

Pre-trial cooperation agreement: enforcement matters and theory

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Abstract—Along with total ordering of the criminal trial general in Russia, special, summary criminal procedures are applied. At present, special criminal justice is the main form of criminal litigation, as more than half of criminal cases are considered on the merits using these procedures. They are used to save time and labor of parties to a criminal proceeding, to involve people into organized groups, criminal communities in the investigation of crimes. In the present study, the authors consider the special procedure for the trial at the conclusion of the pre-trial cooperation agreement, attention is paid to the importance of the pre-trial cooperation agreement for the criminal process, consider its characteristics, as well as the legal precedents. Pre-trial cooperation agreement has some similarities with the guilty plea (plea bargaining), widely used in law enforcement practice of the United States. The authors believe that the basis of these procedures is a confession of guilt by the suspect (accused), which is sufficient for his conviction, as well as certain advantages for the accused who admitted guilt. The problems of using the pre-trial cooperation agreement in law enforcement practice are the possibility of false denunciations by a person who has concluded a pre-trial cooperation agreement, the use of illegal methods of investigation, the vulnerability of the rights of the victim. Other negative and positive aspects of application of the pre-trial cooperation agreement are considered.

Keywords—*pre-trial cooperation agreement; special procedure for the trial; summary criminal jurisdiction; acquiescence to prosecution; guilty plea*

I. INTRODUCTION

The attention to the problems connected with permission of criminal cases in the special, summary procedures of judicial proceedings is caused by the fact that now, according to judicial statistics over a half of criminal cases is considered in essence with use of these procedures. Their use is caused by the objective difficulties connected with identification and investigation of collective crimes, difficulties of investigation of the crimes committed in the conditions of not evidence, the existing unofficial arrangements between the parties of charge and protection.

These procedures are used to save resources (time, financial, human, etc.) for criminal proceedings, as well as prevention of criminality, including professional and organized crime, by reducing the number of humans who are in prison for a long time and are influenced by the criminal environment. Due to the wide application of special, summary criminal jurisdiction in modern Russia,

the purpose of this research is to study the law enforcement practice and problems arising from the use of a special procedure for the trial at the conclusion of a pre-trial cooperation agreement.

II. MATERIALS AND METHODS (MODEL)

The research methods are the general scientific ones (system, logical) and the private scientific ones (comparative legal, formal legal).

III. RESULTS AND DISCUSSION

The application of a special procedure for the trial at the conclusion of a pre-trial cooperation agreement is provided for by the provisions of Chapter 40.1 of the code of the Criminal Procedure Code of the Russian Federation. The essence of this procedure is to encourage the perpetrator to assist the preliminary investigation authorities in the detection and investigation of crimes by his actions, in return for receiving certain advantages as the accused who admitted guilt. The pre-trial cooperation agreement contains instructions on actions which the suspect (accused) undertakes to make for the purpose of assistance in disclosure and investigation of a crime, exposure of other accomplices of a crime, search of the property received in a criminal way.

The conclusion of a pre-trial cooperation agreement involves the adoption of security measures against the person who has concluded such an agreement. Ensuring the safety of participants in criminal proceedings is one of the most effective ways to obtain the necessary evidence in the case [1].

The parties to this agreement are the prosecutor and the suspect (accused) with the mandatory participation of counsel. Given the contractual nature of the institution in question, the conclusion or non-conclusion of the agreement and the conditions under which it is concluded are decided by the parties themselves. The conclusion of a pre-trial cooperation agreement on behalf of the state is a dispositive power of the prosecutor, who has the right to determine the range of persons with whom it is advisable to cooperate with the prosecuting authority on the results of negotiations with the accused, who filed the relevant applications, and their defenders.

The exceptional power of the prosecutor to conclude a pre-trial cooperation agreement testifies to the supremacy of the prosecutorial power in the nomination and preparation of charges and the conduct of criminal proceedings [2].

The investigator and the Prosecutor conclude a pre-trial cooperation agreement to pursue the goal of disclosing previously committed crimes, to solve crimes that were not known to law enforcement agencies, to obtain evidence or information that exposes persons who committed crimes and were not brought to criminal responsibility, or other accused, to establish the location of the property obtained as a result of the crime.

The aim pursued by the suspect, the accused, has concluded a pre-trial cooperation agreement is to get the minimum possible punishment for the crimes committed by him in exchange for providing the bodies carrying out preliminary investigation with information relevant to the disclosure of crimes.

At the conclusion of the pre-trial agreement cooperation the parties may agree on the limits of criminal liability (punishment) for the committed crime but the final amount of punishment is determined by the court on the results of the trial conducted in a special (reduced) order.

The basis for the court to consider the question on the special procedure for the trial and adjudication on the criminal case concerning accused with which the concluded pre-trial cooperation agreement, a criminal case is submitted to court with the Prosecutor about a special procedure for the trial and adjudication on the criminal case. In preparing the case for trial, the judge finds out the content of the submission and establishes the presence in the case file of other procedural documents necessary for its consideration in a special order: a petition for the conclusion of a pre-trial cooperation agreement, the investigator's decision to initiate a petition to the Prosecutor for the conclusion of a pre-trial cooperation agreement with the suspect or accused, the Prosecutor's decision to grant a petition for the conclusion of a pre-trial cooperation agreement, a pre-trial cooperation agreement and also whether the copy of the order of the Prosecutor on the special procedure for the trial and adjudication is handed over to the accused and his defender.

When a case against a person who has concluded a pre-trial cooperation agreement under consideration, the judge may impose a conviction if he/she concludes that the charge with which the defendant has agreed is confirmed by the evidence collected in the criminal case. It should be noted that in cases with a pre-trial cooperation agreement, the evidence is not examined on the basis of an oral, adversarial process, so the judge must carefully study the materials of the criminal case at the stage of preparation of the court session, paying special attention to the evidence of the prosecution, its confirmation by the evidence collected in the case, assessing the relevance, admissibility and sufficiency of evidence for the prosecution.

It should be noted that at the hearing in the proceedings in respect of a person who has concluded a pre-trial cooperation agreement, the role of the Prosecutor, in essence, comes down not to the maintenance of public prosecution and by the confirmation provided by the defendant to the preliminary result of the assistance and its

results reflected in the submission of the Prosecutor on the special order of the trial. Thus, there is no judicial investigation in court proceedings in cases of consideration of cases against persons who have concluded a pre-trial cooperation agreement.

The content and validity of the Prosecutor's submission are the subjects of judicial proceedings in a special order of the court decision at the conclusion of the pre-trial cooperation agreement. In fact, the submission in question contains a request for the application of a special procedure for the trial in respect of a person who has concluded a pre-trial cooperation agreement. The Prosecutor's order contains a justification of the circumstances related to the implementation of the conditions of the pre-trial cooperation agreement and the circumstances related to the completeness and truthfulness of the information provided by the accused. The order is accompanied by materials confirming the fulfilment of the obligations of the agreement and certifying the completeness and truthfulness of the information obtained in the course of cooperation with the investigation. It should be borne in mind that the subject of consideration in court can only be such an order of the Prosecutor, to which the materials are attached. Thus the materials attached to the order of the Prosecutor and case papers concerning conditions of the pre-trial cooperation agreement are subject to consideration in court session. The court studies not only the materials available in the criminal case but also other documents submitted by the parties including those relating to other criminal cases initiated as a result of cooperation with the defendant.

In addition, the court session must examine the evidence confirming compliance with the terms of the defendant pre-trial cooperation agreement and the very importance of this cooperation for the disclosure and investigation of the crime. When considering the case, the defendant is invited to give evidence on the merits of the charge.

It should be recognized that the procedure for holding a court session when considering a case against a person who has concluded a pre-trial cooperation agreement does not fully provide the parties, the participants in the process with certain opportunities to study the evidence of the guilt of the cooperating person. Such study is limited which creates the risk of judicial error in the case not only for the person who concluded the pre-trial agreement but also for its participants.

One of the conditions of the decision of the conviction against the defendant with whom a pre-trial cooperation agreement is concluded is his consent to the indictment. If the defendant does not agree with the charge the court decides to terminate the special procedure for the trial and appoints the trial in the general procedure. Tisen O. indicates that the bases for making decision on criminal proceedings in general, proceedings in respect of a person who concluded a pre-trial cooperation agreement are: the defendant refused pre-trial cooperation agreement and petitioned for criminal proceedings, composed of three judges or by a jury; during the court session, the state prosecutor did not confirm the active assistance of the accused to the investigation in the disclosure and investigation of the crime, exposing and prosecuting other accomplices of the crime, the search for property obtained

as a result of the crime; establishing the fact of involuntary conclusion of a pre-trial cooperation agreement by the accused; establishing the fact of providing the defendants in pursuance of the pre-trial cooperation agreement concluded with him false information or deliberate concealment of other essential circumstances of the crime; the finding of a prisoner with him earlier pre-trial cooperation agreement only by communicating information about their own participation in criminal activity; defendants have not complied with the conditions and not fulfilled the obligations undertaken with him pre-trial cooperation agreement; the defendant fully admits his guilt; the defendant refused the prisoner with him pre-trial agreement [3].

A more complete description of the special procedure for the trial at the conclusion of the pre-trial cooperation agreement can be found in table I.

TABLE I. THE CHARACTERISTIC OF THE SPECIAL PROCEDURE FOR THE TRIAL WITH A PRE-TRIAL COOPERATION AGREEMENT

Trappings	Special procedure for the trial with a pre-trial cooperation agreement
Person who has the right to submit an application	adult suspect, accused
Time of submission of the application	from the beginning of the criminal prosecution to the completion of the preliminary investigation
The subject of pre-trial cooperation agreement	conditions of cooperation of the person with bodies of investigation
Participants who influence the implementation of a special procedure for the trial with a pre-trial cooperation agreement	investigator, head of the investigation office, prosecutor, public prosecutor, court
Taking into account the position of the victim	consent of the victim is not required
Participation of counsel and defendant	necessarily
Procedural documents required for the consideration of a criminal case in a special order	request for pre-trial cooperation agreement submitted by the suspect or accused; resolution of the investigator on initiation before the prosecutor of the petition for the conclusion with the suspect (accused) of the agreement; order of the prosecutor on satisfaction of the petition for the conclusion of the pre-trial cooperation agreement; a pre-trial cooperation agreement, signed by the suspect (accused), the council and the prosecutor; order of the prosecutor on the special order of carrying out court session and adjudication on criminal case concerning the accused with whom the pre-trial cooperation agreement is signed
The basis of consideration of criminal case in a special order	criminal case received by the court with the prosecutor's order
The conditions of consideration of criminal case in a special order	the public prosecutor has confirmed the accused's active assistance to a consequence; a pre-trial cooperation agreement was signed voluntarily and with the defender

The procedure for the trial and sentencing	the absence of a full judicial investigation, however, should be investigated the facts confirming the assistance of the accused to the investigation bodies, the possible threat to the personal security of the defendant as a result of cooperation, his close relatives, the circumstances characterizing the personality of the defendant, and the circumstances mitigating and aggravating the punishment.
The guarantees of the independence, objectivity and impartiality of judges	the judge who took part in consideration of criminal case concerning the person with whom the pre-trial cooperation agreement is signed cannot participate in consideration of criminal case concerning accomplices of a crime of which such person was accused, including with whom the pre-trial cooperation agreement is also signed; a judge who has participated in the consideration of a criminal case against accomplices to a crime in which a person with whom a pre-trial cooperation agreement has been concluded is accused may not participate in the consideration of a criminal case against such person
Sentencing	in the presence of mitigating and no aggravating circumstances, no more than 1/2 of the maximum term or amount of the most severe type of the main punishment, in other cases – no more than 2/3 of the maximum term or the amount of the most severe type of punishment
The limits of appeal against sentence	the sentence cannot be appealed by the parties to the higher court in connection with the discrepancy of the court's conclusions set out in the sentence to the actual circumstances of the case

Currently, a special procedure is in demand by the criminal justice system, most criminal cases are resolved in a special manner. The number of criminal cases considered on the merits in a special order (a special procedure for the trial at the conclusion of a pre-trial cooperation agreement and with the consent of the accused with the indictment) can be viewed in table II.

TABLE II. THE NUMBER OF CRIMINAL CASES CONSIDERED ON THE MERITS IN A SPECIAL ORDER [4]

Year	Number of criminal cases received by the courts of the Russian Federation	Number of criminal cases considered on the merits in a special order (Special procedure for the trial with a pre-trial cooperation agreement and with consent of the accused with the indictment)	%
2015	965925	626777	65
2016	961083	636431	66
2017	916266	598938	65
6 month of 2018	459905	280140	61

According to Piyuk A. V., benefits from the conclusion of pretrial cooperation agreement for the investigation is obvious: if there is no evidence against or they are not sufficient for prosecution in the usual manner without the assistance of the cooperating accused, investigation of offences represented by the specified authorities is difficult

[5]. Time savings are obvious since the consideration of criminal cases in a special order at the conclusion of a pre-trial cooperation agreement facilitates the work of judges – there is no need to hold a court session in full, it is only necessary to check the facts of cooperation of the defendant with the bodies of preliminary investigation and to examine the characterizing material on the defendant, as well as circumstances mitigating or aggravating punishment. From the point of view of Piyuk A.V., literally justice specified a special, summary procedure is difficult to call, as the court seeks to legalize the agreement, not to resolve the question of the guilt or innocence of the defendant, he was requested to take full responsibility for previous actions and decisions of investigator and prosecutor and the very real possibility of conviction of innocent persons and persons in respect of whom the testimony of the person who concluded the agreement [6].

It can be argued that the pre-trial cooperation agreement has some similarities with the guilty plea («plea bargain»), widely used in US law enforcement. Thus, plea bargaining is characterized by the fact that persons who face unjust conviction because of the shortcomings of the trial, preventing the separation of guilt from innocence, may prefer a certain, less severe punishment, concluding a guilty plea, the risk of conviction and more severe punishment after the trial in the general manner [7].

The number of convicts whose cases are considered in a special order (a special procedure for the trial at the conclusion of a pre-trial cooperation agreement and with the consent of the accused with the indictment) can be seen in table III

TABLE III. THE NUMBER OF CONVICTS WHOSE CASES ARE CONSIDERED IN A SPECIAL ORDER

Year	Number of convicts in the Russian Federation	Number of convicted persons in respect of whom a special procedure for the trial has been applied	%
2015	762556	545203	71
2016	772920	548666	70
2017	725547	518013	71
6 month of 2018	341039	241602	70

An application for the conclusion of a pre-trial cooperation agreement shall be submitted in writing to the prosecutor through the investigator and shall contain information on the actions that the suspect (accused) undertakes to commit in order to assist in the investigation of the crime, the exposure of other accomplices to the crime, the search for property obtained by criminal means. The application must be signed by the defender.

At the same time, the accused is in a rather difficult situation: on the one hand, his application may not be supported by the investigator due to the insignificance of the information offered to the communication, on the other hand, it is unprofitable for the accused to give full information at this stage, without guarantees of reducing the punishment. It should be recognized that the prosecutor's

and the court's assessment of how well the terms of the agreement are fulfilled by the accused is subjective [8]. Pre-trial cooperation agreement does not always lead to consideration of the case in a special, simplified procedure, since this procedure is applied in the case of the prosecutor's decision on the proper implementation of the conditions and obligations of the accused under the pre-trial cooperation agreement [9]. At the same time, the legislation does not offer any objective criteria by which the prosecution and the court will have to determine whether the suspect (accused, defendant) has fulfilled or not the obligations assumed under the cooperation agreement and, consequently, whether he has the right to claim the promised benefits in imposing punishment and to demand from the representatives of the prosecution and the court the performance of duties corresponding to this right.

At the conclusion of the agreement the prosecution is not bound by the obligation to leave unchanged the charge under which the agreement is concluded, the accused can be charged with all facts of his criminal activity that have become known to the prosecutor [10].

According to Kolesnik V. V., there is a practice of tacit assumption by the accusatory power (during the negotiations) of the obligation to maintain unchanged (or even mitigate) the charges formulated at the time of the conclusion of the cooperation agreement [11].

However, the importance of pre-trial cooperation agreements should not be overstated. According to Baev M. O. and Gavlo V. K., it is necessary to note the increased danger of false denunciations by persons with whom the possibility of concluding a pre-trial cooperation agreement is discussed [12]. In addition, there are cases of illegal methods of investigation, "non-procedural" conversations with the detainee in the absence of a lawyer in order to persuade him to confess his guilt and testify, cases of physical and mental violence against suspects (accused) [13].

According to Grigoryev V. N. and Zaitsev O. A., the considered summary procedure is a tool of legal regulation, in which one participant in the criminal process is endowed with separate elements of the status of another participant in the process [14]. At the conclusion of the pre-trial cooperation agreement, the criminal case against the cooperating accused shall be separated from the main criminal case and considered separately from the main case. A person who has concluded a pre-trial cooperation agreement due to the peculiarities of its legal position in the criminal process is not a defendant (accused) in the main criminal case and at the same time as the accused in a separate criminal case, by virtue of his pre-trial cooperation agreement, bound by the obligation to report information exposing other accomplices in the crime, in its procedural status is not a witness in the main criminal case.

It is extremely difficult to establish the accuracy of the information and the real circumstances of the crime in such conditions since the investigation of the circumstances of its commission and the evidence is incomplete, the truthfulness of the testimony of the cooperating person is only presumed [15].

Consideration in the special order of the allocated criminal case concerning the person who signed the pre-trial cooperation agreement earlier, than the main criminal case concerning accomplices of this crime can lead to that the courts considering these criminal cases differently establish actual circumstances of the same crime, give them different assessment and criminal legal qualification. There may be a situation where a person who has concluded a pre-trial cooperation agreement, subsequently in court refuses to give evidence previously and other evidence is not available, the remaining defendants have the opportunity to avoid criminal liability [16].

The interests of the victim in the situation under consideration are not protected since his will in the conclusion and execution of the pre-trial cooperation agreement is not taken into account, the victim remains unaware of the submitted application for the conclusion of a pre-trial cooperation agreement, the investigator, the head of the investigative body, the prosecutor's decision, does not participate in the conclusion of the agreement, cannot protest against any of its conditions or, on the contrary, apply for the inclusion of any conditions in the agreement.

This provision shows that the state is only interested in the fact that the crimes have been disclosed, the rights and interests of the victims remain unprotected [17]. The victim is only notified of the date, time and place of the hearing in a special manner, providing an opportunity to express their opinion on the consideration of the criminal case in this order. Objection of the victim against the special order of carrying out court session concerning the defendant with whom the pre-trial cooperation agreement is signed for court it is optional.

The question of the admissibility of a pre-trial cooperation agreement with a minor suspect or accused remains unresolved at present. There is no direct answer to this question in the criminal procedure law. In judicial practice the possibility of concluding a pre-trial cooperation agreement with a minor is denied. Ovsyannikov I. V. notes that pre-trial cooperation agreements in practice are effective at investigation of group crimes and the group way of commission of illegal actions is a distinctive sign of crime of minors. The unresolved issue of concluding pre-trial cooperation agreements with minors significantly reduces the effectiveness of the legal institution of pre-trial cooperation agreement [18]. If a minor has assisted the detection and investigation of a crime the exposure and prosecution of other accomplices to a crime, the search for property obtained as a result of a crime, the court should take these circumstances into account when imposing punishment on a minor.

IV. CONCLUSION

The special order at the conclusion of the pre-trial agreement applied in modern Russia is the simplified form of criminal proceedings. The essence of this procedure is to encourage the perpetrator to assist the preliminary investigation authorities in the detection and investigation of crimes by his actions, in return for receiving certain advantages as the accused who admitted guilt. The pre-trial cooperation agreement contains instructions on actions which the suspect (accused) undertakes to make for the

purpose of assistance in disclosure and investigation of a crime, exposure of other accomplices of a crime, search of the property received in a criminal way.

The special procedure of trial with the consent of the accused with the charge against him has some similarities with plea bargaining, used in the United States. The similarity of the special procedure for the trial at the conclusion of the pre-trial cooperation agreement with plea bargaining is that the formal consent with the prosecution is sufficient for the conviction. In addition, persons who are threatened with unjust conviction due to deficiencies in the judicial process that prevent the separation of guilt from innocence may prefer a certain, less severe punishment by entering into a plea bargain, the risk of conviction and a more severe punishment after the trial in a general manner.

At present the special procedure for the trial is in fact the main form of criminal proceedings since in Russia more than half of criminal cases are considered on the merits with the use of this simplified procedure.

Positive aspects of the application of the special procedure for the trial at the conclusion of a pre-trial cooperation agreement are the disclosure of crimes, if there is no evidence of guilt or insufficient for prosecution in the usual manner, without the assistance of a cooperating accused, the investigation of crimes is difficult to investigate; saving time, since the consideration of criminal cases in a special order at the conclusion of a pre-trial cooperation agreement facilitates the work of judges – there is no need to hold a court session in full, you only need to check the facts of cooperation of the defendant with the bodies of preliminary investigation and examine the characterizing material on the defendant, as well as circumstances mitigating or aggravating punishment; reduction of penalties to the accused, reducing the length of the criminal proceedings, the approach of the moment of bringing to criminal liability of the perpetrator at the time of the crime

Negative aspects of the application of a special procedure for the trial at the conclusion of a pre-trial cooperation agreement are the possibility of false denunciations by persons who have concluded a pre-trial cooperation agreement; the use of illegal methods of investigation, "non-procedural" conversations with the detainee in the absence of a lawyer in order to persuade him to confess his guilt and testify under the influence of physical and mental violence against suspects (accused); insecurity of the rights of the victim, since his position regarding the consideration of the criminal case in a special procedure for the trial at the conclusion and execution of the pre-trial cooperation agreement is not taken into account; subjectivity of the investigator, the head of the investigative body, the prosecutor when deciding on the satisfaction or refusal to satisfy the petition of the suspect (accused) to conclude a pre-trial cooperation agreement and in assessing the completeness of the execution of the suspect (accused) agreement; unresolved issue of the possibility of concluding a pre-trial cooperation agreement with a minor suspect (accused).

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