



Journal Website:
<https://theamericanjournals.com/index.php/tajpslc>

Copyright: Original content from this work may be used under the terms of the creative commons attributes 4.0 licence.

Research Article

SPECIFIC FEATURES OF THE TRIAL ON THE APPLICATION OF PROCEDURAL AGREEMENTS

Submission Date: March 21, 2023, **Accepted Date:** March 26, 2023,

Published Date: March 31, 2023 |

Crossref doi: <https://doi.org/10.37547/tajpslc/Volume05Issue03-06>

Azimov Daniyori Esanovich

Researcher At Supreme School Of Judges, Uzbekistan

ABSTRACT

This article focuses on the analysis of the specific features of the trial on the application of procedural agreements. The necessity of revising the procedure for the trial of the cases in which a procedural agreement was concluded in criminal proceedings, as well as the procedure for appealing the verdicts, was revealed and justified.

KEYWORDS

Procedural agreement, civil action, appeal, subject of litigation

INTRODUCTION

In accordance with Article 26 of the Constitution of the Republic of Uzbekistan, Article 11 of the Universal Declaration of Human Rights, Article 14 of the International Covenant on Civil and Political Rights, and Article 23 of the Criminal Procedure Code, the case of every person accused of committing a crime shall be considered in court in a lawful manner and publicly, and he is not guilty until proven guilty.

The main concern in the implementation of the procedural agreement is that the court is not completely independent, the fact that the agreement was created may create favorable conditions for concealing violations of the law at the stage of proceeding to the court.

In the opinion of L.V. Golovko, the use of cooperation agreements in systems of judicial proceedings where the independence of courts is questionable, as well as

the right of a person to get a lawyer of his own choice, freedom from coercion to testify, etc. creates more conditions for abuses by implementing bodies [1].

The conclusion of a procedural agreement, bypassing the fundamental principles of the criminal process, is not a basis for finding a person guilty and imposing a punishment just on the basis of the conclusion of a procedural agreement.

The procedural agreement is not binding for the court, the procedure of the procedural agreement established in the Criminal Procedure Code does not limit the right of the court to conduct justice based on the evaluation of the legality and discretion of the agreement.

It is necessary to provide effective protection of a person from illegal conviction, unjustified restriction of his rights and freedoms.

Taking into account that the oversimplification of the trial may lead to the violation of the defendant's rights, it is necessary to create a mechanism that can ensure that the sentence is reasonable and fair, and prevent judicial errors.

The defendant exercises his constitutional right to defense by choosing the form of criminal proceedings. Of course, by exercising this right, the defendant gets a privilege regarding the term or amount of the punishment specified in Article 572 of the Criminal Code. The court, on its own initiative, changes the form of the trial and the case is heard in general procedure, the defendant cannot use this privilege established by the law.

For this reason, some scientists have thought about the need for the court to apply the privilege established by the criminal law to the person after the case has been considered in a general manner, after

the case has been considered in a general manner, and the person's guilt has been proven [2].

In our opinion, such an approach is not justified, because it is necessary to determine the form of trial not only by the will of the defendant, but by other objective criteria. In simpler words, the mere fact of a procedural agreement is not automatically the basis for the application of the privilege, otherwise there will be no content of the court hearing and this procedure will turn into an order proceeding.

According to part 6 of article 5867 of the Criminal Procedure Code, the court hears the opinion of the defendant and his defense attorney, the prosecutor, as well as, in necessary cases, the victim (civil plaintiff), after which he enters a separate room to make a decision. That is, the law does not provide for a judicial investigation in court hearings on procedural agreements. However, Article 457 of the Criminal Procedure Code clearly defines the issues to be resolved by the court at the time of sentencing, and failure to determine these circumstances may be grounds for annulment or change of the sentence.

When preparing a criminal case for trial based on a procedural agreement, the judge must check the presence of a plea agreement in the criminal case file, the prosecutor's decision to grant or reject a plea agreement, and a plea agreement.

In particular, on April 26, 2022, the Namangan district court on criminal cases refused to approve the plea agreement with B.

It was found that the plea agreement was granted based on the decision of the Namangan regional prosecutor dated March 5, 2022, but the plea agreement was not signed by the parties.

According to article 5869 of the Criminal Procedure Code, if the court does not agree with the qualification conditions of the crime in the charge against the defendant provided for in the agreement and there is reasonable doubt in the court about the guilt of the defendant, it is a reason to issue a ruling on refusing to approve the agreement and send the criminal case to the prosecutor for investigation according to general rules or to review the agreement is set to be. However, failure to conduct a judicial investigation imposes on the judge the obligation to determine these circumstances based on the materials of the criminal case. The existence of a special subject of proof is a characteristic feature of this category of cases, and the judge is required to evaluate the evidence according to his inner conviction, following the law and legal consciousness, based on a careful, complete, comprehensive and impartial review of all cases.

In addition, the failure to conduct a judicial investigation directly affects the court's decision on the issue of a civil lawsuit. According to article 457, Part 1, Clause 10 of the Criminal Procedure Code, whether a civil claim should be settled in a separate room (consulting room) at the time of sentencing, in whose favor and how much this claim should be settled, and if a civil claim has not been filed, whether the property damage caused by the crime should be recovered. It also resolves the issue of whether the defendants should be held liable in partnership or contributory mode. The reason is that the procedural agreement structure does not limit the civil claimant's rights defined in the Civil Code, does not exempt the court from the obligation to resolve the civil claim.

According to article 282 of the Civil Code, the admission of the claim by the accused, the defendant or the civil defendant, as well as the application of the civil plaintiff, the accused, the defendant or the civil

defendant on mutual agreement does not lead to the termination of the proceedings on the civil claim and requires the investigator, the investigator to thoroughly and fully investigate the circumstances of the civil claim. , does not exempt the court from the obligation to conduct a comprehensive and impartial investigation, and from the obligation to consider and resolve a civil claim.

Failure to conduct a judicial investigation, even if the defendant pleads guilty, prevents the correct determination of the amount and recovery of the civil claim.

If a case of refusal to compensate damages is detected during the court session in conciliation cases, the court issues a decision to send the case to the prosecutor for general investigation. At first glance, there is no doubt that this is correct, but the lack of general rules defining the procedure for determining the nature and amount of damage caused as a result of the commission of a crime in the criminal procedure law allows some victims to make unreasonable and illegal demands for determining the nature and amount of damage, including the victim. there are cases where both material and moral damages are demanded to be compensated and other interests to be satisfied. For example, when a criminal case is sent to court for settlement on the basis of conciliation, the victim during the court process demands additional conditions in exchange for not giving up his petition for conciliation: providing some kind of service, buying and selling an expensive item, help in solving certain issues related to material expenses, etc. [3]

For this reason, in our opinion, if a court investigation is not conducted in connection with the cases for which a procedural agreement was concluded, the court must take measures to determine the grounds, conditions, scope and method of the civil lawsuit, that

is, the recovery of damages. If there is a dispute on the issue of a civil claim, the case must be considered in a general procedure, because the conclusion of the court about the compensation of damages is in doubt and it means that the terms of the procedural agreement have not been fulfilled.

In addition, even if a court investigation is not conducted on the issue of a person's guilt, the court may conduct procedural actions aimed at determining the identity of the guilty person and mitigating and aggravating circumstances.

However, there is a significant difference in the subject matter of a plea agreement and an agreement to cooperate with the investigation. In particular, in connection with the agreement on cooperation with the investigation, it is necessary to clarify what exactly the defendant's cooperation with the investigation is expressed, the compliance of the cooperation with justice and the goals specified in the agreement, whether the security of the defendant or his family members was threatened as a result of the agreement.

In this sense, the opinion of some scientists that the fact, level and circumstances of the defendant's cooperation with the investigation, as well as the importance of this cooperation reflected in the prosecutor's presentation, should not be questioned by the court [4], because such an approach is ultimately rejected by the judge. has a direct impact on the decision to be made, therefore, the judge must perform direct judicial supervision and check whether the prosecutor's opinion about the fulfillment of the terms of the agreement is compatible with the circumstances of the case and the law.

The procedure for review of judgments issued on the basis of a procedural agreement also has a number of features.

By prohibiting the appeal of the sentence on the basis of non-compliance with the actual situation, the legislator devalues the idea of justice by allowing a person to be tried without grounds [5].

The main concern of the proponents of this opinion is that it cannot be changed based on the form of the court hearing due to the generality of the grounds for annulling the sentence, as well as limiting the grounds for filing an appeal against the sentence and negatively affecting the person's right to defense.

In most countries where the procedural agreement is used, it is not allowed to appeal the conclusions of the court on the grounds that they do not correspond to the factual circumstances of the criminal case. For example, Article 317 of the Criminal Procedure Code of the Russian Federation stipulates such a procedure, but the Plenum of the Supreme Court of the Russian Federation explained that there is no such restriction on filing a complaint in the control procedure.

By entering into a plea agreement, the accused waives a number of rights, including the right to direct and oral examination of evidence by the court. Also, the consequences of the procedural agreement will be explained to the accused, and the change of the form of trial will be based on the procedural agreement made based on the petition of the accused.

Judgments issued on the basis of different principles have the same legal force, but the features of the procedure of consideration of the case affect the nature of the grounds for annulment or modification established by law [6].

As a result of the procedural agreement, the public prosecutor is not given the opportunity to prove the defendant's guilt at the trial, a court investigation is not conducted, and as a result, the court checks whether

the guilt has been proven only through the criminal case materials.

That is, the judge examines the written evidence, the compliance with the criminal procedural law, and the correct application of the norms of the criminal law.

However, we can see that there is an inconsistency between the powers of the trial court and the appellate court in the Criminal Procedure Code. In particular, in accordance with Article 49717 of the Civil Code, the court has the right to conduct a full-scale judicial investigation to verify evidence by interrogating the defendant, witnesses, and victims summoned to the hearing. The court of first instance does not have such authority in cases where a procedural agreement has been concluded.

Of course, it is impossible to check the legality, reasonableness and fairness of the judgment and decision of the court of first instance without checking whether the court's conclusions stated in the court's judgment are in accordance with the actual circumstances of the case. However, burdening the appellate authority with the obligation to verify the evidence that was not examined by the first-instance court causes an unjustified increase in the volume of work in this instance.

According to Article 5863 of the Criminal Procedure Code, if it is found that the suspect, the accused, knowingly gave false testimony or intentionally concealed any important and relevant information from the investigation, did not fulfill the conditions and obligations stipulated in the agreement, after the agreement was passed and the punishment was imposed, the sentence will be reconsidered. explains to the suspect, the accused, who has made a request to enter into a plea agreement.

However, the Criminal Procedure Code does not specify the procedure for re-examination of the court sentence based on the violation of the terms of the agreement after the sentence has been passed and the punishment has been imposed. In particular, in accordance with Article 500 of the Criminal Code, if in the complaint, in the protest, there is a question about the need to apply the law on a more serious crime, about increasing the punishment or about other changes that lead to the deterioration of the condition of the prisoner, the case can be reconsidered in the cassation procedure only within one year after the sentence enters into force. is allowed.

Therefore, if it is found that the suspect, the accused knowingly gave false testimony or deliberately concealed any important and important information from the investigation, or did not fulfill the conditions and obligations stipulated in the agreement, after the sentence has been passed and the punishment has been imposed, the case against him can only be re-examined in the cassation procedure. admissible within one year after the judgment enters into legal force. However, if these cases are discovered after one year, how will the issue be resolved? Taking into account that this situation cannot be a basis for restarting proceedings due to newly discovered circumstances, it is definitely required to be regulated in Criminal Procedure Code.

In addition, it should be emphasized that the procedure for verifying the voluntariness of the plea agreement in the trial is not clearly defined. The reason is that "voluntariness" is a conditional concept, and the absence of a universally recognized criterion can lead to different interpretations of this concept.

Interrogation of the defendant is the main means of determining the voluntariness of the agreement in the trial.

For example, in part 4 of Article 316 of the Criminal Procedure Code of the Russian Federation, the judge must ask the defendant for his opinion on the following 6 issues: 1) is the charge understandable to him? 2) agrees to the charge; 3) whether he supports his request; 4) whether the request was submitted voluntarily; 5) whether the petition was filed after consultation with the defense counsel; 6) whether he understands the consequences of a verdict without a trial.

Therefore, in order to determine the voluntariness of the agreement, it is recommended to ask the defendant the following questions:

- Was it given after consultations with the defense counsel before the request for settlement was given?
- Does the signature on the application and agreement belong to you and did you sign it voluntarily?
- Was the agreement translated into your native language and did you read it before signing it?
- Did the defense attorney explain to you the terms of the agreement and the punishment provided for in the Criminal Code?

Is the plea agreement the result of threats to you or a loved one or promises not included in the plea agreement?

- Do you understand that you have the right to withdraw from the plea agreement at this stage?
- Did the defender answer all your questions regarding the agreement?
- Did you understand the consequences of the agreement?
- Did you understand that it is the authority of the court to approve the agreement and impose a punishment, and if you are dissatisfied with the

punishment imposed by the court verdict, you do not have the right to withdraw from the agreement?

However, to prevent the determination of these issues from becoming a formality, it is necessary for the judge to determine not only whether the requirements of the Criminal Procedure Code have been followed, but also the defendant's motive for making the agreement.

REFERENCES

1. Analysis of the conceptual positional project of the Law of the Republic of Kazakhstan "Amendments and additions to some zakonodatelnye akty RK po voprosam dalneyshego reformirovaniya olovnoogo procesas" L.V. Golovko. URL: <http://www.zakon.kz/4480136-analizkonceptualnykh-polozhenij.html>
2. Mashinnikova N.O. Usmotrenie suda pri rassmotrenii ugovnyx del pri soglasii obvinyemogo s pred'yavlenym emu obvineniem: avtoref. dis. ... candy. walk science Ulyanovsk, 2021. S. 200.
3. Jalolov B.O. Some considerations that arise in the application of the institution of exemption from responsibility due to conciliation in judicial and investigative practice // Measures to improve the institution of private prosecution and conciliation: materials of the republican scientific and practical conference. — T.: MIA Academy of the Republic of Uzbekistan, 2015. — B. 90-91
4. Mashinnikova N.O. Usmotrenie suda pri rassmotrenii ugovnyx del pri soglasii obvinyemogo s pred'yavlenym emu obvineniem: avtoref. dis. ... candy. walk science Ulyanovsk, 2021. S. 232.

5. Sviridov M.K., Piyuk A.V. Teoreticheskie osnovy uproshcheniya form razresheniya ugovolnykh del sudom v Rossiyskoy Federatsii. – Tomsk: Izdatelsky Dom TGU, 2019. – 217 p.
6. Mikhailovskaya I. B. Nastolnaya kniga sudi po dopozyvaniyu v ugovnom processe [Elektronnyy resurs] // Spravochno-pravovaya sistema "Garant". Electronic. poiskovaya progr. M., 2007.

