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SOME ASPECTS OF PLEA AGREEMENT INSTITUTION IN THE REPUBLIC OF UZBEKISTAN

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Abstract:

This article provides a definition of the concept of plea agreement, presents the views of scholars on this institution, its criminal law aspects, as well as some thoughts on the application of criminal penalties within the framework of this institution.

Keywords: *Plea agreement, suspect, defendant, punishment,* term or amount of punishment*, maximum punishment, motivation, compensation for damage, agreement with the charges,* offences posing low social danger*, less severe and serious crimes.*

As in other spheres of our country, comprehensive reforms are being carried out in the judicial and legal sphere. These reforms are fundamentally aimed at ensuring the protection of human rights and freedoms, placing the individual at their center.

The institution of plea agreement is also a new legal mechanism introduced into our national legislation as a result of the reforms carried out, based on a thorough study of foreign experience.

This legal institution is widely applied in the United States and in the countries of Europe and the Commonwealth of Independent States (CIS). In the United States, where it has been practiced for more than one and a half centuries, approximately 95 percent of criminal cases are adjudicated annually through simplified judicial procedures.

The corresponding figures are 90% in Switzerland, 80% in Estonia, 75% in Japan, 70% in Germany, and 30% in Spain[1].

The institution of plea agreement is applied in criminal proceedings in both common law systems (Great Britain, the USA) and continental legal systems (Belgium, the Netherlands, Spain, Italy, Germany, France), and its development has its own characteristics based on the legal foundations of each state. Although this institution is known by different names in different countries, it is essentially aimed at achieving the same objective[2].

The institute of plea agreement was introduced into the Criminal Procedure and Criminal Codes of the Republic of Uzbekistan by Law №-675 ORQ dated February 18, 2021, "On Amendments and Additions to the Criminal and Criminal Procedure Codes of the Republic of Uzbekistan."

In particular, Chapter 62^1 titled "Plea agreement" was added to the Criminal Procedure Code of the Republic of Uzbekistan, and Article 57^2 titled "The imposition of punishment for crimes for which a plea agreement has been concluded" was added to the Criminal Code.

The incorporation of foreign experience in the simplified procedure for criminal proceedings into national legislation under this Law is undoubtedly regarded as one of the contemporary requirements for the effective protection of human rights and freedoms. The application of this institution, first and foremost, serves to eliminate unnecessary burdens for citizens, and secondly, contributes to reducing the workload of inquiry and preliminary investigation authorities, thereby improving the quality of cases investigated under the general procedure and enhancing overall procedural efficiency[3].

According to Article 586^1 of the Criminal Procedure Code of the Republic of Uzbekistan, a plea agreement is an agreement concluded, upon the

[1] Х.Камолов. Айбга иқрорлик бўйича келишув институти: мазмун-моҳияти ва уни қўллаш тажрибаси. https://sud.uz/news-2024-09-10-1/

[2] Д.Довудова. Айбга иқрорлик тўғрисидаги келишув институтининг ҳуқуқни қўллаш амалиётидаги муаммолари//Жамият ва инновациялар – Общество и инновации – Society and innovations Issue – 3 № 6 (2022) / ISSN 2181-1415. Б 71.

[3] А.А.Курбанова. Айбга иқрорлик тўғрисидаги келишувнинг тушунчаси. Central Asian Research Journal For Interdisciplinary Studies (CARJIS) ISSN (online): 2181-2454 Volume 2 | Issue 3 | March, 2022 | SJIFactor: 5,965 | UIF: 7,6 | Google Scholar | www.carjis.org. DOI: 10.24412/2181-2454-2022-3-119-125. Б-120

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request of a suspect or accused person who agrees with the suspicion or charge brought against them, has actively contributed to the detection of the crime, and has compensated for the damage caused, with the supervising prosecutor in cases involving offences posing low social denger, less serious crimes, and serious crimes, for the purpose of conducting criminal proceedings under such terms.

In the Explanatory Dictionary of the Uzbek Language, "kelishuv" (agreement) is defined as a mutually discussed opinion, conclusion, decision, or contract, as well as a deal or arrangement. The term "kelishuvchilik" refers to reaching a compromise, agreeing, consenting, joining in, or conciliatory behavior in pursuit of one's own interests[4].

As noted above, "agreement" refers to meanings such as opinion, conclusion, decision, deal, and contract.

A deal or contract is considered an action or agreement between two or more persons aimed at creating, changing, or terminating rights and obligations.

Indeed, a plea agreement can be regarded as a mutual arrangement concluded between a suspect or accused person and the prosecutor regarding the confession of guilt, that is, it creates, changes, or terminates certain rights and obligations. In this agreement, the opinion of the victim is not taken into account.

The rights and obligations arising from the agreement are established by law.

Based on the definition of the plea agreement provided in Article 586[1] of the Criminal Procedure Code, we can identify the following features:

- being concluded with a suspect or accused person,
- to agree with the suspicion or accusation brought against them;
- actively assisting in the disclosure of the crime;
- has fully compensated for the harm caused;

the crime committed being one of offences posing low social denger, less serious, or serious crimes.

According to D. Davudova, the essence of this institution consists in achieving the prompt and complete disclosure of a crime, identifying other persons involved in its commission, and eliminating the damage caused, by granting certain statutory leniency to a person who has entered into a plea agreement, thereby allowing the case to be processed under a simplified procedure[5].

According to A.A. Kurbanova, a plea agreement is a voluntary agreement concluded with the prosecutor in criminal cases, at any stage of inquiry or preliminary investigation, upon the request of a suspect or accused person who admits the suspicion or charge brought against them, sincerely repents of their act, actively assists in the disclosure of the crime, and fully compensates for the damage caused[6].

According to O.S. Toshev, a plea agreement is one of the reconciliation (settlement) agreements based on the voluntary obligation of a suspect (or accused person) to assist in the prompt investigation of a criminal offence in exchange for a significant reduction in the punishment for the crime committed[7].

It is evident from the statutory and scholarly definitions of the plea agreement institution that this institution is beneficial for all participants in the process.

In particular, for the suspect or accused, certain legal leniency is provided within the framework of the law;

For the victim, the damage caused is eliminated, thereby contributing to the restoration of their rights;

For the investigative authorities, the suspect's or accused person's active assistance in the disclosure of the crime makes it possible to ensure the prompt and

[4] Ўзбек тилининг изоҳли луғати. Масъул муҳаррир А.Мадвалиев. – Т."Ўзбекистон миллий энсиклопедияси" Давлат илмий нашриёти, 2020 йил, 5-жилд. Б 347.

[5] Д.Довудова. Айбга иқрорлик тўғрисидаги келишув институтининг ҳуқуқни қўллаш амалиётидаги муаммолари//Жамият ва инновациялар – Общество и инновации – Society and innovations Issue – 3 № 6 (2022) / ISSN 2181-1415. Б 72.

[6] А.А.Курбанова. Айбга иқрорлик тўғрисидаги келишувнинг тушунчаси. Central Asian Research Journal For Interdisciplinary Studies (CARJIS) ISSN (online): 2181-2454 Volume 2 | Issue 3 | March, 2022 | SJIFactor: 5,965 | UIF: 7,6 | Google Scholar | www.carjis.org. DOI: 10.24412/2181-2454-2022-3-119-125. Б-124

[7] О.С.Тошев. Жиноят процессига айбга иқрорлик тўғрисида келишув институтининг жорий этиш мақсади ва ижтимоий зарурати. Юрист ахборотномаси. 5 СОН, 2 ЖИЛД. TOSHKENT-2022. ISSN 2181-9416/Doi Journal 10.26739/2181-9416. Б-104

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full investigation of the offence and to identify other persons involved in its commission**;**

for the courts simplified proceedings reduce workload and procedural costs.

In this institution, the nature and essence of the leniency granted within the framework of the law to the suspect or accused among the above-mentioned participants in the process is considered a particularly important aspect of our study.

In particular, Article 57^2 of the Criminal Code, entitled "imposition of punishment for crimes for which a plea agreement has been concluded" provides that, in criminal cases where a plea agreement has been concluded, the term or amount of the punishment imposed shall not exceed one-half of the maximum punishment prescribed by the relevant article (or part thereof) of the Special Part of this Code.

Specifically, the leniency granted to the suspect or accused within the framework of the law is reflected in the requirement that the punishment shall not exceed one half of the maximum sanction prescribed in the relevant article (or part) of the Special Part of the Criminal Code, and this serves as a motivation for concluding such an agreement.

I would like to draw your attention to the requirement in Article 57^2 of the Criminal Code that the punishment shall not exceed one half of the maximum penalty provided for in the relevant article (or part) of the Special Part of the Code, namely what is meant by the "maximum penalty." Indeed, where a particular article of the Special Part provides for only one type of punishment, it may be understood that the imposed punishment shall not exceed one half of that penalty.

However, if the sanction provision of the relevant article of the Special Part of the Criminal Code prescribes alternative types of punishment, a question arises as to whether the imposed sanction must not exceed one-half of the most severe punishment among those alternatives, or whether it is intended that any type of punishment imposed should not exceed one-half of its respective maximum limit.

The concept of "maximum punishment" is defined in paragraph 11 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated February 3, 2006, No. 1 "On the practice of sentencing by courts for crimes," according to which the maximum punishment should be understood as the maximum term or amount of any type of punishment provided for by the relevant article (part of the article) of the Special Part of the Criminal Code.

Nevertheless, the clarification contained in the said Plenum Resolution does not resolve the issue under consideration, as it is limited to defining the term "maximum punishment" and does not address the interpretation of this provision in cases involving alternative sanctions. Whereas Article 57^2 of the Criminal Code stipulates that the punishment imposed must not exceed one-half of the maximum punishment provided for in the relevant article (or part thereof) of the Special Part of the Code. However, there is no answer to the question of which of them should not exceed half of the maximum punishment if several types of punishment are provided for in the article of the special part of the Criminal Code in which the person is accused or suspected.

In particular, it would be appropriate to introduce an amendment stipulating that the term or amount of punishment imposed for crimes committed under a plea agreement should not exceed one half of the maximum term or amount of the type of punishment selected by the court, as provided for in the relevant article (or part) of the Special Part of this Code, which would eliminate ambiguity.

Furthermore, it would be appropriate for the Plenum Resolution to provide clarification regarding the imposition of additional punishments in criminal cases where a plea agreement has been concluded.

Similarly, it is important to clarify whether the term or amount of punishment imposed for crimes for which a plea agreement has been concluded may be less than the minimum part of the punishment provided for by the relevant article (part) of the Special Part of the Criminal Code, provided that it does not exceed half of the maximum punishment.

For example, according to the sanction of part three of Article 169 of the Criminal Code, it is punishable by imprisonment for a term of five to eight years. In this case, the term of punishment imposed under the plea agreement does not exceed four years, which is less than the minimum part of the punishment provided for by this article (part).

Therefore, in order to clarify this issue, it would be appropriate to provide an explanation in the Plenum Resolution.

Moreover, the legislation does not specify the legal consequences arising from a breach of the conditions of a plea agreement, in particular where it is established that the suspect or accused who concluded the agreement has provided false information or concealed any circumstances related to the commission of the offence.

However, a suspect or accused person cannot be held criminally liable for giving false testimony. Therefore, it would be appropriate to introduce a rule that, if such a situation is identified, the court shall impose punishment under the general procedure, but

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without applying the mitigating circumstances provided for in the Criminal Code.

In conclusion, the institution of plea agreements has been implemented into our national legislation on the basis of international experience and, in terms of its essence and content, is considered beneficial for all participants in the criminal proceedings.