How to Cite:
Shumilin, S. F., Kolmakov, P. A., Nasonov, A. A., Novikova, E. A., & Shumilina, O. S. (2021). Institute of consent with accusation in criminal proceedings of Russia and foreign countries. *Linguistics and Culture Review*, *5*(S3), 1001-1009.
https://doi.org/10.21744/lingcure.v5nS3.1697

Institute of Consent with Accusation in Criminal Proceedings of Russia and Foreign Countries

Sergey F. Shumilin
Belgorod law Institute of MIA of Russia named after I.D. Putilin, Belgorod, Russia

Petr A. Kolmakov
Pitirim Sorokin Syktyvkar State University, Syktyvkar, Komi Republic, Russia

Aleksander A. Nasonov
Voronezh Institute of the Ministry of the Interior of Russia, Voronezh, Russia

Ekaterina A. Novikova
Belgorod law Institute of MIA of Russia named after I.D. Putilin, Belgorod,Russia

Oksana S. Shumilina
Belgorod National Research University, Belgorod, the Belgorod region, Russia

***Abstract*---**The current study attempts to present the effects of a comparative legal study regarding the legal consequences of consent with accusation in Russia and foreign countries' criminal processes. It has been established that the institution of consent with accusation in the Russian criminal process does not have a significant effect on its reduction and also does not determine the development and application of alternative measures of punishment for committing crimes. According to the current Criminal Procedure Code of Russia, consent with accusation concerning committing crimes of small and medium gravity entails the same consequences: release from criminal liability and reduction of the amount of punishment. Following the principle of fairness, the authors substantiated the most appropriate alternative penalties provided by the criminal procedure legislation of Germany and France.

***Keywords*---**agreement accusation, conflict settlement, criminal liability, criminal prosecution, criminal-legal, differentiation punishment, exemption.

***Corresponding author**: Shumilin, S. F.; Email: sergejshumilin@yandex.ru*
Manuscript submitted: 18 June 2021, Manuscript revised: 09 Sept 2021, Accepted for publication: 31 Oct 2021

Introduction

The institution of consent to the prosecution emerged simultaneously with the emergence of criminal procedure as a method of dispute resolution arising in the event of a crime. In the beginning steps of the criminal process development, agreement with the accusation, which was expressed in the fact that the perpetrator of the crime confessed his guilt in court proceedings, mainly influenced the type and amount of punishment imposed by judges. At the same time, the admission of guilt influenced the structure of the criminal process, since it exempted judges from the obligation to examine evidence, i.e., to conduct a full-fledged trial.

The study of works focused on the examination of the genesis and development of consent with the prosecution shows that the admission of guilt was the reason for the emergence of the institute of plea bargaining ("a deal on the admission of guilt"). Several socio-economic and political contributors facilitated the introduction of this legal institution into the criminal process of various countries: the lack of sufficient human resources for prosecutors to support charges in a classic jury trial; the indifference of society to court proceedings in criminal cases; the wish of prosecutors to circumvent the imposition of excessively harsh penalties for certain crimes, etc. These issues were the subject of discussion of a significant array of works by Russian and foreign authors (Alschuler, 1979; Heydebrand & Seron, 1990; Fisher, 2003; Fix-Fierro, 2003; Garoupa & Stephen, 2006), which allows us to concentrate on other matters connected to the expansion of the institution of plea bargaining in the modern criminal procedure of Russia and foreign countries.

The plea-bargaining institute did not stop in its development and gave a new impetus to the recognition of the prosecution as a factor, which, in turn, served as the foundation for the creation and improvement of shortened (accelerated) forms of the criminal process. At present, the reduced (accelerated) forms of the criminal procedure have acquired such significant importance that they have found their consolidation in international documents. In particular, the Committee of Ministers of the member states of the Council of Europe not only approved the idea of out-of-court settlement of criminal conflicts (disputes) in its documents but also proposed specific models for such a settlement (Recommendation № R (87) 18 of the Committee of Ministers to member states regarding the clarification of criminal justice1). In this regard, a comparative analysis of the institution of consent with the charge influence on the criminal process of Russia and foreign states is of scientific interest.

Materials and Methods

The current study is based on scientific techniques of examination and synthesis and such private, scientific techniques as traditional, systemic, comparative, and formal-logical.

Main part

Russia did not stand aside from the widespread trend towards introducing shortened sorts of criminal procedures based on the consent of the perpetrators with the charge brought against them. Given the Criminal Procedure Code of the RSFSR, adopted in 1960 (Ob utverzhdenii Ugolovno-processual'nogo kodeksa RSFSR), an abbreviated form of criminal procedure was established for certain types of crimes that did not pose a great public danger (later they were called the crimes of small or medium severity). Concerning the characters who have done such crimes for the first time, if there are the grounds and conditions specified in the Criminal Code of the RSFSR (hereinafter referred to as the Criminal Code of the RSFSR) (Ugolovnyj kodeks RSFSR. Utverzhden Verhovnym Sovetom RSFSR 27.10.1960) and in the Criminal Procedure Code of the RSFSR, criminal cases with the prosecutor's consent could be terminated at the stage of preliminary investigation, and to the persons exempted from criminal liability, the following measures of public influence were applied: a) consideration of a case by a comrade court at the place of work, study or residence of the person; b) consideration of the case by the commission on juvenile affairs; c) transfer of the person to the responsibility of a labor or educational collective. The CPC of the RSFSR (Article 10) also provided for the possibility of refusal to initiate a criminal case on an insignificant crime, if the fact of such a crime was obvious, and the person who committed it could be corrected by applying the measures of public influence. This form of criminal-legal conflict settlement was excluded from the CPC of the RSFSR in 1996 (Nahak, 2017; Gede Budasi & Wayan Suryasa, 2021).

It should be noted that the consent of a person with the charge of committing a crime was a prerequisite only for the termination of the criminal case with bail, since the Criminal Procedure Code of the RSFSR (part 3, article 9) stipulated that a person cannot be transferred on bail if he does not consider himself guilty or insists on hearing the case in court. In 1996, the Art. 9 of the Code of Criminal Procedure of the Russian Federation was set forth in a different edition. The basis for deciding the issue of the criminal case termination was the victim's statement of reconciliation in this case, but at the same time, the consent with the prosecution was not required from the person in respect of whom the case was terminated. The decision to terminate the criminal case with transfer to a comrade court could be appealed by the person in respect of whom it was made, as well as by the victim (part 2, article 7 of the CPC of the RSFFSF), and the decision to terminate the criminal case with a referral to the Commission on Minors - the accused, his legal representative and the victim (part 2, article 8, the Code of Criminal Procedure of the RSFSR).

In 1985, the Code of Criminal Procedure of the RSFSR was supplemented with an independent section called "Protocol form for the preparation of materials" (Articles 414-419), where a ten-day period for pre-trial proceedings (part 1, Article 414) and a fourteen-day period for consideration were established for some crimes in court (Article 419). The person, in respect of whom the preparation of the materials of the criminal case was carried out in this form, was explained the essence of the charge, his right to familiarize himself with the materials of the case, have a defense lawyer, file petitions and appeal against the actions of the body of inquiry (part 4, article 415 of the Criminal Procedure Code of the RSFSR).

Thus, to send the criminal case to the court, consent with the prosecution was not required, which means that the person in respect of whom the materials were prepared in a protocol form could only express his disagreement when the court considered the case (Kupryashina et al., 2019). The regulation of the special procedure for making a decision under the rules of Chapter 40 of the Criminal Procedure Code of the Russian Federation begins after the preliminary investigation. According to the Part 3, Art. 217 of the Criminal Procedure Code of the Russian Federation, after familiarizing the accused with the materials of the completed criminal case, the investigator explains to the accused his right to petition “on the application of a special procedure for judicial proceedings - in the cases provided for in the Article 314 of this Code” (paragraph 2). If the accused exercises this right, the investigator makes an appropriate entry in the protocol of familiarization with the case materials (part 3 of the article 218, paragraph 1 of part 2 of the article 315 of the Criminal Procedure Code of the Russian Federation).

Accordingly, in Part 1 of the Art. 314 of the Code of Criminal Procedure of the Russian Federation, the following algorithm is established for the court's consideration of a criminal case, according to which a petition is filed for a verdict without a trial. In the preparatory part of the trial, the accused reiterates his agreement with the charge brought against him and that the sentence was passed without a trial. In the original edition of Part 1 of the Art. 314 of the Code of Criminal Procedure of the Russian Federation, this procedure was applied in criminal cases concerning the crimes for which punishment does not exceed 10 years in prison according to the Criminal Code of the Russian Federation (hereinafter - the Criminal Code of the Russian Federation) (The Criminal Code of the Russian Federation).

According to the Part 2, Art. 314 of the Code of Criminal Procedure of the Russian Federation, the court must be sure that: 1) the accused is aware of the nature and consequences of the petition made by him, and this means that it is impossible to appeal on the case verdict on the grounds that the conclusions of the court set forth in the verdict do not correspond to the actual circumstances of the criminal case established by the first court instances (Article 317 of the Code of Criminal Procedure of the Russian Federation); 2) the application was submitted voluntarily and after consultation with the lawyer; 3) the public or private prosecutor and (or) the victim does not object to the stated petition. A prerequisite for holding a court session is the participation of the accused and his defense counsel (part 2, article 316 of the Code of Criminal Procedure of the Russian Federation) (Laberge & Morin, 1995; Prakash et al., 2019).

Further trial in accordance with the Part 1, Art. 316 of the Code of Criminal Procedure of the Russian Federation is carried out in the following order: the parties of the prosecution and the defense act in the judicial debate → the defendant, if desired, utters the last word → the judge decides the verdict. Consequently, the criminal process is reduced only due to the judicial investigation, which is not carried out in this case. The Federal Law of the Russian Federation (March 4, 2013) introduced the Chapter 32.1 “Inquiry in an abbreviated form” into the Criminal Procedure Code of the Russian Federation. A prerequisite for conducting an inquiry in an abbreviated form is the suspect's

acknowledgment of his guilt in committing a crime (clause 2, part 2, article 226.1 of the Code of Criminal Procedure), which is tantamount to agreeing with the prosecution, and gives him the right to file a petition for an inquiry in an abbreviated form. Without going into the details about the inquiry reduction, we will only note the legal consequences of this form of criminal proceedings application. According to the Part 6, Art. 226.9 of the Criminal Procedure Code of the Russian Federation "in the event of a conviction in a criminal case, the inquiry of which was carried out in an abbreviated form, the punishment assigned to the defendant cannot exceed one-half of the maximum term or the size of the most severe type of punishment provided for the crime committed."

Since 2016, a simplified procedure for the consideration of criminal cases by courts in relation to the persons who committed a crime of small or medium gravity for the first time (part 2 and 3, article 15 of the Criminal Code of the Russian Federation) has been applied in the criminal process of Russia, compensated for the damage or otherwise made amends for the harm caused by the crime. In the presence of these conditions, the preliminary investigation body issues a resolution to initiate a petition before the court to terminate the criminal case (criminal prosecution) against the suspect (accused) and to impose a court fine on him and sends it to the court along with the materials of the criminal case (Part 1, Art. 25.1, part 2, article 446.2 of the Criminal Procedure Code of the Russian Federation). The preliminary investigation body sends a copy of the resolution to the suspect, the accused, the victim and the civil plaintiff (part 3, article 446.2 of the Code of Criminal Procedure of the Russian Federation) (Abel & Osborn, 1992; Yasmin, 2016).

Within 10 days the judge shall consider the received petition with the obligatory participation of the suspect (accused), the defense lawyer, if he is involved in a criminal case, the victim and (or) his legal representative, and the prosecutor. Based on the results of the petition consideration, the judge issues a resolution in which he indicates one of the following decisions: 1) to terminate the criminal case (criminal prosecution) and impose a court fine on the suspect (accused) or 2) to refuse to satisfy the petition to terminate the criminal case (criminal prosecution) and the return of the materials of the criminal case to the preliminary investigation body, if the information about the participation of the person in the committed crime, set out in the decision to initiate a petition for the application of a criminal-legal measure to the person in the form of a court fine, does not correspond to the factual circumstances of the case established during the judicial examination of the petition, or a criminal case (criminal prosecution) must be terminated on other grounds (parts 4 and 5, article 446.2 of the Criminal Procedure Code of the Russian Federation).

If the judge decides to impose a court fine, then he sets the time limit for paying the fine, explains to the person the procedure for appealing against the decision and the consequences of evading the fine payment: its cancellation and criminal prosecution (part 2, article 104.4 of the Criminal Code of the Russian Federation). The decision to impose a court fine can be appealed by the person in respect of whom it was made (part 7, article 446.2 of the CPC RF), and then the criminal case will be re-examined by the court of appeal in accordance with the rules established in the chapter 45.1 of the CPC. Thus, the consent or disagreement of

the suspect (accused) with the prosecution does not significantly affect the decisions of both the preliminary investigation body and the judge to release the suspect (accused) from criminal liability with the imposition of a court fine (Holovkin et al., 2021; Joki-Erkkilä et al., 2014).

From this point of view, reduced proceedings in the criminal process of foreign states are of interest. The procedural literature contains sufficiently detailed information on this issue (Girko, 2019; Golovko, 2002; Ugolovnyj process evropejskih gosudarstv: monografiya), therefore, we focus only on certain aspects of abbreviated forms of criminal procedure use in Germany and France. In particular, in the Criminal Procedure Code of the Federal Republic of Germany (hereinafter referred to as the Criminal Procedure Code of the Federal Republic of Germany) (https://www.buzer.de), book six is devoted to special types of proceedings, while the norms of § 407-412 of the said code regulate the implementation of summary proceedings, which is a certain algorithm of actions of the prosecutor, judge and a person accused of committing a criminal offense.

In accordance with § 407 of the CPC of the Federal Republic of Germany, the prosecutor, on the basis of the materials of a criminal offense investigation relating to the jurisdiction of the district judge, applies for the establishment of legal consequences without a trial, provided that the body of inquiry fully clarifies the circumstances of the criminal offense committed by the person (Plyth & Craham, 2020; Ramadani et al., 2021). In the petition, the prosecutor indicates a specific type of legal consequences, from among those specified in § 407 of the Criminal Procedure Code of the Federal Republic of Germany, which he considers proportionate to this misconduct (a fine, deprivation of a driver's license, etc.). If the judge does not see the circumstances precluding the establishment of legal consequences on a summary basis, he satisfies the prosecutor's request (§ 408 par. 3, clause 1 of the CPC FRG), about which he makes a decision that must meet the requirements of § 409 CPC FRG. If the defendant disagrees with the decision, he can appeal it within two weeks, otherwise the decision is tantamount to a verdict that has come into legal force (§ 410 abs. 1 and 3 of the CPC of Germany). A similar type of special proceedings called "Simplified Procedure" is provided in the Art. 495-495-6 of the French Code of Criminal Procedure (hereinafter referred to as the French Criminal Procedure Code) (https://www.legifrance.gouv.fr).

However, in our opinion, the most interesting is the institution of refusal to initiate criminal prosecution, enshrined in the French Criminal Procedure Code, which is based on the consent of a person to be charged with a crime (Mantha et al., 2021; Mungan, 2011). According to the Article 40-1 of the French Code of Criminal Procedure (as amended on July 30, 2020), the prosecutor has received from the body of inquiry the materials about the crime committed by the person whose identity and place of residence are known and in the absence of obstacles to initiate a criminal case against him, the prosecutor has the right either initiate a criminal case, or apply an alternative to criminal prosecution procedure under the Articles 41-1, 41-1-2 or 41-2 of the French Code of Criminal Procedure, or terminate the proceedings, if special circumstances require it, related to the commission of acts (Sykes, 2011; Stroud et al., 2000).

The essence of alternative procedures to criminal prosecution is the following.

- In accordance with the Art. 41-1 of the French Code of Criminal Procedure (as amended on July 30, 2020), the prosecutor personally, through a judicial police officer or an intermediary, has the right to: warn the offender about responsibility; transfer the offender to a medical, social or professional structure for rehabilitation (training, internship in citizenship, etc.); to demand from the offender to resolve the conflict situation created by him in accordance with the law and to compensate the damage caused by him; require the offender not to appear, for a period that cannot exceed six months, in one or more specific places where the crime was committed or where the victim lives; etc.
- Specified in the Art. 41-1-2 of the French Code of Criminal Procedure (as amended on December 24, 2020), the procedure consists in the fact that the prosecutor has the right to propose to a legal entity accused of committing one or more crimes provided by the relevant articles of the criminal and tax codes to conclude a judicial agreement, imposing one of the following obligations: to pay a fine to the state treasury in a certain amount or to submit for a period of up to three and under the control of the French anti-corruption agency a program for the implementation of measures and procedures listed in the paragraph II of the article 131-39-2 of the French Penal Code. If there are the crime victims, they also participate in the conclusion of the agreement. With the consent of the legal entity to conclude an agreement, the prosecutor sends a petition to the court for its approval. The chairman of the court or a judge appointed by him shall consider the application in an open court session with the participation of the legal entity, the victim and their lawyers and, based on the consideration results, take one of the decisions: to approve the agreement or refuse to approve it.
- In accordance with the Art. 41-2 of the French Code of Criminal Procedure (as amended on September 18, 2019) the prosecutor, until a criminal case is initiated , may propose one or several of the measures provided by this article to an individual who has admitted charges of committing one or more offenses for which a penalty is imposed by a fine or imprisonment (five years maximum): pay a fine to the state treasury; refuse in favor of the state from a thing that served or was intended for the commission of a crime or is its result; hand over his vehicle for up to six months for immobilization purposes; submit his driving license to the secretariat of the court for up to six months; submit a hunting license to the court for a period not exceeding six months; perform unpaid work in the public interest in the amount of sixty hours, for a period that cannot exceed six months; within a period not exceeding six months, not to appear at the place or places indicated by the prosecutor, in which the crime was committed or where the victim lives, etc.

The prosecutor's proposal to apply one or more of the twenty-one measures provided in the Art. 41-2 of the French Code of Criminal Procedure, is brought to the attention of the perpetrator, who is explained the possibility of obtaining the assistance of a lawyer, before agreeing to the proposal of the prosecutor. If the guilty party agrees to the proposed measures, the prosecutor applies to the chairman of the court with a motion to approve the agreement, and informs the guilty party and, if necessary, the victim. The president of the court, or a judge

appointed by him, reviews the motion, during which he may question the perpetrator and the victim. Weighing up the outcomes of the investigation, the judge makes one of the decisions: to approve the agreement on the application of the measures proposed by the prosecutor or to refuse the approval. In case of denial to approve the agreement on applying the criteria proposed by the prosecutor, criminal prosecution is initiated and carried out in accordance with the general procedure (Husted et al., 2008; Peay, 2015).

Conclusion

The comparison of the legal consequences of consent with the prosecution in the criminal process of Russia and foreign countries results in the summing-up that the institution of consent with the prosecution in the Russian criminal process does not have a significant effect on its reduction, and most importantly does not determine the development and application of alternative measures of punishment for committing crimes. According to the current Criminal Procedure Code of the Russian Federation, consent to the charge of committing crimes of small and medium gravity entails the same consequences: release from criminal liability and reduction of the amount of punishment. In our opinion, the principle of justice formulated in the Art. 6 of the Criminal Code of the Russian Federation, the application of alternative measures of punishment, as provided for in the Criminal Procedure Code of Germany and France, would be more consistent. The authors do not pretend to be indisputable in their assumption, but they believe that it deserves further discussion by both scientists and practitioners.

References

Abel, G. G., & Osborn, C. (1992). The paraphilias: The extent and nature of sexually deviant and criminal behavior. *Psychiatric Clinics of North America*, *15*(3), 675-687. https://doi.org/10.1016/S0193-953X(18)30231-4

Alschuler, A. W. (1979). Plea bargaining and its history. *Columbia Law Review*, *79*(1), 1-43.

Fisher, G. (2003). *Plea bargaining's triumph: a history of plea bargaining in America*. Stanford University Press.

Fix-Fierro, H. (2003). *Courts, justice, and efficiency: A socio-legal study of economic rationality in adjudication*. Hart Publishing.

Garoupa, N., & Stephen, F. (2006). Law and Economics of Plea-bargaining. *Available at SSRN 917922*.

Gede Budasi, I. & Wayan Suryasa, I. (2021). The cultural view of North Bali community towards Ngidih marriage reflected from its lexicons. *Journal of Language and Linguistic Studies*, *17*(3), 1484–1497

Girko, S. I. (2019). To the question of the implementation of the concept of public safety of the Russian Federation. *Administrative law and process*, (9), 48-52.

Golovko, L. V. (2002). Al'ternativy ugolovnomu presledovaniyu v sovremennom prave [Alternatives to criminal prosecution in modern law].

Heydebrand, W. V., & Seron, C. (1990). *Rationalizing justice: The political economy of federal district courts*. Suny Press.

Holovkin, B. M., Tavolzhanskyi, O. V., & Lysodyed, O. V. (2021). Corruption as a cybersecurity threat in conditions of the new world's order. *Linguistics and*

Culture Review, *5*(S3), 499-512. https://doi.org/10.21744/lingcure.v5nS3.1538

Husted, D. S., Myers, W. C., & Lui, Y. (2008). The limited role of neuroimaging in determining criminal liability: An overview and case report. *Forensic science international*, *179*(1), e9-e15. https://doi.org/10.1016/j.forsciint.2008.04.002

Joki-Erkkilä, M., Niemi, J., & Ellonen, N. (2014). Child sexual abuse—Medical statement conclusions in criminal legal process. *Forensic science international*, *239*, 31-36. https://doi.org/10.1016/j.forsciint.2014.03.006

Kupryashina, E. A., Lyahkova, A. I., Lukyanchikova, E. F., Shumilin, S. F., & Novikova, E. A. (2019). Agreements in criminal processes: problems of application and development.

Laberge, D., & Morin, D. (1995). The overuse of criminal justice dispositions: Failure of diversionary policies in the management of mental health problems. *International Journal of Law and Psychiatry*, *18*(4), 389-414. https://doi.org/10.1016/0160-2527(95)00019-E

Mantha, S., Nolan, M. L., Harocopos, A., & Paone, D. (2021). Racial disparities in criminal legal system involvement among New York City overdose decedents: implications for diversion programs. *Drug and alcohol dependence*, *226*, 108867. https://doi.org/10.1016/j.drugalcdep.2021.108867

Mungan, M. C. (2011). Welfare enhancing regulation exemptions. *International Review of Law and Economics*, *31*(4), 249-255. https://doi.org/10.1016/j.irle.2011.06.002

Nahak, S. (2017). Penal mediation policy of land criminal offense resolution in the outer courts of Indonesia. *International Research Journal of Engineering, IT & Scientific Research*, *3*(2), 123-130. Retrieved from https://sloap.org/journals/index.php/irjeis/article/view/539

Peay, J. (2015). Mental incapacity and criminal liability: redrawing the fault lines?. *International journal of law and psychiatry*, *40*, 25-35. https://doi.org/10.1016/j.ijlp.2015.04.007

Plyth, P. S., & Craham, C. P. (2020). Translation affects literary and cultural systems: how to observe the features of translation?. *Applied Translation*, *14*(1), 29–37. Retrieved from https://appliedtranslation.nyc/index.php/journal/article/view/1141

Prakash, N., Rockmore, M., & Uppal, Y. (2019). Do criminally accused politicians affect economic outcomes? Evidence from India. *Journal of Development Economics*, *141*, 102370. https://doi.org/10.1016/j.jdeveco.2019.102370

Ramadani, S., Danil, E., Sabri, F., & Zurnetti, A. (2021). Criminal law politics on regulation of criminal actions in Indonesia. *Linguistics and Culture Review*, *5*(S1), 1373-1380. https://doi.org/10.21744/lingcure.v5nS1.1651

Stroud, D. D., Martens, S. L., & Barker, J. (2000). Criminal investigation of child sexual abuse: A comparison of cases referred to the prosecutor to those not referred. *Child abuse & neglect*, *24*(5), 689-700. https://doi.org/10.1016/S0145-2134(00)00131-9

Sykes, J. (2011). Negotiating stigma: Understanding mothers' responses to accusations of child neglect. *Children and Youth Services Review*, *33*(3), 448-456. https://doi.org/10.1016/j.childyouth.2010.06.015

Yasmin, M. (2016). Legal liability in standard form of contract. *International Research Journal of Engineering, IT & Scientific Research*, *2*(9), 51-58. Retrieved from https://sloap.org/journals/index.php/irjeis/article/view/513