, these scientists touched on the general concept and essence of this institution, and did not specifically reveal its procedural goals and tasks.

In foreign practice, this agreement has been used for quite a long time, a certain legal practice and scientific doctrine have been formed. In this regard, John H. Langbein, Chereminsky E., Levenson L., Aceves Gabriela, M.Vogel, Stephen F. and Garoupa N.,

Stuntz W.J., Tague P., Mike Work, from CIS scientists A.Peshkov, Kovaldina Yu. V., Makhov V. N., Bochkarev A. E., Dubavik N. can be examples of author the scientific work.

Material and Methods

In the preparation of this scientific article, logical and scientific methods of scientific knowledge were used, in particular, such methods as statistical analysis, logical analysis, synthesis, comparative-legal were used.

Scientific Discussion

In our country, in recent years, much attention has been paid to the differentiation of proceedings in a modern form, abandoning traditional forms of criminal proceedings. In particular, by the decree of the head of state of August 10, 2020 "On measures to further strengthen guarantees for the protection of the rights and freedoms of a person in judicial and investigative activities", it was established to introduce an institution of agreement on confession.

In order to ensure the implementation of the decree on the introduction of this institute, on February 18, 2021, the law "On amendments and additions to the criminal and criminal procedure codes of the Republic of Uzbekistan" was adopted. On this basis, the Institute of confession agreement was realized.

We believe that the introduction of such an important legal institution into the criminal process of the Republic of Uzbekistan should be recognized as timely, justified and relevant. At the moment, the importance and novelty of the procedural agreement of confession for criminal proceedings necessitates the improvement of legislation, positive experience and modern theoretical developments, taking into account the problems that undoubtedly arise in the process of law enforcement practice.

It should be noted that the institution of an agreement on the confession of guilt included in our national legislation does not oblige the parties to conclude an agreement, in cases where an agreement is not concluded, without limiting the rights of the convicted person, maintaining a criminal case in a simplified manner is another opportunity to ensure the inevitability of responsibility for

According to B. Stefanos, the recognition of the procedural agreement is primarily due to the acceleration of criminal proceedings, the reduction of procedural costs, the expansion of dispositive grounds, the forecasting of the type and measure of punishment [2].

It should be noted that even earlier, in the investigation of criminal cases, a procedural agreement was put into practice. The material norms of the CC were recognized as a state of mitigating punishment, remorse for the act, the disclosure of a crime, active assistance in exposing criminal partners.

Consequently, Article 66 of the Criminal Code of the Republic of Uzbekistan- for the first time, a person who commits a crime that is not socially dangerous or not very serious in the article may be released from liability if he made an order to bear his guilt, regretted it sincerely, actively contributed to the disclosure of the crime and eliminated the damage caused, and under Article 71, a person who committed a crime that is not, provided that he can be released from punishment by the court.

However, the fact that this issue is not regulated in a procedural way, that is, there are no strict guarantees of lightness in relation to persons who have fulfilled the above conditions, the informality of the agreement, the application of the consequences of the agreement, sometimes based on subjective factors, prevented the systematic use of the capabilities of this institution.

Now this institution, which is included in the legislation, serves in practice to ensure the full disclosure of crimes, the inevitability of punishment for a crime. In addition, it allows the persons who committed the crime not to avoid punishment, but to facilitate the disclosure of crimes, realizing the nature of their actions, and, as a result, to alleviate their punishment.

For example, during 2021, 47 657 thousand criminal cases were considered in the courts against a total of 61 263 thousand persons, of which 88 criminal cases against 120 persons were confirmed by an agreement on confession.

A total of more than 6 billion sums of damage caused to the parties were covered as a result of the crimes committed in this category of cases [3].

Chapter 62^1 was added to the current Criminal Procedure Code of the Republic of Uzbekistan. It was supplemented by Article 586^1 on the agreement on the confession of guilt and the conditions for its conclusion.

The agreement on the confession is concluded between the suspect, the accused and the prosecutor until the case of serious crimes with a high social risk, not too serious and was sent to court. In this case, it is necessary that the suspect, realizing the nature of his actions or the consequence of his petition, voluntarily and after consulting the defender, agree with the declared suspect or accusation, do not deny the evidence presented, eliminate them, recognizing the nature and amount of damage caused by the crime.

It is necessary that the petition is issued voluntarily and after consultations with the defender participating in the case.

This means that a confession agreement can only be concluded on the initiative of the suspect or accused, and it is not allowed to force or motivate him in any way to conclude this agreement.

In the petition, the suspect, the accused must recognize the suspicion or accusation made in the inquiry and preliminary investigation, not deny the evidence, facilitate the investigation of the crime, indicate what actions are required to carry out for the discovery of the property obtained as a result of the crime, obligations to provide other information related to the crime, as well as The petition for the conclusion of an agreement may also indicate certain actions that are performed by the suspect, the accused, and which will help to expose the crime.

The agreement prevents sanctions, serves to soften the relations of the two parties, to shorten long-term litigation [4]. It is envisaged to achieve a lighter sentence in court on the basis of the confession of the public prosecutor about the crime committed by the accused. It helps to assign to the accused the size, amount and order of passage of punishment even lighter than specified in the law.

Without violating the presumption of innocence, the" agreement on the recognition of guilt "or" agreements " leave important and not so many cases that the prosecution and the defence side of the judicial process cannot resolve the dispute with the help of an agreement on the recognition of guilt. "The agreement on the recognition of guilt" is a certain agreement, with the help of which the accused and the defence Party determine on which clauses the accused will recognize his guilt as guilty, and on which proposals the accused will submit to the court for the appointment of punishment [5].

It is not advisable for the prosecutor to meet with the accused when concluding an agreement. As the court approaches, the accused leads to the fact that in most cases he will admit his guilt. Because the defender only gives him an idea that this way is right. If the accused denies the agreement or does not confess, the defender must definitely explain its consequences. If the accused categorically refuses, the case is subject to official regulation.

The suspect can file a petition to conclude an agreement on the confession of the accused **at any stage of the inquiry and preliminary investigation**. The petition for the conclusion of the agreement must be signed by the suspect, the accused, his defender and, if participating in the case, the legal representative.

It is required that the suspect, the accused does not deny the charge, the evidence available in the case, as well as the nature and amount of damage caused, and that he has eliminated the suspicion made by the inquiry or the investigating authority.

The petition for the conclusion of an agreement on the confession is signed by the suspect, the accused, his defender and the legal representative (if participating

in the case) and issued to the prosecutor through the interrogator, investigator who is conducting the case (article 586[2] of the CPC).

The Inquiry Officer sends the materials of the criminal case to the prosecutor to resolve the issue of concluding an agreement within **twenty-four hours** from the moment the investigator receives a petition to conclude an agreement on confession.

The prosecutor considers the petition for the conclusion of an agreement within seventy-two hours from the moment of its receipt with the participation of an inquiry officer or investigator and a suspect, accused, his defender and checks the compliance with the requirements specified in Article 586[1] of this code. If necessary, the prosecutor will also attract the victim or civil plaintiff to consider the issue of concluding an agreement.

At the same time, the prosecutor explains to the suspect the consequences of the agreement to the accused, in particular, that the agreement can be cancelled and the court sentence can be revised if, after the verdict is made according to the agreement, it is determined that the terms of the agreement are not followed (article 586[3] of the CPC).

It should be noted that the agreement on confession of guilt is a proposal made by the suspect to the investigating authority and is *drawn up on the basis of equality of the parties*. The agreement is signed by the prosecutor and the suspect or accused, their defender. It should be noted that the petition for the conclusion of the agreement itself is not a basis for sending a criminal case to the court, in which the inquiry officer, the investigator must indicate that the crime was committed by the suspect, the accused, make sure that this person did not commit another crime, collect evidence confirming his guilt.

One of the peculiarities of the institution of agreement is that if not one, but *several persons are suspected or accused of committing a crime, an agreement is concluded with each of them separately, in which an agreement is not required to be concluded on the same terms.*

This, in turn, makes it possible to ensure the principle of fairness in the choice of the type and amount of punishment in relation to the person with whom the agreement is concluded. Also, if the agreement is concluded with some suspect, the accused, and is not concluded with some, then the suspect, with whom the agreement was not concluded, the materials relating to the accused are separated from the criminal case, taken into separate proceedings and investigated under general rules (articles JPG 586[5] and 586[6]).

We are confident that in the coming days, various problems will begin to arise in the process of practical application of the Institute of confession agreement. We hope that

scientific circles, practicing lawyers, lawyers, prosecutors, investigators and other law enforcement agencies will make proposals for amendments and additions to Criminal Procedure Law. As for the most controversial issue with this institution, it can be noted that the essence of the institution of a confession agreement in itself is theoretically completely contrary to the principle of the presumption of innocence.

This principle implies that the innocence of the suspect, accused, defendant is guaranteed until the opposite is proven. Article 23 of the Criminal Procedure Code states:" a suspect, accused or defendant is considered innocent until his guilt in committing a crime is proven in the manner provided for by law and determined by a court sentence that has entered into legal force. «The main requirement of this principle is that the person involved in the criminal case does not need to prove his innocence. This task falls under the charge. G.A. Pechnikov writes that in a special order of court proceedings "...unlike the presumption of innocence, the accused is immediately transferred to the category of criminals... As a result, we realize the idea that" the goal justifies any means", in which" confession of guilt "is the goal, and the transaction is the" tool"[6].

In other words, we can say that the suspect, the accused, is abandoning the principle of the presumption of innocence. In this regard, one serious question arises: Can the idea be refuted that the principle of each of the criminal procedure is the basic, fundamental, guiding norm that determines the essence of the criminal process, protects and ensures fair justice in a criminal case, the person, his rights, freedoms, legitimate interests? In addition, in the petition for the conclusion of a confession agreement, the suspect undertakes to assist in the investigation of the accused crime, as a service to prove his guilt. In addition, another question remains unanswered, Why would a person who offered to assist in the investigation in exchange for reducing the punishment (in essence, he may not be involved in the crime) be deprived of the right to refuse an accusation against himself, object to him, and be obliged to agree that the case should be considered in a simplified manner?

It seems to us that the above condition cannot be accepted and must be revised and corrected. On this basis, the main attention of the legislative and law enforcement body should be paid to the suspect, the accused in a timely manner to explain the legal consequences of the application of a particular procedural process, to determine in detail and completely the discretion of the petition, to provide guarantees for obtaining the necessary legal advice from the defender.

Because, it is the right of the parties to conclude an agreement on confession and does not impose any obligations on them. In particular, the prosecutor, having considered

a petition for the conclusion of an agreement, can conclude an agreement or refuse to conclude an agreement.

An important place in reaching an agreement is occupied by the interests of the prosecutor and the victim. For this reason, the parties must actively interact with their defenders. Under the conditions of legal realism, the role of persons exercising legal protection becomes higher and more decisive if the interested person has an advantage over his authority and duty.

The actions of a lawyer should be directed to the solution of three interrelated issues at once, when the accused or defendant protects.

First of all, he is doing the work in his own personal interests,

secondly, to convince (or rather to accustom to defeat) of one's own achievement,

thirdly, it is necessary to conduct work in accordance with procedural norms.

As a result, a party with a good, or rather knowledgeable defender will gain an advantage. Usually, the defender should advise on the first meeting with the accused to take his guilt on the neck when there is enough evidence. This in turn leads to saving time and investment. If the accused agrees to this, the role of the defender in the preparation of negotiations, a confession agreement cannot be overestimated.

It should be borne in mind that the defender has the right to be with him at all stages of negotiations. And when concluding an agreement, there must be grounds specified in the law.

Article 586^5 of the Criminal Procedure Code of the Republic of Uzbekistan is presented in detail on the content of the agreement on confession.

The agreement on confession must include:

the date and place of conclusion of the agreement, information about the prosecutor concluding the agreement,

surname, name and patronymic of the suspect, accused of concluding an agreement, other information,

information about the defender,

the place and time of the crime,

description of other cases that need to be proven,

Article, part, clause of the Criminal Code, which provides for liability for this crime,

circumstances that alleviate the punishment that may apply to the suspect, the accused,

the procedure for the appointment of punishment for crimes for which an agreement on confession is concluded,

actions that the suspect undertakes to carry out after the signing of the defendant agreement on the disclosure of the committed crime, the provision of evidence in a criminal case, the identification of property acquired in a criminal way,
the amount of damage caused and its compensation,
The consequences of non-fulfilment of the conditions provided for in the fifth part of Article 586^3 of the Criminal Procedure Code of the Republic of Uzbekistan.
If the accused is accused of several crimes, a brief fabula on each crime must be brought in the agreement.
At the moment, when drawing up an agreement on the confession of an inquiry officer, investigator, prosecutor, they are also obliged to give an assessment of the evidence. In this case, it is necessary to take into account the features that embody their necessary signs: relevance; acceptability; reliability; adequacy. Each argument must be evaluated in terms of its involvement in the case under investigation, its acceptability in terms of the requirements of the law, and especially reliability, sufficient to solve the case in terms of content (Article 95).
One type of argument cannot always be considered more convincing, significant than other arguments. There is one important rule stuck in this - even a person`s confession of his own guilt cannot serve as a sufficient basis for blaming him [7].
This rule must be observed. The proof is recognized as relevant to the case only if it reflects information about facts or things that confirm, refute or question the conclusions about existing circumstances significant to the criminal case. The task of the judicial and investigative bodies is not to reproduce a criminal case with material and facts that do not apply to its content, but to investigate only those that are directly relevant to the identification of an impartial truth, the correct solution of the case. Therefore, when evaluating evidence, the investigator, the prosecutor must first determine their involvement in the case.
Also, Article 112 of the CPC of the Republic of Uzbekistan ("Assessment of the testimony of the suspect and the accused") establishes that the testimony of the suspect about the crime committed by him and the confession of the accused to his guilt can be taken as a basis for his accusation only if this confession is confirmed by the existing set of
The circumstances determined by the testimony given by the suspect and the accused must be examined and evaluated in the same way as other evidence in connection with all the circumstances of the case, even if the accused pleads guilty and denies that he is guilty".
It is also important to pay attention to certain non-procedural aspects when drawing up an agreement.

For example, the age of the accused testifies to the degree of his intellectual development, his action, to which environment he belongs, therefore, it is also taken into account when choosing a precautionary measure for him. There is usually no need to imprison individuals who are too old because they hardly hide from the court or the investigation.

Incarceration of minors also does not give an effective result, since it can have an extremely negative effect on their not yet solid psyche, break their will, give false testimony (collusion) or confess to guilt for a crime that they did not commit [8].

L.V. Livshits believes that the detention of minors and their communication with certain categories of persons can have a very strong mental effect on them, causing them to continue criminal activity and prevent the investigation from going[9].

The health of the accused also generally excludes his imprisonment in some cases (if the accused needs to be urgently operated on in order to save his life, in case of pregnancy). In all cases, when choosing a precautionary measure for a person with poor health, the severity of the disease and how long it lasts are taken into account. To verify this, a forensic medical examination is often carried out. Those with chronic disease will need medication, diet nutrition, and other amenities. When imprisoned, they are deprived of these opportunities. There is ***usually a risk of confessing guilt by promising them release from prison***. Therefore, it is necessary that the courts, when assessing the confession of guilt in such cases, check the likelihood of achieving this confession under the influence of the illness of the incarcerated person [10].

The marital status of the accused also plays an important role in choosing a precautionary measure for him. Circumstances such as his marriage (ground touching), the presence of young children, parents of retirement age in his care, the presence of an intimate relationship between the accused and them reduce the likelihood that the accused will hide from the preliminary investigation, court, evade the execution of the sentence, apply to a new crime and prevent the identification of the truth.

Discussion Results

The procedural agreement is signed by the prosecutor, suspect, accused, his defender. Until the signing of the agreement, the suspect has the right to discuss the issue of concluding an agreement and its consequences with the defender in a free and confidential manner.

In cases where an agreement on confession is signed, an indictment (act) is drawn up and, having been approved by the prosecutor, is sent to the court along with the criminal case (Article 586^6 of the CPC).

We believe that it is necessary to include an inquiry officer and an investigator among the persons who have the right to sign. The basis for this is that the investigator, the interrogator, on behalf of the state, performs the role of a subject of criminal prosecution. In addition, they collect, examine, evaluate evidence of a criminal case in order to determine the circumstances of the crime committed. Simply put, the investigator, the inquiry officer is obliged to answer for a comprehensive, complete and objective study of all cases of the case.

Therefore, we propose to make an amendment to part three of Article 586^5 of the Criminal Procedure Code of the Republic of Uzbekistan in the following content: "***the agreement is signed by the prosecutor, inquiry officer (investigator), suspect, accused, his defender***."

According to the law, if there are grounds for the application of coercive measures on a medical basis, several crimes have been committed by a person, of which such an agreement cannot be concluded if not too much one does not comply with the established requirements.

When an agreement on confession is signed, an indictment (act) is drawn up and, having been approved by the prosecutor, is sent to the court along with the criminal case.

Against this background, it is also important to take into account the question of whether the completion of criminal cases with the conclusion of an agreement on confession can lead to a decrease in the level of professional quality of the inquiry, investigation. According to Yu. Chaika, Former prosecutor general of the Russian federation a separate procedure for the consideration of criminal cases "leads to a serious professional degradation of the investigator", on the basis of which, by agreement, "argumentation is excluded"[11].

As Kovalev R.R. noted as the principle of Criminal Procedure, the argumentation of the parties in process means that each of the parties protects their pose, provides evidence, submits petitions, exercises other powers, that is, "disputes", and the court acts as an independent, objective judge [12].

At the same time, it seems to us that if we consider the institution of an agreement on confession from the point of view of the gravity of the parties, then it is worth noting that here, too, there is an element of contention. In particular, the parties to the charges and Protection Act in order to strengthen and protect their positions when concluding a confession agreement. The accusation achieves its goal by solving a

crime, exposing other persons (partners) involved in committing a crime, collecting all evidence confirming their guilt, compensation for material damage caused. The Defence party seeks to alleviate the punishment for the crime committed. As for the possibility of" professional degradation of the investigation", it can be manifested in the sense that the institution of a confession agreement is likely to become favourable environment" for corruption.

For example, in Chapter 62^1 of the CPSU of the Republic of Uzbekistan, the conditions and obligations under the agreement on confession are not separately established by the suspect, the procedure for terminating the contract if it is not fulfilled by the accused. Only " if, in the process of conducting the case before the court, other circumstances of the crime are identified that are not provided for in the agreement on confession, the agreement loses its power.

If the identified circumstances do not exclude the conclusion of an agreement on confession, the agreement can be revised in the order and terms provided for in articles 586^2 — 586^4 of this code," the statement says [13]. The part marked as" may be revised " allows prosecutors to make illegal arrangements in which other crimes committed are intentionally hidden, evidence aggravating punishment are not disclosed, and etc.

Conclusions and Suggestions

We found it necessary to list the following signs of drawing up the agreement in the pre-trial stage:

1) Agreement is a way of resolving relations between opposing entities in the field of Criminal Procedural Law;

2) Agreement is a procedural legal document that establishes rights and obligations for the parties;

3) Is the autonomy of the will, which voluntarily manifests the will of the participants;

4) The content of the agreement consists in determining the mutually acceptable conditions of the parties and the mutual legal lightness and privileges permitted by law;

5) Provides for compliance with a certain procedural order, albeit simplified, expressed in written form.

We propose to make an amendment to the third part of Article 586^5 of the Criminal Procedure Code of the Republic of Uzbekistan in the following content: "**The agreement is signed by the prosecutor, inquiry officer (investigator), suspect, accused, his defender**."

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