

## **The plea bargain and the bench trial: the practice of application of ‘special procedure’ of court hearings (art. 40 of CPC) in Russian courts.**

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Starting from 2002, Russian criminal records reflect data on a simplified form of court hearings (regulated by art. 40 of the Code of Criminal Procedure “Special order of making a court decision when the defendant admits the charges”), or in short – the ‘special procedure’, namely, a Russian version of plea bargain. The special procedure entails a bargain of guilt confession: the defendant admits the charges, after which the court hearing winds down to establishing a type and size of sentence, with no investigation of proof. In return, the scale of the defendant’s maximum sentence is reduced one-third (part 7, art. 316 of the CCP)

The Institute for the Rule of Law has conducted a study, whose goal was to establish how sentences are assigned for the defendants who picked the ‘special procedure’ of court hearing.

As a subject of study we picked the three most common articles of the Criminal Code, encompassing around one-third of all convictions (according to the 2010 data – 32.5 percent). The articles are as follows: article 111 part 1 (infliction of grave bodily injuries), art. 158 part 1, p. «B» (larceny with infliction of extensive damage), and art. 228 part 1 (illicit traffic in narcotics with no aim of engaging in drug sale). We analyzed a simple random sample of 2650 cases, representing the universal set of sentences pronounced in accordance with the above-mentioned articles, with an error not exceeding 1.2%

The study has shown that in crimes of little gravity, the defendant who chooses the ‘special procedure’ of court hearing loses. The choice in favor of the ‘special procedure’ deprives him or her of their chance of case dismissal on non-rehabilitating grounds (for instance, settlement with the injured party); at the same time, there is no expected mitigation of sentence compared to those whose cases were examined within at the bench trial. Independently of the form of court hearing, we see the standard predictors of sentence gravity – such as the repetition of crime and the detention during the preliminary investigation. However, analysis of groups of recidivists and non-recidivists, as well as those who were and were not subjected to detention prior to the court judgment, shows that in practice the defendants receive sentences of the same type and scale independently of whether they chose to bargain and admit to the charges or not. As a result, there is no incentive for the defendants to cooperate with the investigators.

The situation is explained by the fact that the judges do not consider it necessary to promote cooperation with the investigation. Additionally, the poorly formulated law does not demand it from them. The practice of sentence imposition under the general procedure as a rule never exceeded two-thirds of the maximum that is possible under certain article. Judges assign those defendants who agreed to the ‘special procedure’ the sentences that are much closer to the lower “upper limit” of the sentence scale than sentences for bench trial defendants. Therefore, they support the parity of final sentence gravity between the defendants convicted under both special and general procedures.

It is possible to cope with this situation by undertaking a number of measures: to change the mechanism of sentence imposition under the special procedure of court hearings so that the judge would immediately impose a sentence that would consequently be decreased by one-third; change the position of the Supreme Court, with a firm statement of the position that the agreement to undergo the special procedure must entail a milder sentence than the one assigned by the specific judge under the ordinary procedure for a similar crime. Another solution – which is extremely difficult but also extremely effective – is to introduce into the Russian justice system a mechanism of real bargaining between prosecution and defense.