



LEGISLATIVE EXPERIENCE OF SOME FOREIGN COUNTRIES IN SENTENCING FOR CRIMES FOR WHICH A PLEA AGREEMENT HAS BEEN CONCLUDED

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Abstract.

The concept and significance of confession, its socio-legal necessity, history of development, and some problems in practice related to sentencing are discussed, and proposals and recommendations are highlighted. The experience of foreign countries in the institution of sentencing for crimes for which an agreement on confession has been concluded, reliable provision of the rights and freedoms of citizens, was studied, opinions were expressed on some problems in the legislation, and proposals were developed.

Keywords: Guilt, confession, agreement, punishment, right, freedom.

To fulfill our people's desire to build a free, prosperous, and powerful New Uzbekistan, create all opportunities for every citizen to develop their potential, raise a healthy, educated, and spiritually mature generation, form a strong economy that has become an integral part of global production, and guarantee justice, rule of law, security, and stability, President Sh.M. Mirziyoyev has adopted the "Uzbekistan - 2030" Strategy. It is no exaggeration to say that one of the steps towards bringing the judicial and legal system to a new level is the strategy's designation of "Ensuring the supremacy of the Constitution and laws, and providing reliable protection of human rights and freedoms as the main criterion of judicial and legal reforms" as one of its hundred goals.

Of course, reforming criminal legislation plays a crucial role in achieving these objectives. Studying the experience of foreign countries in reforming criminal legislation and applying it to our national legislation will enable us to achieve the intended results in the future.

In this context, identifying the scope of application in foreign countries of the institution of sentencing for crimes where a plea agreement has been concluded will serve as a basis for determining our existing shortcomings and future prospects.

According to the French scholar M. Ansel, foreign experience allows legal experts to discover new ideas, better understand the legal system of their own state, and identify its distinctive aspects in comparison with other legal systems.

S.N. Gordeev aptly noted that a scientifically-based analysis of foreign countries' experience helps to identify the strengths and weaknesses of the national system.

In scientific literature, there are opinions that the plea agreement is derived from foreign criminal law.

Although S.S. Klyushnikov put forward the idea that the plea agreement was largely developed based on the Italian terms "abbreviato" and "patteggiamento," he also noted that this legal institution shares common aspects with the legislation of Anglo-Saxon legal system countries. Legal scholars have studied the types of plea agreements and their comparative legal aspects within the criminal procedure system of simplified foreign legislation. However,

a purely procedural approach to this institution would not be correct. This is because Article 572 of the Criminal Code of the Republic of Uzbekistan also contains a provision for sentencing crimes for which a plea agreement has been concluded. Since the plea agreement is an interdisciplinary institution, it allows for its examination from both criminal and criminal procedural perspectives.

In the Anglo-Saxon legal system, the plea bargaining agreement is called "plea bargaining," and in the USA they are regulated by the Federal Criminal Procedure Rules (11 Rules) adopted by the Supreme Court. Included in Section Eighteen of the U.S. Code of Laws by the U.S. Court.

As S.S. Klyushnikov noted, there are three types of plea agreements:

- confession of guilt in exchange for mitigating the charges;
- admission of guilt in exchange for a reduction in punishment;
- confession of guilt in exchange for mitigating the charges and reducing the punishment.

"Plea bargaining" primarily provides for the establishment of a special procedure for making a decision in court proceedings when the accused agrees to the charges against him and a plea agreement is concluded. As N.Yu. Kholmogorova notes, "in the USA, most plea agreements are made after the drawing up and presentation of the indictment to the suspect. However, the suspect may begin negotiations on the agreement before the charges are brought. A plea agreement before prosecution can be useful if the prosecutor wants to use the suspect to obtain testimony against other criminals. For example, they propose to expose the leader of a criminal group. As a result, the person who begins to cooperate with the prosecutor may be completely released from criminal liability. In such cases, the indictment is not submitted, and the other accomplices are deprived of the opportunity to learn about the conclusion of the agreement by the suspect.

The peculiarity of the "Plea bargaining" is that it involves a federal judge, who is assigned the role of an arbitrator, supervises the observance and exercise of rights guaranteed by law, determines the basic principles of legal proceedings in agreeing on the terms of the agreement, the degree of awareness by the accused of the voluntariness of concluding a plea agreement and its consequences. In addition, the prosecutor takes into account the victim's position in the agreement.

At the same time, in the USA, the conclusion of a plea bargain does not guarantee a reduction in the punishment of the accused, but only provides for such an opportunity, since the issue of assigning punishment under the agreement is not fixed in US law, as it is indicated in our legislation. "In accordance with paragraph 3553 (e) of the U.S. Code of Criminal Procedure," writes Yu.V. Kuvaldina, "at the request of the prosecutor, the court has the right to impose a punishment lower than the level established by law as a minimum punishment as an incentive for the accused to make a significant contribution to the investigation or prosecution of other criminals who have committed a crime." According to US Guidelines & 5K1.1 on sentencing, the court, when sentencing such a person, takes into account the significance and usefulness, degree and nature, timeliness, truthfulness, completeness, and reliability of the defendant's assistance to the investigation.

U.S. criminal law has a history of several years and has been used for years. During the study, we became convinced that the institution of the plea agreement also has a long history in US law. The Federal Criminal Procedure Code (Federal Rules of Criminal Procedure) is the primary document defining the procedural rules for confession agreements in the US. Article

11 of this Code (Rule 11: Pleas) establishes the grounds for a plea bargain, while the practice of sentencing by courts under a plea bargain is carried out on the basis of the Federal Sentencing Guidelines. Each state has its own criminal procedure laws and guidelines for sentencing, and the courts themselves determine the procedure for sentencing under a plea agreement. Based on the reviewed opinions, it was concluded that the practice of imposing punishment on a confessor has some similarities and differences with our national legislation. In the USA and in our national legislation, the plea agreement aims to provide a lighter sentence for committed crimes. However, in the US system, agreements are used more widely, and recommendations are given that agreements can be applied even in serious crimes. It is also possible to agree in advance with the prosecutor's office on the mitigation of punishment, and in Uzbekistan, punishment is determined only by the court.

If we talk about plea agreements in England, then in the Middle Ages such a legal phenomenon as the "repentant's appeal" was widespread, the essence of which was that the criminal could avoid the death penalty if he provided information about the crimes committed by others. However, in order to avoid the death penalty, the practice of using such transactions was suspended, since innocent people were also executed as criminals.

Currently, the "plea bargaining" institute in Great Britain is used in limited form only in certain parts (England and Wales) and differs from the practice in the USA. If the person admits guilt, part of the charges may be dropped. However, punitive agreements on this matter are not applied in either England or Wales. The court retains this authority. In England and Wales, the institution of a plea agreement is not as firmly established in legislation as in US law. However, the person's admission of guilt is taken into account when imposing a sentence. This rule is regulated by the English "Sentencing Council's Guidelines." In England, although confession is not a formal agreement, it is important in court proceedings and is taken into account in mitigating punishment. This practice is regulated by judicial precedents and instructions. For example, if a person admits their guilt at the initial stage, the punishment imposed on them can be reduced by one-third.

Speaking about other countries of the Anglo-Saxon legal system, for example, Israel (the legal regulation of criminal proceedings in this country is based on Anglo-American law (common law), which remained as a legal legacy after the mandate rule of Great Britain in the Eres territory until the independence of Israel in 1948), it can be noted that the plea agreement is one of the most widespread institutions. Although there is no legal definition of a plea agreement in Israeli law, the Israeli Ministry of Justice clarifies this concept in its Commentary on the Application of Agreements (paragraph 1) as follows: "A plea agreement is an agreement between the prosecution and the defense, as a result of which the prosecution undertakes to waive part of the charges and/or to demand a lighter sentence in connection with the fact that the accused has pleaded guilty to part of the charges or to the charges as a whole, or has admitted facts sufficient to prove his guilt."

Since the institution of "plea bargaining" under consideration has not reached an agreement with the prosecutor's office and is not legally similar to our criminal legislation, it is illogical to compare it as an analogue of our criminal law. Regarding the French experience of sentencing a confessor, criminal procedure legislation has the institution of a confessor (Comparution sur reconnaissance préalable de culpabilité, CRPC), which is used for the purpose of prompt and effective resolution of criminal cases. In this process, the accused admits his guilt and has the opportunity to receive a lighter punishment in return. The CRPC

was introduced into the Criminal Procedure Code in 2004, which applies only to crimes punishable by imprisonment not exceeding 5 years. These rules are set forth in parts from Article 495-7 to Article 495-16 of the French Criminal Procedure Code. In terms of content and application, there are many similarities with our national legislation. For example, the approval of the agreement by the prosecutor, the judicial and investigative process, and the conditions are similar, but it is necessary to note some differences. In French law, the plea agreement applies only to crimes punishable by imprisonment for a term of no more than 5 years and is based on the rule that it does not apply to minors and certain types of crimes against the person (murder, sexual crimes). When imposing a sentence under a plea agreement, it allows the prosecutor to propose all the punishments applied for the offense under consideration. The prosecutor may propose imprisonment and (or) a fine. The term of imprisonment cannot exceed 3 years and should not exceed half of the term of punishment. For example, if the term of punishment is 4 years, the proposed punishment should not exceed 2 years. This punishment can be canceled early. If the prosecutor proposes imprisonment, he must indicate the possibility of immediate execution. He can propose a reduction in the prison sentence.

The proposed amount of the fine cannot exceed the actually imposed amount. This punishment can be canceled early. In this case, the person does not pay the fine.

The prosecutor may also propose, in addition to the main punishment, the application of one or more additional punishments provided for the crime committed by the accused.

These punishments differ depending on the nature and severity of the crime committed. For example, confiscation of a driver's license. In our opinion, it would be advisable to introduce into our legislation the issue of applying additional punishments based on the French experience, as well as the issue of non-application of agreements on certain serious crimes against individuals.

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