

## **On the practice of consideration by the courts of criminal cases in conciliatory proceeding**

### *Unofficial translation*

Normative decision of the Supreme Court of the Republic of Kazakhstan dated July 7, 2016  
No. 4.

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Having discussed the practice of courts on consideration of criminal cases in conciliatory proceeding, for the purposes of ensuring the unity of judicial practice and the correct application of legislation when concluding a procedural agreement in the form of a plea bargain and consideration of criminal cases by courts in conciliatory proceeding, plenary session of the Supreme Court of the Republic of Kazakhstan

Hereby decrees:

1. To explain that the main goal of conclusion of the plea bargaining in form of a plea agreement (hereinafter referred to as the plea agreement) is the quick and complete disclosure, investigation of crimes and the operational execution of others stipulated by article 8 of the Criminal Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the CPC), objectives of the criminal process through expedited pre-trial procedure and conducting trial in an abbreviated manner in accordance with the terms of the agreement made with strict observance of the principles of legality, judicial protection of the rights and freedoms of man and citizen, the presumption of innocence and other basic principles of the criminal process.

2. Plea agreement may be concluded only with respect to a crime of small or medium gravity or a serious crime or a combination thereof.

In accordance with the requirements of paragraph 1) of part two of article 613 of the CPC the conclusion of a plea agreement shall not be allowed if there is a combination of crimes, at least one of which is classified as especially serious or the suspect, accused, defendant does not agree with suspicion, accusation of at least one crime in the aggregate.

A plea agreement may not be concluded if this may affect the comprehensiveness, completeness and objectivity of the study of circumstances affecting the rights and legitimate interests of other persons who are not parties to the case.

In the criminal case of crimes committed in complicity, a procedural agreement in the form of a plea bargain cannot be concluded with an individual accomplice. Such an agreement shall be allowed only if it is concluded simultaneously with all accomplices of the crime.

**Footnote. Paragraph 2 as amended with the regulatory resolution of the Supreme Court of the RK dated 11.12.2020 № 6 (shall be enforced from the day of its first publication).**

3. A plea agreement may be concluded at the request of the suspect, accused, defendant or his counselor, or at the initiative of the prosecutor. Upon the conclusion of an agreement on guilty plea at the request of the defense counselor at the initiative of the prosecutor at the stage of pre-trial investigation in a criminal case, the voluntary expression of the desire by the suspect, accused, to conclude such an agreement must be properly established and recorded.

The criminal procedural law shall not establish a certain form of a request for a plea agreement, therefore, in accordance with the requirements of part two of article 99 of the CPC a written request must be attached to the materials of the criminal case, a verbal one - must be recorded in the protocol of the investigative action or court session.

4. A request of a suspect, accused, defendant or his defense counselor or prosecutor to enter into a plea agreement may be filed: at the stage of pre-trial proceedings from the moment a person acquires the status of a suspect; in the court of first instance and appeal - before the court retires to the deliberation room.

5. Conclusion of a plea agreement on criminal infractions cases shall not be provided by the law.

When a person commits a criminal infraction and a crime under which a plea agreement is concluded, the pre-trial investigation body should not join cases, since the criminal infraction is carried out in the protocol form of the pre-trial investigation, and the criminal proceedings under the plea bargaining - in accordance with the rules provided for in chapter 63 of the CPC

When a person commits a criminal infraction and a crime, for which a plea agreement has not been reached and is not concluded, the criminal cases under them in accordance with part four of article 526 of the CPC may be joined for single proceedings in the form of inquiry or preliminary investigation.

6. If a criminal case has been submitted to the court with a plea agreement, which combines cases of criminal misconduct and a crime that does not belong to the category of especially grave ones, then the court will return the case to the prosecutor from the preliminary hearing with the opportunity to conduct a pre-trial investigation in accordance with the requirements of the CPC.

7. If a criminal case has been submitted to the court with a concluded plea agreement with respect to a person accused of committing two or more crimes, at least one of which is classified as especially serious, then the court will return the case to the prosecutor from the preliminary hearing due to the lack of grounds for applying conciliation proceedings.

8. If, in the course of the criminal proceedings, the defendant or all the defendants who is complicit in the crime have applied for a plea agreement, the court shall, in accordance with Article 628 of the Criminal Procedure Code, terminate the trial and grant the parties a reasonable period of time to conclude it.

In the event of the conclusion of a procedural agreement, the judge shall decide to continue the consideration of the case in conciliation proceedings under the Rules of Chapter 64 of the Criminal Procedure Code.

**Footnote. Paragraph 8 – in the wording of the regulatory resolution of the Supreme Court of the RK dated 11.12.2020 № 6 (shall be enforced from the day of its first publication).**

9. If in the course of the main trial under a criminal case of a particularly serious crime, the state prosecutor, by partial refusal of the charge, changes the charge to a less serious crime and the victim does not insist on the previous charge, the court must dismiss the case in part and explain to the parties about the new charge their right to conclude of a plea agreement.

10. The body conducting the criminal procedure, before sending the request for the conclusion of a plea agreement to the prosecutor shall be, obliged in accordance with the requirements of paragraph 22) of part six of article 71 of the CPC to explain to the victim that he has the right to know about the intention of the parties to conclude a plea agreement, about its conditions and consequences, existence of the right to offer his conditions for compensation for damage caused by a crime, or to object to its conclusion. A protocol shall be drawn up on the conduct of this action at the pre-trial investigation stage in compliance with the requirements of article 199 of the CPC, and in court proceedings it shall be recorded in the protocol of the court session.

For the purposes of due provision of rights of the victim in the criminal procedure at the state of concluding a plea agreement and receipt of the consent of the victim to its conclusion, the prosecutor must additionally explain to the victim about legal consequences stipulated by article 614 of the CPC of providing his consent for conclusion a plea agreement. A protocol shall be drafted on proceedings of such action by the prosecutor in accordance with the requirements of article 199 of the CPC.

As long as the consent of the victim for conclusion of a plea agreement is the compulsory condition for its conclusion except for the cases when under a criminal case the victim (an individual or a legal entity) is absent, then such consent of the victim in the written form must be attached to the materials of the criminal case together with the protocols of clarification to the victim of his rights and the consequences of giving them consent to conclude of a plea agreement.

11. In accordance with part two of article 614 of the CPC and other norms of chapter 63 of the CPC only the suspect, accused, defendant shall have the right to refuse from the concluded plea agreement. The law does not provide the victim with the right for withdrawal of his consent to conclude the agreement. In addition, in accordance with paragraph 3) of part one of article 614 of the CPC the victim, who give consent for conclusion a plea agreement, shall be deprived of the right subsequently to change the claim on the amount compensation of damage. However, according to part three of article 614 of the CPC, the plea agreement shall not deprive the victim and a civil plaintiff of the right to issue a civil claim in this criminal case or in accordance with the procedure of civil legal proceedings.

The norm of part three of article 614 of the CPC shall fix the right of a victim and a civil plaintiff to issue a claim in cases when after conclusion of a plea agreement with the consent of the victim, their position on the matter of compensation of damages caused by the crime has been changed in connection with circumstances, appeared after conclusion of the agreement (for example, costs of treatment, buying medicines etc.). In this case, the victim and the civil plaintiff, in the absence of new circumstances, shall not be entitled to raise the issue of increasing the amount of harm, which has been specified in the plea agreement with his consent.

12. If a legal entity is recognized as a victim in a criminal case, then consent to the conclusion of a plea agreement shall be given by a representative of a legal entity endowed with such powers by a legal entity.

A plea agreement may be concluded also in the absence of the victim in the criminal case - an individual or a legal entity (for example, in cases of drug trafficking etc.).

13. The plea agreement shall not contain the condition, according to which the court must appoint to the defendant any certain type and amount of punishment, but in accordance with paragraph 8) of part one of article 616 of the CPC it must indicate the type and the amount of punishment, about which the prosecutor will solicit for before the court.

14. When concluding a plea agreement, the prosecutor shall not be entitled to make the condition of its conclusion the recognition by the suspect, accused, the defendant of his guilt. Indication that the suspect, accused, defendant does not dispute the suspicion, accusation, prosecution and existing in the case evidence of committing the crime, nature and the amount of damages caused by them shall be sufficient in the plea agreement in accordance with paragraph 2) of part one of article 613 of the CPC.

15. If the defendant, using his right in court, refused the prisoner of a plea agreement, then the court in accordance with paragraph 1) of part one of article 626 of the CPC shall return the criminal case to the prosecutor for a pre-trial investigation in general. A defendant's statement in conciliatory proceeding about innocence and the conclusion of a plea agreement under duress shall also entail the return of the criminal case to the prosecutor for pre-trial investigation.

16. In the absence in a plea agreement of condition on appointment of medical coercive measures to the convicted person, who is found to need treatment for alcoholism, drug addiction or substance abuse, this coercive measure may not be appointed by the court on its own initiative. In this case, the court shall have the right, on the basis of paragraph 3) of part one of article 623 of the CPC or paragraph 2) of part one of article 626 of the CPC to return the criminal case to the prosecutor for conclusion of a new agreement.

17. Refusal of the defendant from the prisoner of a plea agreement shall be allowed before the court retires to the deliberation room. After a verdict of guilty is passed on the basis of conciliation proceedings, the convicted person shall not be entitled to refuse the concluded plea agreement, but may appeal the verdict in the manner stipulated by chapter 48 of the CPC.

At the same time, the fact that the defendant refused the prisoner of a plea agreement after the court retires to the deliberation room shall not be a basis for cancellation of the court's verdict . A court's verdict rendered following a conciliatory proceeding trial may be revoked or amended by the court of appeal only on the grounds stipulated by article 433 of the CPC, including in connection with a significant violation of the criminal procedural law committed in concluding a plea agreement or in criminal proceedings in conciliatory proceeding.

18. In case if a suspect, accused, defendant or prosecutor makes a request for the conclusion of a plea agreement and its conclusion, the participation of the criminal defense counselor in accordance with the requirements of paragraph 11) of part one of article 67 of the CPC shall be mandatory. When concluding a plea agreement with the prosecutor by a minor suspect, accused, defendant in accordance with the requirements of part three of article 537 of the CPC and part three of article 542 of the CPC in this procedural action, along with the defense counselor, the legal representative from among the persons specified in paragraph 13) of article 7 of the CPC shall participate in all cases.

19. A judge shall issue the appropriate order on the appointment of a trial in a criminal case with a plea agreement. At the same time, consideration by the court of criminal cases in conciliatory proceeding shall be according to the rules stipulated by article 625 of the CPC, without judicial investigation, judicial debate and the provision of the last word to the defendant.

20. Conciliation proceedings shall be conducted by the court within the framework of the prisoner of a plea agreement. The court in conciliatory proceeding shall be entitled to make decision that is not provided for by the plea agreement if it does not aggravate the situation of the defendant and his right for protection is not violated.

21. The criminal case in conciliatory proceeding in accordance with part six of article 625 of the CPC and part two of article 382 of the CPC must be considered within the period of up to ten days, in exceptional circumstances this period may be extended by a motivated resolution of a judge up to twenty days.

22. In the event of a request for conclusion during the main trial of a plea agreement the judge in accordance with the requirements of part one of article 628 of the CPC shall suspend the trial and provide the parties with a reasonable time frame for its conclusion. In this event the criminal case shall not be sent to the prosecutor, but remains with the court. The provision of part two of article 615 of the CPC that the body conducting the criminal process shall forward the petition, together with the materials of the criminal case, to the prosecutor in order to resolve the issue of concluding a plea agreement, to be applied only at the pre-trial stage.

If the court did not agree to the procedural agreement concluded during the main trial, the court would allow the parties the time to conclude a new procedural agreement. If the parties

fail to reach agreement on the terms of the procedural agreement or the court's disagreement with the new procedural agreement, the criminal case shall continue to be examined by the court in a general manner. A new indictment shall not be required in this case.

**Footnote. Paragraph 22 as amended with the regulatory resolution of the Supreme Court of the RK dated 11.12.2020 № 6 (shall be enforced from the day of its first publication).**

23. Based on the results of conciliation proceedings, the court shall have the right both to impose a less severe punishment on the convict than the type and amount of punishment requested by the prosecutor before the court in accordance with the plea agreement, and to return the case to the prosecutor in connection with the disagreement with the type and amount of punishment specified in procedural agreement, with provision of an opportunity to conclude a new agreement.

24. The court shall not have the right to impose a more severe punishment than that stipulated by the guilty plea agreement. If the court does not agree with the type or amount of punishment provided for in the guilty plea agreement, considering it to be lenient, then the criminal case in accordance with paragraph 3) of part one of article 623 of the CPC or paragraph 2) of part one of article 626 of the CPC shall be returned to the prosecutor with provision of an opportunity to conclude a new agreement.

25. Application of article 67 of the Criminal Code of the Republic of Kazakhstan ( hereinafter referred to as the CC) during consideration of a case in conciliatory proceeding shall not be allowed, as long as this regulation is applicable only to a person, concluded the procedural agreement on cooperation subject to performance by him all conditions of the agreement.

26. In conciliatory proceeding when establishing the circumstances, stipulated by part one of article 68 the CC, the court in accordance with paragraph 12) of part one of article 35 of the CPC and paragraph 4) of part one of article 626 of the CPC shall issue an order on termination of criminal proceedings in connection with reconciliation.

Based on the results of the consideration of a plea agreement in conciliatory proceeding, making a decision by the court to dismiss the case on the grounds stipulated by article 36 of the CPC and parts two and three of article 68 the CC, shall not be allowed. In this case the court shall be entitled to bring in the verdict of guilty with exemption from criminal liability or return the criminal case to the prosecutor.

27. By results of consideration of a plea agreement in conciliatory proceeding bringing of acquittal shall not be provided. If the circumstances specified in article 35 of the CPC are discovered, the court shall issue the order on termination of the criminal proceedings on grounds not related to the examination of evidence.

28. According to paragraph 5) of part one of article 626 of the CPC The verdict of guilty must contain a court decision on a civil suit and other penalties in accordance with a plea

agreement. In order to ensure the specified requirements of the law, an agreement on guilty plea, if there are procedural costs in the case, should indicate whether they should be recovered from the convict or charged to the state.

29. Within the meaning of article 87 of the CPC a judge who has returned the case to the prosecutor due to the lack of grounds for applying conciliation proceedings, when the case is brought back to the court with a new plea agreement cannot be dismissed solely on this basis, and he shall have the right to consider this case in conciliatory proceeding.

30. In conciliatory proceeding, criminal cases brought to court with a procedural agreement in form of a plea agreement shall be considered, as well as cases in which a plea agreement has been concluded during the main trial or in the consideration of a case in appeal proceedings.

The case with the petition of the prosecutor in respect of the convicted person who has entered into a procedural agreement on cooperation and fulfilled its conditions cannot be considered in conciliatory proceeding, but must be considered in the execution of the sentence in accordance with articles 476, 477 and 478 of the CPC.

31. In respect of the convicted person in the court of appeal, the procedural plea agreement may not be concluded, as long as in accordance with article 615 of the CPC only the suspect, accused, defendant shall have the right to request for conclusion of such agreement, beside the defense counselor and prosecutor. In addition, according to paragraph 5 ) of part seven of article 65 of the CPC the convicted person shall have the right only to apply for the conclusion of the plea bargaining for cooperation. In this regard, taking into account the requirements of part five of article 429 of the CPC at the court of appeal, a plea agreement can be concluded only after the conviction of the court of first instance has been canceled on the grounds provided by law, and the court of appeal has passed the criminal case in accordance with the rules provided for the court of first instance. In this case, in the case of the conclusion of a plea agreement, the court of appeal issues a decision to consider the criminal case in conciliatory proceeding, considers the case according to the rules of chapter 64 of the CPC and shall make one of decisions, stipulated by article 626 of the CPC.

32. In a criminal case, the conclusion of a plea agreement in the court of cassation, that is, after the court verdict comes into force, shall not be allowed.

33. According to paragraph 1 article 4 of the Constitution of the Republic of Kazakhstan, this normative regulation is included in the current law, is compulsory and is enforced from the date of its first official publication.

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