EUROPEAN INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY RESEARCH AND MANAGEMENT STUDIES

VOLUME03 ISSUE12
DOI: https://doi.org/10.55640/eijmrms-03-12-13 Pages: 67-77


# ISSUES OF IMPROVING THE INSTITUTE OF PUNISHMENT IN THE CASE OF CONFESSION

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## ABOUT ARTICLE

**Key words:** Guilt, crime, punishment, responsibility, confession, institution, about, made, agreement, term.

**Abstract:** This article analyzes the issues of improving the institution of punishment in the case of confession. Also, in the article, the author made suggestions and recommendations as a result of analyzing the opinions of scientists regarding the improvement of the institution of guilty confession.

**Received:** 02.12.2023
**Accepted**: 06.12.2023
**Published**: 11.12.2023

## INTRODUCTION

The main task of criminal law is to protect the most important interests of the individual, society, and the state from criminal encroachment and law enforcement agencies use all available legal means to achieve this goal. One of them is plea bargaining, where the perpetrator assists the investigation in the discovery and investigation of his crime and helps to expose and prosecute other accomplices or other persons who have committed criminal acts. the person who committed the crime will have his guilt mitigated to a certain extent.

The introduction of this institution into law could help uncover crimes that have been unsolved and latent for decades, and help expose several criminal gangs. The imposition of a penalty under plea bargaining shall, in the first instance, impose a penalty in the mitigating circumstances already provided for in the criminal law (institutions, like probation, leniency, release from punishment, imposition of a penalty in remorse in practice).

Although it has been more than a year since the institute was enacted, it is still not put into practice. As a result, litigation has not yet been established in this institution.

One of the main reasons why this institution has not been used since its enactment is the problems of its regulation by law, including the imposition of penalties. Although the institute has a criminal nature, it is largely governed by criminal procedure law.

The procedure for enforcing a plea agreement and the requirements for it are regulated by the Code of Criminal Procedure. For example, in the Criminal Code, when a conciliation agreement is concluded only through this institution, the question of how much punishment to impose for these crimes is given only in the Criminal Code. The Code of Criminal Procedure defines the circumstances in which the institution of this agreement can be implemented. In addition, the norms of criminal law do not correspond to the norms of criminal procedure, and there are certain contradictions between them. In particular, on the issue of strengthening the legislation on the grounds for mitigation of punishment, the question is not answered in the legislation: Who (implies the criminal nature of the subject) and what crime can enter into a pre-trial agreement on cooperation and when it is done?

It is also important in practice and in theory to study the acceptability of the limits of sentencing under the plea agreement and the possibility of distinguishing them. Although this institution has not yet been put into practice, it is enshrined in law and lacks legal mechanisms to make it work in practice.

In neighboring countries, the institute has recently been introduced, and in their legislation, it is difficult to operate. For example, in the Republic of Kazakhstan, there are no statistics on the practice of imposing penalties under the confession agreement. In the Russian Federation, the law has been in place for more than a decade, but its practical application is rare. During these years, only 0.5% of those convicted under a confession agreement were convicted.

Analyzing the legislation of foreign countries on the confession agreement and the views expressed on them, it can be concluded that the condition of the upper limit of the minimum penalty that can be imposed on a confession agreement is determined between the parties. It is also possible to agree on the terms of the confession agreement, such as the provision of information about the accomplices, compensation for damages, and the voluntary presentation of evidence.

A plea agreement is also a way to reconcile with the underworld or the perpetrator. Not everyone supports such rules of procedure. Opponents of the confession process argue that the court's decisions are unfair, primarily because of the lack of evidence in court .

The issue of introducing a plea agreement in our national legal system has been in the scientific community's attention for many years. Although it is not possible to quote scientifically, at the

Professor G.Abdumajidov and Professor Z.Islamov first went to the conference and then to each other's rooms on the proposal to include this institute in our national legislation. , were controversial from a scientific point of view. Some argued that a confession agreement should be enshrined in law, while others argued that the rule would lead to an increase in crime, a negative form of an illegal confession and that our people were not ready for it. Recalling this incident, we would like to emphasize that such ideas still exist.

It should be noted that in recent years, along with many other authors in Uzbekistan, in the framework of K. Matkarimov's doctoral dissertation, proposals have been made to include a plea agreement in our national legislation .

Decree of the President of the Republic of Uzbekistan No. PF 6041 of August 10, 2020 "On measures to further strengthen the guarantees of protection of the rights and freedoms of the individual in judicial proceedings" Based on the proposal of the Prosecutor General's Office of the Republic of Uzbekistan, Ministry of Internal Affairs, State Security Service, Ministry of Justice and National Center for Criminal Procedure, the task was set to introduce the institution of conciliation in criminal procedure law. In the event of a confession agreement, a person who pleads guilty to certain categories of crimes, sincerely repents, actively assists in the detection of the crime, and remedies the damage, concludes a written agreement with the inquiry and preliminary investigation bodies and the court. not more than half of the maximum penalty and (or) the term of imprisonment provided for in Article 1 of the Criminal Code.

Indeed, the inclusion of a plea agreement in our national legislation has many advantages. In particular, there is the issue of procedural costs in criminal proceedings, which are always impossible to resolve "as described in the brochure". For example, extradition costs may not always be reimbursed. There is no need to spend a lot of money on a confession agreement.

Criminal investigations and trials add to the workload of investigators and courts. In some cases, this has a negative impact on the quality of criminal proceedings. The ease with which the public authorities and officials in charge of the confession process can prove their guilt allows them to pay due attention to other criminal cases.

Article 8 of the Universal Declaration of Human Rights, Article 14 of the International Covenant on Civil and Political Rights, and other international instruments provide for the right to a fair trial. This international standard has been scientifically proven to be enshrined in national law and thus guarantees human rights. For example, in his research, N.I.Khairiev scientifically substantiated the need to introduce a plea bargain procedure as a way to speed up criminal proceedings. The plea agreement

provides for the fulfillment of the obligation of public authorities to ensure the right to a fair trial in a timely or reasonable manner .

The adoption of the above-mentioned Decree has led to the development of scientific controversy over the content of the institution, rather than the inclusion or proposal of the institution of conciliation in our national legislation. This situation is not in vain. It encourages thinking about what the consequences may be in the future and what should be taken into account when developing rules specific to the institution of plea bargaining.

In our opinion, the following cases are not directly regulated by the Decree of the President of the Republic of Uzbekistan dated August 10, 2020, No. PF-6041 "On measures to further strengthen the guarantees of protection of human rights and freedoms in judicial proceedings". It is advisable to:

First, the initiation of a plea bargain should not be announced by the investigating authorities if there are other favorable grounds for the accused to close the case. If the parties reconcile, the time limit for prosecution expires, or the criminal case can be terminated on other grounds, the investigative authorities (or the prosecutor) will use a deceptive method to prove that the defendant is offered a plea bargain. This could then lead to the defendant's justified protest.

In addition, as noted above, a plea agreement does not deprive the investigator or inquirer of the obligation to gather evidence and establish the fact of a crime. For example, a person has committed a crime under Article 266 (1). This article falls under the conciliation agreement provided for in the Criminal Code. In such a case, if the accused and the victim enter into a conciliation agreement in accordance with the requirements of this agreement, the inquiry officer, investigator or prosecutor shall not propose to conclude a plea agreement.

Second, while the conclusion of a plea agreement leads to the granting of benefits to the accused, such an agreement entered into without the consent of the victim may subsequently lead to his dissatisfaction with the fairness of the sentence. If our criminal procedure legislation takes into account the views of the victim (enterprises, business entities, which are civil plaintiffs in the practice of our national criminal procedure) in concluding a plea agreement, the right to justice may be taken into account.

Therefore, obtaining the consent of the victim to enter into a plea agreement should be a condition of the agreement. This condition includes compensation for all material and moral damage caused to the victim. For example, if we take the most common crime of fraud under Article 168 of the Criminal Code,

the maximum penalty for this crime is imprisonment for up to 10 years. If a plea agreement is reached, the perpetrator could face up to five years in prison. But in this case, it is necessary to pay attention to the amount of damage. The purpose of the punishment cannot be achieved without compensation for the damage caused, and it rightly contradicts the dissatisfaction of the victims and the principle of justice.

Third, a plea agreement is a contractual relationship that must reflect the principle of equality of arms, which is inherent in private law. Among the duties that can be performed on the accused, such as assisting in the detection of a crime and repairing damages, should be the obligation not to give false testimony and not to deliberately distract from the investigation, otherwise, the agreement will be annulled. This prevents the negative behavior of the person entering into the confession agreement by distracting and deceiving the investigation, arguing for the "right to protection".

At the same time, it is necessary to explain in detail the consequences of violating the terms of the plea agreement. If the accused knowingly distracts the investigation and violates the terms of the agreement by giving false testimony with untrue evidence, or if the person who committed the crime is different, but the person who is concluding the settlement agreement is different, what measures should be taken. In this case, in the event of a violation of the rules for concluding a plea agreement, a sentence should be included in the criminal code. The absence of this article may raise the question of the procedure by which the courts shall impose a penalty in case of violation of the provisions of the plea agreement. For example, Article 631 of the Criminal Code of the Russian Federation contains this article. This article sets out the procedure for imposing a penalty for breach of a plea agreement. In this case, as mentioned above, if they testify falsely or enter into a settlement agreement on behalf of another person, as a result of which the terms of the settlement agreement are violated, they should be punished in the general order.

Fourth, in Europe and many other countries where there is a plea agreement, there is no provision for aggravated or partial addition of penalties for multiple offenses, or the maximum amount and duration of punishment, if any. is not limited. In the presence of this humanitarian principle of sentencing in our national criminal law, the concessions obtained from the confession agreement should not lead to a feeling of disregard for the law. Therefore, in the case of a set of crimes, the issue of concluding a plea agreement should be carefully considered.

Therefore, in cases of recidivism, such as a set of offenses, the conclusion of a plea bargain should be limited. In our legislation, the maximum amount or duration of a penalty is limited. However, there are

no restrictions on the minimum amount. Therefore, the application of a lighter sentence under Article 57 of the Criminal Code should not be limited to the imposition of a sentence for crimes for which a plea agreement has been reached.

Fifth, the confession agreement and the terms of its conclusion should be transferred from Article 5861 of the Code of Criminal Procedure to Article 572 of the Criminal Code, as the terms of this agreement should be governed by substantive law and not by procedural law.

Sixth, revise Article 571 of the Criminal Code, as the concept and terms of a plea agreement are almost the same as those provided for in this article. For example, in the absence of mitigating circumstances provided for in Article 571, paragraphs "a" and "b" of the first part of Article 55 of the Criminal Code, and in the absence of aggravating circumstances provided for in the first part of Article 56 of this Code or the amount shall not exceed two-thirds of the maximum penalty provided for in the relevant article of the Special Part of this Code.

This rule does not apply to persons who have committed crimes related to premeditated murder (second part of Article 97) and terrorism (third part of Article 155) in aggravating circumstances. Paragraphs (a) and (b) of the first part of Article 55 of the Criminal Code provide for a plea of guilty, sincere remorse, or active assistance in solving the crime and voluntary redress of the damage. cases are mentioned. The plea agreement is based on the agreement between the suspect and the accused, who agreed with the accusation, actively assisted in the discovery of the crime, and compensated for the damage. is an agreement to be entered into with the supervising prosecutor at the request of the accused on less serious, less serious, and more serious crimes.

The difference between them is in the timing of their initiation and the duration and amount of the sentence imposed. For example, in the appointment of a member when the perpetrator has practically repented of his or her guilt, the person found guilty of the offense must have voluntarily filed a complaint with the investigating or inquiry authorities. In this case, the law enforcement agencies were not aware of his crime. In a plea agreement, criminal proceedings are instituted against a person suspected of committing a crime, ie a criminal case is opened against a person suspected or accused of committing a crime, and a prosecutor is appointed to supervise with the help of his defense counsel at the beginning of the inquiry or investigation. may arise from the date on which the applicant agrees. The main difference between them was the issue of sentencing in these cases. For example, a person pleads guilty to a crime and appeals to law enforcement agencies to assist in the investigation and gathering of evidence on all issues. He was sentenced to no more than two-thirds of the sentence

provided for in the sanction of the Special Part. For example, the maximum penalty in the sanction of any article of the Special Part should not exceed 9 years, in which case, if we apply Article 571 of the Criminal Code, the penalty imposed by the court should not exceed 6 years.

Now, when it comes to sentencing for crimes for which a plea agreement has been reached, he does not voluntarily plead guilty and apply to law enforcement. However, the bodies of investigation and inquiry themselves suspect or accuse a person of committing a crime, and only then an agreement can be reached on this institution. This can be done after the defendant has agreed to the charges, has actively assisted in the detection of the crime, and has repaired the damage. In this case, the imposition of a penalty following Article 572 of the Criminal Code should not exceed half of the maximum penalty provided for in the relevant article (section) of the Special Part of the Criminal Code. For example, if the maximum penalty specified in the sanction is 9 years, a maximum penalty of 4.5 years may be imposed.

The discrepancy between the explanations given in these cases and these norms is so great that it does not conform to certain principles of the Criminal Code. For example, in the imposition of a penalty when the guilty person repents of his or her actions if the person does not exercise this right, the crime remains latent and may not be identified. The result is an increase in crime in society, which is considered contrary to the principle of inevitability of punishment.

In the imposition of a penalty for a crime for which a plea agreement has been entered into, the crime shall be determined and, even if it is not concluded, a general penalty may be imposed and justice shall be imposed for the crime committed. Therefore, these two norms need to be reconsidered. Failure to address this issue violates the principles of the rule of law in society, equality of persons before the law, the inevitability of punishment, and reduces the confidence of individuals in the law and justice in society.

According to Rustambayev, the legal consequence of committing a crime following the rules of criminal law is the imposition of punishment, in which each crime requires the application of only one basic punishment . It is not in line with the principles of humanity and justice to address this issue especially.

Explaining the scope of circumstances to be taken into account in sentencing, the object of aggression against the socially dangerous nature of the crime (human life and health, property, public safety, etc.)), the form of guilt, which category of criminal act is included in the law (Article 15 of the Criminal Code). The level of social danger of the crime, in contrast to the nature of the social danger, depends on the circumstances in which the act is committed, ie the degree and stages of the crime, the method of the crime, the amount of damage, or the severity of the consequences. the role is entered.

The level of social risk of crime is an indicator of this quantity. The sanction of the article of the Special Part of the Criminal Code is determined by the type and amount of punishment. The socially dangerous nature of the crime is determined by the object of aggression. This is a necessary sign of qualification .

Thus, there is no fixed number of cases to be considered in sentencing, and no decision has been made. However, some scholars believe that the circumstances to be taken into account in sentencing should be clearly defined.

That's why it's important to focus on legislation that can be put into practice. As Charles Montesquieu points out, a good legislator thinks more about crime prevention than punishing for it .

Human history shows that any action that is contrary to society has been repulsed by various factors and means. This can be seen in the ideas, religions, and laws that have been in force at every age, based on scientific principles. Islam, which has been at the heart of our nation's moral values for centuries, has also encouraged people to turn away from evil deeds and sincerely repent those who have done so.

The confession of a person who has committed a crime or other wrongdoing is considered a positive event for both the victim and the law enforcement agencies, as well as for the person who confessed, as it facilitates the disclosure of the crime and allows the case to be investigated. otherwise, it is considered a mitigating circumstance. This is probably why the theoretical sources suggest that the defendant's confession is the best proof, the "flower of the evidence ". A plea of guilty has a positive effect on the effectiveness of proof in the absence of witnesses to the crime. However, history has shown that evidence in the form of a confession is overestimated, that it is considered a necessary condition for a conviction, and that a false confession is obtained to achieve this . In the thirties and fifties of the last century, illegal methods were used in the investigation of criminal cases for the repression of intellectuals in our country to obtain the confession of the accused. There may have been no "credible" evidence other than a confession, or it may have been unusual for a person to be convicted in the absence of a confession.

To prevent the recurrence of such errors in proof, along with other necessary conditions, Article 112 of the Criminal Procedure Code of the Republic of Uzbekistan states: can only be used as a basis for the accusation."

A person's confession of guilt, confirmed by other evidence, is considered a special privilege in the commission of a crime under our current law. For example, a person may be released from liability or punishment if he or she has committed a low-risk or less serious crime for the first time and has

officially confessed to the crime if investigators have not yet found out that he or she has committed the crime. In addition, in cases provided for by our legislation, the defendant's (defendant's) remorse for his actions means that he is not sentenced to more than two-thirds of the sentence provided for in the Criminal Code of the Republic of Uzbekistan.

The inclusion of the confession charge in the legislation of the Republic of Uzbekistan is not working effectively as it was expected. The main reason for this is the shortcomings in the legislation, the fact that this institution is new to our legal system, and the lack of explanatory work and incentives for this institution.

One of the advantages of this institution is that it adheres to the principle of reasonable consideration of the case, that is, the application of this agreement is in the interest of both the demand and the supply side. If the prosecutor and the court save valuable time and money, the defendant will receive a lesser sentence. In this case, the rights and interests of the victims and other participants in the criminal case must be taken into account. There are some shortcomings in the legislation on these issues as well.

The first issue we have considered is the concept of a plea agreement, which is not clearly defined in the legislation. Article 5861 of the CPC sets out what a plea bargaining agreement is and its location does not comply with certain rules. Therefore, the definition given in this article and the conditions for concluding a plea agreement are a rule of substantive law and not a rule of procedural law. Therefore, it would be expedient to transfer this rule of law to its place, ie to Article 572 of the Criminal Code.

We have seen that this institution has been incorporated into the legislation of countries where continental legal systems are in place, and we have studied their experience. The conclusion is that it is difficult to say that the institute has worked effectively in countries with a continental legal system, such as Germany, the Czech Republic, Slovakia, and Italy. The main reason for this is that it does not comply with certain principles of the existing legal system in these countries. For example, material truth, and the principles of the inevitability of punishment. In addition, the role of the prosecutor and the judiciary in these legal systems also hinders the effective functioning of the institution.

Because the institute originated mainly in the Anglo-Saxon legal system, some states use it to a limited extent. In Germany, for example, the institute is not a separate institution, and the application of the institute is left to the discretion of the court.

As for the theories of origin and development of this institute, there are two theories, namely, theories of professionalism and contextualism. The first argues that the plea bargaining agreement was the

result of the development of judicial and investigative processes, while the second believes that the institution is the result of socio-economic changes in society.

As for the history of this institution, its origins are inextricably linked to the American Civil War. Its origins can be traced back to the second half of the 19th century. Its constant use by the courts dates back to the 1920s. This institute can be found first in American law, then in countries where the English legal system exists, and then in other countries in the late twentieth and early twenty-first centuries. It is included in our legislation based on the law adopted on February 18, 2021.

The experience of foreign countries in this institute has been studied and it has been concluded. There is no standard version of this institution, and each legal system adopts and implements its values. We have studied the experience of developed countries and made some following proposals to legislate and make recommendations to change the existing procedures.

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