ADMISSION OF GUILT AS A BASIS FOR CONCLUDING PROCEDURAL AGREEMENTS USING THE BRICS COUNTRIES AS AN EXAMPLE: A COMPARATIVE LEGAL INTERPRETATION

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The main focus of this article is to examine in greater depth the content of the admission of guilt, the issue of agreements with an investigation, and the criteria for the admissibility of confessions, using examples from not only the countries with Anglo-American and continental legal systems, but also taking into account the analysis of the legislation of the BRICS countries. Of particular interest are the attitudes of legislators from different countries towards this legal category, depending on their philosophical views, the political and economic environment, as well as the assessment of their readiness to move forward with the promises of humanization of legislation. The topic of guilty pleas in domestic criminal proceedings is not new for researchers and law enforcement officers. Legal scientists have identified both the advantages and the disadvantages of the forms based on this legal category. However, a gradual rejection of confessions as evidence is noticeable, and in the majority of cases, agreement with the prosecution plays a significant role. Despite the fact that confessions are officially no longer considered "the main thing," in practice we are faced with the fact that, in fact, they are given priority over other forms of evidence. This duality creates uncertainty in scientific circles. We believe that this article can have a positive impact on the process of reforming certain provisions of criminal procedure law regulating procedural components, with mandatory compliance with the rights of participants in legal proceedings guaranteed by the basic laws of the country. To achieve the goal, we used the general scientific dialectical-materialistic method of cognition, as well as the following private scientific methods: logical-legal, comparative-historical, system-structural. Both judicial practice and scientific research are analyzed in depth.

Keywords: admission of guilt; agreement with the investigation; plea bargaining; BRICS countries; United States.

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Introduction

Since the adoption of the new Criminal Procedure Code of the Russian Federation, numerous changes have been made to it, some of which relate to the simplified and summary forms of legal proceedings. Does this circumstance give a negative connotation to the application of the law? It is difficult to give an unambiguous answer to this question. However, one cannot disagree with the claims of Hegel, according to which:

> [O]n the one hand, we must demand simple universal definitions from the official code, and, on the other hand, the nature of infinite material leads to infinite further definitions. On the one hand, the scope of laws should be a complete, closed whole, and, on the other hand, there is a constant need for new legal definitions. But since this antinomy occupies a special place in the field of universal principles, which at the same time remain unshakable, this antinomy does not restrict the right to a complete code, as well as the right to ensure that universal simple principles taken by themselves, distinct from their further special development, are understandable and amenable to a clear formulation.[1]

[1] *Гегель Г.В.Ф.* Сочинения. Т. VII: Философия права [Georg W.F. Hegel, *Works. Vol. VII: Philosophy of Law*] 136–380 (Abram M. Deborin & David B. Ryazanov eds., 1934).

According to Hegel, almost any branch of law is a reflection of the epoch in which it operates and the state of civil society. Therefore, for example, the provisions of criminal legislation cannot be applied in different epochs and are inevitably subject to change. It is noteworthy that Hegel recognized the right of everyone to have his or her case examined by a court, as well as the obligation to appear before a court in the event of committing illegal acts. At the same time, the court was considered as a representative of the official authorities and justice was regarded as the right of the "ruling power," but for the guilty party, it was perceived as an organ of justice. Particular importance was given to the adversarial nature of the process, the possibility of presenting evidence, and the potential negative consequences of such "lengthy formalities" accepted by the parties in advance. Furthermore, the concepts of guilt and recognition have not been left aside. In particular, Hegel noted that "an act can be imputed as the fault of the will," emphasizing that only a person knows what he did. Thus, subjective imputation comes to the fore. In addition, according to the study, the guilty person can either admit or not admit guilt. It all depends on his conscience and inner conviction. At the same time, unlike witness statements and other supporting documents the confession is not given the main role in the evidence. Consequently, agreement with the prosecution should only serve to confirm the facts established during the investigation.

It can be assumed that the establishment of objective truth is not the purpose of the proceedings, because, one way or another, the court, when making a decision, acquires an inner conviction of the guilt or innocence of the person involved, that is, subjectively relates to the behavior of the defendant.

However, it is impossible to deny the fact that the admission of guilt is a kind of testimony of the accused, who voluntarily informs the investigating authorities and the court of the necessary, previously unknown information. Thus, we consider it reasonable to conclude that confessions have at least three meanings: evidence, a guideline for further investigation or a way to protect the accused (suspect).[2] In this case, the court considers the confessions as evidence of the defendant's degree of remorse. Will the confession itself be sufficient without stating the necessary facts? We believe that the answer is negative. Such confessions will have no significance for a proper and high-quality investigation, despite the fact that the accused has the right to "silence." In this situation, the views and activities of the famous Russian lawyer, judge, and state and public prosecutor, A.F. Koni, deserve attention. Koni did not want to overestimate the evidentiary value of the accused's admission of guilt, while at the same time he emphasized the moral duty of the judge not to blindly follow the path of his own consciousness. The true source of evidence, in his opinion, lay in thoughtful research.

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[2] *Перекрестов В.Н.* Уголовно-процессуальное значение признания вины в России: дис. … канд. юрид. наук [Victor N. Perekrestov, *The Criminal Procedural Significance of the Admission of Guilt in Russia*, PhD thesis] 190 (2013).

> During the prosecution, they tried not to rely on the defendants' own consciousness, even made in court, and build their speech like this. As if there was no consciousness at all, drawing from the case objective evidence and evidence that does not depend on one or another mood of the defendant.[3]

After conducting a historical analysis, we believe that the transition from formality to freedom of evaluation of evidence was inevitable.

Returning to the topic of the article, the induction method of research becomes important.

1. The Content of the Term "Plea Agreement" in the Russian Federation

On the basis of the Hegelian concept of the science of law as a part of philosophy, it is reasonable to assume that it will be self-evident upon gaining an understanding of the institution of admission of guilt, to identify the inherent features of this concept.

The term "plea agreement" has three component parts: agreement, guilt and confession.

The concept of guilt at the present stage of the development of legal science is assessed to a greater extent as an internal attitude to what has been done in accordance with the widespread psychological theory. This theory undoubtedly occupies a dominant position. In judicial practice, confessions are viewed by the court as a critical attitude toward what has been done.

Let us turn to the current criminal and criminal procedure legislation. It follows from the analysis that the norms of substantive law consider "guilt" only in terms of its content, which is a set of facts subject to proof for the purpose of legal prosecution. By analyzing judicial practice, we can see that the court in rendering the final decision almost always describes the attitude of the defendant to the charge and begins with the question of admission or non-admission of guilt. Is this really just a formality?

According to the current Criminal Procedure Code of the Russian Federation, not only the event of the crime, its circumstances and its consequences, but also the guilt of the person, the form of that person's guilt and motives are subject to mandatory establishment. In addition, the law says that the validity of the charge is determined only by the court. The admission of guilt does not demonstrate signs of priority, ideality or irrefutability. It is noteworthy that the types of special procedures in legal proceedings are not based on the fact of recognition; on the contrary, the source is agreement with the prosecution. Therefore, we come to the conclusion that the attitude toward what has been done does not come from the suspect (the accused or the defendant), but rather from the version of the preliminary investigation bodies

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[3] *Кони А.Ф.* Приемы и задачи прокуратуры [Anatoly F. Koni, *Techniques and Tasks of the Prosecutor's Office*] 96 (1923).

as it was expressed in the concluding document at the end of the investigation, which was made on the basis of internal conviction. It is probably for this reason that the person involved either agrees or disagrees with the investigating authorities' proposed version of what transpired. As such, the admission of guilt is not mandatory under the current norms. Moreover, if we are talking about the investigation's version of the events, then there can be no question of a guilty plea.

Considering the forms of criminal proceedings that developed in different periods of history, the attitude towards the concept of guilt was not identical. The unifying moment was its establishment by any means. If Hegel wrote that it is impossible to achieve the truth when using torture, since it can be the reason for both the admission of guilt by the person brought to justice and the denial of self-incrimination, thus drawing a parallel between torture and the terms of the plea agreement, the result may be similar.

For example, the private-claim process was characterized by the lack of guarantees for a fair resolution of the dispute, the formal equality of the parties, and the accusatory bias of the prosecution's work in the presence of signs of competition. The admission of guilt was preferred. In contrast to the private lawsuit process, the indictment was characterized by the dominant role of public authorities. The complete lack of rights of the accused is inherent in the inquisition (search) process. Torture was the primary method of obtaining confessions and the concept of evidence was of a formal nature. The search process naturally gives way to an adversarial one when more attention is paid to the evidence of guilt or innocence. In a mixed trial, important characteristics are the presumption of innocence and the court's assessment of all evidence, including confessions, based on internal conviction.

Thus, the evidentiary value of the admission of guilt has traversed the path of historical development from unreliable sources of the fact of recognition to those confirmed by other evidence presented by the parties both during the preliminary investigation and the judicial investigation. If we turn to the transformation of the attitude toward the admission of guilt during the stages of the development of domestic legislation, then, starting with the "Russian Truth" edition, we see the possibility of stopping further investigation in agreement with the prosecution with subsequent compensation for the damage caused. However, it must be borne in mind that the evidence included not only witness testimony but also torture. Further, with the development of a centralized state, according to the Court Books of Ivan the Terrible of 1497 and 1550, the role of torture for obtaining confessions increased. During the same period, the term "confession" appeared, the voluntary nature of which was presumed.

The appeal of turning oneself in was for the mitigation of punishment. This is evidenced by the content of a later normative act, the Council Code of 1649.

By the time of the judicial reform of 1864, the criteria for evaluating confessions were applied, and in the event of non-compliance, other evidence had to be

presented. Furthermore, torture was abolished. Preference was given to the concept of surrender, which has a value that serves to motivate. The system of the formal presentation of evidence has outlived itself. The guidelines followed at this point were an unbiased assessment of the facts.

The most controversial period was the post-war period. It is marked by a prominent representative of jurisprudence, A.Ya. Vyshinsky. Given the complexity of the interpretation of normative acts, the global and sometimes political context of the development of jurisprudence, and despite the call to stop the practice of seeking recognition at any cost, his activities indicate the opposite. The main goal was to get a conviction for political crimes, while the source of the confessions received remained unimportant.[4] Was it a return to formality, or rather a difference in the assessment of *de jure* and *de facto*?

In his writings, A.Ya. Vyshinsky has repeatedly expressed his attitude towards the admission of guilt. For example, he questioned whether the defendant's confessions were relevant to the case and verified by facts. In addition, he argued that the testimony of the person involved, in which he repents of what he has done, may be considered superfluous and lose the value of evidence if the evidence established during the investigation already confirms his guilt. At the same time, the opinion of a scientific legal researcher is given as an example, according to which the accused's own confession becomes the "queen of evidence" when it is received correctly, voluntarily and is completely consistent with other circumstances established in the case. Great importance was attached to the testimony of the accused as the only evidence. In this case, A.Ya. Vyshinsky suggested that the investigation and court authorities approach them objectively. The adversary will be perceived as having a biased attitude towards the accused.[5] We believe that this opinion reflects the ideality of the presentation, since, with rare exceptions, torture was not used and favorable testimony was not obtained.

The Soviet period was characterized by the presence of reduced proceedings in the absence of the need for investigative actions and the obvious indisputability of the case. The freedom to evaluate all evidence was formally secured. It has been repeatedly noted that judicial practice cannot, under any circumstances, be a source of law. It must comply with the requirements of the law. By the time the Criminal Procedure Code of 2001 was adopted, there were both conciliation procedures and a procedure for accepting a confession. In the twenty-first century, simplified and

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[4] *Упоров И.В.* Признание вины в уголовном процессе: взгляд из периода политических репрессий (позиция прокурора Вышинского) // Аллея науки. 2017. № 12 [I.V. Uporov, *Admission of Guilt in Criminal Proceedings: A View from the Period of Political Repression (the Position of the Prosecutor Vyshinsky)*, 12 Alley of Science (2017)] (Nov. 11, 2021), available at https://www.alley-science.ru/domains_data/files/August17/PRIZNANIE%20VINY%20V%20UGOLOVNOM%20PROCESSE.pdf.

[5] *Вышинский А.Я.* Теория судебных доказательств в советском праве [Andrey Ya. Vyshinsky, *Theory of Judicial Evidence in Soviet Law*] 177 (1950).

summary procedures, as well as plea agreements, appeared and were strengthened in the procedural arena. At the same time, we believe that, unlike Westernism, the main motive was not to reduce the burden on investigative and judicial authorities but to achieve justice in the investigation of crimes and consideration of criminal cases by courts.

Let me remind you that the procedure for making a court decision when concluding a pre-trial cooperation agreement with the status of "special" was introduced into the Criminal Procedure Code of the Russian Federation by Federal Law No. 141-FL of 29 June 2009.

According to the explanatory documents to draft Law No. 485937-4, the discussion lasted almost two years before its adoption. The initial draft, submitted by V.A. Vasiliev, V.N. Pligin, A.N. Volkov, O.I. Arshba, M.I. Grishankov, A.M. Rosuvan and A.E. Lebedev, Deputy of the State Duma of the Federal Assembly of the fourth convocation, has undergone a number of changes, including comments from the Supreme Court of the Russian Federation and the Government of the Russian Federation.[6] The officially stated goal is to persuade persons involved in criminal activities to cooperate in order to uncover and investigate crimes involving organizers, instigators and accomplices. This goal is historically justified, particularly in the context of the growth of terrorist threats and the commission of crimes related to the field of illicit trafficking in narcotic drugs and psychotropic substances, and the ongoing fight against corruption and its manifestations. It is worth noting that the draft provided for a confession of guilt; however, the legislature ultimately rejected such an option.

For example, in his dissertation research, V.N. Perekrestov expresses his conviction that

> only after a person admits his guilt, expresses readiness to assist in the investigation of a crime, expresses in exposing the accomplices of the crime, the investigator is obliged to file a petition for an agreement with the prosecutor.[7]

Despite the minimal amount of use of the concept of "guilt" in the current procedural legislation, its significance is great. This pertains not only to criminal and procedural law, but also to penitentiary, as well as civil law. Without guilt, there can be no criminal liability. As precisely stated, guilt individualizes responsibility and,

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[6] Паспорт проекта федерального закона № 485937-4 «О внесении изменений в Уголовный кодекс Российской Федерации и Уголовно-процессуальный кодекс Российской Федерации» (о введении особого порядка вынесения судебного решения при заключении досудебного соглашения о сотрудничестве) // СПС «КонсультантПлюс» [Passport of the Draft Federal Law No. 485937-4. On Amendments to the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation (on the Introduction of a Special Procedure for Making a Court Decision When Concluding a Pre-trial Cooperation Agreement), SPS "ConsultantPlus"] (Nov. 11, 2021), available at https://online.consultant.ru/riv/cgi/online.cgi?req=home;rnd=0.44751827658538934.

[7] Perekrestov 2013.

accordingly, punishment.[8] The fact of recognition itself and the information contained in it should not be confused.[9] Thus, we can talk about common features inherent in all proofs. Will such recognition be acceptable, sufficient, reliable and relevant? It is logical and natural to have a sign of the voluntary nature of such testimony, given that "recognition" is an action of legal significance and legal consequences. It implies certain benefits for both parties involved in the criminal process.

At this stage of reasoning, we come to the next component point – the agreement. It is no secret that the term is multidimensional, as it can be found in virtually any branch of law. And initially it is not associated with a criminal orientation. Its essence lies in conventionality, as well as in discussion of favorable conditions, such as assistance to the investigation and limitations on criminal liability, but with its inevitability. The changes made by the legislator to the criminal procedure legislation naturally led to conciliation procedures being shortened and simplified. Having as an example the long-term experience of foreign countries, regardless of the purposes of the procedures, it should be recognized that the criminal process is filled with civil categories. All previously investigated legal phenomena (confession, reconciliation), which were considered to be mitigating circumstances in the framework of the consideration of the tort, inevitably led to the legitimization of cooperation with the investigation. The agreement, which originated on Russian soil and involved a variety of legal proceedings, has advantages and disadvantages in its arsenal. It has been criticized for disenfranchisement on the part of the accused (defendant), limited opportunities for restoring justice and concealment of illegal coercion. However, do not forget that the agreement was originally aimed at the interaction of opposite interests of the parties in the absence of the vice of guilt. The parties are not recognized as equal. This, in our opinion, is the difference from the civilian category. In one way or another, there is a "dependent" side to the agreement. Consequently, the shortcomings that arise in the practice of application are associated with "guile" in its constituent actions.

It should be noted that since the entry into force of Chapter 40.1 of the Criminal Procedure Code, it has been repeatedly corrected. In particular, it was clarified that the sentences that were handed down in a special order in cooperation with the investigation are not a prejudice in other cases, the criteria for the validity of cooperation are prescribed; and the accused who concluded the agreement received a special status in the main criminal case. In addition, explanations of the Supreme Court of the Russian Federation were required, set out in the resolution of the Plenum of 28 June 2012 "On the Practice of Applying by Courts of a Special Procedure for the Trial of Criminal Cases

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[8] *Андросенко Н.В.* Признание лицом своей вины в совершении преступления и его правовые последствия: дис. ... канд. юрид. наук [Natalia V. Androsenko, *Recognition by a Person of His Guilt in Committing a Crime and its Legal Consequences*, PhD thesis] 28 (2008).

[9] Уголовно-процессуальное право Российской Федерации: учебник [*Criminal Procedural Law of the Russian Federation: Textbook*] 265 (Polina A. Lupinskaya ed., 2004).

When Concluding a Pre-trial Cooperation Agreement," and since the prosecutor is one of the main participants of public interest, then the departmental order of the Prosecutor General of the Russian Federation No. 107 of 15 March 2010 "On the Organization of Work on the Implementation of the Prosecutor's Powers When Concluding Pre-trial Cooperation Agreements With a Suspect (Accused) in Criminal Cases."

Referring to the data of the Judicial Department at the Supreme Court of the Russian Federation[10] from 2015 through the first half of 2021 will allow us to determine the level of applicability of the cooperation agreement at the stage of implementation in the domestic criminal process.

Thus, in 2015 out of the total number of criminal cases considered, taking into account those terminated (928,122), 4,543 cases were considered in accordance with Chapter 40.1 of the Criminal Procedure Code (4,134 persons were convicted, while criminal cases against 479 persons were terminated).

For example, depending on the types of crimes, criminal cases involving a terrorist act were considered in accordance with Chapter 40.1 of the Criminal Procedure Code, 2 out of 8 cases submitted to the court, 6 out of 87 cases were considered against persons who facilitated terrorist activities, 70 out of 474 cases were considered on banditry, 1,572 out of 113,946 in the field of illicit trafficking in narcotic drugs and psychotropic substances, 56 out of 1,972 related to accepting a bribe and 33 out of 5,638 cases on bribery were considered by the court.

An almost similar picture appears before us in the criminal cases considered in subsequent reporting periods.

Thus, in 2016, out of 923,899 criminal cases reviewed, decisions were made on 4,121 cases in accordance with Chapter 40.1 of the Criminal Procedure Code (3,794 persons were convicted, 200 persons had their cases terminated); in 2017, 4,381 cases were considered out of 854,102 (3,963 persons were convicted, 514 persons had their cases terminated); in 2018, 4,001 cases were considered out of 811,852 (3,614 persons were convicted, 435 persons had their cases terminated); in 2019, 3,319 cases were considered out of 755,486 (3,009 persons were convicted, 472 persons had their cases terminated); in 2020, out of 706,219 cases, 3,099 cases were considered (2,763 persons were convicted, 302 persons had their cases terminated); in the first half of 2021, 1,547 cases were considered out of 352,410 (1,413 persons were convicted, 135 persons had their cases terminated).

This shows that the issues of adaptation of the "agreement" in Russian legislation and the effectiveness of implementation remain relevant. However, if we take into account that Section X of the Criminal Procedure Code refers to exceptional procedures, then its non-large-scale application is justified.

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[10] Данные судебной статистики Верховного Суда Российской Федерации // Судебный департамент при Верховном Суде РФ [Judicial Statistics Data of the Supreme Court of the Russian Federation, Judicial Department at the Supreme Court of the Russian Federation] (Nov. 11, 2021), available at http://cdep.ru.

Domestic judicial practice in appealing criminal procedure agreements is mainly related to the conviction of other participants in criminal activity on the basis of a decision against a person who cooperates with the investigation. In such situations, the court will justify its decision by citing the stages of evaluation of the evidence obtained.

In this regard, the cassation ruling of the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation No. 4-CC21-23-A1 of 20 July 2021,[11] the subject of which was the analysis of the results of the pre-trial cooperation agreement, is noteworthy. Thus, one of the arguments of the convict's complaint was the assertion that the testimony of the person with whom the pre-trial agreement was concluded was illegitimate as evidence, despite the fact that there were opposing testimonies before cooperation. Recognizing the guilty verdict as lawful, the court reasoned that the fact of the conclusion of the agreement in itself not only does not predetermine the assessment of these testimonies, but also does not exclude the verification of information on the basis of another evidence base. The Court emphasizes that the reliability of the testimony within the framework of cooperation was determined not by the attitude towards them but by consistency and comparability with other evidence. In addition, there are no other methods of verification, other than those provided by law (Arts. 87, 88 of the Criminal Procedure Code of the Russian Federation). Thus, in practice, the formality of the evidence provided by the investigation is excluded.

In addition, domestic judicial practice also testifies to a serious attitude towards the interpretation of the prejudicial meaning of a court decision.

For example, the Supreme Court of the Russian Federation changed the verdict on the fact of assault and reclassified the actions of the perpetrator as a result of considering the lawyer's complaint (cassation ruling No. 20-CC19-25 of 17 October 2019).[12] The main argument of the complaint was the verdict in the main case against the accomplices, according to which the court concluded that there was no evidence of the existence of an organized group and the commission of crimes by a group of persons by prior agreement. The Court, in making amendments to the decision adopted by the lower court, was motivated in its conclusion by the presence of legal positions set out in resolutions of the Constitutional Court of the Russian Federation No. 6-P of 16 May 2007 and No. 30-P of 21 December 2011, from which it follows that a court decision that has an incorrect reflection of essential circumstances should be corrected. In addition, the recognition of the prejudicial significance of a court decision, which is aimed at ensuring the stability and general validity of a court decision as well as the exclusion of a possible conflict of judicial acts, assumes that the facts established by the court during the consideration of one case, until their

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[11] Банк судебных решений // Верховный Суд Российской Федерации [Bank of Court Decisions, Supreme Court of the Russian Federation] (Nov. 11, 2021), available at https://vsrf.ru.

[12] *Id.*

refutation, are accepted by another court in another case in the same or another type of legal proceedings, if they are relevant to the resolution of this case. The appellate ruling of the Supreme Court of the Russian Federation No. 3-APU19-10 of 17 June 2020 which was based on the results of the consideration of appeals against the verdict in a multi-figure and multi-episode criminal case is interesting from the point of view of the denial of prejudice.

Thus, when passing sentence, the evidence obtained as a result of the conclusion of pre-trial agreements on cooperation with the investigation was taken into account. However, the complaints of the convicts pointed to the inadmissibility of such evidence, the unreliability of the information contained in them and the need to make a private determination on the violation of the terms of the agreement, since the preliminary investigation authorities falsified evidence, which excluded the indictment of the persons who concluded the agreement on a number of crimes. These circumstances indicate a reservation. Considering these arguments, the Court of appeal drew attention to the procedural status of persons with whom a pre-trial cooperation agreement has been concluded. At the time of consideration of the case, it recognized the lawful procedure for their interrogation by analogy with the interrogation of a witness, before making appropriate changes to the Criminal Procedure Code on 30 October 2018 (Art. 278.1 of the Criminal Procedure Code). In addition, it follows from the petitions for the conclusion of cooperation agreements that not only the rights, obligations and consequences of concluding such agreements were explained to each of them, but also other norms of Chapter 40.1 of the Criminal Procedure Code, providing for the consequences of their violation, including the revision of the sentence imposed on such a person. In this connection, the court's failure to explain once again the provisions of this norm does not affect the legality of the procedure of their interrogations. Sentences against persons who concluded pre-trial cooperation agreements were requested at the initiative of the court, which does not contradict the requirements of the law, and attached to the case file. However, the court did not refer to them as evidence from the point of view of prejudice (Art. 90 of the Criminal Procedure Code), and the reference to them in the appealed verdict is purely informative. The refusal of the court to attach to the case the minutes of court sessions in the cases in which they were convicted is legitimate. Since criminal cases against these persons were considered in separate proceedings, arguments about the illegality of the sentences imposed against them, the fairness of the punishment, the illegality of concluding pre-trial cooperation agreements with each of them, and the need for their cancellation are not subject to evaluation and verification within the framework of the proceedings in the main case.

Probably the most frequent drawback of the procedure of "transactions" by law enforcement officers and process legal scientists is that it is considered a violation of the rights of victims.

Again, the analysis of judicial practice shows that courts differentiate between competing interests in criminal proceedings. The motivation of the victim's position,

indicated in the resolutions of the Constitutional Court of the Russian Federation No. 7-P of 24 April 2003[13] and No. 22-P of 17 October 2011,[14] deserves attention, in which it is very clearly stated that legal liability is a means of public legal response. In this connection, the measure of responsibility (the size and type of punishment) should meet public legal, not private interests. However, the court in the decision indicated that in order to comply with constitutional rights, the victim must be provided with access to justice and be given an opportunity to be heard. The victim is not entitled to criminal prosecution and sentencing. The State, with the current judicial system, provides a guarantee of protection of the rights of victims, the possibility of defending their interests and applying compensatory measures.

The next component of the study examines the content and the context of admission of guilt at the conclusion of agreements.

Analyzing the provisions of the current legislation, we come to the conclusion that the emphasis placed on transactions in different legal systems is shifting. Thus, section X of the Criminal Procedure Code recognizes "consent" with the indictment, as well as active cooperation with the investigation, as a reason for considering the case using a special procedure. The mental attitude of the accused towards the deed plays a secondary, optional role. For a long time, the Anglo-American and continental legal systems have been of great interest to researchers. They serve as models of this form of processing. For example, in the United States, the conclusion of a deal with justice has come a long way from secret agreements to legalized ones. Economic, rational, and not necessarily moral factors are at the head. This situation is very clearly characterized by a "new type of social connection," in the process of filtering which

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[13] Постановление Конституционного Суда Российской Федерации от 24 апреля 2003 г. № 7-П «По делу о проверке конституционности положения пункта 8 Постановления Государственной Думы от 26 мая 2000 года «Об объявлении амнистии в связи с 55-летием Победы в Великой Отечественной войне 1941–1945 годов» в связи с жалобой гражданки Л.М. Запорожец» // СПС «КонсультантПлюс» [Resolution of the Constitutional Court of the Russian Federation No. 7-P of 24 April 2003. On the Case of Checking the Constitutionality of the Provision of Paragraph 8 of the Resolution of the State Duma of 26 May 2000 "On the Announcement of Amnesty in Connection with the 55th Anniversary of Victory in the Great Patriotic War of 1941–1945" in Connection with the Complaint of Citizen L.M. Zaporozhets, SPS "ConsultantPlus"] (Nov. 11, 2021), available at https://online.consultant.ru/riv/cgi/online.cgi?req=doc&ts=HHmJTpSPe0xEwYhc&cacheid=8BAF9C1E75A8CC04C0F802A1191355C2&mode=splus&base=LAW&n=42062&rnd=0.44751827658538934#WEnJTpSh7trfOGa5.

[14] Постановление Конституционного Суда Российской Федерации от 17 октября 2011 г. № 22-П «По делу о проверке конституционности частей первой и второй статьи 133 Уголовно-процессуального кодекса Российской Федерации в связи с жалобами граждан В.А. Тихомировой, И.И. Тихомировой и И.Н. Сардыко» // СПС «КонсультантПлюс» [Resolution of the Constitutional Court of the Russian Federation No. 22-P of 17 October 2011. On the Case of Checking the Constitutionality of Parts One and Two of Article 133 of the Criminal Procedure Code of the Russian Federation in Connection with Complaints of Citizens V.A. Tikhomirova, I.I. Tikhomirova and I.N. Sardyko, SPS "ConsultantPlus"] (Nov. 11, 2021), available at https://online.consultant.ru/riv/cgi/online.cgi?req=doc&ts=HHmJTpSPe0xEwYhc&cacheid=03AAD7C53928A4FB5BC8A82F291F1EC2&mode=splus&base=LAW&n=120644&rnd=0.44751827658538934#D6JKTpS4wEPzkK1K2.

the subject becomes an element of market and economic relations.[15] The subject of the transaction is the exchange of preventive measures for admission of guilt (depending on the volume). Or, to put it another way, the offering of services in the market, such as rehabilitation for less serious offenses, the removal of a number of clauses from the charge, the exclusion of aggravating circumstances, all for a cost that is equivalent to a "confession." We venture to assume that the risk of turning the procedure into a business scheme is not excluded. It is interesting to note that historically, the first type of transaction was not an admission of guilt (but also not a challenge), but an agreement with punishment, which later developed into an ambiguous transaction known as the Alford deal.

Let us take, as an example, the proposal of the Prosecutor's Office of the District of Columbia in the United States to conclude an agreement, executed in writing.[16] The letter, which sets out the exhaustive terms of the transaction, was sent to Esther Schwemmer's lawyer. The mandatory item is the validity period of the offer, which in this case is two weeks. After obtaining the client's written consent, this letter acquires the status of an agreement. All the important conditions are prescribed in separate paragraphs. Thus, the defendant must plead guilty to demonstrating or picketing at the Capitol Building in violation of Section 40, United States Code, Section 5104 (e)(2)(G). At the same time, it is clarified that the maximum penalty for this violation is imprisonment of up to six months and a fine. Additionally, the accused confirms that the information contained in the crime statement is accurate and corresponds to the circumstances of the case. The statement is recognized as evidence. It is also indicated that charges on other counts will not be brought by the prosecutor's office. An important clarification included in the letter is that the verdict that will be handed down is a matter solely of the discretion of the court. The court is not obliged to follow any recommendations made during sentencing. The court has the right to impose any punishment, up to the maximum term of punishment provided for by law. The party to the agreement cannot and does not make any promises or statements regarding what sentence the lawyer's client will receive. Moreover, it is implied that the client will not have the right to withdraw the plea if the court passes a sentence that does not comply with the Sentencing Recommendations. Any attempts by the accused to refuse to plead guilty due to the length of the sentence imposed will constitute a violation of this agreement.

In addition, provisions concerning the preventive measure and the consequences of its violation are included.

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[15] *Бахновский А.В.* «Сделка с правосудием»: особенности англосаксонской и континентальной правовой традиции: дис. ... канд. юрид. наук [Alexander V. Bakhnovsky, *"Deal with Justice": Features of the Anglo-Saxon and Continental Legal Tradition*, PhD thesis] 22 (2008).

[16] U.S. Department of Justice, Re: *United States v. Esther Schwemmer*, Criminal Case No. 21-CR-00364, 15 July 2021 (Nov. 11, 2021), available at https://www.justice.gov/usao-dc/case-multi-defendant/file/1438216/download.

The purpose of the agreement is to waive all remedies, the right to any further disclosure of information that has not yet been provided at the time of the client's plea, the right not to plead guilty and the right to a jury trial. By making a deal, the accused voluntarily renounces self-incrimination.

Realizing the uncertainty in assessing which sentence the court will eventually pass, the client consciously and voluntarily waives the right to appeal the verdict, while retaining the right to appeal on the basis of ineffective assistance from a lawyer. In order to repay the losses caused as a result of the riots that occurred on 6 January 2021 (according to the plot), in the amount of US1.4 million dollars, the accused is obliged to provide a full financial report on his income for his compensation. The court has the right to set a repayment schedule. Violation of the obligations under the agreement will entail criminal prosecution for any other crimes, including perjury and obstruction of justice. The text emphasizes the inadmissibility of giving false testimony.

Analyzing this proposal, we dare to assume that it takes into account the nuances that arise in judicial practice on the acceptance of the fact of recognition, as well as guarantees of its compliance aimed at achieving the main goals of an economic nature. In addition, the sequence of actions of the parties, that is, the essential terms of the transaction, are executed in writing.

As long as there are transactions, there will continue to be disputes about negative and positive aspects. The unloading of ships remains a key and permanent advantage for their primary source. At the same time, the task force of the Bar Association has again put on the agenda of 2021 the shortcomings of the system of agreements,[17] citing its solely coercive nature. As a result, we have decisions that are unfair. Unfortunately, the problems of transactions are aggravated by new concomitant vices: racial inequality and the promotion of criminalization.

Currently, the picture of judging in the United States is developing in such a way that the focus is not on the subjects of procedural activity, but on the transaction itself.

The quite obvious negative nature of the transaction is the unformulated delegation of the court's sentencing function to the ranks of the discretion of prosecutors. Thus, public confidence in the justice system is reasonably reduced.

For the Anglo-American legal system, the introduction and development of the institution of transactions has become logical, given the dominant position of precedents. Despite the huge amount of criticism, the encouragement of confessions in the form of the results of agreements is actively used, which indicates the demand for and achievement of the goals of saving procedural costs for nearly two centuries. In this case, is it possible to conclude that the identified shortcomings of the agreement system are not critical?

However, the introduction of transactions into the legal framework of the continental system occurred in a different way, namely, by adapting them into a codified

[17] Criminal Justice Section Newsletter, American Bar Association (Nov. 11, 2021), available at https://www.americanbar.org/groups/criminal_justice/publications/cjs_newsletter/.

form, which, in principle, was done by the legislator. At the same time, it is possible that such a system can get out of control instantly since initially the components are unreliable. In order to avoid negative consequences, we believe there is an increasing need for regulation and legislative consolidation of the guiding rules for concluding agreements with the definition of the initial, intermediate (main) and final stages. For example, because in accordance with Article 37 of the Criminal Procedure Code of the Russian Federation, the indictment (act, resolution) on the case is approved by the prosecutor and the case materials are sent to the court, and given that it is the prosecutor who has the authority to consider the petition and conclude a pre-trial cooperation agreement, then the rules must contain the algorithm of actions of the supervisory authority. If the role of the court is extended to include investigative functions, this will lead to a well-founded allegation of a violation of the adversarial principle and an expression of the clear interest of the judicial system.

Turning to the representatives of the continental system, we note that, having partially adopted the elements of the "progenitor of transactions," despite the commitment to the investigative rather than adversarial nature of the process, the decisive powers were transferred to the court, attaching special importance to the admission of guilt. The researchers note that the active influence of American practice on this legal family was exerted in the post-war period which was in need of restoration.[18] However, the reception of the American model became possible only if there were prerequisites for it in the current legislation of the countries, a favorable environment concerning the observance of the fundamental rights of participants in procedural relations and the introduction of the possibility of collecting evidence by both sides. For example, according to the Criminal Procedure Code of Germany, in addition to simplified and abbreviated forms, the legislator provided for the possibility of concluding transactions in court (257c). In addition, the terms of such agreements should be reflected in the verdict. It is important to note that the subject of agreements can only be legal consequences: the course and result of the process. The court, when announcing the agreement, may specify the range of sanctions. Thus, the main role is given to the court, and the prosecutor and the defendant have the right to agree with the proposal or refuse. In case of a violation of the conditions, the admission of guilt may not be taken into account and the proceedings proceed in a general manner. The caution that permeates the entire criminal process of Germany once again confirms the importance of establishing objective evidence in the case, regardless of the consent of the accused. Moreover, unlike English law, the presence of confessions does not imply the end of a conflict requiring state intervention. Conversely this is another reason for the investigating authorities to conduct thorough procedural actions.

We believe it is impossible to study this legal phenomenon without taking into account foreign experience. At the same time, we will try to move away from the

[18] Bakhnovsky 2008.

usual scheme of using the comparative method and take as a basis countries with different legal systems that differ from well-known examples, such as the United States, Great Britain, Germany and France.

2. Admission of Guilt Under the Legislation of the BRICS Countries

Currently, a strong position on the world stage is occupied by the interstate structure founded in 2006 (within the framework of the St. Petersburg Economic Forum) – BRICS. Despite the fact that this is a political union aimed at guiding the course of the global economy, one should not lose sight of the legal systems of the countries that make up this association.

From this perspective, it is of interest to consider the impact of the institution of admission of guilt on the legislation of the BRICS countries, which are so different from one another, not only in terms of their geographical locations, but also in terms of the process by which their legal systems were formed. The legislation of all the countries represented in this union is based on a symbiosis of legal systems that have undergone a lengthy formation. As of now, this process is still not completed.

We dare to assume that each of the BRICS countries, which are part of this commonwealth, in the modern historical period, to one extent or another, includes the experience of continental or Saxon law as the basis of its institution of admission of guilt.

2.1. Guilty Plea and Deals with Justice under Brazilian Law

The legal system of the Federal Republic of Brazil, for example, differs in that, in general, it can be safely attributed to the Romano-Germanic legal family. The traditions of Roman law have had a strong influence on the formation of the legal framework. At the present, the Brazilian legal system is highly developed. It is worth noting that it pays increased attention to the rights of citizens, particularly in the field of criminal procedure law. Brazil's criminal justice system is influenced by French, Italian, and more recently, American models.

The basic law of the country proclaims the prohibition of torture, the possibility of punishment only after all the facts have been established, the inadmissibility of the death penalty, life or cruel punishment, as well as exile; guilt is confirmed exclusively by a verdict.[19] It is noteworthy that Brazil's 1988 Constitution contains a fairly wide range of provisions on the criminal process, enshrining the basic principles: the right to defense, trial by jury, and even the institute of English law, *habeas corpus*, as well as *habeas data* on the right of a person to claim any document. In addition, illegally obtained evidence is guaranteed to be inadmissible.

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[19] Constituição da República Federativa do Brasil de 1988 (Nov. 11, 2021), available at http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm.

On the territory of Brazil, the Criminal Procedure Code 3.689 of 30 October 1941, with amendments, is in force. Without going into the description of the structure of the document, let us turn to the content related to the admission of guilt and transactions. Thus, in accordance with Article 28-A of the Criminal Procedure Code of Brazil,[20] the prosecutor's office can offer a "non-criminal" agreement on prosecution if a number of conditions are met: punishment for a crime of up to four years; compensation for damages; return of the stolen property; provision of public services and compliance with other proportionate conditions put forward by the prosecutor's office in a certain period. The conclusion of such a document is prohibited for violent crimes against women and minors, as well as for repeat offenders.

A mandatory requirement is imposed on the written form of the agreement, and it is considered to be tripartite: signed by an employee of the prosecutor's office, the accused and the defender. The agreement must then be approved by the court. The victim is notified of all stages of the procedure. Thus, the main elements of the agreement include voluntariness, formality and initiative.

It should be noted that such a consensual approach owes its appearance to the differentiation of crimes into categories such as serious (grave and especially grave) and less dangerous. This institution, introduced in 2019 (Art. 28-A), acts as an instrument of decriminalization. To be more precise, it is aimed at reducing criminal prosecution for minor offenses. This is confirmed by the explanatory note to Law No. 3.689.[21]

At the same time, the legislature pays special attention to the status of silence, which may or may not imply an admission of guilt. The fact of the admission of guilt will be evaluated along with other evidence (Arts. 197–200 of the Criminal Procedure Code).

It is also interesting to think that the legislator is trying to overcome the investigative matrices by introducing new norms into criminal procedure legislation. These procedures have been dubbed as institutions of business justice. Again, the expansion of the space for consensus is due to the inability of the system to cope with the number of criminal cases. The negative element in this institution is precisely the admission of guilt as the basis for concluding an agreement. In addition, the author believes that there is a causal relationship between the tendency to give false testimony and the strong influence of U.S. legislation on Brazilian law. Involuntary false confessions are allowed. The accused has the clear and risky choice between confession under torture and confession under mitigation. The author considers the inevitability of the negative consequences of the one-sidedness of the proposals

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[20] Código de Processo Penal (Decreto-Lei nº 3.689, de 3 de outubro de 1941) (Nov. 11, 2021), available at http://www.planalto.gov.br/ccivil_03/decreto-lei/Del3689.htm.

[21] Explanatory Note to the Law No. 3.689 of 30 October 1941 (Nov. 11, 2021), available at https://legis.senado.leg.br/sdleg-getter/documento?dm=8053755&ts=1576094923538&disposition=inline.

of such agreements. In fact, the State is sacrificing the basic guarantees of the individual.[22]

The law also provides for the possibility of reconciliation, for example, in cases involving libel. It follows from the analysis of the norms that reconciliation is an evaluative category. Its success depends on the judge's internal assessment of the situation (Arts. 519–523 of the Criminal Procedure Code).

A separate chapter V in section 2 is devoted to an abbreviated procedure. It should be noted that its essence differs from the generally accepted one. The Court also conducts a judicial examination of evidence, however, in a shorter amount of time, with limited time for speeches and fewer witnesses on both sides. Accordingly, it is applied to the consideration of minor criminal offenses.

We can find a distant reminder of the deal with justice in the Anti-Corruption Law (on clean companies) No. 12.846 of 1 August 2013 which sounds like a leniency agreement. However, only legal entities can count on this leniency. This law is aimed at Brazilian companies involved in the investigation of corruption cases (Art. 16).[23]

Can this law be called innovative? Definitely. Moreover, they provide for mitigation of punishment in the form of a fine for two-thirds of companies, provided that they take the initiative and inform the authorities about the violation, as well as for mandatory termination of illegal activities and recognition of their participation in it. The Agreement does not release a legal entity from the obligation to compensate for the damage caused. The document is signed by the authorized body, the General Controller of the Union. Such assistance guarantees the non-application of sanctions to the organization in the form of a ban on receiving incentives, subsidies, grants, donations or loans from government agencies and organizations, for a period of one to five years.

However, given the low level of literacy, poverty and high crime rate among the multi-ethnic population of the country (for example, according to data for 2021: South Africa is in 3rd place, Brazil is in 6th place, the United States in 56th place, India in 71th place, Russia in 86th place and China in 109th place),[24] it is difficult to talk about strict compliance with procedural guarantees and procedures, and even more so, the introduction of unadapted borrowings practices.

2.2. Guilty Plea and Deals with Justice under Indian Law

Rene David discovered in his research that the law in these countries is formulated in a different way than in Western countries. It should be noted that when considering

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22 Jander da Cunha Teixeira, *A confissão no acordo de não persecução penal*, Consultor Jurídico, 30 December 2020 (Nov. 11, 2021), available at https://www.conjur.com.br/2020-dez-30/jander-cunha-confissao-acordo-nao-persecucao-penal.

23 Lei nº 12.846, de 1º de agosto de 2013 (Nov. 11, 2021), available at https://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Lei/L12846.htm.

24 Рейтинг стран по уровню преступности // NoNews [Ranking of Countries by Crime Rate, NoNews] (Nov. 11, 2021), available at https://nonews.co/directory/lists/countries/crime-index.

the institution of guilt in the BRICS countries, a special place is given to India. In particular, the legislation of India was strongly influenced by colonial conquests, for example, English law. Prior to the arrival of the British, Muslim law, and in some cases, customs were the governing legal and social systems in force. Subsequently, the recognition by the Indians of the use of the English model was of particular importance.[25] But probably the most important difference from English law is the presence of the basic law in India. In connection with the above, it becomes quite obvious that the criminal process in India is built on Anglo-American positions, but has followed its own unique path of development of the legal system.

The admission of guilt has always existed in Indian law and the current Criminal Procedure Code is no exception.

According to Article 252 of the Criminal Procedure Code of India,[26] when pleading guilty, the court has the right to convict the guilty person at its discretion. It is also possible to convict and collect a fine in the absence of the defendant if the punishment for the crime does not exceed a fine of one thousand rupees, a so-called "minor offense." The legislator did not ignore the possibility of summary proceedings, even though the defendant may not admit his guilt in the charge. Cases with a sanction of imprisonment of up to two years or minor crimes, such as theft or the possession of stolen goods (Art. 260), are considered using a simplified procedure. Are conciliation procedures possible? Yes, for example, Article 348 grants the right to an apology.

The influence of Anglo-American law is reflected in the existence of a plea bargain. It is worth noting that the institute appeared only in 2005, although problems of congestion in courts and overcrowding in prisons have existed for a long time. We can say that its appearance was inevitable, much as it was in the United States. The main requirements for the statement of the involved person about the transaction are its voluntary nature and the absence of conviction on a similar charge. The initiator is the defendant, and such an application is submitted only to the court. Based on the essence of the norms (Art. 265b), the main role is assigned to the court, in contrast to the transaction in the United States, where the court is actually passive. Compared with the criminal process of the Russian Federation, the figure of the "prosecutor" in the transaction is not the key one. Of course, there are restrictions on the application of norms. In particular, this applies to crimes whose sentences exceed seven years or are punishable by life imprisonment or the death penalty, as well as when the accused is a minor or the victims include women and children. Plea agreements are likewise not allowed in cases where the crime may have an impact on the nation's socioeconomic situation. Based on the results of the consideration of the case, the

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[25] *Давид Р*. Основные правовые системы современности [Rene David, *Basic Legal Systems of Modernity*] 431 (1988).

[26] Indian Criminal Procedure Code, Conviction upon Admission of Guilt (Nov. 11, 2021), available at https://www.indianemployees.com.

court has the right to impose a minimum penalty or may impose a sentence in the amount of one-fourth of the punishment provided for such a crime. The victim, who is entitled to compensation, is not deprived of attention, but the victim's role is not nearly as significant.

It should be noted that the application of transactions was not actively accepted in the judicial community. Even after the amendments were made in 2005, there were cases of judges rejecting applications for transactions on the grounds of the absence of norms in the legislation.[27] It is clear that the Indian model of the transaction developed with an American bias, but it did not become widespread. Most likely, the reason is hidden in the distrust of the judicial system, including inherent religious and historical views. The presence of legislative obstacles to the exercise of one's *de facto* and *de jure* right to refuse judicial resolution of a case also does not contribute to the active application of this legal phenomenon.

Turning to judicial practice, we will see the opinion of judges based their vehement rejection of negotiations, both in violation to Article 20(3) of the Constitution of India which prohibits inadmissibility of self-incrimination, and the validity of their introduction into the legal system. The analysis of practice shows that the existing advantages of the institute, such as rapid consideration of cases, non-publicity and lack of government costs, do not outweigh its disadvantages. Among the negative aspects highlighted are a potential corruption component, inattention to the opinion of victims and possible bias towards the accused in the event that accused's application is denied.

For example, in the decision *State of Uttar Pradesh v. Chandrika 1999*,[28] the Supreme Court did not accept the judge's approval of the plea bargain at the initial hearing of the case and considered this practice unconstitutional. No one has the right to agree that the evidence will not be evaluated. The Court was of the opinion that the decision on the case should be made on the merits. If the defendant pleads guilty, he must be sentenced accordingly. However, by 2005, the court recognized the need for negotiations. The Court stated that the very purpose of the law is to ensure prompt justice (*State of Gujarat v. Natwar Harchandji Thakor*).[29]

Many lawyers believe that despite the fact that the transaction is not a solution to the issue of "accumulated cases," a method is required that would facilitate a quick trial and fair sentencing.[30]

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27 Muhammad Ashraf & Absar A. Absar, *Plea Bargaining in India – An Appraisal*, ResearchGate (July 2020) (Nov. 11, 2021), available at https://www.researchgate.net/publication/342783286_Plea_Bargaining_in_India_-An_Appraisal.

28 *State of Uttar Pradesh v. Chandrika*, 1999 Supp(4) S.C.R. 239.

29 *State of Gujarat v. Natwar Harchandji Thakor*, 2005 CriLJ 2957, (2005) 1 G.L.R. 709.

30 Shweta Rathore, *The Notion of Plea Bargaining*, 6(3) J. Emerg. Technol. Innov. Res. (2019) (Nov. 11, 2021), available at https://www.jetir.org.

The analysis testifies to the caution of the legislator in the wide dissemination of the institution of the transaction, as evidenced by the criteria for its implementation enshrined in the law.

2.3. Guilty Plea and Deals with Justice under the Laws of the People's Republic of China

In our opinion, the point of view of Chinese legal scientists in the field of jurisprudence regarding the institution of admission of guilt is very interesting; they practically do not recognize it. In this regard, special attention should be paid to the legislation of the People's Republic of China in the field of criminal procedure law.

It cannot be denied that China has a modernized Soviet version of the continental model of criminal procedure.[31] The criminal process in China is not just unique; it synthesizes philosophical views with Soviet legal constructions. Therefore, there is an obvious similarity between many legal institutions in this country and either the Soviet Union or continental legal systems. Furthermore, China's legislation is characterized by systematic, gradual, even cautious changes.

The criminal procedure legislation of the People's Republic of China deserves close attention, the peculiarity of which lies in the idea of socialist legality, which permeates all areas of jurisprudence. The Criminal Procedure Code was first adopted in 1979 and revised in 1996. The next amendments were made in 2012. It should be noted that the Criminal Procedure Code of the People's Republic of China is more conservative than the Criminal Procedure Code of the Russian Federation, although it was created with the tangible influence of the legislation of the USSR. At the same time, emphasis is placed on the impossibility of building socialism without the participation of workers and the people.

Since 2016 the reform of procedural legislation directed towards humanization and simplification has been actively promoted.

The origins of all the principles are contained in the basic law of the country and the presence of the people can be found in all structures: the Assembly of the people's representatives, public property, the People's Prosecutor's Office and the people's courts. In addition, when deviating towards the entire legal system of China, one should recognize its uniqueness, since it meets the signs of eclecticism. It synthesizes not only the traditional (historical) law of China, which includes the foundations of philosophy and elements of the socialist system, but also elements of international law.

Returning to the characteristics of the modern legal system, the definition of a crime is of interest, which provides for a division into classes: from the state to a specific person. Is this a vestige of the socialist system, unlike other legal systems that put the rights of the individual first? Uniquely. However surprisingly, despite

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[31] Курс уголовного процесса [*The Course of Criminal Procedure*] (Leonid V. Golovko ed., 2016).

the presence of fundamental humanistic principles in the criminal process of the People's Republic of China, there is no possibility of applying procedures related to the admission of guilt. In general, this institution is not properly reflected in the legal system, despite the fact that the principle of competition is proclaimed. Thus, according to Article 42 of the Criminal Procedure Code of the People's Republic of China,[32] the evidence primarily includes the testimony of witnesses, victims and only after that, statements of suspects (accused). The focus on collecting any information on the case indicates an independent approach and a non-accusatory bias. At the same time, one should not overlook the fact that the final result of the investigation and consideration of any criminal case depends on the environment in which procedural legislation developed, the influence of ideology, politicization over a long period and historical prerequisites. Is there a simplified procedure for considering cases in the Criminal Procedure Code? Of course, only Article 174 provides for the conditions for the application of such a procedure: a sanction of up to three years of imprisonment, clarity of factual circumstances and the presence of strong evidence in minor criminal cases. Do confessions play any role here? No Even when an offender is released from punishment for minor crimes, a choice is provided: public censure or an obligation to put one's repentance in writing (Art. 37 of the Criminal Code of the People's Republic of China).[33]

In the event of a confession or a report of an unknown crime confirmed during the investigation, the court may, but is not obliged to, mitigate the punishment.

An interesting fact is that in 2016, an experiment was conducted to introduce accelerated criminal proceedings, including plea agreements, in eighteen territories of the People's Republic of China.[34] As a result, this decision was approved in 2014 at a meeting of the Standing Committee of the National People's Congress. It was assumed that the Supreme People's Court and the Supreme People's Prosecutor's Office were given the authority to consider criminal cases in this order in cases with a penalty of no more than three years of imprisonment. The main goal of the project was to improve the system for leniency upon the admission of guilt. The confession itself implied agreement with the facts presented by the investigating authorities. The suspect's deal with the prosecutor included an agreement on punishment, sentence, leniency for admitting guilt and methods of execution of punishments. The proposed sentence from the Prosecutor's Office was considered an important element. An integral part of the project was the creation of legal aid centers, which would take on their duties after the initiative taken by the prosecution to reach

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[32] Criminal Procedure Code of the People's Republic of China, National People's Congress (Nov. 11, 2021), available at http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/13/content_1384067.htm.

[33] *Id*.

[34] **福建法院刑事**诉讼改革调查：从刑事速裁到认罪认罚从宽 – **中**华人民共和国最高人民法院 [Fujian Court Criminal Procedure Reform Investigation: From Expedited Criminal Judgment to Lenient Punishment, Supreme People's Court of the People's Republic of China] (Nov. 11, 2021), available at http://court.gov.cn.

an agreement, in order to prevent infringement of the rights of the suspect. The demand for increased funding for the activities of lawyers has become increasingly clear. Unfortunately, practice has shown that there are problems with the quality of legal assistance provided by "duty" lawyers. In addition, the pilot project once again confirmed the significance of the defendant's psychological attitude towards confession, activity and sincerity of remorse. It is essential that this be open and be transparent. A positive result was noted following the implementation of a phased mitigation of punishment, depending on the stage of admission of guilt. This means that the sooner the defendant confessed, the more leniencies he or she received. Despite the preliminary findings, no final decision has been reached.

In 2021, a press conference on the interpretation of the application of the Criminal Procedure Code was published on the official website of the Supreme People's Court of the People's Republic of China. One of the questions from the journalists concerned the introduction of a system of guilty pleas as a mitigating circumstance.[35]

Judges mark this system as an important institutional measure guaranteeing a fair trial. Starting with the first pilot project in some regions in 2016 and ending with its nationwide implementation at the end of 2018, the Supreme People's Court has repeatedly stressed that mitigation systems should adhere to the principles of proportionality of guilt and punishment, leniency, as well as evidence in order to prevent ineffective verification of convictions, unbalanced sentencing and improper procedures. It is particularly noted that persons are subject to leniency for frivolous crimes. However, if the defendant pleads guilty to grave and especially grave crimes, such as robberies, kidnappings and murders, the judicial procedure must meet the requirements of comprehensiveness and rigor in order for the decision to be adequate for social justice. The standard of proof cannot be lowered simply because the accused pleads guilty. Thus, much attention is paid to the reform of the system and is actively considered by law enforcement. The attitude towards the admission of guilt under the legislation of the People's Republic of China is formed by the goal of the entire legal system, which consists of improving the effectiveness of punishment for crimes and strengthening judicial protection of human rights.

Despite its inquisitorial nature, the current situation in Chinese legislation is characterized by a mixed form of criminal proceedings, with a smooth transition from accusatory to adversarial. But, given the size of China's population and the growth of crime, the legislator is in no hurry to introduce new forms of legal proceedings. We dare to assume that if such changes are made, their main goal will not be to reduce the burden on the prosecutor's, investigative and judicial corps. The opinion

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[35] **最高法相关**负责人就《最高人民法院关于适用〈中华人民共和国刑事诉讼法〉的解释》答记者问 **中**华人民共和国最高人民法院 [Relevant person in charge of the Supreme People's Court answered a reporter's question on the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Code of the People's Republic of China, Supreme People's Court of the People's Republic of China] (Nov. 11, 2021), available at http://court.gov.cn.

of Professor Liu Mei of the National People's University of Law and Politics[36] (relevant today) will be quite informative in this context, from which it follows that the process of introducing the institute of transactions with the investigation is being debated. However, the stumbling block is the immaturity of this institution, as well as differences in the procedural concepts of China and, for example, the United States and Italy, since the result of the investigation is understood to be the establishment of all the facts of what was done. That is to say, formal adjudication in China is not an end in itself of procedural activity.

The written repentance and confession provided for in the Criminal Procedure Code indicate that from the point of view of generally accepted legal and social norms, these provisions can be interpreted as an admission of guilt by the person who committed the crime. However, the state, represented by law enforcement agencies, does not yet want to include this in the criminal procedure law of the People's Republic of China as an element or prerequisite for the institution of a deal with the investigation, which we call a plea agreement in the Russian Federation.

2.4. Guilty Plea and Deals with Justice under South African Law

The next country of our attention is the Republic of South Africa, a country where there has never been a coup d'etat. Despite the fact that South Africa is the most developed country on the African continent, in terms of living standards and crime it is approaching the most disadvantaged, ranking third in the world in terms of crime and first in terms of unemployment for 2020.[37] There is no doubt that social factors influence the criminogenic situation and the content of legislation and cannot go unnoticed in the context of the implementation of the criminal procedure policy of the state.

To understand the essence of the South African legal system, it is necessary to turn to Rene David, the author, who attributed it to a mixed type, which borrowed everything that was possible.[38] Historical events and colonization left their mark on the formation of a legal system that combined elements of Romano-Germanic, Anglo-American and traditional. The country has a Constitution that was adopted in 1996. At the same time, there is no denying the realities of the history of apartheid (before the adoption of the basic law) which was based on institutionalized racial discrimination against the non-white population. Its consequences are still noticeable at the present time.

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[36] *Козубенко Ю.В.* Вопросы уголовного судопроизводства КНР // КиберЛенинка [Yuri V. Kozubenko, *Issues of Criminal Proceedings of the People's Republic of China*, CyberLeninka] (Nov. 11, 2021), available at https://cyberleninka.ru/article/n/voprosy-ugolovnogo-sudoproizvodstva-knr.

[37] Рейтинг стран по уровню безработицы // NoNews [Ranking of Countries by Unemployment Rate, NoNews] (Nov. 11, 2021), available at https://nonews.co/directory/lists/countries/unemployement.

[38] David 1988.

The criminal procedure legislation is based on English law. Its main sources are the Constitution of the country and the Law on Criminal Proceedings.[39] In particular, the basic law proclaims and guarantees the basic rights of citizens in the field under study: the right not to make confessions (Art. 35), including those that can be used against a person as evidence, the right to silence and an explanation of the consequences of its violation and the right to a fair trial. In general, the norms indicate compliance with the principles of legality and competitiveness.

The Law on Criminal Proceedings contains a detailed description of judicial procedures. The focus is on the institution of admission of guilt, which is not surprising in light of the unfavorable criminal situation. It is remarkable that by confessing, the guilty person can be immediately sentenced (sec. 112(1)(a)), that is, only on the basis of a statement; other evidence is not subject to mandatory investigation. It is possible to convict a person and impose a fine even if they do not appear in court (Ch. 8, Arts. 57–57a). Thus, the conclusion itself suggests that the legislator actually establishes and encourages a conflict-free situation between the State and the defendant in other circumstances requiring the application of lengthy procedures established by law.

In some cases, if the judge is convinced that the statement corresponds to the confession, then the defendant is sentenced without questioning the latter. This procedure of legal proceedings is applicable only in less serious cases with the impossibility of imposing a penalty in the form of imprisonment or a fine, including a fine exceeding a certain amount. Article 110 of the Law on Criminal Proceedings contains a mandatory notification of the Prosecutor's Office by the accused of his confession statement. At the same time, the role of the court is not passive; namely, the court has the right to clarify the testimony not only to interrogate the defendant but also, if there is a discrepancy with the confession for various reasons, to indicate to the prosecutor to continue the investigation. In order not to hinder the observance of the adversarial principle, the law authorizes the parties to present evidence. The defendant is also not deprived of the opportunity to contradict his confession, even on the basis of the fact that it is incorrectly recorded. Is the fact of recognition proof enough? Certainly, as long as it is not refuted. Even after the refusal of official recognition, it can still be considered by the court as evidence. Interesting in this regard is the decision *S v. Zuma and Others*,[40] an important result of which was the recognition as unconstitutional of the provision of Article 217(1)(b)(ii) on the freedom and voluntariness of a confession made before the trial, the illegality of which must be proved by the defense party, and not by the State. Thus, the realization of the presumption of innocence is guaranteed.

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[39] Constitution of the Republic of South Africa (1996) (Nov. 11, 2021), available at https://www.concourt.org.za/images/phocadownload/the_text/english-2013.pdf; Criminal Procedure Act 1977 (Act No. 51 of 1977, as amended up to Criminal Law (Forensic Procedures) Amendment Act 2010) (Nov. 11, 2021), available at https://wipolex.wipo.int/en/legislation/details/13452.

[40] *S. v. Zuma and Others*, [1995] Z.A.C.C. 1, 1995 (2) S.A. 642 (CC), 1995 (4) B.C.L.R. 401 (CC).

Analyzing the procedural norms, we can summarize that the content of the statement of guilt may be both its non-recognition and its disagreement in part.

In the South African criminal process, the institution of a deal with the prosecutor before the admission of guilt is also represented (Art. 105A). When concluding an agreement, the prosecutor consults with the investigating authorities and takes into account the nature and degree of public danger posed by the deed, as well as the identity of the accused. The terms of the agreement include compensatory and restorative measures. There is no provision made for the participation of the court in the negotiations. During the actual hearing, the court focuses on compliance with the procedural aspects of the transaction, finds out exactly what the defendant agreed to, as well as whether or not the defendant understands the nature of the agreement, and, of course, whether it was concluded voluntarily. In addition, the court, when assessing the circumstances of the case, in agreement with the agreement, may conclude that the agreement on the operative part of the verdict under the agreement is fair. If the court considers the punishment unfair, it notifies the prosecutor and the defendant about it. In such a situation, the parties involved have two options: either refuse the agreement and consider the case in a general manner; or submit it to the discretion of the court. In this regard, we should agree with the opinion that compliance with the terms of the transaction by the court is an extremely delicate and unpredictable moment. Moreover, there is a risk of shadow use of the provisions on the admission of guilt (Art. 112) instead of Article 105 (transaction), since the time-consuming requirements associated with obtaining official permission to conclude an agreement from supervisory authorities and consultations with victims often deter prosecutors who face an unmanageable volume of cases due to the application of the transaction procedure.[41] Again, the question arises with the study of the problem of compliance with the rights to judicial proceedings. But the author considers transactions to be an integral procedural part since they restrict the rights of the accused (defendants) to a lesser extent than other procedural forms, which they are allowed as an alternative to the general procedure of legal proceedings.

Proceeding from the meaning of the law on criminal proceedings, we come to the conclusion that the legislator pays closer attention to the admission of guilt in order to apply a simplified procedure for considering the case. At the same time, it is important for the legislator that the recognition be confirmed. This is evidenced by the content of Article 219, the main purpose of which is to establish the burden of the accused to prove the truthfulness of his own confession made in writing.

It is worth noting that the nature of transactions is an institutional response to the needs of the state and not to the interests of the defendants. Furthermore, the admission of guilt implies the consent of the person involved to be punished for the

[41] Richard Adelstein, *Plea Bargaining in South Africa: An Economic Perspective*, 9(1) Const. Court Rev. 81 (2019).

crime committed, which, in fact, ends the simplified procedure. This content fully complies not only with the norms of Western legislation but also with South Africa.

Therefore, priority is given to the proposal from the prosecution, which has leverage in its assets, for example, the ability to transfer a criminal case for consideration to a higher court, which, when passing a guilty verdict on certain categories of grave and especially grave cases, can only impose life imprisonment.

The institute of admission of guilt is considered by researchers of the law school of South Africa first and foremost, as repentance with the prospect of rehabilitation of the offender and as a guarantee that the crime will not be committed again. To assess the degree of remorse, courts should pay attention not to the words of the defendant but to his actions. Therefore, the admission of guilt does not exclude the absence of remorse, for example, in cases with obvious and irrefutable evidence. If recognition is understood as an "element of good behavior," it can be assumed that its application will depend on the need for this recognition.

However, judicial practice often indicates a different approach to repentance when it is an evaluative concept that does not have clear criteria of relevance and admissibility. In particular, an example of the consideration of a criminal case is given when the defendant's position changed from "innocent" to "guilty" during the trial; thereby the court regarded this fact as a path to rehabilitation.[42] One way or another, by pleading guilty, a person assumes responsibility for his or her illegal behavior, regardless of the motives behind it.

If reliable and solid evidence plays an important role in the adversarial process, one might ask why the admission of guilt, in the majority of cases, accepted unconditionally. The question remains unanswered, while the legislator establishes criteria for verifying such confessions in order to minimize the consequences of side effects.

The subject of discussion by the law commission in 2001 was the advantages and disadvantages of out-of-court settlement as a type of simplified criminal proceedings. In addition to saving time and costs, the report also pointed to the absence of a criminal record, which prompted convicts to appeal the court's decision. In addition, the prospect of achieving the goal of restorative justice is enhanced if all the parties involved in the agreement are unbiased. Despite the significant disadvantage of the lack of judicial control, the commission concluded that it was necessary to introduce this system of out-of-court agreements. It was an innovation to introduce the use of the neutral concept of "negotiations" or "plea discussions," since it was believed that the purpose of the process was to reach a satisfactory agreement, and not so that the accused could conclude a "deal."[43] The question arises

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42 Pieter Du Toit, *The Role of Remorse in Sentencing*, 34(3) Obiter 558 (2013).

43 South African Law Commission, Simplification of Criminal Procedure (Out-of-Court Settlements in Criminal Cases), Discussion Paper 100 (Project 73), 31 December 2001 (Nov. 11, 2021), available at https://www.gov.za/documents/simplification-criminal-procedure-out-court-settlements-criminal-cases-discussion-paper.

as to whether we will not encounter a purposeful substitution of concepts when the essence remains the same.

The legislator also considers options for conflict resolution by means of mediation, but this only transfers the dispute onto the civil-legal plane.

Conclusion

The analysis showed that the category of "admission of guilt" remains the trigger of various forms of legal proceedings since it is of no small importance how the fact of recognition is treated. Cases of self-incrimination are also not excluded, for example, when it comes to the end of the dispute or to the occasion to apply it as mitigating circumstances.

If we consider this legal category as a basis for negotiations, we can conclude that the relevance in the system of transactions based on confessions or agreements with the prosecution does not depend on the relevance to a particular system of law. It should be recognized that modern processes taking place in society dictate legislators turn their attention to the application of transactions. The difference lies in the goals, initial components and implementation of the mechanism, from the attitude to the essence of the fact of recognition or assistance with public authorities.

At the same time, the main guarantee of a lawful decision will continue to be the consideration of the case in a general manner. The court makes a decision based on an objective attitude to the totality of evidence rather than a formal approach, thereby liberating itself in the freedom of their assessment.

If we consider the ideal form of expressing a confession of guilt, then it should have the concept of 'honesty' as one of its basic tenets. Thus, having such a confession at your disposal, you can assert compliance with the guidelines of criminal proceedings for the purpose of conducting a qualitative investigation of the circumstances of the crime. In this regard, the authenticity of the statements of the person involved must be verified.

In addition, the analysis showed that the category of "admission of guilt" is inextricably linked with the sign of voluntariness. A number of researchers point out the need for a clear consolidation of guarantees of such voluntariness in national legislation. At the moment, the main guarantee in Russia is considered to be the provisions of the Constitution of the Russian Federation (Art. 21) prohibiting torture, violence and other cruel or degrading treatment or punishment. International legal acts are not an exception. For example, part 3 of Article 14 of the International Covenant on Civil and Political Rights states: "Everyone has the right, when considering any criminal charge brought against him, not to be forced to testify against himself or to plead guilty." In the framework of the criminal process, important factors in the legality of evidence, including testimony, are the participation of

witnesses and a defender; the absence of abuse by public authorities, as well as the integrity of the performance of official duties. The motive for establishing such guarantees is the illegality of obtaining the testimony of the accused. Turning to the negotiation procedure, voluntariness applies to both sides of the agreement, since it is impossible to force not only the suspect (accused), but also the prosecution side to cooperate. In this regard, the prosecutor's exercise of the right to refuse or change the cooperation agreement provided for in Article 317.2 of the Criminal Procedure Code of the Russian Federation should not affect the change in the testimony of the guilty person or the possibility of assessing the guilty person's consistent position when considering the case is considered by the court in the general procedure from the point of view of mitigating circumstances.

It remains important to achieve the goals of the reforms expressed by researchers, which are aimed at establishing a balance between compliance with the procedure of a qualitative investigation and the establishment of all circumstances, as well as protecting the rights and interests of participants in the process.[44] Perhaps this will be facilitated by the rejection of the influence of the positions of the participants in the procedural relationship. Mistakes made during the investigation and judicial review will be minimized.

Within this range of issues, holding a position on the prospective application of transactions with the expectation not only of guaranteed punishment of the perpetrators but also of prevention and subsequent socialization is not meaningless.

In addition, one should not lose sight of the content of confessions, which may differ significantly from the plan prepared by the investigating authorities. In this regard, the position on combining the concepts of 'admission of guilt' and "consent to the charge" continues to be relevant. If we turn to the current domestic legislation, the emphasis is solely on the latter. Thus, whether this is a flaw in the system or a deliberate choice by the legislator is left to the participant's understanding.

For the legitimate acceptance of a guilty plea and the conclusion of potential agreements, a regulated procedure for their application with a clear algorithm of actions and consequences is crucial.

Considering that the admission of guilt does not play a major role, neither in the conclusion of procedural agreements nor in criminal proceedings in general, we believe it would be advisable to highlight at the legislative level the procedure for concluding cooperation agreements and plea agreements. At the same time, it is impossible to allow a backlash in which such testimony can be treated as the worst of the evidence. It should piece together the full picture of what happened, which, in the end, will make it possible to make a legal decision regarding the participant

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[44] *Кмитюк Е.Н.* Международный опыт применения соглашений о признании вины // Вестник Нижегородской академии МВД России. 2013. № 21. С. 210–213 [Elena N. Kmityuk, *International Experience in the Application of Plea Agreements*, 21 Bulletin of the Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia 210 (2013)].

of the cooperation agreement itself, to bring the accomplices to justice and to restore the violated rights of the victims without significant costs on the part of public authorities. The effective operation of the mechanism should be ensured by representatives of all parties.

At the same time, the admission of guilt, as the basis of agreements, should under no circumstance, predetermine the course of the investigation and reduce the investigator's work by refusing to collect additional evidence on the circumstances of the case under investigation. Although there is a position based on which the essence of criminal proceedings is a dispute (conflict) between the parties. In this situation, if confessions have been received from a participant, thereby losing the whole point of continuing the dispute (for example, English law), then the trial loses interest for the parties and the further procedure for exercising the right to trial becomes mandatory.

In addition, we believe that the solution to the problem of court congestion (I should point out that in a number of countries it is the main reason for legalizing transactions with justice) will be facilitated by expanding the possibilities of alternative pre-trial procedures along with clear regulation of the categories of crimes related to them.

Undoubtedly, the interest of the investigating authorities, and subsequently the court, in a quick investigation and consideration of the case does not exclude additional benefits from potential agreements. In this regard, it is necessary to consider more closely the possibility of creating conditions for the attractiveness of confession-based.

Of course, there are risks associated with any agreement, but it is important to keep in mind that the investigation and consideration of a criminal case should be not only conducted quickly, but also to a high standard. In this regard, the investigator is charged with fulfilling the obligation to properly prove the guilt or innocence of the suspect (accused), conducting a comprehensive assessment of the evidence obtained, as well as determining the consequences of recognizing the testimony of the person with whom the pre-trial agreement was concluded as reliable. Criminal prosecution must be carried out in accordance with the guidelines of criminal proceedings, despite the presence of confessions of the accused. Only in such a case is it possible to exclude the illegality of the conviction.

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