

The institute of plea bargaining in Georgia

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Abstract

Since 2004, a completely new institution for the legal system of Georgia was introduced and actively used in the criminal law on the legislative level, which has changed the traditional procedural course of reviewing criminal cases. This institution is plea bargaining i.e. the bargaining between the prosecution and defence when it is possible the court to reach the verdict without reviewing the case thoroughly.

In the article are reviewed new statutes of the Criminal Procedural Code of Georgia as well as the statistical analysis of jurisprudence. Special emphasis is made on the Institute of plea agreement as one of the most significant changes in the criminal proceedings.

I.

In the Post - Soviet space Georgia was the first to make amendments in the procedural legislation of criminal law and introduced a completely new institution which was unknown to our legal system - Plea Agreement¹. The amendments made in the criminal procedural code were implemented in February of 2004, what, naturally, caused a lot of criticism, debates and diversity of opinions in scientific circles as well as in the circles of broad society.

In the following years was worked out a new criminal procedural code, which came into force in October 1, 2010. The mentioned document gave many interesting innovations to the system of justice of Georgia.

¹ JE Ross. The Entrenched Position of Plea Bargaining in United States Legal Practice. The American Journal of Comparative Law (The American Journal of Comparative Law). 2006. Pp. 717–732.

The changes in Georgia put an end to' the Soviet criminal jurisprudence" from the principles of inquisitive (continental) law moved to the system of general (competitive) law.

From the novelties considered by the code especially important are²:

1. Code Simplification

Legal language of code is maximally simplified, and the structure of the document became easily perceivable even for those who do not have legal education. The new code consists of only 333 Articles, which much more easily regulate procedural issues.

2. The principle of full competition

The key principle of the new procedural code of criminal law - on the level of pretrial investigation as well as during discussing the case on the court – is the full competition between the parties. The code sets the prosecution and defence in the equal conditions in the process of obtaining, presenting and evaluating evidences.

3. Discretionary power of the prosecutor

Criminal prosecution with the new process is only public and its implementation is only the prosecutor's competence. Taking into consideration the best experience of the United States and Great Britain, Holland and other Western countries, the principle of discretion of criminal pursuit will be introduced in Georgia. The prosecutor will be equipped with the right not to start or stop criminal-legal prosecution, if it does not correspond to the state criminal justice policy whose guidelines are approved by the Minister of Justice.

4. Clear standards of ascertain

The new criminal procedural code, unlike its existing analogue, clearly defines the standards of proof. The new process is based on three major standards of proof – the standards of well-grounded supposition, high probability and those of excluding reasonable doubt (reliable evidence).

5. Jury trial

The citizens of Georgia will use a form of direct democracy and will accomplish justice themselves. Society will take responsibility in the case of the struggle against crime.

Inspite of the fact that practitioner lawyers as well as scientists pay great attention to the topic of plea bargaining, in the works published in Georgian juridical literature, which concern its separate procedural aspects, some procedural issues are

² www.justice.gov.ge/files/Documents/prokuratura/kodeqsii.doc

discussed in different ways. At the same time, in the theory is expressed such viewpoint according to which the idea of establishing the plea bargaining institute in the procedural legislation of criminal law of Georgia is wrong and is opposed to not only the principles of the procedural legislation, but also to its main statutes. We cannot agree to this standpoint.

The aim of introducing the plea bargaining institute in Georgia is ensuring fast and efficient justice. The criminal procedural code considers two forms of plea bargaining:

- Agreement on fault – while agreeing on fault, the accused (defendant) confesses his/her crime.
- Agreement of the penalty - while agreeing on penalty, the accused (defendant) does not contradict the accusation though agrees with the prosecutor on the size of the penalty or on being full released. The result of the agreement on penalty is a person's conviction.

In addition, the criminal Procedural code does not contain any restrictions on the possibility of making plea bargaining related to various categories of crime – consequently, making plea bargaining is possible on the crime of any categories and severity. We think that such peculiarity gives some kind of freedom to the Prosecutor's Office in the process of making plea bargaining - for making effective investigation of different crimes it becomes necessary to use different tactics of investigation.

But at the same time, such freedom includes certain perils. The thing is that the prosecutor may, only in accordance with his will, make bargaining with the accused and produce accusation only on the basis of confessed testimony. Such perils may be allowed, but increasing the General Courts' role and raising the degree of independence of the judiciary completely excludes all kinds of "illegal freedom" from the side of the Prosecutor's Office.

Moreover, according to the procedural legislation of the criminal law of Georgia and according to the legislation of other countries, plea bargaining is approved by the court, and only after this agreement between the accused and the prosecutor acquires full legitimization.

In 2002-2008 only 89,093 criminal cases are considered by the General Court of Georgia. During the last six years the number of cases considered by the court has increased twice. In such cases, the courts have a lot of work and there is a danger that the procedural terms set by the legislation may be violated. The cases of such volume throughout Georgia are considered by 216 judges of the first instance. This is the

number of judges according to every specialization - criminal, civil and administrative law.

Including March of 2008, the first instance courts reviewed 4038 criminal cases. It is 20 percent more than in the same period of the previous year. Among them the verdict was reached in 3950 cases³.

According to the legislation of Georgia the plea bargaining can be made:

- At the stage of preliminary investigation;
- During the trial, before the court discussion starts.

Herewith, the plea bargaining can be offered by the accused (defendant) as well as by the prosecutor. Plea bargaining is made with prior written consent of the supreme public prosecutor. While making decision to reduce the sentence or partially withdraw the penalty, the prosecutor should take into consideration public interest, the severity of punishment considered for the committed crime and the degree of culpability. It is not allowed the make plea bargaining without the defender's immediate participation and prior consent of the accused on the bargaining.

As it has already been mentioned, the debates concerning the fairness of using the institute of plea bargaining have never stopped among the scientific circles since the date of its implementation in the criminal justice of Georgia. Despite cardinaly different opinions, it is impossible to characterize advantages and disadvantages of the Institute of plea bargaining without analyzing the statistical data.

Out of the total number of cases (64,217) discussed in General Courts in 2005-2009 (January – February of 2009), the plea bargaining was made on 23,175 criminal cases what makes 36 percent of the total number. At the same time, according to the court practice, the number of cases accomplished with the plea bargaining has increased in recent years. The majority of divulged and not divulged criminal cases are accomplished mainly by plea bargaining.

We consider that it would not be a correct scientific approach to make any kind of conclusion only on the basis of arithmetical analysis of the statistical data related to making the plea bargaining. It is important to conduct additional researches in order the results of the legislative changes implemented in Georgia to be perceived clearly and distinctly. The results of the research conducted by the European experts in 2010 are rather interesting. In spring of 2010, the institute "Gorbi" implemented the research of victimization in Georgia with the financial support of the European Union⁴.

³ http://www.supremecourt.ge/default.aspx?sec_id=39&lang=1

⁴ http://www.justice.gov.ge/files/Documents/analitikuri/GORBI_crime_survey_EU_GEO.pdf

According to the results of the research:

- 98 percent of the population feel safe, 87 percent are satisfied with the work of law-enforcement bodies and express confidence in it;
- Over 70 percent of the population think the concept of “criminal authority” does not exist in the country;
- According to statistical data of the Ministry of Internal Affairs of 2009, the number of crimes in the country decreased in 50 percent since 2006;
- Car theft cases in Georgia are three times less than in the UK;
- Robbery and brigandage cases are four times less than in Sweden;
- Burglary case are four times less than in Denmark;
- Stealing parts in vehicles is five times less than in the Netherlands.

Table 1 - Victimization five year prevalence (cross country comparative data)²

	Survey year	10 crimes	Theft of cars	Theft from and out of car	Car vandalism	Motorcycle theft	Bicycle theft	Burglary	Attempted burglary	Robbery	Theft of personal property	Sexual incidents against women	Assaults & threats
Denmark	2005	52,2	4.8	11.2		2.1	23	10.9	6.9	3	11.9	4.6	9.6
Estonia	2004	58,2	3.5	17.4	12.1		13.7	13.6	9.3	7.5	18.2	2.8	8.7
France	2005	40,5	4.3	15.9		1.2	4.8	7.9	5.2	2.6	11.3	1.4	8.9
Germany	2005	43,1	2	10.1		0.6	13.9	3.5	5.2	1.8	14.7	6.5	12.1
Georgia	2010	11.1	1.1	7.3	1.7	2.8	1.5	2.7	1.2	0.6	2.1	0.2	0.9
Italy	2005	43,3	6.3	10.2		2.9	8.1	10.5	7.8	2.6	10.7	1.7	4.1
Japan	2004	32,4	0.5	6.7	13.9	3.1	20.2	3.6	2.6	0.4	0.7	3	1.1
Holland	2005	58,3	2.8	17.1		1.5	28.9	6.4	7.1	3.4	15	6.1	13.9
Norway	2004	47,9	3.6	12.4		1	16.7	4.9	3.4	2.4	18.4	5.5	10.5
Spain	2005	42,7	6.1	18.1		1.9	3.2	5.2	4.5	5.9	12.4	1.4	9.7
Switzerland	2005	50	1.2	10		1.5	16.4	8.1	6.7	3	19.3	6.5	8.9

² Note: ICVS survey data from 2005 was compared to Georgian data from 2010. Victimization level has been decreased worldwide since 2005, so current average numbers of victimization in countries indicated may be lower; however Georgian estimates are still very low which make comparison possible.

We think that the results of the essential reforms implemented in the legislation system of Georgia, among them in the law-enforcement bodies during the last five years are actually reflected in the results of the research presented by us.

Professor of Victimology and Human Resources at Tilburg University, the Netherlands, Jan Van Dijk⁵ states: “Georgia has metamorphosed from a high crime into a low crime country in just a few years. Tbilisi appears now to be one of the safest capitals in the Western world”.

⁵ http://justice.itdc.ge/index.php?sec_id=314&lang_id=GEO

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