March 2023 (№25)
Volume 9; Issue 1; Page No. 180-193
ISSN: 2346-7916 (Print)
ISSN: 2587-5043 (Online)

INTERNATIONAL JOURNAL OF LAW: "LAW AND WORLD" www.lawandworld.ge

https://doi.org/10.36475/9.1.18

PLEA BARGAIN – AIM, IMPORTANCE AND PROBLEMATIC ASPECTS IN THE REALITY OF THE US, GERMANY AND GEORGIA

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ARTICLE INFO

Article History:

Received 19.01.2023
Accepted 9.03.2023
Published 31.03.2023

Keywords:

The US, Germany,
Georgia,
Plea Bargain, Court

ABSTRACT

The parties come to a plea bargain, based on which the defendant receives a reduced punishment than would be appropriate in a formal trial. Based on its core, it is obvious that the given system largely favors the accused, but after a thorough investigation, we can see that several significant concerns need to be addressed right now.

The purpose of the paper that is being provided is to examine the plea bargain, its growth over time, and its status in three distinct states. The writers of the article examine the realities in Germany, Georgia, and the United States of America, which will be a fascinating depiction of the present situation. The study of the facts provided will be highly fascinating and varied in this regard because the United States of America is a country of Anglo-American law, and Germany and Georgia are countries of continental European law.

The article will examine not only the legislative history of the described issue in the given states but also genuine situations, using which the problematic elements of this institution in all three nations will be distinctly highlighted. As a conclusion, the authors' viewpoint on the current models in each of the three states will be stated.

INTRODUCTION

Criminal law has a long history of using plea bargains. Depending on the laws of various countries worldwide, its purpose and meaning might vary. As you are aware, there are nations with continental European law and nations with Anglo-American law. Their respective legal bases are vastly dissimilar. Regarding the countries of continental European law, the situation is different here because we have written law that is provided in codified form, unlike Anglo-American law, which is based on precedents, which eventually establishes the legal foundation on which the court acts.

Due to its unique qualities around the globe, the plea bargain system is fascinating. It goes without saying that each state has its unique legal system. Based on the work, the key elements of plea bargains, legal realities, and problems will be explored using the examples of the US, Germany, and Georgia.

The constitution of America serves as the cornerstone of this state. The dignity of the constitution is its fundamental component, and the 27 additional articles work in concert to produce an intriguing reality. The US Constitution does not include plea bargains as a right, but it should also be emphasized that they do exist in the American criminal court system. Based on the Supreme Court's broad view, it has been determined that plea bargains are necessary in America. Considering the paper's objectives, we will review the existing procedures, history, and court practices in America connected to plea bargains. We'll next concentrate on the benefits and drawbacks of this institution before drawing a judgment concerning its potential demise.

The German criminal proceeding corresponds to the model of a triadic value conflict: the victim's need for retribution is replaced by society's need for deterrent action, which is transformed into the state's demand for punishment, with the judge conditioned to act as an impartial third party.[1] As a result of the different legal concepts and traditions, the establishment of plea bargains in German criminal proceedings turned out to be more controversial and problematic. The core of the problem was that establishing the American model of plea bargains meant that the traditional German structure of value-conflict needed to be transformed into interest-based negotiations between defendants and prosecutors, where the judge's role and function would be limited. For the reasons mentioned above, several judicial decisions set clear limitations on plea bargains in Germany, which differed its regulation from the traditional American model. Within this article, the general principles of German criminal law; the arguments of critics and legal scholars against the establishment of plea bargains in German criminal law practice; the necessity of significant changes, and the first steps towards changes in the German criminal justice system; disadvantages of the current regulation and the possible recommendations for its improvement, will be discussed and analyzed.

The article's purpose is to discuss one of the most important issues regulated by the Criminal Procedure Code – the plea bargain. The article "Plea bargain – aim, importance, and problematic aspects in the reality of the US, Germany, and Georgia" discusses the problematic issues related to the Georgian plea bargain. The changes made after the introduction of the plea bargain into the legislative space and the extent to which it limits the judge's role in considering the criminal case. At the end of the article, a position will be presented as a conclusion regarding what legislative

1 <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1306&context=pilr> [Last seen 27.03.2023].

changes should be made to make the institution of plea bargain more effective and fairer. Georgian criminal procedural legislation has recognized the institution of plea bargain since 2004.[2]

Kalenike Uridia

1. PLEA BARGAIN IN THE US

1.1. The Meaning of Plea Bargain

In the American judicial system, plea bargains are frequent, making up to 90% of all criminal cases. However, plea bargains are not permitted in many nations because they are seen as unethical and immoral. A bargain between the prosecution and the defendant in a criminal case, known as a plea bargain, often involves the defendant admitting guilt in exchange for a less punishment or charge.[3] They don't always represent a traditional sense of "justice" and are frequently only seen as a technique for developing a "mutual awareness" of the case's advantages and disadvantages. The question of who is best served by these bargains does arise, even if courts, in theory, are willing to let the parties involved resolve their conflicts by themselves.[4] A plea bargain is a contract between the prosecution and the defendant; if either party doesn't uphold their half of the bargain, the most likely option is to go to court to enforce the bargain. Usually, a lower charge is offered in exchange for something the defendant must undertake. A prosecutor has the right to cancel the offer if the defendant doesn't keep up half of the bargain.[5] There are three main varieties of Plea bargain recognized in the U.S:[6]

- Charge Bargaining: The most typical type of plea bargaining, in which the defendant agrees to admit guilt to a lower charge in exchange for the dismissal of more serious charges. A classic illustration would be to admit manslaughter as opposed to murder;
- Sentence bargaining: is when a defendant agrees to plead guilty to the charged offense in exchange for a less severe sentence. It is far less prevalent and strictly regulated than charge bargaining. Most often, a court must consider this, and many countries explicitly forbid it;
- Fact bargaining: The least frequent type of plea bargain involves a defendant agreeing to concede to some facts to block the admission of other facts into evidence. Most lawyers oppose using fact bargains, and many courts do not permit them.[7]

1.2. Principal Causes and Influencing Factors for Using a Plea Bargain

The primary justifications include the following: Courts are congested; if they were to continue operating, they would be overloaded; prosecutors' workloads are likewise overcrowded, fewer trials allow them to focus their efforts on the most severe matters, and defendants save time and money by skipping the necessity to appear at trial. These main arguments benefit the court, the prosecutor, and the defendant in their respective roles, but they don't automatically benefit the public. The plea-bargaining system has been openly criticized by many in the legal community for this reason and other moral, ethical, and constitutional ones.[8] As an illustration, the Alaska Attorney General outright prohibited plea bargaining in 1975, and other states and towns have followed suit. In 1978 re-

2 Fafiashvili, L., Tumanishvili, G., Akubardia, I., Gogniashvili, N., Ivanidze, M., Criminal Procedural Law of Georgia, Meridian Publishing House, Tbilisi, 2017, p. 545.

3 Malcolm M. Feeley, Plea Bargaining and the Structure of the Criminal Process, Berkeley Law Berkeley Law Scholarship Repository, 1-1-1982, 338-354.

4 Albonetti, C., (1992). Charge Reduction: An Analysis of Prosecutorial Discretion in Burglary and Robbery cases. Journal of Quantitative Criminology 8:317-333.

5 Bibas, S., (2001). Judicial Fact-Finding and Sentence Enhancements in a World of Guilty Pleas. Yale Law Journal 110:1097-1120.

6 Bibas, S., (2004). The Feeney Amendment and the Continuing Rise of Prosecutorial Power to Plea Bargain. Journal of Criminal Law & Criminology 94:295–309.

7 Champion, D., (1989). Private Counsels and Public Defenders: A Look at Weak Cases, Prior Records, and Leniency in Plea Bargaining. Journal of Criminal Justice 17:253-263.

8 Holmes, M., Daudistel, H., and Taggart, W., (1992). Plea Bargaining Policy and State District Court Caseloads: An Interrupted Time Series Analysis. Law and Society Review 26:139-160.

search on the impact of Alaska's ban on plea bargaining, the author concluded that being unable to rely on plea bargaining strengthened accountability at every stage of the legal system and prevented the court system from being overburdened. The research concludes that plea bargaining was unnecessary to effectively run Alaska's criminal justice system.[9]

Finally, research in other areas, such as "Prisoner's Dilemma" studies, has shown that suspects have every motivation to accept arrangements that don't represent their guilt or innocence, either out of fear or to shift the responsibility to someone else. Despite these worries, plea bargains remain a significant part of the American judicial system.[10]

1.3. How Plea Bargains Function in the US

The U.S. Supreme Court has deemed plea bargaining not only legal and constitutional but also "a fundamental component of the administration of justice and should thus be promoted." When handled properly, the court explained that plea bargains might be advantageous to all parties. The defendant obtains a rapid resolution of his case, the opportunity to admit guilt and a head start on achieving any possibilities for rehabilitation. He also avoids the prolonged fears and uncertainties of a trial. Prosecutors and judges protect precious and limited resources. The public is shielded from dangers presented by criminal suspects free on bail while their cases are being processed.[11] The right to a jury trial is not unlawfully restricted by the mere chance that a jury trial may result in a worse punishment than a plea bargain. It is also legal for a defendant to plead guilty despite maintaining his innocence if there is a factual foundation for the plea and the defendant wants to avoid the possibility of receiving a harsher sentence. The defendant and the prosecution are not guaranteed the right to have a guilty plea accepted, and the defendant cannot compel the prosecution to enter a plea bargain.[12]

According to the constitution, a guilty plea must be offered willingly, with knowledge of the charges against the defendant and their potential implications. The court must (1) conduct a thorough investigation of the defendant in open court on the record and (2) determine that the defendant has made a voluntary, knowing, and intelligent waiver of these rights before a plea can be accepted because significant constitutional rights are being waived, including the right to a jury trial, the right to confront witnesses, the privilege against self-incrimination, and the right to be convicted only by proof beyond a reasonable doubt. For nolo contendere pleas and specific admissions to sufficient facts equal to guilty pleas in their finality, explicit inquiries and waivers are also necessary.[13]

The "critical stage" of a guilty plea necessitates counsel or a legally binding renunciation of counsel. If the defendant enters her guilty plea without legal representation, she has the right to change her mind before the sentence. A guilty plea does not surrender the right to improper aid of counsel, a typical basis for applications to withdraw the plea.[14]

The court must examine the defendant, make specific findings, and inform the defendant of the potential consequences of entering a plea. The defendant is put under oath in open court during the colloquy section of the hearing and is asked a series of questions.

According to relevant case law, the judge must:

- Find out if there are any bargains that are dependent on the plea from the defendant or their attorney. The nature of any bargain must also be disclosed to the court;
- Let the defendant know that he has the option to change his plea if the court decides to impose a harsher penalty;

9 King, N., Soule, D., Steen, S., and Weidner, R., (2005). When Process Affects Punishment: Differences in Sentences After Guilty Plea, Bench Trial, and Jury Trial in Five Guideline States. Columbia Law Review 105:960-1009.

10 Meyer, J., and Gray, T., (1997). Drunk Drivers in the Courts: Legal and Extra-Legal Factorsaffecting Pleas and Sentences. Journal of Criminal Justice 25:155-163.

11 Santobello v. New York, 404 U.S. 257, 260 (1971).

12 Piehl, A., and Bushway, S., (2007). Measuring and Explaining Charge Bargaining. Journal of Quantitative Criminology 23:105-125.

13 Steffensmeier, D., and DeMuth, S., (2001). Ethnicity and Judges' Sentencing Decisions: Hispanic-Black-White Comparisons. Criminology 39:145-78.

14 Steffensmeier, D., Ulmer, J., and Kramer, J., (1998). The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male. Criminology 36:763-98.

- Inform the defendant that his plea waives trial rights;
- Inform the offender of potential criminal and/or immigration repercussions;
- Make sure the defendant is aware of the components of each charge to which he is entering a plea of guilty;
- Make inquiry about voluntariness and come to conclusions;
- Accept or reject plea.

1.4. Alford Plea VS. The "Nolo Contendere" (No Contest) Plea

In an Alford Plea, the accused admits guilt but maintains his innocence. A defendant who enters a nolo contendere plea accepts punishment (the court's sentence), but they do not acknowledge guilt. In both cases, the defendant is found guilty.[15]

Alford received a 30-year jail term from the court. An appeals court overturned the conviction, but the U.S. Supreme Court overturned it in 1970. The Supreme Court rejected Alford's contention that his plea was forced because he wanted to avoid the death penalty and thus was "the consequence of fear and coercion." Because Alford and his counsel wisely determined that accepting the plea offer was in his best interests, given on the significant incriminating evidence against him, the court determined that Alford's guilty plea was voluntary.[16]

The Alford plea is not accepted in all jurisdictions, and in those that do, the consequences differ. But in general, even if the genuine offender hasn't been found and apprehended, a case can be closed with a conviction after an Alford plea. Unfortunately, this may imply that the actual criminal is still free and able to commit more crimes without fear of being tracked down. The weight of a conviction staying on their record and the impossibility of pursuing financial damages for the erroneous conviction due to their admission of guilt are the effects of an Alford plea on people exonerated but facing a retrial.[17] The Alford plea has quickly emerged as the prosecution's first choice due to the sharp rise in wrongful convictions for wrongful accusations. The case is concluded with a conviction, and the defendant is also barred from suing the state or collecting statutorily permitted compensation for the incorrect conviction.[18]

How an innocent person may consent to a plea that ends in a conviction that will last their whole lives may be a mystery to those who have never had to consider the possibility of spending decades or their entire lives behind bars. But after spending years, even decades, behind bars, the overwhelming yearning is just to be free. This is particularly true if the defendant spent a significant amount of time on death row in solitary confinement. It is reasonable that many who have been exonerated have little trust in the judicial system after having been found guilty of crimes they did not commit. Therefore, the decision is simple when given the option of freedom while admitting guilt or a new trial and going back to jail.[19]

1.5. Benefits and Drawbacks of Plea Bargaining

Although some Americans believe that the practice of plea-bargaining results in offenders receiving lower sentences than they should, the system has several advantages for both the accused and the judicial system. There are benefits and drawbacks for the prosecution, the defendant, the victims, and society.

Plea bargaining has the main benefit of accelerating the legal system's procedures. In many cases, a criminal trial will last many days. A few may require weeks. For 135 days, the OJ Simpson murder trial for Ronald Goldman and Nicole Brown Simpson was broadcast on television. This can be

15 Uviller, R., (2000). The Neutral Prosecutor: The Obligation of Dispassion in an Enthusiastic Pursuit. Fordham Law Review 68:1695-1718.

16 Steffensmeier, D., and Hebert, C., (1999). Women and Men Policymakers: Do the Judge's Gender Affect the Sentencing of Criminal Defendants? Social Forces 77:1163-196.

17 Ulmer, J., and Bradley, M., (2006). Variation in Trial Penalties Among Serious Violent Offenses. Criminology 44:631-670.

18 Ma, Y., (2002). Prosecutorial Discretion and Plea Bargaining in the United States, France, Germany, and Italy: A Comparative Perspective. International Criminal Justice Review 12:22-52.

19 Kurlychek, M., and Johnson, B., (2004). The Juvenile Penalty: A Comparison of Juvenile and Young Adult Sentencing Outcomes in Criminal Court. Criminology 42:485-515.

avoided with a plea bargain so that the judge can address punishment right away. The main drawback of plea negotiations is that they might still result in the imprisonment of innocent persons. For instance, California voters enacted Proposition 8 in 1982 to restrict the times when plea bargaining may take place to address this problem and prevent innocent individuals from feeling pressured to risk going to trial.[20]

Based on the discussion, we can conclude that the advantages of a **plea bargain** are:

- It eliminates uncertainty in the judicial system;
- It gives a convincing certainty;
- It could work well as a negotiation tactic;
- It gives the community access to more resources;
- It lowers the number of inmates in local prisons.
- Along with the advantages, the named mechanism also has disadvantages such as:
- It eliminates the option of a jury trial;
- It could result in poor investigative techniques;
- For the innocent, a criminal record is still created;
- A plea bargain is not binding on judges;
- Plea bargains take away the possibility of an appeal;
- It offers the guilty soft justice.

1.6. The Divergent Views on whether to Outlaw Plea Bargains in the US

- Plea bargaining is a contentious aspect of the legal system. Plea bargaining opponents make claims about rights, justice, and appropriate punishment;[21]
- Plea bargaining is unjust because of the rights that defendants give up, such as the right to a jury trial;
- Plea bargaining enables offenders to thwart the judicial system, which lowers public confidence in the criminal justice system;
- Giving offenders who enter plea deals lesser sentences leads to unfair punishments when the punishment is overly moderate in comparison to the seriousness of the offense;
- Plea negotiations increase the likelihood that innocent persons would confess to crimes they didn't commit;
- Proponents emphasize plea bargaining's advantages in real life;[22]
- Plea negotiating enables criminal justice professionals to customize sanctions and lessen their severity;
- Plea bargaining is a necessary administrative practice because without it, the judicial system would become clogged with cases, and the courts would be overrun;
- Plea negotiations spare the prosecution, the judiciary, and the prisoner the expense of a trial;
- Plea bargaining has many real-world advantages; thus, it is unlikely to be abolished very soon. According to the current bargain, any injustice and unfairness that plea bargaining may bring about in the legal system are at least balanced out by the advantages it provides for both the state and the defendant.

Elene Landia

2. PLEA BARGAINS IN GERMANY

2.1. Argumentation of Critics and Legal Scholars Against the Establishment of Plea Bargains in German Criminal Law

The legislative regulation of plea bargaining in German criminal law has not had as long a history as in American criminal law. It was not until 2009 that Germany's constitutional court upheld a law that allowed plea bargains in criminal trials. In 2013 the German constitutional court affirmed

20 Lee, S., (2005). The Scales of Justice: Balancing Neutrality and Efficiency in Plea Bargaining Encounters. Discourse & Society 16:33-44.

21 Steffensmeier, D., Kramer, J., and Streifel, C., (1993). Gender and Imprisonment Decisions. Criminology 31:411-46.

22 Stuntz, W., (2004). Plea Bargaining and Criminal Law's Disappearing Shadow. Harvard Law Review 117:2548-2569.

that plea bargains in criminal court cases are legal under the German constitution.[23]

For many years German legal scholars and commentators considered that plea bargaining could not become a part of German criminal law. They were motivated by the significant difference between the German and American criminal justice systems. In the American criminal justice system, criminal proceedings are adversarial. It means the defense counsel and the prosecutor have almost equal adversarial postures. The judge is presented as a neutral observer with a limited scope of authority. By contrast, the German trial is led by a judge who has quite an active role in the process. The judge searches out the truth to determine which crime was committed and the most appropriate sentence for this punishment. Many basic principles relating to criminal prosecution go back even further in German legal history — they're outgrowths of the German notion of the "Rechtsstaat", translated as "the rule of law". The "Rechtsstaat" requires that an unbiased judge probe all the facts of the case in a public proceeding in which all parties have a right to be heard, with the ultimate purpose of discovering the fundamental historical truth of what happened.[24] It is important to discuss what dangers the opponents of establishing plea bargains in German practice might have seen:

- As plea bargaining is an out-court negotiation process, a well-established principle of public trial gets violated. As a result, society may lose their respect and confidence in criminal justice proceedings;
- Society may cast doubts on "Fair-trial" guarantees, as defendants are giving up some of their constitutional rights, such as the right to be presented and to participate in proceedings, the right to a jury trial, the privilege against self-incrimination, the right to confront witnesses, the right to be convicted only by proof beyond a reasonable doubt, etc.;
- Even though the primary advantage of plea bargaining is to speed up the processes of the justice system and make courts less overcrowded, it may lead to poor investigation procedures. As a result, an innocent defendant may also plead guilty and in some cases, the truth of what happened may not ever completely be known;
- Moreover, criminal statistics will not be fully consistent with reality as guilty pleas count as convictions although there was no trial;
- Another problematic issue is that there is a presumption of innocence and a key principle of "In dubio pro reo" (In doubt for the accused) established in German criminal justice proceedings. It means that when in doubt, the judge must rule in favor of the accused. By establishing plea bargaining in German criminal law, this principle becomes questionable, because there is a danger that while pleading guilty, the defendant is providing evidence against himself;
- The impartiality of judges could also be problematic. As defendants are pleading guilty voluntarily, judges may become biased against them;
- Finally, it may also violate the principle of legality, because there is a danger that the state may forfeit its indispensable claim to be the sole legitimate punishing authority, especially in the case of serious crimes.[25]

2.2. The necessity of significant changes in the German criminal justice system

Even though critics and opponents might have made solid and well-grounded arguments against the establishment of plea bargaining in German criminal law, the German criminal justice system needed significant changes. In the 70th of the 20th century, a significant growth of crimes in Germany – quantitatively and qualitatively – was observable.[26] But the budget for criminal courts remained the same. As a result, courts became overloaded and were not functioning effectively. To ensure fair criminal proceedings, the State hires and pays the

23 <https://p.dw.com/p/180F3> [Last seen 29.11.2022].

24 <https://hammeltranslations.com/2019/05/22/the-difficult-birth-of-the-criminal-plea-bargain-in-germany/> [Last seen 24.03.2023].

25 <https://hammeltranslations.com/2019/05/22/the-difficult-birth-of-the-criminal-plea-bargain-in-germany/> [Last seen 24.03.2023].

26 Crime and Criminal Justice History in Germany. A Report on Recent Trends Herbert Reinke; VOL. 13, N°1, 2009; paragraph 2.

judge, the prosecutor, the police, and criminal laboratories.[27] It is necessary to consider that the average person accused of a crime does not have a great deal of money. So, the state also has to hire and pay for lawyers to protect their rights. As we can see, the effective functioning of criminal proceedings requires significant financial expenditure from the state. In return, the state receives a guarantee that the law is functioning effectively.

Governments spend just enough money to ensure the criminal-justice system functions minimally, but no more than this. If the state needs to tighten its belt, budgets for criminal justice are one of the first line-items to be, and the most efficient way to resolve a criminal case is by a deal, or "plea bargain", in common-law parlance. The defendant appears before the judge, enters a guilty plea, formally waives his right to a trial, gets his reduced sentence, and the case is closed without needing an expensive, uncertain trial. Everyone is happy, sometimes even the defendant.[28]

2.3. First steps towards changes in the German criminal justice system

In 2009 Germany's constitutional court upheld a law that allowed plea bargains in criminal trials. In the same year, section 257c was added to the German Criminal Procedure Code by the Federal legislature. To discuss the circumstances of the changes briefly, in suitable cases, the German court was able to reach an bargain with the participants on the further course and outcome of the proceedings. However, according to the legislature, the court could announce what content the negotiated bargain could have. It could also indicate an upper and lower sentence limit, and the negotiated bargain shall exist if the defendant and the public prosecution office agree to the court's proposal. Moreover, the court could cease to be bound by a negotiated bargain if legal or factually significant circumstances have been overlooked.

As we can see, because of the new legislative regulation in the German Criminal Procedure Code, a strict legal framework was defined within which plea bargains had to be implemented. A judge still had quite an active role in the process, could control the content of the bargain, and even declared the bargain invalid because of circumstantial changes.

Such an arrangement differed from the American regulation, where the goal of the entire criminal justice system is to encourage plea bargains. Deals between the prosecutor and the defendant are enforceable in courts, and, moreover, the existence of the Alford plea (An opportunity for the defendants to plead guilty to the crimes they state they did not commit) encourages the more frequent use of plea bargains in practice. The addition to the German Criminal Code was challenged in the German Federal Constitutional Court, which published necessary clarifications in 2013 – "Criminal law is based on the principle of individual guilt, which has constitutional status. This principle is anchored in the guarantee of human dignity and personal responsibility. The government is obliged under the Constitution to ensure the functioning of the criminal justice system to establish the real facts of a case, without which it is impossible to implement the substantive principle of individual guilt". "Even if it is currently not possible to conclude from the deficits in the implementation of the Plea-Bargaining Act that the statutory provision is unconstitutional, it is nonetheless necessary that the legislature keep a close eye on future developments. the legislature must take reasonable steps to counteract this undesirable development.... Should it fail to do so, an unconstitutional situation would arise". [29] To briefly summarize the decision of the German Federal Constitutional Court, the court considered that the new law provided adequate protections for the defendants' rights. Even though there is a serious implementation deficit, the regulation is currently not yet unconstitutional. However, the legislator should take effective steps to solve implementation deficits and, if necessary, improve them.

27 <https://www.stimmel-law.com/en/articles/trial-preparation-what-happens-month-trial> [Last seen 29.11.2022].

28 <https://hammeltranslations.com/2019/05/22/the-difficult-birth-of-the-criminal-plea-bargain-in-germany/> [Last seen 24.03.2023].

29 Bundesverfassungsgericht, Press Release No. 17/2013 of 19 March 2013 – Legal Regulation of Plea Bargaining is Constitutional – Informal Bargains are Impermissible: Decision – 2 BvR 2628/10.

3. PLEA BARGAINS IN GEORGIA

3.1. Georgian Legislative Amendments Concerning Plea Bargaining

Along with the changes made in the Code of Criminal Procedure, the grounds for entering into a plea bargain changed. Initially, if in order to enter into a plea bargain, it was necessary for the accused to cooperate with the prosecution, confess to the crime, and provide the investigative authorities with unmistakable information about a serious crime or a criminal act committed by an official, the current criminal law procedure According to the Code, a plea bargain is a basis for the court to issue a verdict without considering the merits of the case. Accordingly, the conclusion of a plea bargain between the parties was simplified from a procedural point of view.[30]

The accused was not considered convicted under the original version of the legislation in the case of signing a plea bargain, but in the case of signing a plea bargain, the court issues a guilty verdict without considering the case's merits, which automatically leads to the person's conviction.

According to the Criminal Procedure Code, valid until 2014, the basis for the court to issue a verdict without considering the case's merits was a plea bargain, and the basis for a plea bargain was a bargain on guilt or punishment. With the changes made by law N2517 of July 23, 2014, one of the grounds, namely the bargain on punishment, was canceled. In the explanatory note of the named law, we read: the existence of the possibility of bargain on the punishment in the conditions of not admitting guilt may represent another factor for the accused, who recognizes himself as innocent, to agree to a plea bargain with the motive of mitigating the punishment. The draft law envisages the abolition of the sentence bargain as a form of a plea bargain. Accordingly, the basis of the plea bargain will be only the bargain in which the accused admits the crime and agrees to the punishment with the prosecutor.[31]

According to Article 211, Part 1 of the Criminal Procedure Code, which is still in effect until 2014, the court should state in the motion for a verdict, without considering the merits of the case, that there is evidence sufficient to make a reasonable assumption that this person committed the crime in question.[32] The named legislative amendments of 2014 also affected the said legal record, as it directly contradicted Article 13, Part 2 of the Code of Criminal Procedure, which unequivocally states that a guilty verdict must be based only on a set of evidence that must prove a person's guilt beyond a reasonable doubt.[33] As a result of the above-mentioned changes, the motion for a plea bargain must reflect sufficient evidence to issue a judgment without a substantive review of the case provided for in Article 3, Section 11^1 of this Code, which is more than the standard of reasonable suspicion, but still cannot fully meet the requirements of Article 13 of the Code of Criminal Procedure to the requirements established by part 2.

A legislative amendment implemented in 2014 addressed the grounds for appealing a plea bargain. As a result of the changes, another ground was added to Article 215 of the Code of Criminal Procedure, namely, the convicted person has the right, within 15 days from the delivery of the sentence provided for in this chapter, to file a complaint with the higher court instance regarding the approval of the plea bargain regarding the annulment of the court verdict if: the plea bargain was concluded in such a way that: There was not enough evidence to issue a verdict without considering the merits of the case provided for in Article 3, Section 11^1 of this Code. The mentioned change should be positively evaluated because it is aimed at protecting the rights of the convicted person.

Prior to the changes, the principles that should guide the state prosecutor when deciding on a plea bargain were too vague. Before the legislative change, the mentioned issue was regulated according to Article 210, Part 3 of the Code of Criminal Procedure, when deciding to reduce the pun-

30 Law of Georgia, Code of Criminal Procedure of Georgia, Article 209, Article 1. The law was published on 03/11/2009.

31 Law of Georgia of July 25, 2014, N 2517, explanatory card. An explanatory card is available at <https://info.parliament.ge/file/1/BillReviewContent/10720>

32 Law of Georgia, Code of Criminal Procedure of Georgia, Article 211. The law was published on 03/11/2009. Editorial valid until July 24, 2014.

33 Law of Georgia, Code of Criminal Procedure of Georgia, Article 13, Section 2. The law was published on 03/11/2009.

ishment for the accused or to reduce or partially remove the charge, the prosecutor must consider the public interest, the severity of the punishment for the committed crime, the illegality of the action and the degree of guilt.[34]

As a result of the legislative changes of July 24, 2014, all the circumstances that should be considered to conclude a plea bargain were written in detail the state's judicial priorities, the severity of the crime committed and the expected punishment, the nature of the crime, the degree of guilt, the public danger of the accused, personal characteristics, conviction, with the investigation. Cooperation and conduct of the accused to compensate for the damages caused by the crime.[35] The said amendment serves to bring more clarity and predictability to the process of concluding a plea bargain.

3.2. Plea Bargain and rights of the victim

When negotiating a plea deal, it is critical to consider the victim's legal situation. Although the victim is not a party to the proceedings under the Code of Criminal Procedure, he shall enjoy the rights recognized by international legal acts. According to Article 217, Part 2 of the Criminal Procedure Code, the victim has no right to appeal the plea deal.[36] It is critical to assess if the legislative record in question infringes the victim's right to a fair trial. The victim values the sense of justice and the knowledge that the court considered his circumstances while determining the punishment. Despite the fact that the victim does not have the right to appeal the decision on the plea bargain under the current procedural code, he is given the opportunity to provide the court with the approval of the plea bargain in writing or orally at the court session about the damage he suffered as a result of the crime, and the plea bargain does not deprive the victim of the right to file a civil suit. To make a fair decision, it is important that the victim's position is known to the prosecutor in concluding a plea bargain. According to the Procedural Code, the prosecutor must consult with the victim before concluding the plea bargain and inform him of the conclusion of the plea bargain, about which the prosecutor draws up a protocol. It is important that the victim has rights in the plea bargain process so that his position is not completely ignored, and he should not have the right to veto the plea bargain. In accordance with international standards, the victim should have the opportunity to appear in court to hear his opinion, a similar opportunity is given to the victim according to the Criminal Procedure Code of Georgia.

3.3 Plea Bargain and the Judge's Role in Sentencing

Several provisions of the Criminal Code address the question of plea bargaining. If the parties reach a plea bargain, the court may impose a sentence shorter than the lowest limit of the penalty imposed by the relevant article of this Code, or another, lesser kind of punishment, according to Article 55 of the Criminal Law Code.[37] Because there is no plea bargain between the parties, the mentioned norm opposes the concept of individualization of punishment, because the court has no power to impose a milder sentence than the one given by law. Even in the absence of a plea bargain, the court should have the authority to impose a lesser sentence than that prescribed by law, which will contribute to the practical application of the principle of individualization of punishment.[38]

In Georgian criminal law, the imposition of conditional punishment is linked to the parties reaching a plea bargain. According to Article 63, Part 1 of the Criminal Code, if the parties reach a plea bargain, the court has the authority to determine that the imposed sentence is conditional. As a result, a plea bargain must be reached between the parties

34 Law of Georgia, Code of Criminal Procedure of Georgia, Article 210. Law published on 03/11/2009. Editorial valid until July 24, 2014.

35 Law of Georgia, Code of Criminal Procedure of Georgia, Article 210, Article 3. The law was published on 03/11/2009.

36 Law of Georgia, Code of Criminal Procedure of Georgia, Article 210, Article 2. The law was published on 03/11/2009.

37 Law of Georgia, Criminal Code of Georgia, Article 55. Law published on 22/07/1999. <https://matsne.gov.ge/ka/document/view/16426?publication=243>

38 Tkesheliadze, G., Lekveishvili, M., Nachkibia, G., Todua, N., Mchedlishvili-Hedrichi, K., Mamulashvili, G., Ivanidze, M., Sarkeulidze, I., Criminal Law General Part, Meridian Publishing House, TB, 2019, p. 600.

for the prescribed punishment to be considered. According to Article 63, Part 2 of the Criminal Code, if the convicted person has committed a particularly serious or intentionally serious crime, the imposed sentence may not be considered conditional, this norm contradicts Article 50, Part 5 of the Criminal Code of Georgia, which regulates part of the imposed punishment subject to consideration and where no importance is attached to the seriousness of the crime committed. The contradiction between the two named norms should be decided in favor of part 5 of Article 50 of the Criminal Code because it refers to a private case of the use of conditional sentence and, simultaneously, decides the issue in favor of the person.[39]

CONCLUSION

The discussion made it evident how significant plea deals are in Georgia, Germany, and America. Additionally, it became evident that the three states take various approaches to the problem of regulating plea bargains and had different ideas on how to resolve it. Despite this institution's strengths, negative things that should be changed or corrected were brought to light.

In the United States of America, as can be seen from the paper, there are different forms of a plea bargain, which were formed because of court practice and are still in use. Based on a plea bargain, a person loses and gives up the right to a fair trial, which is the most problematic issue, and the judge in America can ignore the type of punishment in the plea bargain, which makes the deal between the prosecutor and the accused unstable. Despite its drawbacks, a plea bargain shortens court proceedings, and the parties must spend less time and resources to reach an outcome. There is a prevailing view in America that the disappearance of a plea bargain would be impermissible because it plays a more positive role in the litigation process than a negative one.

The law which regulates plea bargains in Germany is still controversial. It defines a strict legal framework within which plea bargains must be implemented. Yet neither the state nor the federal government has enough budget to ensure complete and detailed conduction of all stages of criminal proceedings. As a result, courts are overloaded, and the quality of justice may be harmed. Even though the representatives of the German legal system are proud of their longstanding principles, following high principles is expensive. Something needs to be given up. Though the primary purpose of the traditional model of the German criminal justice system was to pursue the truth and justice with the active involvement of judges, the modern state faces various challenges and has to regulate many new areas of a complex society. The criminal justice system needs to be perceived as a regulatory tool that has the main goal of conducting efficient deterrence rather than applying strict retribution.

In conclusion, it should be noted that in Georgian reality, it is important to conclude a plea bargain in such a way that the conviction of an innocent person is minimized. When concluding a plea bargain, several problems arise in practice, including the issue of the limited authority of the prosecutor directly supervising the case. It would be preferable if the current rule is changed through legislative amendments, the authority of the prosecutor directly supervising the case is increased in this regard, and the approval of the superior prosecutor is not required, at least in the case of less serious and serious crimes, ensuring the actual implementation of the principle of speedy justice while not having a plea bargain. Existence restricts the judge's ability to apply the concept of individualization of punishment genuinely and, if required, to be more humanitarian considering the purposes of the penalty or to utilize such forms of criminal action as a conditional sentence.

39 Law of Georgia, Criminal Code of Georgia, Article 63, Article 2, Code published on 22/07/1999. <https://matsne.gov.ge/ka/document/view/16426?publication=243>

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