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## ПРОБЛЕМИ ЗАБЕЗПЕЧЕННЯ РОЗГЛЯДУ КРИМІНАЛЬНОГО ПРОВАДЖЕННЯ НА ПІДСТАВІ УГОД НЕЗАЛЕЖНИМ І БЕЗСТОРОННІМ СУДОМ

**Анотація.** Конвенція про захист прав людини та основоположних свобод містить положення про те, що кожен має право на справедливий і публічний розгляд його справи упродовж розумного строку незалежним і безстороннім судом, встановленим законом, який вирішить суперечку щодо його прав та обов'язків цивільного характеру або встановить обґрунтованість будь-якого висунутого проти нього обвинувачення. У конструкції права на справедливий суд гарантія розгляду справи незалежним та безстороннім судом має першорядне значення. Не випадково в усіх національних законодавствах дане положення знаходить своє закріплення як загальна засада судоустрою та судових проваджень. В статті досліджуються питання забезпечення права особи на справедливий і публічний розгляд його справи незалежним і безстороннім судом, встановленим законом, при направленні прокурором до суду обвинувального акту з підписаною стороною угодою про визнання винуватості. В роботі використані методи моделювання, абстрагування, узагальнення. Проблема визначення суду, який розглядатиме кримінальне провадження при винесенні ухвали суду про виділення справи в окреме провадження у зв'язку укладенням угоди про визнання винуватості розглядається у системному зв'язку із правотлумачною практикою Європейського суду з прав людини, яка формулює підходи до розуміння понять «суд створений на підставі закону» та «неупереджений суд». Розроблені пропозиції, спрямовані на алгоритмізацію процесуального порядку виділення в окреме провадження кримінального провадження щодо особи (осіб), з якою досягнуто угоду, та визначення суду, який розглядатиме це провадження. Встановлено, що при укладенні угоди про визнання винуватості під час підготовчого провадження з однією особою, яка вчинила злочин у співучасті, кримінальне провадження щодо цієї особи обов'язково підлягає виділенню в окреме провадження, яке реєструється як таке, що надійшло до суду в день постановлення ухвали суду про виділення та підлягає автоматизованому розподілу в загальному порядку. Виявлено, що суддям, які розглядали провадження на підставі угоди, важко абстрагуватися від обставин, які стали їм відомі під час ухвалення вироку на підставі угоди та бути неупередженими, адже у них вже склалося уявлення про обставини кримінального правопорушення та винуватість обвинувачених.

**Ключові слова:** інститут угод; угода про визнання винуватості; угода про примирення; кримінальне провадження на підставі угод; неупереджений суд; безсторонній суд.

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## PROBLEMS OF ENSURING THE CONSIDERATION OF CRIMINAL PROCEEDING ON GROUNDS OF TAKING A PLEA BARGAIN BY INDEPENDENT AND IMPARTIAL COURT

**Abstract.** *The Convention on Human Rights and Fundamental Freedoms contains the provision that everyone is has a right to a fair and public consideration within a reasonable period of time by an independent and impartial court established by law that resolves a dispute over his civil rights and duties or establishes the validity of any charge against him. In the structure of the right to a fair trial, the guarantee of the case consideration by an independent and impartial court is of paramount importance. It is no coincidence that in all national legislations this provision finds its consolidation as a general foundation of the court system and court proceedings. The article investigates the issue of ensuring the right of an individual to a fair and public trail by an independent and impartial court established by law after sending by a prosecutor a bill of indictment to the court with a plea bargain by parties. Methods of modelling, abstraction and generalisation were used in the research work. The problem of determining the court which will consider a criminal proceeding at the time of passing judgement on singling out a case in the individual proceeding in connection with taking a plea bargain is considered in the systemic connection with law-interpretive practice of the European Court of Human Rights which formulates approaches to understanding the concepts of "court established on grounds of law" and "impartial court". Developed proposals are aimed at the algorithmisation of procedure for singling out in the individual proceeding the criminal proceeding against an individual (or in-dividuals) with whom the bargain was taken, and the judgement of the court which will con-sider a case. It is established that when taking a plea bargain during the preparatory proceed-ing with one individual who committed a crime of complicity, the criminal proceeding against this individual must be singled out in the individual proceeding which is registered as received by the court on the day of the court judgement on singling out and is subject to automated dis-tribution in the general order. It is established that it is difficult for judges, who considered the proceeding on grounds of the bargain, to abstract away from the circumstances that became known to them at the time of passing judgement on grounds of the agreement and be impartial because they already have an idea of the circumstances of the criminal offence and the guilt of the accused.*

**Keywords:** *Institution for Bargains, agreement on guilty plea, agreement of reconciliation, criminal proceeding on grounds of agreement, independent court, impartial court.*

### INTRODUCTION

The introduction of the Institution for Bargains in the criminal proceeding into the legal system of Ukraine is related to taking into account by our state Recommendation No. R (87)18 of the Committee of Ministers of the Council of Europe to member states On the Simplification of Criminal Justice of September 17<sup>th</sup>, 1987. This institute was ambiguously taken by the legal community, but later became quite

popular law enforcement practice. However, as of 2017 the prosecution authorities send every eighth bill of indictment to the court with the agreements on reconciliation or guilty plea (721, or 12.6 %); almost every fifteenth bill of indictment (8007, or 6.5 %) is sent to the court with agreements on guilty plea by the police authorities; for authorities of the State Fiscal Service of Ukraine this indicator is 408 out of 813 (or 50.2 %) and for the authorities of the Security Service of Ukraine is 241 (or 22,8 %) [1].

Given the novelisation of the criminal procedural legislation, the operation of the Institute for Bargains in the criminal proceeding for a short time, its demand for by law enforcement practice, the problems which arise in the implementation of the norms that establish this institution, scientists are constantly turning to the consideration of the most pressing issues of proceeding on grounds of agreements [2–4]. The evidence of the relevance of this Institute introduced by the legislator is an appeal to it at the level of dissertation research only for the past few years of the following scientists: V. Povzyk (*Legal Consequences of Guilty Plea by a Suspect or an Accused: Comparative-Legal Research*, 2013); O. O. Leliak (*Plea Bargain in Criminal Proceeding of Ukraine*, 2015); R. V. Novak (*Criminal Proceeding on Grounds of Bargains in Ukraine*, 2015); O. V. Stratii (*Psychological and Legal Particularities of Criminal Proceeding on Grounds of Bargains*, 2015); H. Ye. Tiurin (*Organisational and Legal Bases of the Prosecutor's Participation in the Criminal Proceeding on Grounds of Bargains*, 2017); H. Yu. Saienko (*Proceeding on Grounds of Bargains in Criminal Proceeding of Ukraine*, 2017), A. S. Trekke (*Criminal Proceeding on Grounds of a Plea Bargain*, 2018); I. O. Kislitsina (*A Prosecutor's Role in the Criminal Proceeding on Grounds of Plea Bargains: Issues of Theory and Practice*, 2018) and the others. The essence of bargains in the criminal proceeding; procedural order of their taking; determination of the scope of rights and duties of the parties of the bargain; ensuring the victim's rights in the proceeding on grounds of bargains; issues related to the legal consequences of non-compliance with the plea bargain and the like were investigated by such domestic scientists as Yu. P. Alenin, V. I. Boiarov, I. V. Hloviuk, V. H. Honcharenko, Yu. M. Hroshevyi, P. M. Karkach, L. M. Loboiko, V. T. Maliarenko, V. T. Nor, D. P. Pysmennyi, M. A. Pohoretskyi, P. V. Pushkar, D. B. Serheieva, O. Yu. Tatarov, I. A. Titko, O. M. Tolochko, V. M. Trofimenko, A. R. Tumanians, L. D. Udalova, M. I. Khavroniuk, O. H. Shylo, M. Ye. Shumylo, O. H. Yanovska and many others.

Despite the fact that the criminal process can include certain theoretical development of topical issues of the Institute of Bargains in criminal proceedings, law enforcement practice periodically faces the presence of gaps in regulatory control, legal uncertainty of individual provisions, absence of unity in understanding by law enforcers of some or other provisions of Chapter 35 of Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC of Ukraine or the CPC) *Criminal Proceeding on Grounds of Bargains*.

One of such complex problems of law enforcement, which is ambiguously solved in practice, is the problem of interpreting and application of the provision contained in Part 8, Art. 469 of the CPC of Ukraine, that is, determination of the procedural order of singling out in individual proceeding the criminal proceeding concerning the individual (individuals) with whom the bargain was taken and ensuring the appropriate structure of court which has to consider these proceedings. In particular, it is possible to cite such an example from judicial practice. When terminating the criminal proceeding in which two individuals (Individual\_1 and Individual\_2) were informed of suspicion of committing a crime under Part 2 Art. 307 of the Criminal Code of Ukraine, the prosecutor drew up a bill of indictment and sent it to the court. At the same time, along with a bill of indictment a plea bargain which was taken with Individual\_2 was sent to the court as well. In the preliminary case consideration, the local court passed judgement on grounds of the bargain on Individual\_2 and in the same composition it continued consideration of criminal proceeding against Individual\_1 and passed judgement of guilt on Individual\_1 [5].

Given that plea bargain or guilty plea can be initiated at any time after an individual is informed on suspicion at the stage of pre-trial investigation and by the time the court enters the deliberation room at the trial stage, a fair question arises regarding determining the moment of singling out in the individual proceeding against the individual with whom a plea bargain was taken. In addition, it should be solved the following question: whether the court should have been in view of the provision of Part.8, Art. 469 of the CPC to single out the materials of the case against Individual\_1 Individual\_2 in the individual proceeding? Is the court which passed judgement on grounds of bargain entitled to consider criminal proceeding against Individual\_1? Are there any grounds to assert that one or both of the sentences were taken by the illegal composition of the court?

Therefore, the article's aim is the analysis of the legal content of Part 8, Art. 469 of the CPC of Ukraine in order to provide its interpretation in a system connection with the other norms of the current criminal procedural legislation as well as with law-interpretive practice of the European Court of Human Rights (hereinafter referred to as the ECHR) which formulates approaches to understanding the concepts of "court established on grounds of law" and "impartial court". In addition, the aim of the article is to develop proposals aimed at algorithmisation of the procedural order of singling out in the individual proceeding the criminal proceeding against an individual (individuals) with whom a bargain was taken and the ruling of the court which will consider these proceedings, ensuring in this way the right of the accused to a fair and public consideration of their cases within a reasonable period of time by an independent and impartial court established by law.

## 1. MATERIALS AND METHODS

To achieve the aim set in the article and formulate reasonable conclusions, in the process of work it was used a complex of general scientific and special methods

of scientific research which are traditional for legal science: dialectical, formal-logical, system-structural, hermeneutical, modelling, abstraction and generalisation. Dialectical method, having included the entire system of categorical apparatus of dialectics and guided in the process of cognition by the principles of reflection, activeness, comprehensiveness, the ascent from the single to the general and vice versa from the general to the single, interrelation of quantitative and qualitative characteristics, determinism, unity of induction and deduction, analysis and synthesis, allowed to find out the essence of the problem which arise at the time of ensuring the consideration of a criminal proceeding on grounds of bargains by independent and impartial court and provide an integrated approach for the entire research. The ascent of thinking from the specific to the abstract with the subsequent transition from the abstract to the specific made it possible to establish the essential, typical and generalised features which are proper to understanding the essence of an independent and impartial court, to single out individual and specific features which are proper to a criminal proceeding on grounds of bargains. Formal-logical (dogmatic) method became the basis for the revealing and improvement of the concepts that make up the content of the Institute for Criminal Proceeding on grounds of bargains and consideration of a criminal proceeding on grounds of bargains by an independent and impartial court. Applying the system-structural method of analysis of social phenomena allowed to consider a criminal proceeding on grounds of bargains since the moment of preparation of a bill of indictment by the prosecutor up to the moment of its adoption for consideration by the court as an integral internally determined of the systemic mechanism as well as highlight its stages.

With the help of hermeneutical method legal meaning of individual norms of the criminal procedure legislation, shortcomings of regulatory control of criminal procedure legal relations are revealed, discrepancy of law enforcement practice regarding singling out the criminal cases in individual proceedings is stated, the approaches to understanding the meaning of individual standards through law-interpretive practice of the ECHR are considered. Methods of modelling and abstraction allowed to project an algorithm of the prosecutor's actions and the court which are aimed at preventing violations of the person's right to a fair trial. Method of generalisation provided an opportunity to unite single facts in unified whole and formulate valid conclusions, improve regulatory control of the issues under examination and overcoming the problems existing in law enforcement.

The above methods were applied in interrelation which contributed to the completeness of the research and the validity of the formulated scientific findings and proposals.

## **2. RESULTS AND DISCUSSION**

### *2.1. Particularities of the procedural order of taking a bargain*

Bargain is a mutual voluntary agreement of the parties of criminal proceeding that is formalised in the relevant procedural document and aimed at settlement of the

criminal law conflict, reaching agreement on the determination of the punishment agreed by the parties to the individual who is guilty of committing a criminal offence, and imposing additional obligations on him [1-4]. The consequence of such an agreement is the application of a differentiated procedure of criminal proceeding and passing judgement on grounds of plea bargain.

A plea bargain between a prosecutor and a suspect or an accused can be taken if, as a rule, the damage is caused to the state or public interests in criminal proceeding for criminal offences, crimes of small and medium gravity, serious and the gravest crimes (Part 4, Art. 469 of the CPC). Taking a plea bargain can be initiated at any time after an individual is informed on suspicion and up to the moment the court enters the deliberation room for passing judgement [6; 7].

If a criminal proceeding is conducted against several individuals who are suspected or accused of committing one or more criminal offences, and the agreement on taking a plea bargain is reached not with all suspects or the accused, the bargain can be taken with one (several) of suspects or the accused (Part 8, Art. 469 of the CPC).

Also, the CPC of Ukraine stipulates the obligatory requirement that criminal proceeding against the individual (individuals) with whom agreement was reached is subject to singling out in the individual proceeding (Part 8, Art. 469 of the CPC). Since the provision of Part 8, Art. 469 of the CPC is general, it is possible to conclude that the obligation to single out in the individual proceeding the proceeding which can be conducted this or another office-holder who has the relevant competence depending on the stage of the criminal process. However, if the agreement is reached at the stage of pre-trial investigation, it is the obligation of the prosecutor who has taken a plea bargain, but at the stage of preliminary proceeding or judicial consideration it is the court's obligation.

It should also be noted that the literal interpretation of the provisions of Part 8, Art. 469 of the CPC to conclude that it is a criminal proceeding, but not some certain papers on its case that is subject to singling out. Besides, the criminal proceeding *against the individual (individuals)* with whom the agreement was reached is subject to singling out as well.

The Plenum of the Supreme Specialized Court of Ukraine on Civil and Criminal Cases (hereafter referred to as the HSCU) in its resolution of 11.12.205 No. 13 On the Practice of Conducting Criminal Proceedings by the Courts on grounds of bargains. In particular, the Court noted, ‘‘5. If a criminal proceeding is conducted against one individual who is suspected/accused of committing several individual criminal offences among which there are a serious or the gravest crime as well as a crime of minor gravity in the result of which the victim was harmed, a plea bargain can be taken with regarding a crime of minor gravity. *A criminal proceeding in this case should be singled out in the individual proceeding* the decision about which the prosecutor presents for consideration, and the judge passes judgement’’.

“9. ... In case if a criminal proceeding is conducted against several individuals who are suspected/accused of committing one or more criminal offences, and agreement on taking a bargain was reached not with all suspects / the accused, in accordance with the requirements of para. 1, Part 8, Art. 469 of the CPC, a bargain can be taken with one (several) of suspects / the accused. A criminal proceeding against an *individual (individuals) with whom the agreement on a plea bargain was reached*, on grounds of the prosecutor’s decision or the court judgement, is subject to singling out in the individual proceeding depending on at what stage of criminal proceedings the parties initiated the process of taking a bargain” [8].

Thus, if a prosecutor in the criminal proceeding against two individuals took a bargain with one suspect, by his decision he should single out the criminal proceeding against this individual in the individual proceeding, a bill of indictment against the individual with a signed plea bargain should be immediately sent to the court (Part 1, Art. 474 of the CPC). Besides, in accordance with the requirements of the Regulations on the Procedure for Maintaining a Single Register of Pre-Trial Investigations approved by order of the Prosecutor General’s Office of Ukraine from 06.04.2016 No. 139 when singling out from the criminal proceeding the case papers regarding a certain individual, the information on such singling out is fixed in *newly-created criminal proceeding* with a new number assigned. In this case, a requisite "singled out" is used (para. 12) [9]. A bill of indictment against the individual who committed a crime of complicity with the individual who took a plea bargain with the prosecutor and with the individual who refused to a plea bargain, also, according to the requirements of the CPC, should be sent to the court in the general order. The prosecutor’s strict compliance with the requirements of the law must ensure the legality of the composition of the court which will consider a case since the court receives two criminal proceedings with different numbers. In the case we consider, the prosecutor did not comply with the requirements of Part 8, Art. 469 of the CPC.

If a plea bargain was taken in the court consideration, according to paras. 2.21, Section 2 *Regulations on recordkeeping in local general courts, appellate courts of regions, appellate courts of the cities of Kyiv and Sevastopol, the Appellate Court of the Autonomous Republic of Crimea and the Higher Specialized Court of Ukraine for Civil and Criminal Cases* (hereinafter referred to as the HSCU) [10], in case of singling out the materials of criminal proceeding in the individual proceeding, new court case (case papers of criminal proceeding) is registered as received by the court on day of the adoption of the relevant procedural document (resolution, judgement) of the court. It is assigned a new single unique number. *After that, the case is subject to automated distributing in the general order.* The copies of procedural documents from the previous case certified by the judge, which are important for this case, are added to the new case.

Therefore, in case of taking a plea bargain during preparatory proceeding with one individual who committed a crime of complicity, the criminal proceeding against this

individual (*with whom the agreement on plea bargain was reached*) is subject to singling out in the individual proceeding which is registered as received by the court on the day of the court judgement and is subject to automated distribution in the general order.

## 2.2. *Statement of the fact of violation of the right to a fair trial*

Going back to the practical situation that is given above, we recall that the court in the preparatory proceeding did not pay attention to the need of singling out the case in the individual proceeding, passed judgement on grounds of a plea bargain as well as appointed a trial, and subsequently, considered the case against the second accused and found a guilty verdict. Considering the issue of which court (composition of the court) is entitled to execute justice in the current situation, it can be noted that the court did not comply with the requirements of the law aimed at ensuring the consideration of the case by the court established by law. Perhaps this is a consequence of the absence of legal certainty in the regulatory control of the procedure for singling out the case in the individual proceeding if the prosecutor and the suspect (an accused) reached an agreement on plea bargain. When modeling the algorithm of the court's actions in the current situation, it can be assumed that the court had to single out in the individual proceeding the case on Individual\_2 with whom an agreement is reached. After that it had to be registered as received by the court, be given a new single unique number and be sent for the execution of automated distribution in the general order. Non-compliance with this procedure led to the violation of the right to a court established by law.

Para 1, Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the CPHR) [11] *Right to a fair trial* stipulates that "Everyone has a right to a fair and public consideration of his case within a reasonable period of time by an independent and *impartial court established by law* which will resolve a dispute about rights and obligations of civil nature or establish the validity of any criminal charge against him...".

According to the Law of Ukraine On Judicial System and Status of Judges, "Every-one is guaranteed the protection of his rights, freedoms and interests within a reasonable period of time by an *independent, impartial and fair court established by law*" (Art. 7) [12].

Article 21 of the CPC of Ukraine *Access to Justice and the Binding Nature of Court Judgements* declares that everyone is guaranteed the right to a fair consideration and resolution of the case within a reasonable period of time by an independent and *impartial court established by law*.

So, the immanent feature of the court in the context of the right to a fair trial is, first, the legality of the composition of the court which considers the case, and second, its unbiased character (impartiality).

As for the first requirement of § 1, Art. 6 of the CPHR, that is, *court established by law*, it is possible to state the following.

The analysis of the practice of the ECHR and legal literature makes it possible to conclude that the criteria for determining the concept of "court established by law" are: 1) legal basis for the existence of the court; 2) legal personality of the court (its jurisdiction and powers); 3) the proper composition of the court, that is, the appropriate number of judges and the legal grounds for their participation in a specific process [13].

As noted by the ECHR in one of its judgements, 'according to case law of the Court, the term 'established by law' in Art. 6 of the CPHR is aimed at ensuring that "the judicial branch of power in the democratic society is not dependent on the executive branch, but is guided by the law adopted by Parliament"..24. The phrase "established by law" applies not only to the legal basis of the very existence of the "court", but also to the observance by such a court of *certain rules governing its activities*" [14]. Thus, failure to comply with the procedural order of the court ruling which must execute justice leads to the illegality of the judgement passed by it.

As for the sentence that was passed by the court for Individual\_1, it can also be noted that, from our point of view, the court was neither unbiased, nor impartial, as required by law. This fact was paid attention to by the Plenum of the HSCU, having noted that despite the fact that the sentence imposed on grounds of the plea bargain agreement (in respect of one of several individuals) has no prejudicial significance for the criminal proceeding against the other individuals, and *guilty plea of the first individual is not the proof of guilt of the latter ones* (para. 3, cl. 9, 10 of the Resolution of the Plenum of the Supreme Specialized Court on Civil and Criminal Cases On the Practice of Consideration of Criminal Proceeding by the Courts on Grounds of Plea Bargains dated 11.12.2015 No. 13), the participation of a judge (judges) in the consideration of criminal proceeding against two individuals, with one of whom the plea bargain was taken, calls into question their impartiality [8].

According to the requirements of Art. 472 of the CPC, in the guilty plea agreement specifies its parties, formulation of suspicion or charge and its legal qualification with specification of the article (part of the article) of the law of Ukraine on criminal liability, circumstances essential for the relevant criminal proceeding, unconditional recognition by the suspect or the accused his guilt in committing a criminal offence, obligations of the suspect or the accused to cooperate in exposing a criminal offence committed by another individual (if appropriate agreements were reached), conditions for partial discharging the suspect or the accused from civil liability in the form of compensation to the state of damage in the result of committing a criminal offence by him, arranged punishment and consent of the suspect or the accused to its imposition or the imposition of punishment and release from its enduring with the test, the consequences of the conclusion and approval of the agreement under Art. 473 of the CPC and the consequences of failure to comply with the agreement.

Therefore, for the court (or judges) that considered the plea bargain agreement in which the individual during the consideration of the criminal proceeding recognised all the circumstances of the criminal offence alleged to him, executing justice in respect of his complice, it is objectively difficult to abstract away from the circumstances that became known to it at the time of the passing judgement on the basis of the plea bargain and be impartial because it (the court) already has an idea of the circumstances of the criminal offence and the guilt of the accused.

In dictionaries, when interpreting the word "impartial", the connotation is that it is one that does not have a deceptive, negative or pre-formed opinion [15], impartial, devoid of prejudice, subjectivity, uninterested, unbiased[16]. As noted in cl. 23 of the conclusion of the Consultative Council of European Judges, "the impartiality of the court provides for the performance of judges 'duties without any favouritism or bias or sympathy" [17]. As far back as in 1984, in Case of Piersack v. Belgium, the ECHR formulated two criteria – objective and subjective – for evaluating the impartiality of judges [18]. This approach of the ECHR is reflected in the well-known Case of Bilukha v. Ukraine (No. 33949/02, November 9th, 2006): "49. According to the established practice of the Court, the existence of impartiality in accordance with para. 1, Art. 6 must be determined by subjective and objective criteria. According to the objective criterion, among the other aspects, it is determined if the court as such and its composition ensured the absence of any doubt in its impartiality" [19].

Also, in Case of Ferrantelli and Santangelo v. Italy No. 19874/92 of September 7<sup>th</sup>, 1996, the ECHR established that doubts and fears of the applicants for the impartiality of the court were justified. The presiding judge and rapporteur in their case at the national level was the same judge who a few years ago, being a presiding judge and rapporteur, dealt with the case against their complices, and in the judgement concerning the latter, much attention was paid to the applicants [20]. Thus, without going into details on consideration of the issue of the court's partiality, we will note that on our belief, the composition of the court that examined the case on Individual\_1 after passing judgement on grounds of the plea bargain, does not stand the test on the subjective criterion of impartiality developed by the ECHR because the judges had the belief regarding the facts of the crime committed by Individual\_1 and Individual\_2 in comlicity, the actual circumstances of the case, form of guilt, and therefore, the accused could not count on justice during the court consideration of his case.

## CONCLUSIONS

Criminal proceeding on grounds of plea bargains is a modern popular practice form of resolution of the criminal law conflict. Despite the fact that the theory of criminal procedure can assert a certain theoretical development of topical issues of the Institution for Bargains in criminal proceeding, law enforcement practice is

faced with the presence of regulatory gaps, legal uncertainty of individual provisions and absence of unity in understanding by law enforcers of the rules of law which are included in Chapter 35 of the CPC *Criminal Proceeding on Grounds of Bargains*. In case if a criminal proceeding opened against several individuals who are suspected or accused of committing one crime, and agreement on taking a plea bargain is not reached with all suspects or accused, an agreement can be concluded with one individual. The criminal proceeding against an individual with whom an agreement was reached is subject to singling out in the individual proceeding. Given the fact that the provisions of Part 8, Art. 469 of the CPC is general, the obligation to single out the criminal proceeding in the individual proceeding can be fulfilled by the official who has the appropriate competence for this, depending on the stage of the criminal process. However, if the plea bargain was taken at the stage of pre-trial investigation, it is the obligation of the prosecutor who took a plea bargain, but when it comes to the stage of preparatory proceeding or court consideration it is the obligation of the judge (court). At the stage of pre-trial investigation, the information on this singling out should be fixed in the new criminal proceeding, with giving a new number and a requisite "singled out". When complying with the requirements of law stipulated by Part 8, Art. 469 in the trial stage, the judge (court) is obliged to single out the case in the individual proceeding, to register it as received by the court on the day of the court judgement, and send it to the automated distribution in the general order. Failure to comply with this requirement of the law results in illegality of court judgements rendered by the court and violation of the right of an individual to a fair trial. One and the same composition of the court is not entitled to consider the criminal proceeding of individuals who committed a crime of complicity if there was taken a plea bargain with one of suspects (the accused).

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