

Alternative Justice: Modern Trend in Criminal Development Justice

¹Fahritdin M. Muxitdinov, ²Pulatov Azizkhon Saidakbarovich, ³Kushayev Nurali Makhmudovich

¹Doctor of Science, professor of the Department of Criminal Law Disciplines at the University of Public Safety of the Republic of Uzbekistan, 100146, Tashkent, Tashkent region, Zangiata district, Chorsu settlement, 100109. Uzbekistan.

²Associate Professor at the University of Public Safety of the Republic of Uzbekistan

³Deputy Head of the Department of Criminal Law Sciences at the University of Public Safety of the Republic of Uzbekistan, Candidate of Jurisprudence, PhD, Associate Professor

Author's Contribution

In this study, the author analyzed the origins and essential properties of an alternative form of criminal proceedings, the current state and development trends in the practice of forming and improving alternative forms to the general and basic procedural orders and rules of justice. The author, based on the legislative practice of democratic countries, examines the ways and directions of development of procedural legal relations, this problem is especially relevant not only for the practice of justice in developing countries, but also for states in which the informatization of public relations, due to the intensification of these relations, plays an important role.

Alternative justice, which, according to the author, arose in the bosom of the social-integrative theory of the last century, has become a pressing problem in the implementation of independent, fair and swift justice, aimed, first of all, at ensuring the rights and interests of the accused, the defendant.

It is alternative justice in the current state of development of societies that has the highest chances of subsequently gradually replacing the conservative order of justice of the "old world".

In this regard, this study of the forms and methods of implementing alternative procedures in criminal proceedings is very attractive for developing countries, both Central Asian countries and developed countries, in the context of transforming criminal justice to the requirements of intensively developing social relations.

The purpose of the study, is to analyze the features of the development of alternative justice, identify its socio-legal significance, through the study of various classical and modern procedural forms of alternative justice, to reveal the essence and properties, the main directions of development of criminal justice in the Republic of Uzbekistan and other countries in the region.

Research methods consists of designing and integrating problems, deductive and inductive data analysis, knowledge of the structural and functional features of a phenomenon and revealing their essence, methods of synthesis and historical analysis of facts.

Results and main conclusions: identification of the main trends in changes in socio-legal relations in the field of criminal justice, outlines of ways and methods for the development of alternative forms of implementation of the criminal process, comparative analysis of the procedural features of alternative justice in countries that have favorable practices in this socio-legal relationship.

Results of the study: Wider use of the methodological foundations of modern criminological theories in the implementation of scientific research, a deeper understanding of the content of policies to combat crime, expansion of aspects of scientific and theoretical research, as well as the formation of skills in using the dings of the most advanced scientist and criminological theories in improving criminal justice.

Annotation: This article discusses the basics of the development of modern trends in the resolution of social conflicts in the field of justice. The article also analyzes the important socio-legal properties of alternative case management, which arose in the 70s of the 20th century as an alternative to the main procedure of legal proceedings. The author believes that the wider application of the alternative procedure of judicial proceedings, the expansion of its procedures and types, will inevitably contribute to solving the problem of the intensification of justice, which, in turn, will help eliminate the socio-legal conflicts caused by the crime by offending the injury inflicted on the victim, as well as solve the problem of the resocialization of the person who committed the crime.

Key words: restorative justice, punitive justice, alternative legal proceedings, legal proceedings, participants in criminal proceedings, accuser, accused, criminal procedural attitude, trial cases, plea agreement, exemption from punishment due to active repentance, summary proceedings, mediation, social and legal conflict.

Introduction

The development of information technology has led not only to a decrease in socio-economic transactions in relations between subjects of society, but in a certain way has accelerated decision-making on important socio-legal issues. An important global symbol of the 21st century is not only modern technologies themselves as transmitting information, but their result - the speed of its transmission, analysis and intensity of its use. The article concludes that this state of affairs for modern - post- and meta-modern societies means that they must become an important part of and be prepared for all the challenges of intensified information relations. Judicial and investigative legal relations in this matter are no exception. Analysis and characteristics of the forms of criminal proceedings show that one of the modern trends in the development of criminal proceedings is accelerated criminal proceedings. This is due to the problems that many states are trying to solve in their national systems - an increase in the number of criminal cases referred to the courts, and especially cases that entail lenient penalties, long periods of criminal proceedings¹.

To achieve stability in criminal procedural relations, legislators need to develop a clear strategy for reforming justice, since the main goal of this activity remains to ensure fair justice. In this context, it should be noted that it is the differentiation of criminal procedural legal relations, i.e. the production of criminal cases on the basis of the public danger of crimes and other statutory and procedural characteristics is a fundamental design of modern justice. One of the important elements that occupy a central place in the mechanism for ensuring differentiated-level justice is usually considered simplified criminal proceedings. Therefore, a clear definition of its place and implementation in procedural and legal relations can be considered a priority strategy of society in the field of justice.

Materials And Methods

In the modern world, there is a growing interest in alternative methods of resolving criminal law conflicts. This is due to several factors, particularly the overload of traditional judicial systems, which leads to lengthy case processing times and reduced effectiveness of justice; the desire for a more humane approach in criminal law, focused on restoring social justice and rehabilitating offenders; the need to consider the interests of victims and their active participation in the conflict resolution process; and the search for a more economically efficient method of administering justice.

However, for different models of justice, the formulation and solution of this problem methodologically differ from each other. For Western countries, the following issues are relevant: high levels of recidivism and the need to find more effective methods of resocializing offenders; growing costs of maintaining the penitentiary system and the need to optimize them; public demand for a more individualized approach to justice that takes into account the specifics of each case; and the development of the concept of restorative justice as an alternative to

¹ *Shagaeva R. M.* International standards of simplified proceedings in criminal cases // Rule of law: theory and practice. – 2016.– №1 (43). – P.132.

the punitive approach. For ASEAN countries, more pressing issues are: harmonization of traditional conflict resolution methods with modern international legal norms; consideration of cultural peculiarities of the region, where out-of-court dispute settlement is often preferred; the desire to create a more accessible justice system, especially in rural and remote areas; and the need to reduce the burden on the judicial system in conditions of rapid economic development and population growth.

From this perspective, Uzbekistan sets itself the task of solving the following important issues:

- Modernization of the criminal justice system as part of the country's overall legal reform.
- Finding a balance between implementing international standards and preserving national legal traditions.
- The need to develop more effective mechanisms for protecting citizens' rights and access to justice.
- The desire to reduce crime rates and increase the effectiveness of offender resocialization.

Despite the growing interest in alternative justice, there are significant differences in approaches and the degree of its implementation in different regions of the world. These differences are due to a number of factors: a) different legal systems and traditions (common law, continental law, mixed systems); b) cultural and social characteristics of each region; c) the level of economic development and available resources for reforming the justice system; d) political will and society's readiness for changes in the criminal justice sphere.

These and other problems necessitate a comprehensive study of these differences to identify the most effective practices of alternative justice and the possibilities of adapting them to different legal and cultural contexts.

Results And Discussion

The alternative method of resolving social and legal conflicts in modern society plays an important role in the state's response to criminal acts. In specialized literature, alternative criminal proceedings are usually understood as a method of eliminating the consequences of a crime without applying ordinary criminal procedural procedures, allowing to resolve the conflict in an extra-procedural way and not resort to criminal prosecution as such, or to terminate criminal prosecution at a certain stage².

In literature, the procedural and legal foundations of alternative proceedings are divided according to objective and subjective characteristics. Thus, *objective characteristics* include: the object of encroachment, the complexity of establishing circumstances included in the subject of proof, the method of committing the crime, the type and size of possible punishment. The group of *subjective characteristics* includes: the personality of the accused in committing the crime (presence of criminal record, characteristics, etc.), the number of persons who participated in committing the crime³. However, the central concepts of this form of proceedings still remain such criteria as (a) the public danger of the committed crime and (b) the personality of the criminal.

Of course, for grave and especially grave crimes, for which the legislator has provided severe punishment, it is impossible to talk about applying an alternative order of proceedings. For these cases, proceedings are conducted in the usual manner.

The issue of applying alternative proceedings is similarly resolved based on the personality of the person who committed the crime. The system of alternative proceedings is not applicable to persons who have previously committed crimes, and certain types of these proceedings are also not applicable to persons who have not reached the age of majority, etc.

² Course of Criminal Procedure / Ed. by Doctor of Law, Prof. L.V. Golovko. - 2nd ed. rev. - M.: Statut. 2017. - P.78; Chigrin D. A. State Prosecution in the Russian Criminal Process: Problems of Formation and Maintenance (Comparative Legal Research). Abstract of dissertation ... Candidate of Legal Sciences. - Ufa, Samara Research University, 2018. - P.16.

³ Zharikov E. V. Differentiation of Criminal Procedure as a Means of Ensuring the Safety of Persons Contributing to Criminal Proceedings: Abstract of dissertation ... Candidate of Legal Sciences. - Barnaul, Altai State University, 2004. - P.9.

In the noted cases, the question of applying an alternative order of proceedings is relevant only for crimes that do not pose a public danger and for their less severe types, as well as for persons who have not been previously subject to criminal liability. Other material and procedural-legal characteristics (for example: committing a grave crime, a crime committed by an especially dangerous recidivist, etc.) should not be the subject of alternative criminal proceedings.

An important reason for such a decision by legislators in many countries, particularly the USA, France, Germany, and others, may be, firstly, the need to provide procedural guarantees to persons involved in the orbit of criminal proceedings as accused (suspect, defendant), since, from the point of view of legal technique, practically all legislations of world countries regulate procedural rules that are commonly called "basic". Other forms of criminal proceedings are considered alternative to the main type of judicial proceedings. It is in the main form of criminal proceedings that a more perfect system of procedural-legal mechanism for protecting the rights and interests of participants in the process, primarily the accused (suspect, defendant), is provided.

In this understanding, the alternative form of judicial proceedings is oriented not so much towards establishing the truth as towards establishing such a formal procedural feature as admission of guilt and/or the fact of reconciliation of conflicting parties.

Secondly, legislators, when constructing criminal procedure, almost always rely on its essential concepts. As it is believed, criminal procedure is a socio-legal institution whose role is to ensure society's right to punish a person who has shown deviant behavior. Punishing "deviators" from social norms has been the main, and sometimes the only, idea of justice throughout the historical period of human society development. That is why "punishment" as a procedural-legal ideology has always been associated with the public interest of society.

Meanwhile, criminal procedural relations are classified according to the "scale of legal interests" into: public, private, and private-public⁴[1] conduct of criminal proceedings. This qualification has two important features: 1) the peculiarity of the emergence, development, and completion of procedural relations, in which the procedural mechanism for initiating and terminating criminal prosecution under certain conditions depends on the will of the subject authorized to perform such actions; 2) as already noted, the conduct of cases is always a priori subordinate to the "procedural interest" existing in the criminal process.

In turn, it should be noted that the proceedings based on public interest are the most important element of the "main" form of legal proceedings.

Thus, "the development of procedures existing outside the traditional criminal process allows us to talk about a shift from the 'paradigm of punishment' to the 'paradigm of restoration', which is aimed at reconciliation and overcoming the harmful consequences of violating criminal law outside the framework of criminal repression. It should be noted that the traditional criminal process does not always allow for successfully resolving a criminal-legal conflict, which represents a clash of polar interests of the person who committed the crime, and the victim, society, and state in the sphere of social relations protected by criminal law"⁵.

Meanwhile, even the imposition of a fair punishment on the accused implies a certain coercion. Practical experience of justice shows that punishment, regardless of whether it has mild or severe consequences for the accused, does not always achieve its goal - eliminating the criminal-legal conflict that arose between the

⁴ Sometimes scholars also distinguish a fourth classification feature as public-private, which also takes into account the formal basis for the emergence of procedural-legal relations. However, in a purely procedural-legal understanding, it is actually tied to the public basis of criminal proceedings.

⁵ *Kuzmina O.V.* Restorative justice as an alternative to criminal prosecution // Legal systems of the Republic of Tajikistan and CIS countries: state and problems: Materials of the International scientific-practical conference dedicated to the Honored Lawyer of the Republic of Tajikistan, outstanding scientist, Doctor of Law, Professor Sh. Mengliev (Dushanbe, October 23, 2015). - Dushanbe: RTSU, 2015. - P.312.

accused, the victim, and society. In solving this problem, punitive justice does not always satisfy the needs of the victim, let alone achieve the goal of resocializing the convicted person.

On this issue, one can support the view of Arutyunyan A. A., who noted that "the concept of restorative justice involves achieving goals that are not always successfully implemented within the framework of traditional criminal proceedings, namely: 1) restoration of social relations violated by an unlawful act; 2) condemnation of unlawful acts and fostering respect for generally accepted moral norms and values; 3) help and support for persons who have been harmed by an unlawful act, satisfying their interests and needs; 4) assisting the person who committed the act in realizing its consequences and taking responsibility for them; 5) identifying the restorative effect of punishment; 6) reintegration of persons who committed an unlawful act into society and prevention of recidivism; 7) identifying the causes of crime"⁶.

It is necessary to consider the existing forms of alternative criminal proceedings. Thus, in general, the range of alternatives to criminal prosecution in world practice is quite wide. In many countries, alternative proceedings are formed within the framework of the development of so-called restorative justice⁷.

It was restorative justice that became the basis of the modern alternative method of dispute resolution on the North American continent. In particular, the criminal justice systems of the USA and Canada, within the framework of "restorative justice," attempted to introduce a procedural order providing for reconciliation of the parties to a criminal conflict, as noted by specialists, in order to restore social peace, and not just punish the criminal.

A similar opinion is held by I. I. Belozerov, who asserted that "the restorative approach to criminal justice is based on the idea of the need to reconcile the parties to the conflict in order to restore the normal order that existed before the crime was committed; to satisfy the interests of the injured party; to correct and resocialize the person who committed the crime"⁸.

At the same time, the alternative method of considering criminal cases, according to its supporters, is also understood as a way to ease the burden on judges while maintaining judicial control over alternative procedures. The positive features of this proceeding include:

- Reducing the workload on courts;
- Finding a peaceful way to resolve conflicts;
- Reducing the cost of justice for both the offender and the state;
- Quick resolution of disputes, confidentiality of criminal agreements⁹[2].

In criminal proceedings, one of the first mechanisms representing an alternative to criminal prosecution is criminal mediation. Mediation procedures as an alternative method of dispute resolution are defined in literature as "a procedure in which an independent and impartial third party - a mediator - participates in resolving a criminal-legal conflict between the person who committed an unlawful act and the person who was harmed by the unlawful act, with the aim of reconciling the parties and finding a mutually acceptable solution on issues of compensation for harm caused by the unlawful act, as well as on other issues that may arise in resolving the

⁶ *Arutyunyan A. A.* Mediation in criminal proceedings: Abstract of dissertation ... Candidate of Legal Sciences. Lomonosov Moscow State University. - Moscow, 2012. - P.19.

⁷ *Course of Criminal Procedure / Ed. by Doctor of Law, Prof. L.V. Golovko.* - 2nd ed. rev. - M.: Statut, 2017. - P.78

⁸ *Belozerova I. I.* Alternatives to criminal prosecution in the criminal process of France // *Bulletin of the Moscow State Institute of International Relations of the Russian Foreign Ministry.* - 2016. - No. 10. - P. 130-135.

⁹ *Reponse ministerielle nA 42-282 // Journal officiel de la Republique Francaise.* 1991. 7 oct. P. 4130.

criminal-legal conflict, based on the voluntary expression of will of the parties, and which may entail legal consequences for the parties to the criminal-legal conflict within the framework of criminal proceedings"¹⁰.

The procedure regulating the activities of a mediator in countries where this institution is used in law enforcement practice is widely applied to resolve conflicts of a private-public and private social nature, involving various types of legal relations, allowing the parties to the conflict to resolve it without recourse to competent state bodies. However, in many states, mediation has also found its application in criminal proceedings. In particular, the institution of mediation appeared in the legislation of Great Britain and Austria in 1988, in Germany in 1990, in Spain in 1992, in Belgium in 1994, in France in 1999. Including, the institution of mediation was introduced into Polish legislation. In 1997, 2003, and 2015, it underwent significant changes.

Polish expert J. Tomczak, in particular, highlighted the following principles of applying mediation in the Polish criminal process: 1) mediation concerns a criminal case, and the court must decide whether the specified procedure is applicable in the given case; 2) with a positive decision, the court tries to convince the parties to use it, but nevertheless, voluntariness in its choice is necessary; 3) impartiality of professional mediators, for whom there are a number of requirements in terms of legal profession; 4) confidentiality of information.

According to data provided by J. Tomczak in 2017, 2.5 million criminal cases reached the court, of which 4,100 were with the use of mediation, and in 2,300 cases, the cases were settled by professional mediators. The Polish expert explained that the termination of a criminal case suits everyone: the victim, the prosecutor's office, and the court¹¹.

At the same time, based on the differences in legal systems and criminal procedural legislation of a number of European states, two types of mediation application can be distinguished: 1) Anglo-Saxon, within which mediation is a pure manifestation of the concept of restorative justice and represents a community method of conflict resolution; 2) continental, which is characterized by the use of mediation as an alternative to criminal prosecution, usually enshrined in legislation and having features of a procedural institution¹².

Within the framework of the proposed concept, it seems expedient to develop the institution of mediation as an additional measure of a criminal procedural nature, aimed at achieving reconciliation between the accused and the victim with the aim of terminating criminal prosecution or making a court decision in a simplified manner, taking into account the agreement reached by the parties. Subsequently, mediation can be applied as a true alternative to criminal prosecution, before the initiation of a criminal case, since reaching a conciliatory agreement between the parties to a criminal-legal conflict will allow competent authorities and officials to refuse to initiate criminal prosecution as such.

However, in the South Asian region, there functions another model of mediation in terms of content, which differs from the classical Euro-American system in some of its features. In particular, the institution of mediation is an integral part of the Singaporean legal system. It is widely used as a settlement mechanism not only for private disputes but also in courts, government departments, companies, and other specific industries.

In Singapore, there are two main categories of mediation practice: court-based mediation and private mediation.

«Court-based mediation» is mediation conducted in courts after parties have initiated legal proceedings. This type of mediation is mainly carried out by the State Courts (for civil disputes; community disputes, harassment and employment disputes, as well as minor criminal offenses) and the Family Justice Courts. The first type of mediation is conducted by the State Courts Centre for Dispute Resolution (SCCDR), the Maintenance Mediation Chambers (MMC), and the Child Focused Resolution Centre (CFRC).

¹⁰ Savchenko V.N., Ureneva O. V*. Mediation in criminal proceedings: Bulletin of Chelyabinsk State University. 2015. No. 25. Law. Issue 45. - P. 131.

¹¹ Pavlova Z. Is it possible to apply mediation in criminal proceedings? // Criminal-Executive Law. - 2020. - No. 2. - P. 97.

¹² Ludwiczak F. Les procédures alternatives aux poursuites: une autre justice pénale. – Paris, 2015. – P. 29.

«Private mediation» in Singapore is led and primarily conducted by the Singapore Mediation Centre (SMC) and the Singapore International Mediation Centre (SIMC).

A third aspect of mediation practice takes place in government agencies and industry organizations, such as Community Mediation Centres or the Consumers Association of Singapore¹³.

Moreover, court-based mediation is understood as mediation conducted in court after the commencement of legal proceedings. With the introduction of the presumption of alternative dispute resolution in 2012, the vast majority of cases in State Courts undergo court mediation or another form of alternative dispute resolution.

The mediation model in Singapore's courts is based on the following elements: (a) a facilitative approach in assisting parties in negotiations; (b) emphasis on collaborative problem-solving between the mediator, parties, and lawyers; (c) mediation usually includes discussion of the legal merits of the case.

Overall, court-based mediation has had a tremendous impact on Singapore's judicial system. Between 2012 and 2017, the State Courts Centre for Dispute Resolution handled about 6,700 cases, with a settlement rate exceeding 85%. In surveys conducted by the State Courts in 2015, 98% of respondents agreed that the dispute resolution services provided by the courts met their expectations in ensuring satisfactory dispute resolution¹⁴.

In Malaysia, the institution of mediation also functions. However, the form of the reconciliation process as an analogue of mediation includes elements of mediation. The criminal process is regulated by the norms of the Criminal Procedure Code and is generally based on the English model.

For countries intending to implement mediation procedures in their criminal justice practice, it is necessary to define criteria for its possible application in each specific case. Such criteria should include, for example, the following: 1) the crime belongs to the category of minor or medium gravity, in certain cases - to the category of serious crimes (crimes against property, as well as rape or violent sexual acts without aggravating circumstances)¹⁵; 2) the victim is recognized as a natural person; 3) the parties have expressed voluntary mutual consent to participate in the mediation procedure.

For instance, in US legislation, one can find additional rules for conducting mediation that require special attention. These rules primarily regulate formal aspects, i.e., prerequisites for the emergence and development of legal relations in mediation proceedings. In particular, if the parties have agreed to participate in mediation, the court notifies them orally or in writing of the following: a) the time allotted by the court for mediation; b) the name of the mediator or mediation organization; c) the requirement for the offender to pay a fee of \$60 USD for mediation services¹⁶.

Also, in §7A-38.3D (m) of the North Carolina General Statutes, it is stated that the court may, at its discretion, allow a third party to pay the fee or part of it for the offender. And in §7A-38.7(b), it is noted that the mediation organization must receive documentary confirmation of the payment made¹⁷.

Similar conceptual developments have been proposed by individual scholars who believe that, at the initial stage, mediation should be applied to resolve criminal-legal conflicts involving juvenile offenders. Subsequently, this institution can be extended to crimes committed by adults. Initially, mediation can be applied

¹³ <https://www.singaporelawwatch.sg/>

¹⁴ <https://www.mediation.com.sg/>

¹⁵ It appears that mediation cannot be applied in cases of crimes that have led to irreversible consequences, primarily causing death

¹⁶ Vasilenko A. S. Mediation in the US criminal process // Bulletin of Perm University. Legal sciences. 2012. Issue 2 (16). <http://www.jurvestnik.psu.ru/index.php/ru/vypusk-2162012/19-2010-12-01-13-31-58/-2-16-2012/462-vasilenko-as-mediaczia-v-ugolovnom-proczenesse-ssha>

¹⁷ Ibid

after the initiation of criminal prosecution, and later it is advisable to apply mediation before initiating a criminal case¹⁸.

When implementing mediation procedures in criminal justice practice, international standards and principles of mediation procedures must certainly be taken into account, which include the following: a) using mediation only based on voluntary consent of the parties; b) ensuring the parties' right to withdraw from the mediation process at any time; c) in case of failure to reach a conciliation agreement, participation in the mediation procedure should not subsequently be considered as an admission of guilt during the proceedings; d) parties should agree on the main circumstances of the case to participate in the mediation procedure; e) agreements reached as a result of the mediation procedure should contain reasonable conditions; f) necessary legal guarantees should be provided during the mediation procedure; g) the mediation procedure should be confidential; h) repeated criminal prosecution for an act should not be allowed if a restorative procedure was applied to resolve it and the parties reached an agreement within such a procedure¹⁹.

However, restorative justice, in addition to mediation, has a significant number of procedures in its arsenal: Victim-Offender Mediation (VOM), Family Group Conferencing (FGC), circles of justice, Restorative Conferencing (RC), Community Restorative Board (CRB), Sentencing Circles (SC), negotiation, neutral fact-finding, arbitration, early neutral evaluation, and summary jury trial²⁰.

In this matter, the legal experience of the French legislator arouses certain interest. It should be said that French law has also been subject to the trend of introducing alternative judicial proceedings. According to the French Criminal Procedure Code, alternatives to criminal prosecution include: measures related to the call to comply with obligations, criminal mediation, criminal agreement, and criminal transaction. In particular, the French criminal process operates on the principle of expediency of criminal prosecution, enshrined in Articles 40 and 401 of the French Criminal Procedure Code, according to which, in the presence of facts indicating the commission of an offense, the prosecutor has the right to initiate criminal prosecution, refuse to initiate criminal prosecution, or propose to apply one of the alternative methods of dispute resolution²¹.

From the above, it can be concluded that in the French criminal process, the prosecutor has broad powers, which allows him to actively promote the development of alternative dispute resolution methods. In particular, an alternative to criminal prosecution - a criminal agreement, regulated in Art. 41-2, 41-3 of the French Criminal Procedure Code, can be applied at the initiative of the prosecutor in case of committing any offenses and misdemeanors, for which the maximum punishment is a fine or imprisonment for 5 years or less. However, a criminal agreement cannot be applied in case of misdemeanors against the press, causing death by negligence and political misdemeanors, and cannot be applied to minors under 13 years of age.

In general, the mechanism of criminal transaction in French legislation was enshrined in 2014. It applies in case of the following illegal actions: 1) minor offenses, except for offenses providing for the termination of criminal prosecution in case of payment of a fine in a pre-assessed amount; 2) misdemeanors punishable by a fine; 3) misdemeanors punishable by imprisonment for one year, except for such an offense as grave insult; 4) theft, if

¹⁸ Savchenko V.N., Ureueva O. V. Mediation in criminal proceedings // Bulletin of Chelyabinsk State University. Law. - 2015. - No. 25. - Issue 45. - P.131-133.

¹⁹ Mediation. Practical guide to the application of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Scientific and Methodological Center for Mediation and Law. Translation. -2013. - P.7-9 and 28 (<https://assets.hcch.net/docs/e2fb7d3b-65a6-487c-8be2-a47085862827.pdf>).

²⁰ Mediation in Criminal Proceedings: Textbook / L. A. Shestakova. - Samara: Samara University Publishing House, 2021. - P.11.

²¹ Belozerova I. I. Alternatives to criminal prosecution in the criminal process of France // Bulletin of the Moscow State Institute of International Relations of the Russian Foreign Ministry. - 2016. - No. 10. - P.130-135.

the value of the stolen item does not exceed 300 euros; 5) consumption of narcotic substances; 6) illegal occupation of publicly owned premises for holding meetings²².

Meanwhile, the mechanism of criminal agreement also consists in the fact that the offender admits to committing an illegal act and undertakes to carry out measures proposed by the prosecutor, such as a fine, confiscation of the instrument of the offense in favor of the state, mandatory work, prohibition to leave the territory of France, educational measures. If the offender agrees, the criminal agreement is approved by the court. If the criminal agreement has already been executed by the offender, the Prosecutor of the Republic refuses to initiate criminal prosecution. In case of non-execution of the criminal agreement, he initiates criminal prosecution²³.

In general, the agreement of the parties as a procedural form first appeared in Anglo-American judicial law. The earliest mentions by American lawyers regarding the conclusion of plea bargains date back to 1839. In those times, it appeared as an alternative proceeding and was essential for eliminating the legal conflict between public and private interests through their procedural legal consensus. Therefore, in the most general form, a plea bargain, in a procedural legal sense, is defined as "an agreement in a criminal case, according to which the prosecutor offers the accused to plead guilty to the incriminated act in exchange for a reduction in the amount of punishment or reclassification of the crime to a less serious one"²⁴.

If we consider in more detail the concept and basics of classification defined in American legal sources about plea agreements (deal with justice), then, in particular, the Federal Rules of Criminal Procedure in the USA (Rule 11, Art. 1) defines its concept as follows: "The attorney for the government and the attorney for the defendant or the defendant when acting pro se may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either the charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will: (A) not bring, or will move to dismiss, other charges; (B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court)"²⁵.

In practice, the agreement is usually signed by the parties in writing, after which it is submitted to the court for consideration, which can approve it, reject it, or postpone making a decision on it until studying the preliminary conclusion of the probation commission.

Thus, the court does not participate in negotiating the terms of the deal but approves them. According to Article 11 "c" of the Federal Rules of Criminal Procedure of the USA, if the court concludes that the terms of the deal contradict public interests due to excessive advantages provided to the accused, or unreasonably infringe on the interests of the victim, it has the right to accept and approve the deal and pass a sentence without full compliance with its terms.

Such an approach in criminal proceedings practically marks the arrival of a so-called "stimulating" element in the system of criminal procedural relations, which plays an important role in resolving social conflict through an

²² Belozeroва I. I.* Alternatives to criminal prosecution in the criminal process of France // Bulletin of the Moscow State Institute of International Relations of the Russian Foreign Ministry. - 2016. - No. 10. - P.136.

²³ Ibid.

²⁴ Ivanov A.A. Legal regulation of the institution of plea bargains in the USA // Bulletin of Lobachevsky University of Nizhny Novgorod. - 2012 - № 2 (1). - P. 282.

²⁵ Isakova T.V. On the issue of simplified forms of legal proceedings in criminal cases against minors // Bulletin of Udmurt University. Series "Economics and Law". - 2013. - №3. - P.149.

agreement between the parties to the criminal process. Even procedural scholars of the 19th and early 20th centuries spoke about the need to encourage persons who committed crimes for subsequent positive actions²⁶.

Analysis of the norms of Section 11 of the Federal Rules of Criminal Procedure of the USA allows classifying plea agreements into separate types, depending on the content of the conditions.

Depending on the obligations assumed by the defense, the following types of agreements are provided: 1) "ordinary" guilty plea (the so-called regularly guilty plea). This form of agreement with justice entails a conviction and deprives the accused of the right to appeal it, as well as to challenge the circumstances established by the court when considering the case, except for procedural violations committed by the court and the prosecution; 2) specific, i.e., in the form of "I do not admit, but I do not dispute" (nolo contendere plea or no contest plea). Strictly legally, it means that the accused does not admit guilt, however, due to the accused's obligation not to object to the imposition of punishment for the charge brought by the court of first instance, it is equated to a guilty plea²⁷.

The procedure for proceedings on agreements is peculiar. In particular, in cases of agreements at the initial stage, the essence of the entire volume of charges in which the accused admits guilt is always stated. In this case, the prosecution can choose one of two options for action:

1) changing the scope of the charge. This action can have several directions of development: a) reclassification of the charge to a criminal law provision providing for responsibility for a less serious crime; b) exclusion of charges on one or more episodes of criminal action²⁸; c) determination of the exact size and type of punishment or limitation of the term or size of punishment determined by criminal law; d) determination of the type of punishment; e) determination of the term or size of punishment; f) determination of the probation period;

2) facilitating the investigation, including by: a) exposing accomplices of the incriminated act; b) exposing persons involved in committing other crimes not related to the incriminated act; c) reporting on sources of evidence of the incriminated crime unknown to the investigation (for example, an obligation to hand over stolen goods, indicate the place of burial of a corpse, etc.)²⁹.

In addition, according to procedural rules, when deciding on the approval of the deal, the court checks for sufficient evidence in the case to consider the guilty plea to be true. The court must also make sure that this agreement is concluded voluntarily and after preliminary consultations with the defender.

However, the Federal Rules of Criminal Procedure of the USA provide for the termination of a plea agreement. This is possible only if the agreement of the parties was made by coercing the accused to conclude it or in case of a significant violation of the procedure for its conclusion. In other cases, the termination of deals with justice is prohibited for both the accused and the prosecutor.

Uzbekistan, since the beginning of the new millennium, has actively been conducting legislative reforms, which had an important aspect - the introduction of "alternative justice". Thus, in 2001, a conciliatory form of process was introduced, the essence of which was that under certain procedural and legal conditions, in particular, upon reconciliation of the accused (suspect, defendant) and the victim, regardless of at what stage of the process it was concluded, the criminal case should immediately be transferred to court for approval of the reconciliation that took place.

²⁶ Spasovich V. Textbook of Criminal Law. Vol.1. - St. Petersburg, 1863.

²⁷ Ivanov A.A. Legal regulation of the institution of plea bargains in the USA // Bulletin of Lobachevsky University of Nizhny Novgorod. - 2012. - № 2 (1). - P. 283.

²⁸ In the USA, unlike other countries of the continental legal model, the prosecution has the freedom of material criminal legal claim against the accused, therefore, has the right to arbitrarily change the scope of the charge when concluding a plea agreement

²⁹ Ivanov A.A. Legal regulation of the institution of plea bargains in the USA // Bulletin of Lobachevsky University of Nizhny Novgorod. - 2012. - № 2 (1). - P. 283.

Ultimately, in 2021, a completely new procedural institution for our legal practice was introduced into the Criminal Procedure Code - "plea agreement". The basis for introducing this institution into the Criminal Procedure Code was the introduction of a norm into the Criminal Code regulating the imposition of punishment for crimes for which a plea agreement was concluded. According to Art. 572, "the term or amount of punishment imposed for crimes for which a plea agreement has been concluded cannot exceed half of the maximum punishment provided for by the corresponding article of the Special Part of the Criminal Code".

Analysis of the norms of criminal procedural legislation of foreign countries regulating the conditions of "plea agreement" shows that they do not quite correspond with the classical understanding of the content of this institution. We believe that the "inconsistent provisions" in the norms are primarily related to their mismatch with the content of the model property of the criminal process system concerning plea agreements. At the same time, the norms of this procedural institution in domestic legislation have been "successfully" transformed into a hybrid form. So, if according to the classic "Anglo-American model" a plea agreement is not only a procedural fact that occurred between the prosecutor and the accused (suspect, defendant), but if it is concluded in accordance with the requirements of the law, then the approval of the agreement becomes an obligation for the court. From this thesis follows the conclusion that the agreement of the parties on the plea is an autonomous right of the parties to the process, primarily the prosecutor and the accused (suspect, defendant) for an alternative solution to eliminate the social and legal conflict that arose after the commission of the crime. In this procedural legal relationship, the court is assigned the role of "main observer" for the legality of the conclusion of the "agreement" itself.

At the same time, the agreement of the parties on the plea is, first of all, a procedural act that includes a system of mutual obligations of the subjects of this relationship. From civil law definitions, we know the main features of an "agreement", which are based on certain actions of the parties to legal relations to establish, change or terminate civil rights and obligations (Article 101 of the Civil Code). In accordance with Art. 234 of the Civil Code, an obligation in a legal relationship is recognized as - "one person (the debtor) is obliged to perform a certain action in favor of another person (the creditor)". This means that a plea agreement in criminal proceedings is a means of the parties to the agreement arising peculiar duties, in particular, for the accused - admission of guilt, and in other conditions - elimination of damage caused by his criminal actions, etc.

Meanwhile, the plea agreement also imposes an obligation on the accusing party to change the content of the charge, in particular, from a serious crime to a less serious one. Thus, a plea agreement can only take place if the prosecutor is the rights holder to fulfill their obligations under the agreement. Therefore, when choosing a method of regulating legal relations related to concluding a plea agreement, the legislator must always take into account the autonomy of the parties' rights to these actions.

Another important system-forming element of the method of regulating legal relations under a plea agreement is the "procedural interest". It is the interest of the parties to the agreement that serves as the basis for its conclusion. Each party pursues a certain interest when concluding the agreement. However, interests differ in objective and subjective characteristics into such types as: public (prosecutor) and private (accused, suspect, defendant). Thus, the interests of the accused in concluding an agreement are always associated with their personal motives, since, being the central subject of the criminal procedural legal relationship, the accused usually pursues those options for resolving the issue that meet, first of all, their personal interests. For example, to be acquitted, or to have their punishment mitigated, etc. Thus, personal interest is the primary source of the accused becoming a party to the plea agreement.

In this understanding, the interests of the prosecutor are peculiar. In criminal proceedings, the accusatory function plays an important role, which is associated with presenting a procedural and legal claim against a person who has committed an unlawful act. For these purposes, the prosecutor must: a) collect and present evidence to this person confirming their guilt in the committed crime; b) formulate an "accusatory claim", i.e., define the framework of the same accusation; c) subsequently substantiate their point of view on the accusation in court, i.e., support the accusation and bear the burden of proof.

Based on this framework of understanding the accusatory function, in most forms of criminal process, this function is divided into two levels. The «first level» has a public nature and therefore always pursues the public interest. This activity is carried out through procedural means and methods, the form and content of which are directly aimed at ensuring public safety. That is why the public prosecutor, as a bearer of public authority in the fight against crime, pursues only the public interest; there should be no personal interests in such accusatory activity.

The «second level» of the accusatory function is associated with conducting this activity privately. Unlike the public function, private law accusatory activity is built on personal procedural interest. Therefore, the legal relationship between the private prosecutor and the accused is mainly based on the free will of these subjects.

Analysis of the prosecutor's procedural interest shows that it is the procedural interest of the parties, primarily the prosecutor's interest aimed at ensuring public safety, that should become a priority requirement for regulating legal relations related to plea agreements. Since in criminal proceedings, it is the function of accusation that gives rise to other procedural functions. Moreover, the accusatory function directly reflects the public interest, and the public interest is always associated with its safety. In turn, the concept of public safety implies two conflicting theses. The first is the speedy resolution of social conflict by punishing the person who committed the crime; the second is providing a system of protection for both public interests and the interests of the accused involved in the orbit of the criminal process.

Meanwhile, to confirm this thesis, the following arguments can be presented. Thus, a plea agreement based on the procedural interest of the parties will contribute, **firstly**, to the elimination of socially negative conflict; **secondly**, to the resocialization of the accused and their return to normal social legal relations; **thirdly**, to increasing the effectiveness of crime-fighting activities, through concluding a plea agreement with the intention that the accused, acting as a party to the agreement, would provide active assistance to the investigative authorities in uncovering and investigating more serious crimes. By the way, the last argument is a crucial element for the classic Anglo-American procedural form (in the form of assistance to the investigation) associated with plea agreements³⁰.

At the same time, a plea agreement can also take place for crimes that do not pose a great public danger and are less serious, but also for serious crimes. Important conditions for concluding a plea agreement are recognized as: a) the accused (suspect) did not dispute the charge (suspicion) brought by the inquiry or investigation bodies, the evidence available in the case, as well as the nature and extent of the harm caused; b) they have made amends for it (Article 5861 of the Criminal Procedure Code).

Moreover, in accordance with Article 5862 of the Criminal Procedure Code, when petitioning for a plea agreement, the accused (suspect) is obliged to indicate in it - admission of the charge (suspicion) brought during the inquiry and preliminary investigation, not denying evidence, providing assistance in investigating the crime, actions that they are obliged to perform to discover property obtained as a result of the crime, making amends for the harm caused by the crime, as well as providing other information.

In addition, the petition for a plea agreement may indicate certain actions performed by the suspect, accused, and contributing to the disclosure of the crime (Part 4 of Article 5862 of the Criminal Procedure Code).

The question arises, what algorithm of actions do the investigation or inquiry bodies, including the court, have under similar conditions? Under the same conditions, they should apply the rules on: "sentencing for crimes for which a plea agreement has been concluded" (Article 572 of the Criminal Procedure Code), i.e., take a formal approach (presence of a written agreement) or accept "exemption from punishment in connection with the active repentance of the guilty party in the deed" (Article 71 of the Criminal Code), i.e., a factual approach. The adoption of either decision under the norms of the Criminal Code will be recognized as legal.

³⁰ Khairiev N.I. Intensification of criminal proceedings: Dis. ... Doctor of Legal Sciences. - T., Institute of the National Guard of the Republic of Uzbekistan. 2019. - P.215-225.

Meanwhile, such a dual decision on this issue is absolutely unacceptable, not only in terms of logic of actions but also from the point of view of legal technique. This issue must be resolved immediately.

Regarding the prospects of alternative justice in the so-called ASEAN countries, it should be noted that there is a common feature related to the fact that the countries in the ASEAN region have diverse legal systems combining elements of common law, civil law, and Islamic law. In this regard, traditional methods of conflict resolution play a significant role in the region. There is a trend towards modernizing the justice system in accordance with international standards. For example, in **Singapore**, important issues of alternative justice are:

a) Developed system of community mediation:

- Community mediation centers have been operating since 1998;
- Volunteer mediators undergo special training;
- Focus on resolving neighborhood disputes and minor offenses;

b) Early intervention programs for juveniles:

- "Guidance and Counseling" program for first-time offenders;
- Family conferences for juvenile offenders.

c) Prospects:

- Expanding the use of mediation in criminal cases;
- Development of online platforms for alternative dispute resolution.

3. Malaysia:

a) Traditional methods of conflict resolution:

- Application of customary law (adat) in rural areas;
- Role of elders and religious leaders in dispute resolution.

b) Restorative justice for juveniles:

- "Child Outside Court" program for minor offenses;
- Family conferences as an alternative to court proceedings.

c) Prospects:

- Development of legislation on mediation in criminal cases;
- Integration of traditional methods into the formal justice system.

4. Indonesia:

a) Application of traditional law (adat):

- Recognition of the role of customary law in the Constitution;
- Use of traditional reconciliation methods at the village level.

b) Mediation in criminal cases:

- Pilot projects on introducing mediation in some regions;
- Role of police in mediating minor offenses.

c) Prospects:

- Expansion of mediation practice at the national level;
- Development of restorative justice programs for juveniles.

5. Vietnam:

a) Traditional methods of conflict resolution:

- Role of village elders and committees in dispute resolution;
- Conciliation procedures at the community level.

b) Reforms in alternative justice:

- Introduction of mediation in criminal proceedings since 2015;
- Development of resocialization programs for juvenile offenders.

c) Prospects:

- Strengthening the role of mediation in criminal proceedings;
- Development of probation system and alternative punishments.

6. Philippines:

a) Barangay system (local self-government):

- Barangay courts for resolving minor disputes and offenses;
- Application of traditional reconciliation methods.

b) Restorative justice:

- Diversion programs for juvenile offenders;
- Pilot projects on mediation in criminal cases.

c) Prospects:

- Expanding the application of restorative justice in criminal proceedings;
- Strengthening the role of communities in offender rehabilitation.

7. Thailand:

a) Mediation in criminal proceedings:

- Legislative enshrinement of mediation in criminal cases;
- Practice of "justice conferences" for juveniles.

b) Buddhist principles in alternative justice:

- Use of concepts of forgiveness and reconciliation;
- Role of monks in mediation processes.

c) Prospects:

- Expanding the application of mediation to more serious crimes;
- Integration of traditional Buddhist practices into the justice system.

Thus, the general trends and prospects for expanding forms and methods of alternative justice for the ASEAN region can be defined in the following aspects:

- Movement towards formalization and institutionalization of alternative justice methods;
- Maintaining a balance between traditional practices and modern legal norms;
- Development of interstate cooperation in the field of alternative justice;

-
- Adaptation of international experience taking into account cultural and social features of the region;
 - Increasing the role of communities and civil society in alternative justice processes;
 - Expanding the use of technologies (online mediation, electronic monitoring systems) in alternative justice and others.

Conclusion

Based on the analyzed experience of ASEAN countries and scientific approaches of their scholars, the following standards for implementing alternative justice in national practice can be proposed:

1. Legislative framework:

- Developing a clear legal basis for alternative justice.
- Defining the scope of application (types of crimes, categories of participants).
- Establishing procedural guarantees to protect participants' rights.

2. Cultural adaptation:

- Considering national traditions and cultural features when developing programs.
- Integrating local conflict resolution methods into the formal justice system.
- Ensuring "cultural competence" of mediators and facilitators.

3. Ensuring voluntariness:

- Guaranteeing free and informed consent of all participants.
- Providing the possibility to exit the process at any stage.
- Ensuring no negative consequences for refusing to participate.

4. Training specialists:

- Creating a system for training and certifying mediators and facilitators.
- Developing ethical standards for alternative justice practitioners.
- Providing interdisciplinary training (law, psychology, sociology).

5. Ensuring neutrality:

- Developing mechanisms to guarantee impartiality of mediators.
- Creating a system for recusal of mediators in case of conflicts of interest.
- Regular evaluation and monitoring of mediators' activities.

6. Considering victims' interests:

- Developing mechanisms for protection and support of victims.
- Ensuring the victim's right to voice in the process.
- Creating a system of psychological support for victims.

7. Rehabilitative approach to offenders:

- Developing resocialization and reintegration programs.
- Creating mechanisms for monitoring and support after program completion.
- Ensuring access to educational and professional programs.

8. Community participation:

- Involving local communities in alternative justice processes.
- Creating mechanisms for public oversight.
- Conducting information campaigns to raise public awareness.

9. Gender sensitivity:

- Considering gender aspects in program development and implementation.
- Ensuring gender balance among mediators and facilitators.
- Developing special protocols for cases related to gender-based violence.

10. Monitoring and evaluation:

- Developing a system of program effectiveness indicators.
- Regularly conducting independent evaluations.
- Creating feedback mechanisms from process participants.

11. Flexibility and adaptability:

- Ensuring the possibility of adapting programs to various types of conflicts.
- Regular review and update of programs based on gained experience.
- Creating mechanisms for implementing innovations.

12. Integration with the traditional justice system:

- Developing clear criteria for referring cases to alternative justice.
- Creating mechanisms for interaction between alternative and traditional justice.
- Ensuring recognition of alternative justice outcomes by the judicial system.

13. Use of technologies:

- Implementing online platforms for mediation and conferences.
- Creating electronic systems for record-keeping and monitoring.
- Ensuring data protection and confidentiality when using technologies.

These standards should be adapted to the specific national context, considering the legal system, cultural features, and socio-economic conditions of the country. It is also important to ensure ongoing dialogue between practitioners, scholars, and policymakers to improve the alternative justice system.

INFORMED CONSENT STATEMENT. Not applicable.

DATA AVAILABILITY STATEMENT. The data presented in this study are available upon request from the corresponding authors.

CONFLICTS OF INTEREST. The authors declare no conflicts of interest.

ETHICS STATEMENT. Our institution does not require ethical approval for reporting individual cases or case series.

FUNDING STATEMENT. The authors did not receive any funding for this study.

Reference:

- [1] Arutyunyan A. A. Mediation in criminal proceedings: Abstract of dissertation... Cand. of Legal Sciences. Lomonosov Moscow State University.- Moscow, 2012.
- [2] Belozeroва I. I. Alternatives to criminal prosecution in the criminal process of France // Bulletin of the Moscow State Institute of International Relations of the Russian Foreign Ministry, No. 10, 2016.

-
- [3] Vasilenko A. S. Mediation in the US criminal process. Bulletin of Perm University. Legal Sciences Issue 2 (16) 2012 [URL provided]
 - [4] Zharikov E. V. Differentiation of criminal process as a means of ensuring the safety of persons contributing to criminal proceedings: Abstract of dissertation... Cand. of Legal Sciences. Barnaul, Altai State University, 2004
 - [5] Ivanov A.A. Legal regulation of the institution of plea bargains in the USA: Bulletin of Lobachevsky University of Nizhny Novgorod, 2012, No. 2 (1)
 - [6] Isakova T.V. On the issue of simplified forms of legal proceedings in criminal cases against minors: Bulletin of Udmurt University. Series "Economics and Law". 2013. No. 3.
 - [7] Kuzmina O.V. Restorative justice as an alternative to criminal prosecution // Legal systems of the Republic of Tajikistan and CIS countries: state and problems. Materials of the International scientific-practical conference dedicated to the Honored Lawyer of the Republic of Tajikistan, outstanding scientist, Doctor of Legal Sciences, Professor Sh. Mengliev (Dushanbe, October 23, 2015). - Dushanbe: RTSU, 2015.
 - [8] Course of criminal procedure / Edited by Doctor of Law, Prof. L.V. Golovko. -2nd ed. rev. -M.: Statut. 2017.
 - [9] Mediation. Practical guide on the application of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Scientific and Methodological Center for Mediation and Law. Translation. 2013. -P.7-9 and 28 [URL provided]
 - [10] Mediation in criminal proceedings: textbook / L. A. Shestakova. -Samara: Samara University Publishing House, 2021.
 - [11] Pavlova Z. Is it possible to apply mediation in criminal proceedings? // Criminal-Executive Law. No. 2 2020.
 - [12] Savchenko V.N., Ureneva O. V. Mediation in criminal proceedings: Bulletin of Chelyabinsk State University. 2015. No. 25. Law. Issue 45.
 - [13] Spasovich V. Textbook of Criminal Law. Vol.1. - St. Petersburg, 1863
 - [14] Decree of the President of the Republic of Uzbekistan dated January 28, 2022, No. UP-60. [URL provided]
 - [15] Khairiev N.I. Intensification of criminal proceedings: Dissertation... Doctor of Legal Sciences. T., Institute of the National Guard of the Republic of Uzbekistan. 2019.
 - [16] Chigrin D. A. State prosecution in the Russian criminal process: problems of formation and maintenance (comparative legal research). Abstract of dissertation... Cand. of Legal Sciences. Ufa, Samara Research University, 2018.
 - [17] Shagaeva R. M. International standards of simplified proceedings in criminal cases: Rule of Law: Theory and Practice. No. 1 (43). 2016.
 - [18] Reponse ministerielle nA 42-282 // Journal officiel de la Republique Francaise. 1991. 7 oct.
 - [19] Ludwiczak F. Les procedures alternatives aux poursuites: une autre justice penale. Paris, 2015.