

PRE-TRIAL COOPERATION AGREEMENT (PLEA BARGAIN): ISSUES AND PERSPECTIVES

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ABSTRACT

The pre-trial cooperation agreement represents the agreement between the parties on charge and protection according to which the specified parties coordinate conditions of the suspect responsibility or the defendant depending on his actions after initiation of legal proceedings or making a charge. Today practice of the concluding of the pre-trial cooperation agreement promptly gains steam, whereas science, analyzes, generalizes experience in details, and develops a technique of its application. Despite rich foreign experience of implementation of similar procedures at investigation of crimes, this short story of the Russian legislation has been ambiguously apprehended by both scientific and practical workers. Moreover, common stereotypes found in the Russian legislation, in particular, aimed at uncompromising fight against crime, are nutrient medium for reasonings about moral questions arising before the investigator, who, to some extent, is placed on the way of cooperation with the criminal. Today, however, from our point of view, the studied innovations in criminal legal proceedings should be considered as a legal reality with no further refusal. In this regard it would be more expedient to speed up work on improvement of institute of the pre-trial cooperation agreement, than to try to search only for shortcomings and subject of infinite and unpromising criticism.

Keywords: *"criminal legal proceedings", "disclosure", "investigation", "the pre-judicial agreement", "investigator", "special order", "cooperation".*

INTRODUCTION

Certainly, the quality indicator of crime change can be considered as repeatedly amplified counteraction to crimes' disclosure, substantially characterised as systemic and long-term. Under given circumstances, society and the state actively look for the most effective and optimum ways of overcoming counteraction to crimes' disclosure. Introduction of the legal short story of the pre-trial cooperation agreement into the Russian legislation is a convincing example. This procedural institute is urged to stimulate commission of positive post-criminal acts by accused (suspects) because the state undertakes certain obligations towards the accused (suspect) who has concluded the pre-trial cooperation agreement.

Nowadays the practice of application of chapter 40.1 of the Code of Criminal Procedure of the Russian Federation formed in 7 years from the moment of adoption of the Federal law from 6/29/2009 by No. 141-FL demonstrates rather wide use of pre-trial cooperation agreements on criminal cases that is confirmed by data of judicial statistics .

So, in 12 months of 2011, 2 969 criminal cases had come to courts of law of the Russian Federation with prosecutor's recommendation of a special order of conducting court session and adjudication regarding the defendant with whom the pre-trial cooperation agreement was concluded (2 630 persons were condemned); in 2012 – 2 289 criminal cases (2 099 persons were condemned); in 2013 – 3 261 criminal cases (3 155 persons were condemned); in 2014 – 4 241 criminal cases (3 875 persons were condemned); in 2015 – 4 543 criminal cases (4 134 persons were condemned) [1].

At the same time, an increased number of the reached agreements also stimulates the unresolved questions and problems faced by participants of criminal legal proceedings in practice .

The ambiguous relation of scientific and practical workers to introduction of the pre-judicial cooperation agreement is caused, first of all, by problemacy in a legal regulation of this institute that, certainly, causes difficulties of its application in the course of investigation of crimes. In terms of the critical analysis of norms of this institute, certain scientists-jurists meet practical requirements, and note that the legislator has put in norms of the Criminal Procedure Code of the Russian Federation "extremely vicious ... idea of admissibility of compromises in fight against crime ... Thus we conclude that the legislator is consistently guided by the relativistic principle: in the Russian criminal trial everything is relative, admissible and acceptable" [2]. At the same time, in their opinion, there are increased risks of false denunciations, tampering of investigating authorities, prosecutors and judges, and prosecuting of only those on whom the defendant informs, and thus real offenders escape criminal liability. As a result it is noted that according to their contents chapters 40 and 40.1 of the Code of Criminal Procedure of the Russian Federation aim to counteract investigation [3].

Today, however, from our point of view, these short stories of criminal legal proceedings should be considered as the reality with no further refusal. Therefore it is more expedient to speed up work on improvement of a legal regulation of institute of the pre-trial cooperation agreement, and also to comprehend ways of providing them with complex criminalistic recommendations which will allow minimizing the negative factors and risks stated above .

DATA AND METHODS

The methodological basis of the research was constituted, first of all, by a fundamental dialectic method of cognition of the social and legal phenomena of the area under study, methods of the analysis, questionnaire survey, and also a comparative and legal method.

So, comprehensive scientific approach significantly dispels the fears stated above regarding introduction of new legal institute to the Russian legislation. First of all, similar fears aren't new. Thus, according to D. Richmond: "Obviously, this law provides certain risk. The prosecutor needs to be able to convince, intimidate, and catch criminals on a lie. Of course, there is always a probability that the defendant will begin to slander the innocent to commute the penalty. Before relying on words of the criminal, everything needs to be double-checked" [4].

The comparative and legal method is one of the fundamental means of studying of legal phenomena. Its application helps to reveal the general, special and single features of legal systems of the present days. For example, authors of this work initially proceeded from a hypothesis: introduction of institute of the pre-trial cooperation agreement to the Russian legislation in its current rudimentary state will hardly bring

something new into the international legislation. The research conducted by us demonstrates a daily need of adopting foreign experience in a regulation of the studied institute. It was the topic, based on rich foreign experience that has predetermined interest in a wide range of foreign researches. Among them works of such scientists, as: Cynthia J. Alkon [5], Albert W. Alschuler [6], Stephanos Bibas [7], Frank H. Easterbrook [8], George Fisher [9], John H. Langbein [10], Maximo Langer [11], Stephen J. Schulhofer [12], Fred C. Zacharias [13], and others.

Having developed a special questionnaire, authors of this article have studied 20 criminal cases considered in the Supreme Court of the Republic of Tatarstan and Vakhitovsky district court of Kazan for the last 2 years (2014-2016) according to which the pre-trial cooperation agreement has been concluded with one or several defendants. Complexity combined with high scientific informational content of criminal cases predetermined the multiple volumes of the cases on the most difficult and resonant crimes committed by organized criminal groups (from 10 volumes, and more). This questionnaire comprised the following key questions: 1) at what stage of preliminary investigation petitions for the conclusion of the pre-trial cooperation agreement were presented; 2) whether the person who has concluded the pre-trial cooperation agreement was involved in judicial proceedings on the main criminal case); 3) in what procedural status it acted in court session of the main case; 4) what was the status of a person in organized criminal group (the organizer, the associate, the performer, etc.); 5) whether the concerning criminal case is viewed as a separate procedure; 6) what is the awareness of a person, who concluded the pre-trial cooperation agreement, in the criminal activity with no his personal contribution .

RESULTS. WHAT DO RESULTS OF OUR RESEARCHES SHOW?

1. In many cases, accused (suspect) with whom the pre-trial cooperation agreement has been concluded, wasn't incidentally involved in criminal activity. On the contrary, criminal activity was and remains the main way of existence for him. Moreover, as a rule, it is not about common members of criminal organized group, but organizers and the most active performers of a crime. Certainly, it should be made clear that concluding the pre-trial cooperation agreement for such person may, and, most likely is, a means to achieve personal goals and interests, to minimize negative consequences by any ways. At the same time, concessions by criminal prosecution authorities concerning accused (suspect) who concluded the pre-trial cooperation agreement are fairly explained by social value achieved by a full crime picture .

In this regard the following example of court practice is relevant. An X., possessing good organizing abilities, leadership and background experience of armed commission of assaults (who has been sentenced to 16 years of imprisonment for robberies and other serious crimes in 2004), has organized a gang to commit serious and the most serious crimes in 2013. It is to be emphasised that any of other members of gang had no prior convictions. But it was the X, the prosecutor has concluded the pre-trial cooperation agreement with. It appears, that well planning and coordination with other members of group performed by X was justified since, as a result, all members of gang, including X., have received almost equal punishment in the form of imprisonment from 10 to 12 years [14]. At the same time cooperation with X has enabled investigation authorities, and court to establish an objective picture of committed criminal acts.

2. According to paragraph 4 part 1 art. 154 of the Code of Criminal Procedure of the Russian Federation, the investigator has a right to allocate another criminal case concerning accused (suspect) with whom the pre-trial cooperation agreement has been concluded into a separate procedure. In every criminal case under study, the stated rule was followed and criminal cases against people, who have reached the pre-trial cooperation agreement, have been allocated in separate procedure and considered separately by courts in a special order up to the settlement of the main criminal case. Thus, L. G. Tatyana primarily suggests considering criminal procedures against people, who haven't concluded the pre-trial cooperation agreement. Thus, the defendant who concluded the pre-trial cooperation agreement will be able to fulfill

obligations for the plea bargain. In her opinion, it prevents the defendant from escape after sentencing according to special procedure [15].

It appears that, such doubts arise quite often because the problem under study is investigated without the outlined tendencies of the modern practice, based, in particular, on features of the relations of public authorities with the person who has concluded the pre-trial cooperation agreement. Specifics of this relationship, in our opinion, consist in the following. Firstly, the state fulfills the obligations honestly and in time, thus, assessing past (for commission of crime), present and future actions (for assistance in disclosure of crimes and establishment of persons, who committed it) of accused (suspect). Secondly, such "trust" is an effective motivator for the person who has concluded the pre-trial cooperation agreement firmly to adhere to the line of conduct chosen by him and based on cooperation with bodies of preliminary investigation at disclosure of a crime. Thirdly, during studying of criminal cases we haven't revealed any case of release from custody of such person accused of commission of serious crime.

3. The investigator's actions in case of strong reasonable doubts in truthfulness of testimonies of cooperating accused (suspect) remain unsettled up until now. In fact, the unfair pleader risks almost nothing, as his any deception will not affect his position since according to a presumption of innocence accused (suspect) doesn't bear criminal liability for refusal of evidence and for giving obviously false testimonies (item 3 of the p. 4 of Art. 47 of the Code of Criminal Procedure of the Russian Federation). To expose deception? To terminate the agreement? In this regard the recommendations on overcoming deception and other manifestations of unfair behavior of the person cooperating with bodies of preliminary investigation developed by criminalistics can be of essential help in the solution of the considered problem .

4. One of key procedural questions of institute of the pre-trial cooperation agreement is in what status the person who has concluded the pre-trial cooperation agreement on the main criminal case has to be interrogated in court. The analysis of materials of the criminal cases studied by us confirms full uniformity of law-enforcement practice according to which this person in all cases was interrogated in the procedural as a witness .

Certainly, the person who has concluded the pre-trial cooperation agreement and has already been condemned for the imputed acts in a special order, in court session on the main case has to have the status of the witness .

The rule of obligatory participation of the person who has concluded the pre-trial cooperation agreement in court session on the main case that will in full be coordinated with the developed case practice of the European Court of Human laws has to be accurately enshrined in the criminal procedure legislation of the Russian Federation .

In the Resolution of ECHR from 7/24/2008 of case "Vladimir Romanov against the Russian Federation" (complaint No. 41461/02) it is determined that these laws demand the defendant to have an adequate and appropriate opportunity to challenge evidences which the witness gives against him, to ask him questions as soon as indications are received or at later stage of trial ... Conviction can't be based, only or to a great extent, on testimonies of the witness whom the defendant couldn't interrogate or who hasn't been interrogated on preliminary investigation or in judicial examination [16].

5. The law doesn't provide the obligatory participation of the victims in court considering case in a special order against the person who has concluded the pre-trial cooperation agreement. In some cases, due to the absence of the victims in the courtroom for the unspecified reasons courts continued judicial proceedings. At the same time, the victims can become carriers of the important guiding information on the case. Thus, injured K., well informed on many circumstances connected with activity of the criminal group 'Kaluga'

has declared in court: "preliminary investigation hasn't established real motive of murders of my spouse ... A number of citizens who had no motive to wish death to my husband is accused on the case ... The pre-trial agreement with them has been concluded with one purpose – that they have received the shortest terms" [17]. The followed verdict of jurors concerning innocence of two citizens accused of participation in commission of crimes can serve as the evidence of justice of her words.

In this regard we consider it expedient to legitimate obligatory participation of the victim in judicial proceedings of criminal case in a special order concerning the person with whom the pre-trial cooperation agreement was concluded.

CONCLUSIONS.

In short operational term the institute of the pre-trial cooperation agreement has shown the efficiency and the prospect of broad application in the future. The research of criminal cases conducted by us presents positive tendencies achieved by introduction of norms of this institute in judicial and investigative practice.

The compromise embodied in the pre-trial cooperation agreement concluded by criminal prosecution authorities is justified as it achieves socially useful result by establishing all circumstances of a crime. That is especially important in criminal cases of serious and the most serious crimes committed by a group of persons .

We consider the following features of the legal relationship in the conclusion of the pre-trial cooperation agreement: 1) the Russian Federation fulfills the obligations honestly and in reasonable time, forming assessment to actions of accused (suspect) of the past, present and future; 2) the trust from the state in turn acts as an effective motivator for the person who has concluded the pre-trial cooperation agreement consistently to adhere to the line of conduct determined by a framework of the concluded pre-trial agreement.

In case, the person in whose production there is a criminal case has reasonable doubts in truthfulness of testimonies of the defendant who has concluded the pre-judicial cooperation agreement or whether his assistance was limited to conveying data only on his personal participation in criminal activity or he hasn't met and fulfilled all conditions and obligations provided by the concluded pre-trial cooperation agreement. Then there is sufficient base to cancel the pre-trial cooperation agreement when the state refuses to implement the assumed liabilities provided by this agreement at any stage of criminal legal proceedings .

The pre-trial cooperation agreement implies the criminalistics component which is designed to provide efficiency of action of this procedural institute .

The legitimization needs to find the rule of obligatory participation of the person who has concluded the pre-trial cooperation agreement in court session on the main case.

According to the criminal procedure legislation of the Russian Federation, it is expedient to account for victim's opinion regarding an order of conducting court session, and also obligation of the participation of the victims in court that considers the case in a special order against the person who has concluded the pre-trial cooperation agreement .

Conclusion. Under current conditions activities for disclosure of crimes need to be reconsidered according to the changes that took place in the criminal procedure legislation. These changes are viewed as a proper response to increase of counteraction to disclosure of crimes from related parties. The state represented by

the competent authorities has decided on legislative stimulation of positive post-criminal acts of accused (suspects) which is carried out because the state undertakes certain obligations to the defendant. Figuratively speaking, the signal is sent to the parties: it is necessary to change rigid opposition to establishment of mutually beneficial cooperation. However, it is unacceptable to go beyond certain borders of this cooperation .

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