
Alternative Measures for Resolving Cases in Foreign Legislation

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Abstract: The article analyzes the peculiarities of criminal prosecution in the criminal proceedings of some foreign countries, modern trends in the introduction of alternative methods, proposals of alternative institutions of criminal prosecution between the accused and the victim, between the accused and society, between the accused and the state

Keywords: Criminal procedure, criminal prosecution, suspect, victim, preliminary investigation bodies.

In the context of ensuring the legitimacy of criminal prosecution in the world and protecting the rights and legitimate interests of the participants in this process, the problems of improving the function of criminal prosecution in criminal proceedings, the rational implementation of this activity on the basis of the rule of law are important. Based on the study of the experience of foreign countries, two different models of criminal prosecution can be distinguished: Anglo-Saxon and Romano-German.

In the Anglo-Saxon model, the court and the victim use alternative methods of prosecution and control within the framework of their role and authority as the target of criminal prosecution.

In particular, the initiation of a criminal case as an initial step in the initiation of criminal prosecution in the framework of criminal proceedings in the United States is not limited to one procedural document, which is drawn up and executed by one official. According to USA law, this stage of the process consists of the decisions and actions of several officials.

The decision to initiate a criminal case is made on the basis of investigative materials carried out by investigators from the prosecutor's office, police and other investigative bodies.

A criminal case was initiated, an official indictment was announced and a decision was made to transfer

the case to court. The function of referring a case to court is performed by a large commission on especially grave crimes, and in most criminal cases - by a magistrate.

The magistrate¹ decides to bring the accused to trial at a glance. According to state law, the first hearing is held in the presence of the accused and his defense attorney. The magistrate hears the testimony of the participants, examines other evidence, and then decides to take the case to court. Although the magistrate has the right to discontinue a criminal case due to insufficient grounds at the stage of bringing the case to court, in practice such cases are very rare. At the pre-trial stage of the consideration of the case, the prosecutor's service is controlled by the grand judge².

After the decision is taken by the grand judge or magistrate, the guilt will be confirmed and this will be formally announced to the accused. After

¹ A magistrate is a judge who has the right to independently consider minor cases, determine whether there are sufficient grounds to prosecute a person, and conduct a series of investigative actions. In the USA, the Master's Institute emerged on the basis of the Institute of Judges of Conciliation and now completely replaces it. All federal court judges are also eligible for the office of magistrate.

² Makhov V.N., Peshkov M.L. US Criminal Procedure (Pre-trial stages). - M., 1998. - p. 47.

reviewing the indictment, the accused has the right to file a motion to determine whether he pleaded guilty. The petition filed by the defendant is usually the result of an agreement between the defendant, his defense lawyer and the prosecutor. The essence of such agreements is that the accused admits his guilt (in full or only on a certain point (s) of the announced indictment) in the event that he has committed a less serious crime than was initially announced to him. The defendant is interested in obtaining a petition to plead guilty, and such a petition indicates that the conflict between the state and the defendant in the criminal process in the United States is over. The analysis shows that a "plea agreement" in criminal proceedings in the United States helps to improve the efficiency of the judiciary and the prosecution service.

It should be noted that in Estonia and Latvia only 20% of cases are referred to the court for examination of the content, and the remaining 80% are concluded with a plea agreement³.

Today, the institute "Agreement on the admission of guilt" has been introduced into our national legislation⁴. Judging by it, the plea agreement is concluded with the prosecutor supervising the criminal proceedings against the suspect or the accused, who agreed with the charge, actively contributed to the disclosure of the crime and compensation for minor, less serious and serious crimes.

A plea agreement is concluded subject to the following conditions:

- 1) if the suspect or the accused has realized the essence of his actions, as well as the consequences of his petition;
- 2) the application was submitted voluntarily and after consultation with a lawyer who participated in the case;

³ Kuchin A.F. Legal mechanism of public criminal prosecution: Abstract of the dissertation of the candidate of legal sciences: - N. Novgorod: Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia, 2004 - 193 p.

⁴ Law of the Republic of Uzbekistan on amendments and additions to the Criminal Procedure Code of the Republic of Uzbekistan No. LRU-675 02/18/2021. <https://lex.uz/docs/5295912>.

3) if the suspect or the accused has not refuted or removed the suspicion or accusation by the body of inquiry or investigation, the available evidence in the case, as well as the nature and extent of the damage.

After all, the introduction of the "Agreement on the admission of guilt" serves to ensure the speed of criminal proceedings on low-risk, less serious and serious crimes, to save time and efforts of the prosecutor's office and the court, as well as to intensify the criminal process. In addition, this institution has long been effectively used in many foreign countries as a simplified form of office work, reducing the burden of criminal cases and focusing on serious and very serious criminal cases and improving the quality of office work.

Great Britain criminal procedure law also plays a special role in the conduct of criminal prosecutions. Criminal procedure in Great Britain is characterized by three independent criminal procedure systems - English, Scottish and Northern Ireland. The United Kingdom may be included in the list of countries where the concept of "appropriateness" of prosecution applies.

In the United Kingdom, there is no official border dividing the stages of the criminal process, and there is no legal document to initiate a criminal case⁵. In the United Kingdom, prosecution in the pre-trial stages of a trial is when the police, after being informed of a crime, have the power to take factual steps to gather evidence, sometimes with coercive procedural measures.

In particular, having received sufficient information about the crime committed and collecting all the necessary materials, the police make one of the following decisions: declare the crime and continue production or leave the crime without any official consequences. It is in this context that in English law one can speak of "the expediency of initiating a criminal case"⁶. The situation was further complicated by the enactment of the Prosecution Act in 1985 and the establishment of the Royal

⁵ Lubensky A.I. Preliminary investigation under the legislation of the capitalist states. - M., - P.77 <http://lawlibrary.ru › izdanie8280> (The time of access to the electronic source is 09/02/2021.)

⁶ Spenser J.R. La ce'le'rite' de la proce'dure pe'nale en Angleterre // Revue internationale de droit pe'nal vol.66.-1995. – №3-4. – P. 414.

Prosecution Service. Thereafter, if the police continue to prosecute, they will send the case file to the Crown Prosecution Service, which in turn will decide whether it is appropriate or impractical to prosecute, and during the proceedings it should be noted that it will serve as a special complementary mechanism for prevention of criminal prosecution. At the same time, it should be noted that the Crown Prosecution Service cannot initiate prosecutions on its own, as this is the absolute prerogative of the police. The suitability of prosecution in the United Kingdom is assessed first by the police and then by the Royal Prosecution Service. If the police decide not to prosecute, this decision will not be monitored by anyone or any authority. In such cases, the victim has the right to prosecute himself in accordance with the traditional English concept⁷ of private prosecution, enshrined in the Prosecution Act 1985. However, it should also be noted that paragraphs 6 (2) b and 23 (3) b of the 1985 Act give the Crown Prosecution Service the power to dismiss a victim's criminal case⁸. The decision of the police to institute criminal proceedings is monitored and evaluated by the Royal Prosecution Service.

In the English model of criminal prosecution, one of two methods is chosen: formal criminal prosecution of a person and refusal to prosecute (leaving the state's violation of the criminal law without consequences)⁹.

British jurisprudence began to look for the "third method" as an institution, alternative to criminal prosecution. As a result, two new phenomena emerged in English law. The first is the Juvenile Prevention Police Institute, which has been increasingly used in recent decades.

There are three types of warning institutions in the United Kingdom (informal warning, warning and formal warning)¹⁰. In the first case, once the police

have determined that a less serious crime has been committed, they do not take any other action, warning the minor not to take other similar actions if they deem it unnecessary for criminal prosecution. This method is called "informal warning" and has no procedural implications, and the content refuses to be held accountable. In the second case, a warning is included in the statement, called a warning. In principle, it does not differ from the first method of notification, because even a written statement is not an official procedural document¹¹. The third type of warning is an "official warning", which, unlike the first two, is a real legal institution, alternative to criminal prosecution. In our opinion, it is advisable to study this form of warning about the inclusion of this institution in the national legislation of the Republic of Uzbekistan.

If the police do not consider it necessary to initiate a criminal case so as not to leave the crime without consequences, they will officially warn the minor and receive a receipt from his parents. This notification is recorded in a special register. The register is kept in police archives and is generally kept for up to three years or until the minor reaches the age of 18¹². If a person commits a new crime within the specified period, he is subject to criminal punishment. An important procedural and legal consequence of the application of the measure under consideration is the following: the prosecutor declares to the court considering the case that the accused had previously received an official warning. The court takes this situation into account when imposing a sentence, interpreting a warning as a person's conviction. In the process of applying an official warning, the police must alert the juvenile or his or her parents to the legal consequences of committing a new criminal offense prohibited by criminal law.

When a poll was conducted among law enforcement officials on whether it was appropriate to include the institution of an official warning in the Criminal Procedure Code, 70% of respondents

⁷ It should be noted that there are no cases of private prosecution in the United Kingdom. Therefore, it is necessary to distinguish the English "private prosecution" from the private prosecution cases with which we are familiar (for example, in Russia and Germany).

⁸ O'Doherty S. Compensation and young offenders // The criminal law review. – 2017. – №4. – P.283.

⁹ R.v.DPP.exp. Manning and Another.2000. 3.W.L.R. 463.

¹⁰ Veevers J. Pre-court diversion for juvenile offenders //

Mediation and criminal justice. Victims, offenders and community / Ed M.Wright. B.Galaway. – London, 1989. – P.71.

¹¹ Cautions-further problems // The criminal law review. – 2017. – №8. – P.23.

¹² Hungerford-Welch P.Criminal litigation and sentencing. – London-Sidney, 2018. – P.25

said it was appropriate, 20% said it was inappropriate, and 10% expressed a different opinion. Most of the respondents believe that the institution of prevention in the Code of Criminal Procedure should be applied to minors.

Focusing on the prospect of including the institution of official warning in our legislation, we consider it appropriate to apply it to minors who have committed low-risk or less serious crimes for the first time. Parents of minors should also be warned. Their warnings encourage children to take responsible control of their behavior and relationships, which is very effective in preventing crime. The introduction of this institution will further reduce the level of criminalization of minors, prevent their illegal activities and return them to society.

The new Scottish exemption from prosecution is called a “fiscal penalty”. According to him, a fiscal fine has the right to require the offender to pay a certain amount to the state treasury after receiving relevant information about the crime, which is within the competence of the district court¹³. Failure to do so may result in legal action. In this case, he sends an official proposal to the person concerned. The proposal clarifies the conditions for exemption from criminal prosecution, indicating a 28-day period for consideration. If the defendant agrees and transfers the money to the treasury of the district court, criminal proceedings will not be initiated. Otherwise, after the expiration of the relevant period, he considers the issue of initiating a criminal case on a general basis. His right to refuse criminal prosecution remains in force in this case as well.

Taking into account the interests of the poorest segments of the population, the 1987 law divided the fine into five parts, giving the right to pay 5 pounds sterling. Each of them needs to be paid at least once a week. If the first £ 5 is paid within 28 days of the receipt of the official proposal from the prosecutor's office, no criminal prosecution will be initiated. In case of refusal to pay the remaining amount of the fine, it is subject to enforced collection using the mechanisms used in civil proceedings.

Based on an analysis of the Scottish experience, the inclusion of a “fiscal fine” in our national legislation

as an alternative institution will allow to resolve criminal disputes between the accused and the victim as soon as possible without criminal prosecution, reduce the number of convictions, and focus on serious and very serious crimes.

In the Federal Republic of Germany, the prosecution function is vested in the prosecutor's office¹⁴. The Prosecutor's Office is a hierarchical system of general courts of all levels. In Germany, the prosecution has the task of declaring guilt in court, enforcing the prosecution during the trial and other duties¹⁵.

In the Federal Republic of Germany, most criminal cases are investigated by the police. The function of the prosecutor is to decide the question of determining the next direction of the criminal case. In the most difficult and important cases, the prosecutor personally appears in court, and the police are obliged to follow his instructions.

If the suspicion of the commission of an act is sufficiently substantiated, the prosecutor is obliged to admit guilt in court.

Since 1923, the Prosecutor's Office of the Federal Republic of Germany had the right to terminate the process of committing a non-socially dangerous act without a conviction in order to facilitate the work of the courts. In 1975, the authority of the German prosecutor's office to terminate criminal prosecutions was expanded to include all types of less serious crimes. The prosecutor could exercise his authority over low-risk crimes without the consent of the court. According to the legal literature, about 26% of all criminal cases are terminated by the prosecutor, despite suspicions that a punitive crime has been committed in the Federal Republic of Germany¹⁶.

In this case, the accused has the following obligations: to perform certain actions to recover damages caused by the act; payment of a certain amount of money to a social institution or state treasury; perform other socially useful work;

¹⁴ Kalinovsky K.B., Fayziev Sh.F. Criminal proceedings in foreign countries. Tutorial. - Tashkent: Tashkent State Law Institute, 2010. - P.39.

¹⁵ Bezlepkin B.T. The criminal process of Russia. General part and pre-trial stages. Lecture course. - M., 2008. - p. 455

¹⁶ Gutsenko K.F., Golovko L.V., Filimonov B.A. Criminal process of Western states. - M., 2001. - p. 252.

¹³ Duff P, Meechan K. Op.cit. – P.25.

providing financial support to the person concerned (victim), and so on. Although all of the above conditions are equal, in Germany the payment of a sum of money to the state treasury is in practice one of the most common conditions for exemption from criminal prosecution¹⁷.

One of the features of the German criminal procedure is that 70 percent of the total number of cases are considered in a simplified manner. In this country, a simplified procedure known as "Punishment" is applied to persons who have committed crimes within a period of not more than three months, as ordered by the District Judge. Based on the information provided by the request, the prosecutor or the police will contact the district judge with a draft sentence. The district judge can reject the motion on the grounds that the suspicion is unfounded, or order a trial, or impose an immediate sentence. If the defendant does not file an objection within seven days from the date of the order, it becomes effective and enters into force as a judgment. Otherwise, the court session will be scheduled in accordance with the general procedure¹⁸.

As we can see, while Germany is following the Romano-Germanic model of criminal prosecution, in the German criminal process, law enforcement agencies are trying to create the necessary conditions for the effective use of these institutions.

In France, there is a very simple method of prosecution: a direct fine is paid to a police agent who records a crime that does not pose a high social risk¹⁹. This process, called "paying a fine in accordance with an agreement," allows the police to decide, at their discretion, the legal nature of the action and the form of responsibility (criminal or administrative). The payment of a fine means that the act is recognized by law²⁰.

¹⁷ Hunerfeld P. La ce'le'ri'te' dans la proce'dure pe'nole en Allemagne // Revue internationale de droit pe'na1.Vo1.66. – 2015. – №3-4. – P.398.

¹⁸ Filimonov B.A. Fundamentals of Criminal Procedure in Germany. - M.: Moscow State University, 2012. - P.87. <https://www.twirpx.com/file/772574/>

¹⁹ Pradel J. Droit pe'na1 compa're. – Paris: 2019. – P.485.

²⁰ Paizullaev K.K., Karaketov M. Punishment: problems and reforms // Execution of criminal punishment: problems and solutions: materials of a scientific-practical conference. - Tashkent: Tashkent State Law Institute,

Thus, a simplified procedure such as "payment of a fine under a contract", "Procedure for punishment" is similar to a punishment in the form of an administrative fine under Article 25 of the Code of Administrative Responsibility of the Republic of Uzbekistan. However, the fact that the defendant is given the right to agree or disagree with such an agreement or order leads to the principle of adversarial proceedings.

The institution of punishment in the form of fines has long been used in Sweden. It is similar in content to the Scotland Tax Penalty Institute. This Swedish method of exemption from criminal prosecution applies to criminal cases with a penalty not exceeding a pecuniary fine. In this case, the prosecutor initiates a criminal case and invites the accused to pay a certain amount of the fine prescribed by law. If the accused agrees, the prosecutor's decision will be executed. Swedish experts say that it is inappropriate to use this institution in cases where a person subject to criminal prosecution is interrogated by the police in cases where he denies guilt²¹.

As we have seen, in the criminal procedural legislation and practice of Western countries, there are many institutions that are alternative to criminal prosecution, which indicates the need to use the experience of these countries when reforming our national legislation.

Judicial control is carried out by the Commonwealth of Independent States in accordance with Article 106 of the Criminal Procedure Code of the Republic of Kazakhstan, which provides for "judicial review of complaints against decisions and actions (inaction) of prosecutors and prosecutors". One of the most important features of judicial control in accordance with the procedural legislation of these countries is that all pre-trial investigations, preliminary investigations or all procedural actions related to prosecutorial supervision in this area, especially when conducting investigative actions and applying coercive measures. procedural measures. Elimination of these violations through control by the state

2006. - P.9.

²¹ Lindblom P.H. Litigation // Introduction to Swedish Law. - M., 2016. - p.109.

plays an important role in the timely restoration of violated human rights and freedoms²².

According to the Criminal Code of the Republic of Kazakhstan, a person is released from criminal liability if he actively contributed to the elimination, disclosure, investigation of crimes committed by an organized group or criminal community, exposure of participants in a crime committed by an organized group or criminal community. association²³.

Above, the relevant provisions of the criminal procedure legislation of some foreign countries regarding criminal disputes were analyzed. As we have seen, alternative institutions to prosecution help resolve disputes between the accused and the community, between the accused and the state, between the accused and the victim, and the accused himself. Institutions alternative to criminal prosecution require a clear definition of the scope of obligations imposed on the accused, and their implementation frees a person from criminal prosecution.

²² Esanov R. The role of judicial supervision in improving the pre-trial stage of criminal proceedings. "Science and Education" Scientific journal. April 2021/ volume 2 issue 4.

²³ Volzhenkin B.V. New Criminal Code of the Republic of Kazakhstan // Jurisprudence. - Moscow, 2019. - No. 1. - P.145.