



CURRENT ISSUES OF THE PRE-TRIAL COOPERATION AGREEMENT IN RUSSIA

Melnikov Victor Yuryevich¹

Doctor of Laws. Professor of the Department of Criminal Procedure and Criminalistics
Rostov Institute (branch) VGUYUA (RPA of the Ministry of Justice of Russia) Russian Federation
mn.301@yahoo.com

Seregin Andrei Victorovich²

Associate Professor, Department of theory and history of state and law,
Southern Federal University, Russian Federation
sa.academic@yahoo.com

Sizko Igor Aleksandrovich³

Associate Professor, Department of fundamentals of law,
Federal State-Funded Educational Institution of Higher Education Don State Technical University
a.science7876@yahoo.com

Skorik Elena Nikolaevna⁴

Candidate of Legal Sciences, Associate Professor
Head of the magistracy department of the Rostov Institute for the Protection of Entrepreneurs
el.science19@mail.ru

Marina A. Abramova⁴

Department of municipal and environmental legislation,
Law Faculty, Southern Federal University, Russian Federation
mg.researcher@yahoo.com

ABSTRACT

The article analyzes a number of issues related to the pre-trial cooperation agreement. It is noted that in order to improve the quality of cases in a particular order at the conclusion of pretrial agreement on cooperation it is advisable to comply strictly with the requirements of substantive and procedural law in considering cases in the order of Chapter 40.1 of the criminal procedure code of the Russian Federation, to take into account the opinion of the victim at the conclusion of pretrial agreement on cooperation, the possibility of case consideration in a special order, as well as other issues.

Key words: Pre-trial cooperation agreement. Court. Victim. Criminal proceedings.



QUESTÕES ATUAIS DO ACORDO DE COOPERAÇÃO PRÉ-JULGAMENTO NA RÚSSIA

ABSTRATO

O artigo analisa uma série de questões relacionadas ao acordo de cooperação pré-julgamento. Note-se que, para melhorar a qualidade dos processos em um determinado despacho na conclusão do acordo pré-julgamento de cooperação, é aconselhável cumprir rigorosamente os requisitos de direito material e processual ao considerar os casos na ordem do Capítulo 40.1 do Código Penal. código de procedimento da Federação Russa, para levar em consideração a opinião da vítima na conclusão do acordo pré-julgamento sobre cooperação, a possibilidade de consideração do caso em uma ordem especial, bem como outras questões.

Palavras-chave: acordo de cooperação pré-julgamento, tribunal, vítima, processo penal.

1. INTRODUCTION

The state should never forget that the proper performance of its external tasks and functions also determines the internal situation in the country, the ability to fulfill, among other things, its social obligations.

In the course of monitoring compliance with the law in the pre-trial stage of criminal proceedings, the prosecutor revealed 1255,245 violations of the law in 10 months of 2019, and 1,314,470 violations in 10 months of 2020 (an increase of + 4.7 %).

The COVID-19 coronavirus pandemic in 2020 revealed and exacerbated many legislative, political, economic and social issues that had been in the life of our country for decades, but which seemed secondary. The shock of the "viral crisis" experienced by the world can affect not only European political institutions, but also the entire system of international relations.

UN Secretary-General Antonio Guterres has asked world leaders to abandon attempts to use the COVID-19 coronavirus pandemic as a pretext for violating human and civil rights and freedoms, as well as the free dissemination of information.

The significant social, economic and political transformations that have taken place in Russia since the end of the 80s of the last century have determined the emergence of various youth groups in the country. A certain part of such groups, having emerged spontaneously on the basis of common views on music, literature, and art, have undergone changes and transformed into paramilitary groups with extremist views. By the beginning of the 90s of the XX century, they began to have a clearly extremist character, continuing to progress in this direction.



The internal organization of these groups was improved, improved degree of physical and ideological training, and the technical equipment groups, studied the methods of propaganda, the stock has become better organized and prepared.

To date, very often amendments are made to the criminal procedure law, which could not have been made, but the legislator is in no hurry to make relevant, significant amendments.

Thus, according to ch. 3. article 140 of the code of criminal procedure cannot serve as a pretext for a criminal case the fact of submission of a special Declaration in accordance with the Federal law "On voluntary Declaration of assets by individuals and accounts (deposits) in banks and on amendments to certain legislative acts of the Russian Federation" and the information contained in the Declaration and the documents and (or) the information annexed to the Declaration

The Supreme court in its Resolution of Plenum of the Supreme Court of the Russian Federation № 24 Moscow October 13, 2020 "On introducing to the State Duma of the Federal Assembly of the Russian Federation of the draft Federal law "On amendments to the criminal code of the Russian Federation and the Criminal procedural code of the Russian Federation in connection with the introduction of the concept of criminal misconduct"" proposes a new article in the criminal code on criminal offense.

"Article 151. A criminal offense is a criminal offense: a minor crime committed by a person for the first time, for which this Code does not provide for a penalty of imprisonment, with the exception of a number of crimes provided for in part one of Article 115, Articles 1161, 1511, 1714 , part one of Article 174, part one of Article 1741 and a number of other articles.

The term "pre-trial cooperation agreement" is disclosed in paragraph 61 of Article 5 of the Code of Criminal Procedure of the Russian Federation, introduced by Federal Law No. 141-FZ of 29.06.2009. It specifies, among other things, the actions that the suspect or accused undertakes to perform in fulfilling the obligations specified in the pre-trial cooperation agreement.

The lawmakers then assumed that the parties to the prosecution and the defense get the opportunity to conclude a deal on mutually beneficial terms. The suspect or accused undertakes to assist the investigation in the detection and investigation of the crime, the mandatory exposure and prosecution of other possible accomplices to the crime in exchange for a reduced sentence. When the corresponding amendment to the legislation was adopted, many presented this action as our American analogue of the "deal with justice" procedure, it was supposed to reduce the time for consideration of criminal cases, improve their quality, and generally reduce the state's costs for criminal proceedings. While respecting the rights of the individual, the principles of criminal justice, both parties make mutual concessions within the limits permissible for them.



A cooperation agreement can only work successfully in a state governed by the rule of law, and a person who is offered to help the investigation must have a high legal culture, fundamental values and beliefs. It should be borne in mind that for the sake of personal gain, the accused may stipulate an innocent person. On the other hand, such testimony can be used by unscrupulous law enforcement officials who suggest that the accused, for example, give evidence against another person as an accomplice.

2. METHOD

Methodological basis of this study is the dialectical method of cognition of social and legal phenomena and concepts in their development and interdependence. In the process, general-purpose and scientific methods of scientific knowledge are used as well, historical and legal, systemic, structural-functional, comparative legal, statistical, sociological, specifically the formal-logical, logical-legal and others. The legal framework and information base includes the research of international legal instruments, scientific sources, investigative and judicial practices to ensure the rights and lawful interests of individuals in the pre-trial proceedings.

3. RESULTS

In modern conditions, the development of the rule of law, civil society, and cooperation agreements can actually become the enemy of fair justice. An accused person, for example, who simply slandered another person, gets a minimum sentence, and the investigation and the court actually get rid of the need to prove the crime committed, to bring the true perpetrators to criminal responsibility. As a result, the principle of adversarial proceedings is not observed, the defense party, the victims do not actually participate in the process. There are many examples of the negative application of the institution of agreement with justice in law enforcement practice. In each of them, there are defendants who have concluded a pre-trial cooperation agreement. The testimony of the accused may become the basis for the criminal prosecution of several more persons, while other sufficient and reliable evidence in the case may sometimes not be available at all.

The President of the Russian Federation also spoke about the imperfections of the system of pre-trial agreements and special order in Russia. In the spring of 2019, Vladimir Putin called on the authorities to oppose the consideration of cases in a special order, if there are doubts about the evidence of the prosecution and the voluntary confessions received from the



accused, and then the defendants. There are no new legal provisions on the pre-trial agreement yet.

According to the consolidated statistical reports, the courts of general jurisdiction in the first instance in 2019, when concluding a pre-trial cooperation agreement (Chapter 40.1 of the Code of Criminal Procedure of the Russian Federation), reviewed with sentencing or terminated 2.6 thousand cases (in 2018 – 2.8 thousand), convicted-2.6 thousand persons (in 2018-2.8 thousand), cases were terminated against 62 persons (in 2018 – 89) (<http://www.cdep.ru>). According to the consolidated statistical data on the activities of the federal courts of general jurisdiction and magistrates only for the 1st half of the year 2020 when concluding a pre-trial cooperation agreement (chap. 40.1 of the Code of Criminal Procedure of the Russian Federation), 1,293 cases were received (in 2019 – 3,319 cases), 1,160 people were convicted (in 2019 – 3,009), and 135 cases were dismissed (in 2019 – 472). According to information submitted to representations of public Prosecutor about a special order of adjudication at the conclusion of pretrial agreement on cooperation (Chapter 40.1 of the criminal procedure code of the Russian Federation) did the Prosecutor (article 317.5 of the code) by the number of persons – 1227, the decision on the appointment proceedings in the General order (part 3 of article 317.6 CCP RF) – 60 (<http://www.cdep.ru>).

4. DISCUSSION

The works of many Russian authors are devoted to the issues of concluding a pre-trial cooperation agreement (Pre-trial cooperation agreement).

A pre-trial cooperation agreement may be concluded with the accused (suspect) during the investigation of a criminal case in the form of a preliminary investigation, including in cases provided for in part 4 of Article 150 of the Criminal Procedure Code of the Russian Federation (Travnikov, 2018). The possibility to appeal the investigator's decision to refuse to conclude an agreement is available only in the departmental order (Part 4 of Article 317.1, Part 2 of Article 317.2 of the Criminal Procedure Code of the Russian Federation), contradicts Article 19 code of criminal procedure, according to which the freedom of appeal (departmental, judicial order, appeal to the Prosecutor) is a principle of criminal proceedings and confirmed the current enforcement practice. There is a discrepancy with the provisions of Article 125 of the Criminal Procedure Code of the Russian Federation.

The prosecutor may become aware of the facts of non-fulfillment of the conditions of the concluded pre-trial agreement on cooperation only after the completion of the preliminary investigation during the study of the criminal case that came to him with the indictment. In view



of this, in the case of finding violations of the terms of the pre-trial agreement during the study of the materials of the criminal case received with the indictment, the prosecutor has the right to approve the indictment and send the criminal case to the court for its consideration in a general manner (without drawing up a corresponding submission provided for by art. 317.5 of the code) or, if any inconsistencies in the indictment in the criminal case, when it States on the implementation by the accused of the cooperation agreement, which in fact was not fulfilled, the Prosecutor in the manner prescribed by paragraph 2 of part 1 of article 221 of the code of criminal procedure, returns a criminal case to the investigator for a redrafting of the indictment and the deficiencies identified with their written instructions.

The same procedure for the prosecutor's actions when receiving information about the accused's non-compliance with the pre-trial cooperation agreement is set out in paragraph 1.16 of Order No. 107 of the Prosecutor General of the Russian Federation of March 15, 2010 (Resolution of the Plenum of the Supreme Court of the Russian Federation No. 16 of 28.06.2012). In this case, makes a decision on termination of pre-trial cooperation, and in compliance with article 221 of the criminal procedure code of the Russian Federation the decision on refusal in entering of submissions under article 317.5 of the code of criminal procedure. However, taking into account the above, it is still advisable to develop appropriate amendments and additions to the Code of Criminal Procedure of the Russian Federation.

If the defense does not agree with the procedural decision of the prosecutor on the failure of the accused to comply with the terms of the cooperation agreement, it seems very illusory to appeal to a higher prosecutor or to the court with a complaint in accordance with Articles 123, 125 of the Criminal Procedure Code of the Russian Federation against the actions of the prosecutor.

As we know, according to the general requirements, the consideration of the case in a special order of trial with the consent of the accused with the charge brought against him is possible only if the victim agrees to it (Chapter 40 of the Criminal Procedure Code of the Russian Federation). The failure of the victim, his legal representative, representative, as well as the civil plaintiff, civil defendant and their representatives to appear at the court session without valid reasons, provided that they are properly notified, is also not an obstacle to the consideration of the criminal case.

In Chapter 40.1 of the Criminal Procedure Code of the Russian Federation, the terms "victim" and "civil plaintiff" are not used. The court session is held only with the mandatory participation of the defendant and his defense lawyer. The new version of Part 1 of Article 314 of the Criminal Procedure Code of the Russian Federation no longer requires the consent of the victim to consider the case in a special order in criminal cases of crimes of small or medium



gravity. In 2020, Part 4 of Article 314 of the Criminal Procedure Code of the Russian Federation also became invalid, stating that if a public or private prosecutor and (or) a victim object to the petition filed by the accused, then the criminal case is considered in a general manner.

The conclusion of a pre-trial agreement with a suspect or accused may entail a significant violation of the rights and legitimate interests of participants in criminal proceedings on the part of the defense, since the possibility of concluding an agreement is not made dependent on compensation for damage to the victim caused by the crime.

As we can see, the criminal procedure law does not oblige to take into account the opinion of the victim when the accused enters into a pre-trial agreement on cooperation, which is a clear imperfection of the law and can lead to an unjustified and unfair sentence. As the survey of practical employees showed, they do not often "resent" the issue of this requirement of the law. Despite the fact that criminal proceedings have, in particular, their main purpose is to protect the rights and legitimate interests of persons and organizations that have suffered from crimes (Article 6 of the Criminal Procedure Code of the Russian Federation). In this case, the rights of not only the victims, but also the accused themselves are actually violated in the subsequent imposition of punishment by the court. Without the testimony and opinion of the victim, in particular, regarding the personal participation of the accused in the crime committed, taking into account his opinion on the possibility of considering the case in a special order, it is impossible to objectively make a decision on the possibility of concluding a pre-trial agreement on cooperation, considering the case in a special order.

In the sense of article 63.1 of the criminal code (without application of the provisions of parts 2, 3 and 4 of article 62 of the criminal code relating to the timing and amount of punishment, and article 64 of the criminal code), parts 3,4 article 317.6 and part 5 of article 317.7 of the code of criminal procedure, the court adopts the decision on termination of special proceedings and shall appoint a trial in a General manner.

The current requirement that when the court finds that the stipulated conditions are not met, it decides on the appointment of a trial in the general order (Part 2 of Article 317.6 of the Criminal Procedure Code of the Russian Federation), can not always become a reliable barrier to the court's reasonable and agreed verdict.

The court bases its decision only on the fact that the public Prosecutor at the hearing confirmed active assistance accused to a consequence in disclosing and investigation of crimes and at the conclusion of the agreement was attended by the defender.

So in the verdict of the court, the following wording is usually indicated: "The state prosecutor at the hearing confirmed that H. V. S. duly fulfilled the conditions of the pre-trial agreement, as well as the importance of cooperation with the defendant for the detection and



investigation of crimes..." (Order of the Prosecutor General of the Russian Federation No. 107 of March 15, 2010).

The circumstances of the actual non-compliance with the pre-trial cooperation agreement can be difficult to determine before the verdict is passed, and often this becomes known after the verdict enters into force. As the author's research shows, the cancellation of sentences was caused by inattentive study by the courts of the provisions of Chapter 40.1 of the Code of Criminal Procedure of the Russian Federation, as well as improper study of the pre-trial agreement and the indictment concerning the qualification of what the convicts did.

It was due to the presence of numerous violations, when concluding a pre-trial agreement on cooperation, in 2016, the legislator himself was forced to amend the Criminal Procedure Code of the Russian Federation. As we know, the criminal procedure law provides for such an adverse consequence for a person who has concluded a pre-trial cooperation agreement, in case of non-compliance with its terms, as the cancellation or modification of a court decision on appeal. This consequence, along with the possibility of termination of the agreement, trial of the case in the usual manner, review of the court decision in terms of the imposed punishment, is considered as the procedural responsibility of the specified person. Important on this issue is the position of the Constitutional Court of the Russian Federation, expressed in its Decision No. 17-P of 20 July 2016 (The verdict of the Central District Court of Novokuznetsk), as well as the position of the European Court of Human Rights of 04 December 2014 in the case "Alexander V. Kazakov v. Russia" (LAWS, CODES AND LEGAL acts of the RUSSIAN FEDERATION).

A review in cassation of the sentence, determination, judgment of the court in the grounds, entailing the deterioration of the convict, the acquitted, the person against whom the criminal case was dismissed, allowed in a period not exceeding one year from the date of their entry into force, if the trial were identified with evidence of compliance with the face of the conditions and fulfilment of obligations stipulated pre-trial cooperation agreement.

5. CONCLUSION

As we can see the turn for the worse in revising a judicial decision as supervision is not allowed, except in the cases provided for in article 401.6 of the code. According to the code of criminal procedure, the grounds for cancellation or modification of the judgment, ruling or order of the court in order of supervision are essential violations of the criminal and (or) criminal procedure laws that influenced the outcome of the case or identification of evidence of



compliance with the face of the conditions and fulfilment of obligations stipulated pre-trial cooperation agreement (paragraph 1 of article 412.9).

In order to improve the quality of cases in a special manner the court decision at the conclusion of pretrial cooperation agreement is advisable: to ensure compliance with the requirements of substantive and procedural law in considering cases in the order of Chapter 40.1 of the criminal procedure code of the Russian Federation; to take into account the opinion of the victim, private Prosecutor, civil plaintiff, at the conclusion of pretrial agreement on cooperation, the possibility of case consideration in a special manner.

CONFLICT OF INTEREST

The author confirms that the data do not contain any conflict of interest.

REFERENCES

" Report on the work of the courts on the consideration of criminal cases in the first instance» /// <http://www.cdep.ru>;

Official website of the Judicial Department of the Armed Forces of the Russian Federation/ <http://www.cdep.ru/index.php?id=79&item=5461>;

Pre-trial cooperation agreement. Problems of improvement: a textbook / ed. by F. K. Zinnurov, G. B. Mirzoeva. M.: UNITY-DANA: Law and Law, 2014. -119 p.; Kutsenko S. M. Modern view of the institute of pre-trial agreement on cooperation// Bulletin of the Ural Law Institute of the Ministry of Internal Affairs of Russia. Right. 2019. №. 2. P. 14; Titova K. A., Topchieva T. V. Actual problems of the pre-trial agreement on cooperation //Society and the law. Right. 2018. No. 4 (66). P. 75; Edilova P. V. Agreement on cooperation with the accused in the criminal process: diss.... cand. jurid. nauk. M., 2017. p. 76.;

Travnikov A.V. Criminal-procedural problems that arise when concluding, changing and terminating a pre-trial agreement on cooperation in criminal cases on terrorist crimes // Bulletin of the St. Petersburg Law Institute of the Ministry of Internal Affairs of Russia. Right. No. 4 (80), 2018, etc.

Resolution of the Plenum of the Supreme Court of the Russian Federation No. 16 of 28.06.2012 "On the practice of applying by courts of a special procedure for the trial of criminal cases when concluding a pre-trial cooperation agreement" // <https://www.garant.ru>.

Order of the Prosecutor General of the Russian Federation No. 107 of March 15, 2010// <https://www.garant.ru/products/ipo/prime/doc/1257288/>.

The verdict of the Central District Court of Novokuznetsk. No. 1-82/2018 1-820/2017 of 27 February 2018 in case No. 1-82 / 2018. See, for example: Sentence No. 1-67/2015 of 01.04.2015 of the Kirovsky District Court of the Stavropol Territory city of Novopavlovsk, in respect of M., <data withdrawn>, accused of committing crimes under Part 3 of Article 30,



paragraph "a, d" Part 4 of Article 228.1, paragraph "a, d" Part 4 of Article 228.1, Part 1 of Article 30, part 5 of Article 228.1 of the Criminal Code of the Russian Federation; Sentence №. 1 - 84/2011 of the Isakogorsky District Court of Arkhangelsk in respect of Sh. art. 30, part 3, 228 part 2 of the criminal code, M. I. B. accused of committing a crime under articles 30 part 3, part 5, 33, 228 part 2 of the criminal code // <https://pravo163.ru/obobshhenie-sudebnoj-praktiki>.

LAWS, CODES AND LEGAL acts of the RUSSIAN FEDERATION
<https://legalacts.ru/doc/postanovlenie-konstitutsionnogo-suda-rf/>.

Official website of the Prosecutor General's Office of the Russian Federation//
<https://genproc.gov.ru/documents/espch/document-1023731/>.

