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THE FORMS OF ACCELERATION OF JUSTICE

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ABSTRACT

Plea bargaining is one of the most important institutions of criminal law not only in Georgia but also in other countries. The said procedural institution was also introduced into the Georgian system and has not lost its relevance since its introduction. It is also obvious that this procedural-legal institution is the cornerstone of Anglo-American law, and it is impossible to discuss it outside the context of the said legal system.

Our research includes an in-depth study of the plea bargaining as a basic legal institution. In particular, the formation and development of plea bargaining in England and America is presented. Among them, the case law in the part of plea bargaining is discussed. The article presents the process of implementing plea bargaining in the countries of continental Europe. The work contains a comparative legal analysis of different countries and the Georgian system.

Historically, there are two types of bargaining: explicit and implied. Explicit plea bargaining is an open offer from a judge to a victim during a trial or a judge's advice to a defense attorney about the "best reasonable solution".

The rules of expedited justice in the countries of the continental European system (Germany, France, Italy) are characterized by certain features, the features of which are discussed in this article.

The study reveals the main essence of plea bargaining in Georgia, the practice of its use, and the main problems. The author's conclusions and recommendations are presented at the end of the study.

INTRODUCTION

The strategic direction of accelerated justice, which originated from the Anglo-Saxon model of law, is highly relevant today for the procedural laws of Georgian and foreign countries.

Long before on September 17, 1987, the Committee of Ministers of the Council of Europe specially adopted the recommendation, which offered its member states to introduce simplified forms of proceedings and to introduce accelerated forms of resolution of "criminal law disputes".[1]

In the countries of the continental European legal system, where the proceedings were very long in time,[2] they began to perfect the existing models and simplify traditional mechanisms; many procedural regulations were introduced that accelerated the time of litigation and simplified procedural actions, which is why today in various forms of procedural legislation, these requirements are implemented and function successfully in most European countries (Belgium, Italy, France, Greece, etc.). This idea is based on the principles of competition, equality and constant control of the investigative stage by judicial authorities.

Article 8 of the Criminal Procedure Code of Georgia, as a principle, guarantees a fair process and provision of accelerated justice, where it is indicated that the accused has the right to speedy justice within the time limits established by the Procedural Code. A person has the right to refuse this right if necessary for the proper defence preparation. The court must prioritise the criminal case in which imprisonment is used as a preventive measure against the accused.

Before we talk directly about the Georgian model of accelerated justice and its problems, it is probably better to first consider the features that characterize the procedural laws of Anglo-Saxon and continental European countries in the implementation of speedy justice.

1. A FORMAL PLEA OR DEAL

This plea is a statement by one party in a criminal proceeding to admit the fact on which the other party bases its claim or counter-opinion; it relieves the other party from further necessary substantiation of the mentioned fact, which in this case is deemed to be proved.[3] There are several types of formal guilty pleas. Historically, plea bargaining originated in the United States. Currently, up to 90% of criminal cases are considered in this way.[4] In the American legal literature, we can find the following definition of a plea bargain: it is a case where the accused pleads guilty (plea guilty) in exchange for a less severe sentence (plea guilty) or exchange for other interests. A deal is made between the accused and the prosecutor. Rule 11(c)(1) of the Federal Rules of Criminal Procedure states that a judge is prohibited from participating in a plea bargain.[5] The US Supreme Court held in the Missouri[6] and Laffer[7] cases that a defendant has a constitutional right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution when entering into a plea bargain. It should be noted that the prosecutor has the right to use threats to force the accused to make a deal, but this influence should be related only to the qualification of the crime and the amount of the punishment. This provision was confirmed in the Bordenkircher[8] case. But if there are no reasons to impose a more strict sentence, and the prosecutor still uses threats, this is a violation.

In the case of Santobello,[9] the Supreme Court

1 Recommendation No. R (87) 18 of the Committee of Ministers to Member States concerning the Simplification of Criminal Justice <http://www.antoniocasella.eu/ restorative/ Rec(87)18.pdf>.

2 Pradel, J. (1999). Comparative Criminal Law. Tbilisi, p. 393.

3 Mamniashvili, M. (2015). Recognition of Formal Guilt (in the book: Criminal Law Process of Georgia (General Part)). Eds.: Ghakhokidze, J., Mamniashvili, M., Gabisonia, I. Publishing house "World of Lawyers", pp. 249-258.

4 Langer, M. (2004). From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure. Vol. 45, №1, pp.1-64.

5 Federal Rules of Criminal Procedure <https://www.law.cornell.edu/rules/frcrmp>.

6 Missouri v. Frye. (132 S. Ct. 1399 (2012)) <https://legaldictionary.net/missouri-v-frye/>.

7 Lafler v. Cooper. (2012) <https://www.law.cornell.edu/supremecourt/text/10-209>.

8 Bordenkircher v. Hayes. (434 U.S. 357 (1978)) <https://supreme.justia.com/cases/federal/us/434/357/>.

9 Santobello v. New York (404 U.S. 257 (1971)) <https://supreme.justia.com/cases/federal/us/404/257/>.

ascertained that if the accused agrees to a deal with the prosecutor in exchange for a recommendation but then the prosecutor does not fulfill this promise, another prosecutor is appointed with whom the agreement was not signed, then, in this case, the procedural rights of the accused are violated. But if the court disagrees with the prosecutor regarding the amount of the sentence and imposes a heavier sentence than what was specified in the deal, then the accused cannot claim a violation of the constitutional right. Many US states have instituted plea bargaining (plea guilty) to achieve this goal. The accused has the right to initiate an agreement with the prosecutor before the sentencing if there are valid reasons for doing so.

The court is authorized to share a plea bargain and include this provision in the final decision. The judge may also refuse to accept such a deal if the evidence in the criminal case does not point to the defendant's guilt. The parties will be notified of the court's decision at the court session. Thus, the court does not automatically recognize the plea agreement but analyzes the evidence received from the parties in the criminal case.

In Great Britain, the institution of plea bargaining appeared much later than in the United States. Long before 1970, the Court of Appeal expressed a negative position regarding the institution of plea bargaining, stating that this practice is unacceptable in criminal proceedings. However, the lower courts did not hold the Court of Appeal's instructions and continued the bargaining practice. The High Judiciary had no choice but to adopt the established practice of using this institution.[10] The emergence of established plea agreements, Contrary to the direct instructions of the superior courts in the case law country, suggests that the criterion of efficiency has prevailed over the tradition of judicial resolution of criminal cases on the merits.

Historically, there are two types of bargains: expressed and implied.[11] An expressed bargain (later prohibited in R v. Turner's case[12]) is an open offer by the judge to the damaged person during the trial (R. v. Barnes[13]) or advice from the judge to the defense lawyer as to the "best reasonable solution" (R. v. Inns[14]).

An implied bargain can be of three forms. The first form – within the client-advocate relationship – the advocate, based on his procedural status, advises that alleviates the responsibility of the accused (R. v. Turner). The second form – within the judge-defense relationship – is based on the freedom of communication between the judge and the lawyer in the absence of the accused in the judge's room, and this communication must be directed to the defense of the client. For example, the defendant has cancer, but he does not know about it; this circumstance may affect the decision made by the judge (R. v. Cain[15]). The third form is in the form of mitigation of punishment due to active repentance.

The prosecutor's role gradually increases, and he decides whether to make a deal. This is because the Crown Prosecution Service was created in 1986, and the Criminal Justice Act gave the power to lay the final charge to the public prosecutor (previously, the police had the said right) in 2003. The difference between the American and English institutions of guilty pleas lies in the historical role of the prosecutor. To clarify the place of prosecutors in a new function for them – the parties to the plea agreement – the rule[16] of the procedure for confession of guilt was developed in 2009.

A plea bargain in English criminal law is a case between the prosecutor and the defense where the accused pleads guilty to the charge, in which case the prosecution does not proceed with the indication. There is another option of a deal, when the accused pleads guilty to a less serious crime (i.e. burglary is reclassified to theft, theft to handling stolen goods), this institution can be used in all categories of criminal cases.

The accused must initiate the plea bargain at any stage of the proceedings before entering the

10 Rauxloh, R. (2012). Plea Bargaining in National and International Law. Routledge, London, p. 285.

11 Thomas, P. (1978). Plea Bargaining in England.

12 R. v. Turner. (1 All ER 70 (1975)) <https://vlex.co.uk/vid/r-v-turner-794008705>.

13 R. v. Barnes. (55 Crim App. 100 (1970)) <https://vlex.co.uk/vid/r-v-barnes-793401041>.

14 R. v. Inns. (60 Crim. App. 231 (1974)) <https://vlex.co.uk/vid/r-v-inns-793111617>.

15 R. v. Cain. (Crim LR 464 (1976)) <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/17086/index.do>.

16 The acceptance of pleas and the prosecutor's role in the sentencing exercise <https://www.gov.uk/guidance/the-acceptance-of-pleas-and-the-prosecutors-role-in-the-sentencing-exercise>.

courtroom. R v. The Goodyear case established the rule that a maximum penalty[17] should be considered when agreeing to a sentence.

In continental Europe, plea bargaining was introduced much later, in the early 21st century. In France, the plea agreement (Comparution sur reconnaissance préalable de culpabilité) creates a way to avoid prosecution if a person admits to the charges brought against him (Section[18] 8 of the French Code of Criminal Procedure). As a rule, this procedure is carried out at the prosecutor's initiative. The accused himself or his lawyer can also request a deal; the prosecutor can accept or reject the request. In addition, the investigating judge may request a plea bargain and forward the case to the prosecutor. The deal is made only with an adult defendant and is used only in the case of a misdemeanor (delict). In addition, the investigating judge may request a plea bargain and forward the case to the prosecutor. The deal is made only with an adult defendant and is used only for a misdemeanor (delict). Article 111-1 of the French Penal Code divides criminal acts into three categories: felonies (most serious, only intentional, punishable by imprisonment for more than ten years), misdemeanors (less serious, intentional or negligent, imprisonment for up to 10 years), violations (minor action, imprisonment is not imposed). However, not all crimes fall within the scope of plea bargaining. Exceptions are the following types of crimes: violence, threats of violence, aggressive sexual crimes and reckless body harm if they are punishable by imprisonment for more than five years; manslaughter; media activity related to crimes (insult, defamation); political crimes (terrorism, etc.).

If the prosecutor decides that a plea deal is the preferred option in the given case, then he calls the defendant. Mandatory participation of a lawyer during the conclusion of a transaction is established. The prosecutor offers the accused: 1) a fine, the amount of which cannot exceed the amount of the imposed fine; 2) Imprisonment, the term of which cannot exceed one year and half of the sentence served. The accused can accept the offer, refuse it or ask for additional time to think for a maximum of 10 days. In an open trial, the judge recognizes or rejects the bargain (ordonnance d'homologation). It should be noted that the judge cannot change or supplement the terms of the bargain.

The French Ministry of Justice notes that the purpose of the plea agreement is to free up the courts, significantly speed up the processing of cases and increase the effectiveness of the punishment because the accused confesses to the crime. The European Court of Human Rights recognized France as a violator of unjustified delays in the consideration of cases.[19] In addition, a deal can also be made by a legal entity through its representative (Article 706-43 of the French Criminal Procedure Code). In addition, it is emphasized that the use of coercive measures against the representative of a legal entity is prohibited, except for the summons for trying the case.

In Germany, the institution of plea bargaining (Abshprachen) was introduced in 2009 and provides for a reduced sentence or exemption from serving if the accused pleads guilty. According to Article 153 of the German Code of Criminal Procedure, the prosecutor's office can drop the case at the preliminary investigation stage due to the minor nature of the action if the accused pays a fine. The deal is concluded at a court session with the participation of both parties.[20]

The bargaining process can be divided into three stages. The first is that the prosecutor offers a plea bargain that involves a reduced sentence in exchange for a guilty plea. The second stage is when the defense admits guilt or the crime committed by the accused. As a result, the prosecution is not required to prove the accused person's guilt. The peculiarity of the German model lies in the fact that, before the plea bargaining, i.e. before the case is tried in court, the accused can familiarize himself with the materials of the criminal case and all the evidence.

When comparing plea agreement institutions

17 R. v. Goodyear. (All ER (D) 266 (Apr (2005)) <https://vlex.co.uk/vid/r-v-goodyear-karl-793793697>.

18 Code de Procédure Pénale. (Version en vigueur au 09 décembre 2023) <https://www.legifrance.gouv.fr/ codes/texte_lc/ LEGITEXT000006071154/>

19 Circulaires de la Direction des Affaires Criminelles et des Grâces Signalisation des Circulaires du 1er Juillet au 30 Septembre 2004 <https://www.justice.gouv.fr/sites/default/files/migrations/portail/bulletin-officiel/3-dacg95e.htm>.

20 German Code of Criminal Procedure (Strafprozeßordnung – StPO) <https://www.gesetze-iminternet.de/englisch_stpo/englisch_stpo.html>.

in foreign countries, it is worth noting that procedural conditions share the following common features:

1. A deal is concluded between the defense and prosecution parties without the participation of a judge;
2. The terms of the deal usually contain a condition about the maximum term of the sentence, which the court's judgment can later determine;
3. The participation of a lawyer during the conclusion of the plea bargain is mandatory.

2. ACCELERATED DEAL

Accelerated (lat. celerantes – fast, the fastest) deal is a deal about simplifying justice procedures. If the American plea bargain is formally related to representations, the truth of the judicial decision, i.e. It is assumed that the admission of guilt by the accused is trustworthy, in the criminal proceedings of a number of European countries (Spain, Italy and others) from the 80s of the last century, they began to use a plea deal, the object of which was not only the guilt itself but also the formal consent of the accused to the indictment (conformidad – Articles 655, 589 of the Criminal Code of Spain) or "sentencing" (the so-called pattegament – Articles 444-448 of the Criminal Code of Italy, as amended in 1988). In both cases, the accused agrees to such deals to plead not guilty. In response to this action, the law provides for a lighter sentence (no more than six years in Spain) or a reduction of the specified term of the sentence (reduction of imprisonment by one-third in Italy). In addition, no judicial investigation is conducted. In practice, such a deal is perceived as an agreement between the parties to plead guilty, earning it the unofficial name "zero plea".[21]

Article 40 (Part 10) of the Criminal Procedure Code of the Russian Federation also provides for the trial of the case using an accelerated bargain. In such a case, an agreement is made between the prosecutor, the victim, and the accused on the appointment of punishment for crimes of medium severity (which provides up to 10 years of imprisonment). No judicial investigation is conducted, and the court, with its verdict, confirms the sentence agreed upon by the parties in advance.

As we mentioned above, Article 8 of the Criminal Procedure Code of Georgia, as a principle, guarantees a fair process and provision of speedy justice, where it is indicated that the accused has the right to speedy justice within the time limits established by the Procedural Code. A person has the right to refuse this right if it is necessary for the proper preparation of the defense. The court is obliged to consider as a priority the criminal case in which imprisonment is used as a preventive measure against the accused.[22] Moreover, according to the procedural legislation of Georgia, the plea agreement is used in two directions: first, it helps to speed up the justice process, and second, it is one of the best ways to reveal the participants in organized crime because even in a special case, when the perpetrator of the crime is revealed as a result of the cooperation of the accused/sentenced person with the investigative authorities. The identity of an official and/or a person who commits a serious or particularly serious crime and his direct assistance creates essential conditions for solving this crime; such a person may be reduced in punishment and/or fully exempted from criminal liability or punishment.

3. THE GEORGIAN MODEL OF PLEA BARGAIN

It should be noted from the beginning that the plea agreement in force in Georgia is not a complete copy of the "plea bargain" in the USA. It was not directly copied from the procedural legislation of other countries of Europe or the former Soviet Union. In each state, the institution of the plea agreement has its characteristics, which, in many cases, quite distinguish it from the American one.[23]

21 Mamniashvili, M. (2015). Recognition of Formal Guilt (in the book: Criminal Law Process of Georgia (General Part)). Eds.: Ghakhokidze, J., Mamniashvili, M., Gabisonia, I. Publishing house "World of Lawyers", pp. 249-258;

22 Criminal Procedure Code of Georgia, Article 8 (18.09.2023) <https://matsne.gov.ge/ka/document/view/90034?publication=157>.

23 Gogshelidze, R. (2007). Plea Agreement – for All Categories of Crime? Journal "Profession Lawyer", №2, pp. 84-92.

The institution of the plea agreement in Georgia was introduced in the previously effective Criminal Procedure Code by the law of February 13, 2004. It has passed a certain historical path before taking place in the Georgian justice system with some important changes in the current Criminal Procedure Code.

Chapter 64[1] of the previous Criminal Procedure Code, where the plea agreement was stipulated since its adoption (February 13, 2004), including its effect, especially since March 2005, has undergone systematic and significant changes, reaching 27. The title of Chapter 64[1] of the previous Criminal Procedure Code has been changed. If it was called a "Plea Agreement" when it was accepted, it was later titled a "Plea Agreement and Full Release from Sentence".

Moreover, in accordance with Article 15[1] of the Code of Criminal Procedure, the first part of Article 679[1] of the same Code determined that the plea agreement is the basis for the judgment to be determined by the court without considering the merits of the case. In contrast to the previous (February 13, 2004) edition, the legislator did not consider mandatory the issue of the accused person's cooperation with the prosecution, which is manifested in the confession of the crime and the provision to the investigative bodies of such trustworthy information or evidence or information about the crime committed by the official, which contributes to solving this crime. According to the first edition of the law, the consent of the accused to help and cooperate with the investigation was a necessary condition of the plea agreement. Cooperation with the investigation, as indicated in the legal literature, meant that the accused would provide the investigation with truthful information about a more serious crime or a crime committed by a higher-ranking official, or based on the confession of a less serious crime, a criminal prosecution would be carried out against the emperor who committed a more serious crime.[24]

In case of fulfillment of such conditions, the prosecutor had the right to request a reduction of the sentence for the accused or, in the case of a combination of crimes, to decide on reducing the charge to partial removal. But, a few months after the enactment of the law (Law of July 24, 2004), the procedural legislation underwent changes, from the first part of Article 679[1] of the previous Code of Criminal Procedure, the obligation of the accused to confess and agree to cooperate with the investigation, to provide trustworthy information or evidence of a serious crime committed by a person, which would contribute to the opening of such a category of crime. In addition, the terms of the plea agreement were divided into two and were indicated as a "plea bargain" or "sentence agreement".[25] In the case of a plea bargain, the confession of the crime by the accused was considered mandatory, while the requirement to cooperate with the investigation was maintained. As for the sentence agreement, at such time, the accused was not required to confess the crime, and cooperation with the investigation remained a mandatory requirement for the accused to agree on the punishment with the prosecutor.

In the previous criminal procedural legislation, in the last period (except for the revision of the law of March 25, 2005), a number of substantial changes were made in Chapter 64[1] of the Criminal Procedure Code. Article 15[1] of the previous Criminal Procedure Code indicated that the plea bargain was carried out in compliance with the principle of judicial independence, the purpose of the plea bargain is to provide quick and effective justice, and special chapter 64[1] of the same code provides for the plea agreement and the conditions and procedural rules for full exemption from punishment. In addition, if offering a plea bargain to the accused represented the prosecutor's power with the amendments, the plea bargain could be offered to the accused (defendant) and the prosecutor during the substantive discussion of the case before the court argument. The court (judge) was authorized to offer the parties to conclude a written plea agreement within the framework of the procedural legislation.

It should be noted that on April 28, 2006, the amendments to Article 679[1], Part 2 of the Criminal Procedure Code gave a different interpretation to the plea bargain when agreeing on the sentence because the non-confession in the part of the

24 Gabrichidze, N. (2004). Plea Agreement. Journal, "Human and the Constitution", №3. p. 55; Journal "Law", №5-6, pp. 57-63.

25 Criminal Procedure Code of Georgia. (2004). Amendments and additions as of October 2004. Tbilisi, pp. 377-378.

charge was completely removed and it is indicated that "while plea-bargaining, the accused (defendant) does not contradict the charges to the accusation, although he agrees with the prosecutor on the size of the punishment or complete release from it". Thus, whether the accused confessed or did not confess to the charges was no longer important for the plea bargain.[26]

In the current Procedural Code, the institution in question is titled a "Procedural Agreement", and in the last period, the legislator made a number of changes. First of all, it should be noted that Section 11^1 was added to Article 3 of the Criminal Procedure Code of Georgia, the definition of the concept of evidence sufficient to issue a verdict without considering the merits of the case, the standard of evidence evaluation. That is, evidence that would convince an objective person that the accused committed a crime, given that the accused confesses to the crime, does not make the evidence presented by the prosecution indisputable and denies the court the right to consider the merits of his case.

At present, with the amendments made to the Code of Procedure, the division of the basis of the plea agreement into two parts was canceled, and it was determined that the basis for the court's sentencing without considering the merits of the case is the plea bargain, according to which the accused admits the crime and agrees with the prosecutor on the punishment, reduction of the charge and partial dismissal.

When entering a plea agreement, the accused may agree to cooperate and/or pay damages to the prosecutor along with the above conditions.

A plea bargain is concluded by a prior agreement with the superior prosecutor.

Both the accused (convicted) and the prosecutor can offer plea agreements. During the trial of the case, the court is authorized to find out the possibility of concluding a plea agreement between the parties.

When entering into a plea bargain, the prosecutor is obliged to warn the accused about the consequences of the plea agreement and to explain to him that in case of entering into a plea bargain, the court brings out the incriminating evidence without direct and oral examination of the evidence, and that entering into a plea agreement does not release the accused from civil and other types of responsibility.

In special cases, the Prosecutor General of Georgia or his deputy has the right to apply to the court for the full or partial release of the accused from civil liability. In this case, civil responsibility rests with the state. It is true that the procedural legislation does not indicate in what cases the Prosecutor General has the right to release a person from civil liability because, in such a case, the state has the obligation to compensate for the damage caused.

A protocol is drawn up regarding the plea bargain, which describes the negotiation process between the accused and the prosecutor (protocol of the plea bargain). A copy of the minutes of the plea agreement will be given to the accused and his lawyer. The accused and his lawyer have the right to comment on the plea bargain protocol attached to the protocol. The prosecutor signs the protocol of the plea agreement, the accused and his lawyer, as well as the legal representative of the accused, if any.

CONCLUSION

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26 Mamniashvili, M. (2021). The Georgian model of Plea Agreement and the Separate Problems of its Completion, Journal "Themida", №14 (16).

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28. Lafler v. Cooper. (2012) <https://www.law.cornell.edu/supremecourt/text/10-209>.
29. Bordenkircher v. Hayes. (434 U.S. 357 (1978)) <https://supreme.justia.com/cases/federal/us/434/357/>.
30. Santobello v. New York (404 U.S. 257 (1971)) <https://supreme.justia.com/cases/federal/us/404/257/>.
31. R. v. Turner. (1 All ER 70 (1975)) <https://vlex.co.uk/vid/r-v-turner-794008705>.
32. R. v. Barnes. (55 Crim App. 100 (1970)) <https://vlex.co.uk/vid/r-v-barnes-793401041>.
33. R. v. Inns. (60 Crim. App. 231 (1974)) <https://vlex.co.uk/vid/r-v-inns-793111617>.
34. R. v. Cain. (Crim LR 464 (1976)) <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/17086/index.do>.
35. The acceptance of pleas and the prosecutor's role in the sentencing exercise <https://www.gov.uk/guidance/the-acceptance-of-pleas-and-the-prosecutors-role-in-the-sentencing-exercise>.
36. R. v. Goodyear. (All ER (D) 266 (Apr (2005)) <https://vlex.co.uk/vid/r-v-goodyear-karl-793793697>.
37. Code de Procédure Pénale. (Version en vigueur au 09 décembre 2023) <https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071154/>.
38. Circulaires de la Direction des Affaires Criminelles et des Grâces Signalisation des Circulaires du 1er Juillet au 30 Septembre 2004 <https://www.justice.gouv.fr/sites/default/files/migrations/portail/bulletin-officiel/3-dacg95e.htm>.
39. German Code of Criminal Procedure (Strafprozeßordnung – StPO) <https://www.gesetze-iminternet.de/englisch_stpo/englisch_stpo.html>.
40. Former convicts (2021, April 15) were Justified by the court. G GEO Justice.