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Some Considerations Regarding the Trial of Admitting Guilt

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Abstract: The research regarding the trial in case of admitting guilt was to attract attention to the limitation of the courts to rule other decisions than condemnation in such cases. It is mainly about people who admit their guilt, but cannot benefit from art. 18¹ Criminal Code. The procedure is relatively new (it was introduced in the Code of Criminal Procedure Law no 202/2010) there have not conducted research in this area. In addressing the problem there were used the methods of examination and observation, the results leading to the conclusion that the legal text should be improved. The implications of the work concern the practitioners' activity. It reveals a loophole which is reflected on the quality of justice.

Keywords: new institutions of the criminal trial; Code of Criminal Procedure; guilt

By the article XVII, section 43 of law no. 202/2010 regarding some measurements taken to accelerate the settlement of processes was introduced in the Criminal Procedure Code, article 3201, entitled "Judgment in the case of admitting guilt". The main objective of the new institution is, of course, the prompt settlement of criminal cases to be decided. Indeed, under this regulation, if the application of the defendant, personally or by declaring that it recognized the authentic act retained the perpetration of summons, the trial should be made based on the evidence brought in the prosecution phase, and so the judicial investigation is waived. The judgment can take place at the first hearing only based on the evidence brought in the prosecution phase and if the conditions laid down by the law are fulfilled, namely: the defendant fully admits to all the facts established in the document instituting the proceedings, he will not ask for further evidences except for documents in criminal proceedings and that the criminal action is not justified and aimed at an offense punishable by life imprisonment.

In such cases, the court gives the word to the prosecutor and to the other parties, convicting the defendant but reducing his sentence by one third in case of imprisonment or by reducing his sentence by a quarter in case of a fine.

Therefore, the advantages are on both sides: the act of justice is rendered with maximum celerity, thus giving efficiency to the fundamental principle of promptness, and the defendant benefits of a reduction of the sentence that will be applied to him.

Since the law expressly provides that in the trial of admitting guilt, the court is sentencing the conviction, therefore the defendant that fully admitted committing an act that lacks importance and that doesn't represent any degree of social danger of a crime, can't be judged by the procedure provided by article number 320 of the Criminal Procedure Code if he requests payment under the provisions of article number 11, point 2 a) the reference to article 10 paragraph (1), b) Criminal Procedure Code and to article 18 of the Penal Code. An argument in support of the reason of these provisions would be that in case we refer to a payment, the court must carefully examine all real and personal circumstances of the criminal case, which would not be achieved by passing over the judicial inquiry. The explanation seems superfluous, whereas the sentencing of a person implies, for instance, a thorough examination of the case, in all its aspects. However, the provision of article number 3201 of the Criminal Procedure Code, gives the judge the opportunity to pronounce a sentence, for the ones

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that have the right of a sentence reduction, even at first hearing. From this perspective, we consider that the exclusion from the trial procedure for admitting guilt on the basis of the lack of being a social threat is unjustified.

Most of the times, in case of acquitting the accused under article 11 section 2 letters a) in reference to art.10 par. 1). b) Criminal Procedure Code and art. 18 Penal Code, it acknowledges the facts established in the act of initiating the court and does not request any further evidence than those administered during the prosecution, presenting only situational pleadings (characterizations, relations with different institutions, certifications.). Therefore, the conditions provided by the art. 320 of the Criminal Procedure Code are fulfilled and the defendant wouldn't have, apparently, no reason to disagree that the trial would take place in abbreviated form according to this legal text. In fact, the defendant found in such a situation has a reason not to require the trial to be held in accordance with art. 320 of the Criminal Procedure Code, namely that, he has recognized the deed like it was established by the indictment and not wanting the administration of other evidence, tend to acquittal, which is impossible under the new regulations.

To be able to reach such a solution (acquitting on the basis of lack of the penalty threat), although the defendant fully recognizes the offense which was detained in charge and declares it doesn't require other evidence, the court will have to follow the usual procedure, that is after preparatory measures, clarifications, exceptions and other applications to go to judiciary research, to hear the parties, the witnesses etc., solving the case in a time, sometimes quite long. In this way the defendant who admitted committing the facts found in the act of complaint, but seeks a solution other than condemnation, is not able to claim that the trial should be made only upon evidence taken during the criminal investigation and can't benefit a shorter process.

Given the purpose of the institution recently introduced in the Code of Criminal Procedure, that of accelerate the solving process, we see no reason why the trials where the defendants, fully recognizing the charges withheld through the act of instituting the court, requires payment of the basis of social danger, may not be able to be resolved in accordance with the procedure referred in article 320 of the Criminal Procedure Code. Therefore, the *ferenda* law, we consider that paragraph (7) of this article should be amended in order to provide the court to issue a decision under the law, and in case of conviction of the defendant to reduce the penalty under provisions in force. In this way it would be shortened the period of solving the criminal cases and in the situation where the defendant seeks acquittal on the basis of lack of danger of the penalty. If the conviction of a person who pleads guilty is sufficiently short and fast procedure, nothing precludes such a procedure to apply in a situation of acquitting a person on the basis of lack of danger of the deed, when he recognized and does not require evidences other than those administrated during follow-up.

2. The provisions of art. 320 of the Criminal Procedure Code represents a preview of those covered in art.374 of the New Code of Criminal Procedure, with the same title, namely "Judgment in the case of admitting guilt," between them being an obvious resemblance. Since the Law. 202/2010 has been subsequent to the adoption of the new code, we have every reason to believe that art. 320 of the current Criminal Procedure Code is a copy of the article 374 of the new code, which is a foretaste of what we wanted to achieve in the future, while testing the viability of an innovative rule for our legal system.

Also this text establishes the exemption of the abbreviated procedure that tends to other solutions than convicting the accused. Therefore, paragraph (7), article 374 of the new Criminal Procedure Code, features that in case of short procedure application "the court will sentence the defendant", excluding, for example, solving the case by removing the penalty. According to article 80 of the Penal Code, the court may decide to waive the penalty if the following conditions are met:

- a) the crime committed shows a reduced gravity, given the nature and extent of the consequences produced, the means employed, the manner and circumstances in which has been committed, the motive and aim pursued;

- b) in relation to an individual offender, the behavior intended previously of the offense, it's efforts to eliminate or mitigate the consequences of the crime and its means of correcting, the court agrees that a penalty would be inappropriate because of the consequences that would have on its person.

In order to give such an assessment to the offense and offender, certainly the court will also consider the fact that it fully acknowledged the deed. But, according to the law, it will not be able to resolve criminal proceedings pronouncing the solution to waive penalty than following the normal procedure and not the short one, applied to those who admit their guilt. Again, we need to put the problem of identifying the reason, or the reasons, for which the legislature wished that, with regard of defendants who admit their guilt and requests to have it applied the operative procedure under Art.374 the New Criminal Procedure Code, the court to adjudicate exclusively the sentence. For now we can only assume what we have already demonstrated: the concern for careful examination of all circumstances when it decides to waive the penalty, this is accomplished only in a complete procedure, without sacrificing any stage of proceedings, such as inquiry. But, as I pointed out, it will not be accepted that in case of convicting the defendant, the court could allow a rapid transition (in our case, dropping the judicial investigation) over the circumstances of the case to reach the solution of conviction. We believe that, both the case of giving up the conviction but also the punishment, the court examines with the same responsibility the cause, in all matters of fact and law. Under these conditions, the assumption that the legislator has been concerned with ensuring a deeper examination of criminal cases by the court in a situation or another do not stand up to any analysis. Our opinion is that it has manifested easily in the drafting of this text (art. 374 of the New Criminal Procedure Code) and the one from article 3201 of the current Criminal Procedure Code.

There is no justification that after the trial in case of admitting guilt, the defendant who asks that the judgment be made based on evidence taken during the prosecution may not benefit from the solution to the penalty waiver. In this regard there are to make a few practical observations. Firstly we are talking about crimes with a reduced gravity and criminals with chances of correction (art.80 the new Penal Code), but they can't follow the simplified procedure, even if they admit guilt, while for serious crimes, the mere recognition of the defendant shall provide access to this procedure. Secondly, with no possibility of obtaining the solution to the penalty waiver, defendants who meet all the conditions prescribed by the law in order to avoid the procedure established by article 374 of the New Criminal Procedure Code, which, "removes the burdensome and often unnecessary procedures for establishing legal truth", (Explanatory statement, 2010, p. 31.) just by opting for these procedures, burdensome and unnecessary, but which can reach the path to the waiving of penalty.

3. In the same line with the judgment in the case of guilt recognition, lies the special procedure of plea bargain agreement, provided by article 478-488 of the new Criminal Procedure Code. Conceived as "an innovative legislative solution" designed to ensure solving of criminal cases "within a period optimal and predictable," this special procedure in the minds of the editors of the new code represents" a remedy for the elimination of major deficiencies of the Romanian judicial system, respectively long duration of conduct of judicial proceedings." (Explanatory statement, 2010, p. 36)

As in the trial of the case of admitting guilt, carried out on the basis of evidences administrated during the prosecution, the trial on a plea bargain agreement is "an abbreviated form of trial for certain offenses", in order to relieve the courts.

Plea bargain agreement ends the prosecution, after the criminal action, between prosecutor and defendant, as a result of admitting guilt by the latter. He is to recognize and accept the legal classification of committing the crime for which it the criminal proceedings were put into motion, also the type, amount of punishment and execution of its form. Plea bargain agreement may be terminated only with the offenses for which the law provides for penalty a fine or imprisonment that doesn't exceed seven years. After concluding the agreement, the prosecutor shall notify the competent court that decides through sentence, following non-contradictory proceedings in open court, after hearing the prosecutor, the defendant and his lawyer and the civil party, if present. Analyzing the cause, the

court may accept a plea bargain agreement and also sentence the defendant, or may reject the agreement and send the file to the prosecutor for further criminal prosecution.

When the court accepts the agreement and sentences the defendant, the court applies a penalty prescribed by law whose limits are reduced by one third in case of imprisonment and with quarter in case of a fine. Thus the special procedure of plea bargaining agreement does not only simplify and reduces the trial stage, as in admitting guilt trial situation, but also the prosecution phase. The legislator was guided in this process by the economic benefit, looking to encourage all parties, and in this way he saves important material and human resources. But, exclusively concerned about this purpose, he excluded the possibility that at the end of the plea bargain agreement procedure to find a different solution other than condemnation, and to waive the penalty. In other words, if the offense and the offender are placed under art. 80 of the Penal Code, the defendant admitting that he committed the offence and accepting the legal status that set into motion the criminal action, if concluding a plea bargain, the court cannot rule other than conviction. In such a situation, it is understood that the defendant will avoid a plea bargain agreement, preferring the common procedure, with a longer duration but at the end of which it can lead to the abandoning of the penalty solution, a solution more favorable than the reduced sentence. We don't insist on identifying the reason or reasons considered by the legislature for this statutory framework, because in our opinion, they have not existed, the situation is due to the ease and haste in drafting these very important legislation papers.

4. The exclusion from the abbreviated trial procedure for admitting guilt, or from the special procedure of plea bargain agreement of people who recognize the facts, but tend toward the solution of acquittal on the basis of lack of social danger or penalty is waived without doubt, an error that will be eliminated by changing the texts to which we referred. But such an operation will occur only after confronting with reality, after the "side of controversial issues of doctrine and practice "will acquire "a consistent shape", so after a certain period of time (Cioclei, 2009, p. 2.). Till then, the practioners and the theorist will deepen the "letter and spirit" of the new regulations, and the legal practice will accumulate a number of solution that will definitely reflect the shortcomings indicated in these lines.

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