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The Changes Made to the Criminal Procedure Code by the law no. 202 of October 25TH 2010 and their Importance

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Abstract: Among the most important dysfunctions characterizing the Romanian justice, there were identified also several related to the lack of celerity with which the cases brought to justice are solved. As such, it has been discussed the matter of the efficiency in the administration of the act of justice which consists, inter alia, in the celerity with which the cases are solved irrevocably, especially the criminal ones. As a consequence, in order to create conditions which would lead to shortening the proceedings and deployment of the trials within optimum and predictable terms, in the Official Journal of Romania, Part I, no. 714 of 26.10.2010 it has been published the Law 202 of 25.10.2010 regarding several measures for the trial settlement process.

Keywords: Criminal procedure; judicial procedures; motives; mediation; celerity

In the explanatory memorandum accompanying the project of this Law it is shown that of the major dysfunctions of the Romanian justice, the harshest criticism has been directed towards the lack of celerity in solving the cases. Because the legal proceedings often prove difficult, formal, costly and long, it was realized that the effectiveness of administrating the act of justice lies largely in the celerity with which the rights and obligations established by the decisions of the courts of law enter in the legal circuit, thus ensuring the stability of the legal relations brought to justice.

By reforming the Criminal Procedure Code, was intended, as critical objective, the creation with respect to the legal proceedings of a modern legal framework which would fully respond to the imperatives of function for a modern justice, adapted to the social expectations, as well as to the necessity of increasing the quality of this public service.

Also taking into account the deadline for the expected entry in force of the new Criminal Procedure Code, it is imperative to be established several procedural rules with immediate effects on the preparation for implementing the code and in agreement to the legal solutions established by it, capable to facilitate the efficiency of the legal proceedings and the expeditious resolution of the trials.

In the following we will present several newly introduced procedural rules and mechanisms to the criminal proceedings, because on art. XVIII it is stated that the Criminal Procedure Code, republished in the Official Journal of Romania, Part I, no. 78 of April 30th 1997, with the subsequent modifications and completions, it is modified and completed for this purpose.

Article 10 lett. h) Criminal Procedure Code concerns one of the cases in which the criminal action can be instituted or, if it has been instituted, it cannot be exercised, leading to the finalization of the

criminal trial either by the termination of the criminal prosecution or by the cessation of the criminal prosecution [art. 11 par. 1 lett. c) Criminal Procedure Code - in the stage of the criminal prosecution], or by the cessation of the criminal trial [art. 11 par. 2 lett. b) Criminal Procedure Code - in the trial stage]. It envisages the incidence of two causes which eliminate the criminal liability, namely withdrawal of the preliminary complaint [art. 131 par. (2) Criminal Code] and the reconciliation of the parties (art. 132 Criminal Code).

The above mentioned article is completed with respect to lett. h) by introducing a mention regarding the signing of a mediation agreement as impediment in beginning or the continuation of the criminal trial, along with the withdrawal of the preliminary complaint or with the reconciliation of the parties, a newly introduced text corresponding to the provisions of art. 16 par. (1) lett. g) of the new Criminal Procedure Code.[1]

In order to ensure a coherent framework on the settlement of the civil side, it has been introduced art. 16^1 which governs the possibility of transaction, mediation and recognition of the civil claims, as well as their effects. In case of recognition of the civil claims, the court compels to compensations with respect to the recognition. Regarding the civil claims which are not recognized, evidences can be administered.

The modifications of art. 27 of the Criminal Procedure Code envisage the material competence of the tribunal as court of first instance. Comparing the contents of the two letters [d) and e^1)] after the modification performed by the Law no. 202 of 2010, we observe (Atasiei, Tit, 2010, p. 201) that:

- the offences to the rights of intellectual and industrial property will become the material competence of the court in terms of it general jurisdiction;
- will also become the competence of the tribunal as court of first instance, a part of the tax evasion offences, namely the offences provided by art. 9 of the Law no. 241 of 2005, the other offences of the above mentioned law will continue to remain in the competence of the court as court of first instance;
- for reasons of legislative technique, for a better systematization of the code, but without effects upon the competence, the money laundry offence[2], for which will continue the competence of the tribunal as court of first instance, it is moved within the par. (1) lett. d) on lett. e^1), along with the tax evasion offence.

The assembly of modifications operated regarding the competence through the Law 202 of 2010 converge towards the intention of relieving the tribunal of some of the cases which it used to solve (especially by eliminating the trials as appeal court and by the substantial diminishing of the appeals made at this court, with the aim that the legal activity of the tribunals to focus mainly upon the complex cases, especially those regarding corruption crimes and the ones of organized crime[3]).

Due to the fact that prag. 2 of art. 27 is revoked, we draw the conclusion that the tribunal will no longer have panel of judges for appeal cases, but it will deliver judgments as court of first instance (for the crimes provided in art. 27 par. 1) or as appeal court (for the crimes sentenced in first instance by

[1] The new Criminal Procedure Code has been approved by the Law 135 of 2010 and published in the Official Journal of Romania no. 486 of 15.07.2010, and it was intended to come into force at a date to be established by the Law of implementing this code, a law which is in stage of project.

[2] Provided by art. 23 of Law 656 of 2002 for the prevention and punishment of money laundry, as well as for instituting prevention measures for preventing the financing of terrorist operations.

[3] Opinion expressed by the initiator of the law, the Ministry of Justice, in the Explanatory Memorandum to the project of the law regarding measures for the acceleration of solving the trials.

the courts for which it is necessary a preliminary complaint of the injured person). Also, through the modifications to art. 27, par. 3, the court will function as legal restriction court, judging the appeals against the criminal decisions delivered by the judges regarding preventive measures, provisional releases or precautionary measures, of the criminal decisions delivered by the judges regarding the execution of the criminal sentences or of rehabilitation, as well as in other cases expressly provided by the law (Atasiei & Tit, 2010, p. 205)

Through the revocation of par. 2 of art. 28, in fact, it is eliminated the possibility of pursuing an appeal against those decisions delivered by the military tribunal for which the law previously provided such appeal mode (except the crimes against the military order and discipline punished by the law with at most 2 years of imprisonment, as well as the crimes judged in first instance by the military tribunals for which it is necessary a preliminary complaint of the injured party - for these it is provided only the appeal), appeal which it is judged by the territorial military tribunal. Through the two new letters introduced in art. 28^1 par.1 Criminal Procedure Code, it is expanded the competence of the appeal court as court of first instance regarding the crimes committed by persons having a certain quality on the date of the deed, the competence will be taken over by the supreme court, in order to release it of certain criminal cases.

The modification of art. 28,1 par. 3 envisages the cases in which the appeal court solves the case as court of appeal. The modification comes to correlate with the revocation of art. 27 par.2, operated by the same law. Thus, with the disappearance of the competence of the immediately inferior court of judging the appeal, the appeal court will solve as court of appeal the cases coming directly from court houses, namely those cases for which it is provided the possibility of appeal, other than the appeals placed in the competence of the tribunal.

The modifications operated with relation to art. 29 par. 1 of the Criminal Procedure Code aims at reducing the cases of first instance competence of the High Court of Cassation and Justice.

Through the new contents of art. 29 par. 1 of the Criminal Procedure Code, we conclude (Daniel Atasiei, Horia Tit, 2010, p. 205) that the following competence changes occur (as first instance court) for the supreme court:

- on lett. a), along with the crimes committed by deputies and senators, are also introduced the cries committed by MEPs.
- on lett. c) there have been removed the crimes committed by the members of the Court of Accounts, by the president of the Legislative Council and by the Ombudsman, the competence for these actions will be transferred, along with the entry into force of the Law 202 of October 25th 2010[1], to the court of appeal, according to lett. b^3) of art. 28^1 par. 1 of the Criminal Procedure Code newly introduced:
- the contents of lett. d), regarding the members of the Superior Council of Magistracy, it is identical to the one of lett. e^1) of the old form of art. 29 par. 1, without producing any modification in competence;
- on lett. e), it is taken a part of the contents of lett. f) of the old form of art. 29 par. 1, being eliminated from the competence of the supreme court a series of crimes which have been passed to the competence of the court of appeal;

[1] Published in the Official Journal of Romania, Part I, no. 714 of 26.10.2010

- the contents of lett. f), of the new rule, regarding the crimes committed by marshals, admirals, generals and officers, it is identical to the one of lett. d) of the old form of art. 29 par. 1, without producing any modification in competence;
- the contents of lett. g) remain the same.

Through par. (4^1) added in the structure of art. 45 of the Criminal Procedure Code there are governed the rules of extending the competence for the situation in which the object of the criminal investigation are the crimes with connection or indivisibility relationships, crimes which are passed in the competence of the National Anticorruption Directorate, and other in the competence of the Directorate of Investigations of Organized Crime and Terrorism.

Article 91^6 of the Criminal Procedure Code has the marginal title of "Verification of the means of probation" and aims at the possibility of disposing, on the request of the prosecutor, of the parties or *ex officio*, the expertise of the means of probation obtained through audio or video interceptions or those assimilated to them. The modification through par. 14 aims at replacing the expression "will be subjected to a technical expertise" with the expression "can be subjected to an expertise", thus, along with the entry into force of the modifying law, the verification of these means of probation (video, audio, photographic) is no longer limited only to a technical expertise, but, also to any type of expertise which can be administered in the criminal trial.

The introduction of article 127^1 was made on the background of some practical situations in which the tutelary authorities refused, on the request of the institution of legal medicine, to perform such social investigations and to place at their disposal, in the absence of a disposition of a legal organism. Through the new provision it is performed an acceleration of the criminal trial by the possibility of the sanitary unit of requesting this social investigation directly to the tutelary authority from the residence of the minor, authority which, in front of the new express dispositions of the Criminal Procedure Code, can no longer refuse or delay the performance of such an action.

The modification of art. 140 par. (3) of the Criminal Procedure Code, envisages the competent legal organisms in order to ascertain the rightful cessation of the preventive measures, expanding the role of the prosecutor on this matter.

The new text introduced by article 160^6 par. 4^1 eliminates the possible controversies related to the composition of the panel of judges of the competent court to hear the request of provisional release under judicial control. The formulation of the new text imposes that, regardless of the nature of the crime, the judgment competence attributed for the investigated cause to general or specialized panels of judges, the judgment of a request of provisional release formulated during the criminal investigation stage, to be made by a panel formed of a single judge.

The modification of par. 3^1 of art. 184 has a correspondence in art. 266 par. (1) 2nd thesis of the new Criminal Procedure Code, although the text of the later covers a larger area of individuals whose presence in front of the judicial organism can be accomplished through constraint in the situation of issuing a summons mandate. The only modifications operated in the structure of art. 184 par. (3^1) of the Criminal Procedure Code refers to the possibility of execution of the summons mandate through constraint not only towards the accused or defendant, but towards the witness as well.

The text of article 184^1 newly introduced is novelty in the Criminal Procedure Code and has an identical content with the provisions of art. 267, the new Criminal Procedure Code envisaging the right of direct access of the prosecutors and of the courts of law to the electronic database held by the

authorities such as Local Register Office, the Registry of Commerce, the National Administration of Penitentiaries, the National Agency of Cadastre and Real Estate Publicity.

The new text introduced by par. (1^1) of art. 192 is a novelty only by the fact that establishes the payment of legal expenses advanced by the state in case of a decision of not to commence criminal prosecution. It provides that by the prosecutor's ordinance, deciding not to commence criminal prosecution, to rule that the payment of the legal expenses advanced by the state to be paid by the person who made the referral, only to the extent that it finds "the abusive exercise of this right". By the new text introduced through letter k) on paragraph (4) of art. 198 it is accomplished to complement art. 198 of the Criminal Procedure Code regarding the judicial deviations of a new conduct appreciated as being incorrect in the criminal trial, namely the actual abuse related to the exercise by the parties or their representatives of the process or procedural rights (Atasiei & Tit, 2010, p. 205).

The text of art. 230 it is modified in order to adapt it to the modifications operated on the content of art. 228 par. (2) of the Criminal Procedure Code to which it makes reference. Thus, art. 230 provides the possibility of the prosecutor to decide, in case of incidence of the case provided by art. 10 par. (1) lett. b^1 of the Criminal Procedure Code, not only the solution of not to commence criminal prosecution, but the solution of not to commence criminal prosecution, when the investigative organism makes such a proposal before it begins the criminal prosecution. Art. 230 of the Criminal Procedure Code is completed similarly with the provisions of art. 228 par. (6) of the Criminal Procedure Code, in the sense that, after the disposal of the solution of not to proceed to trial, copy of the ordinance and, if necessary, of the proposal of the criminal investigation organism it is communicated to the interested persons – the person who made the referral, but also, as an element of novelty in comparison to the previous form of the text, and the person against whom there were performed the prior acts or the acts of criminal prosecution.[1]

The modification of art. 243 of the Criminal Procedure Code envisage in fact the 2nd thesis par. (3), the 1st thesis remains unmodified. Given that art. 140 par. (1) lett. b) of the Criminal Procedure Code requires that the solution of ceasing the criminal prosecution ordered by the prosecutor against an accused or an arrested defendant has as consequence the actual cessation of the preventive measure, art. 243 par. (3) it was necessary to be modified in order to correlate it with the modification operated by the same law 202 of 2010 regarding art. 140 par. (3) of the Criminal Procedure Code.

Being a case of actual cessation of the preventive measure, this cessation, in order to take effects, it must be ascertained by a judicial organism which, checking the incidence of the case of actual cessation, will order the immediate release of the accused or defendant, so that the order of release it must be communicated to the place of detention. On the same line it is recorded as well the modification of art. 245 par. (3) of the Criminal Procedure Code regarding the complementary dispositions of the ordinance by which the prosecutor ordered the cessation of the criminal prosecution. As long as the release of the accused it is made directly based on the ordinance given by the prosecutor, without requesting the permission of the court to order the revocation of the preventive measure, the legislator also intervened within the art. 245 par. (3) of the Criminal Procedure Code removing, of the mentions of the ordinance for the cessation of the criminal prosecution, the necessity of making reference to the conclusion of the court, to the revocation of the preventive measure (Atasiei & Tit, 2010, p. 278).

[1] Although art. 230 of the Criminal Procedure Code, in the previous form of the modification by Law 202 of 2010, did not expressly provided that the delivery of a solution based on art. 18^1 of the Criminal Procedure Code to be communicated to an investigated person, in practice this resolution communication was made compulsory, because, indirectly, art. 249^1 par. (3) of the Criminal Procedure Code required this.

Article 251 of the Criminal Procedure Code it is included in Section IV of Chapter IV, titled "Procedure for presentation of the criminal procedure material", which treats more accurately only the procedure of presentation of the criminal procedure material in the cases in which it has been disposed the initiation of the criminal action.

The modification operated on art. 251 of the Criminal Procedure Code refers to the replacement of the sentence "organism of criminal investigation" with the sentence "criminal prosecution organism".

The modification of art. 254 par. (1) concerns the situations in which, upon the completion of the criminal prosecution initiated, the presentation of the criminal prosecution it is not possible due to reasons such as the absence of the defendant or, more recently, of his defender.

A first modification operated at the level of this article is the replacement of the sentence "organism of criminal investigation" with the sentence "criminal prosecution organism". Another modification refers to the impossibility of presentation of the criminal prosecution material in case that, even though the defendant is present, he refuses unjustifiably to fulfill this procedure. The last modification is related to the refusal of the defender to appear before the judicial organism, to assist his client or in the development of this procedure, refusal which has to be unjustifiable. The text of art. 278 par. (2^1) as a newly introduced one and has an equivalent in the provisions of art. 339 par. (5) of the new Criminal Procedure Code.[1] The completion refers to art. 278 of the Criminal Procedure Code, which has as marginal title "Complaint against the actions of the prosecutor". By introducing this new text it was intended that the right of filing a complaint through administrative channels to be limited to a single administrative stage, preventing the formulation of successive complaints through which to reach the entire hierarchy of the prosecutor offices to be called to solve a complaint directed against a solution delivered by a subordinated prosecutor (Daniel Atasiei, Horia Tit, 2010, p. 284) The provisions of art. 85 1st thesis of the Criminal Procedure Code, regarding the previous complaint, has been completed with the sentence "through administrative channels". By this completion it is desired that the misdirected[2] complaint to be submitted through administrative channels, without the court considering itself notified, delivering a trial date, to summon the parties, and then to be able to deliver through a decision the withdrawal of the notification, thus avoiding the overload of the courts or the development of useless judicial proceedings.

The modifications to art. 291 par. (1) and (3) have a correspondent, in most part, in the provisions of the new Criminal Procedure Code[3], which radically modifies the summoning procedure of the parties in the criminal trial and extending the cases in which the parties take term knowingly, without being compulsory their summoning for the next trial date.

The text introduced by the new art. 320^1 is a novelty in the criminal procedure and has a correspondent in the provisions of art. 374 of the new Criminal Procedure Code. The newly introduced dispositions are circumscribed exclusively to the trial in the first instance court and applies in case the

[1] Art. 339 of the new Criminal Procedure Code, having the marginal title "Complaint against the actions of the Prosecutor", provides on par. (5): "The ordinances which solve the complaints against the decisions, actions or measures can no longer be appealed by complaint to the superior hierarchical prosecutor and will be communicated to the person who filed the complaint and to the other interested persons"

[2] The complaint can be "misdirected" only to the court, given that, according to art. 279 par. (2) of the Criminal Procedure Code, "the previous complaint it is addressed to the criminal investigation organism or to the prosecutor according to the law", no longer being a crime for which the prior complaint can be addressed directly to the court of law.

[3] According to art. 353 par. (2) of the new Criminal Procedure Code., "The party present in person, by a representative or by a defendant elected on a trial date, as well as the party to whom, through a representative or an elected defendant or through the clerk or the person assigned to receive the mail, it has been lawfully handed the summons for the trial date are no longer summoned for the subsequent trial dates, even though that person would miss one of these trial dates, except for the situations when his presence is mandatory."

defendant fully admits the facts retained in the document of notification, triggering a more simplified and fast trial procedure, being capable of ensuring the celerity of some of the criminal trials, with benefits both for the defendant, the application of punishments within narrow limitations towards the provisions of the criminal law, as well as for the state, by shortening the proceedings, of the costs implied by the proceedings, as well as the relieving of the judicial organisms of some difficult and, very often, useless proceedings. The new provision mentioned on art. 397 par. (4) is a novelty and refers to the solving procedure of the extraordinary method of appeal of the revision. The revision procedure imposes, previous to the notification of the court, to file the request to the prosecutor at the prosecutor's office within the court which has judged the case in first instance and the performance of acts of research by the prosecutor in order to verify the validity of the revision request.

The new provisions of art. 402 par. of the Criminal Procedure Code have a correspondence in the provisions of art. 459 par. (1) of the Criminal Procedure Code[1] and hey determine that, on receiving a revision request, the president of the court establishes a date for its examination. The change in terminology, from trial term into term, is correlated with the modifications of art. (403) par. (1), according to which the admissibility in principle of the revision request it is made in the council chamber, without summoning the parties and without the participation of the prosecutor, thus we do not find ourselves in the presence of a disposition given by a trial decision, whose date is established through a trial date (Atasiei & Tit, 2010, p. 330). Through the revocation of art. 484 par. (1), the special trial procedure of the cases with underage offenders it is aligned, in terms of the persons summoned on the trial of the underage offenders, with the existing procedures of the new Criminal Procedure Code[2], and, also, to waiver as well the obligation of presence of the defendant before the court in the cases of crimes committed by underage offenders. Yet, the abrogation of the mentioned text, does not have an effect upon the obligation of the court to dispose the summoning of the underage person and of the other persons established by art. 484 par. (2) of the Criminal Procedure Code, and the failure of such persons to appear, if they have been legally summoned, does not prevent the trial of the case.

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[1] According to art. 459 par.(1) of the new Criminal Procedure Code, "On receiving the request of revision, the president of the court establishes a trial date for the examination of the admissibility in principle of the revision request, ordering that the file should be attached to the case".

[2] The new Criminal Procedure Code does not require the obligation of the underage offender to be present on trial during the trial of the case. According to art. 508 of the new Criminal Procedure Code, "(1) During the proceedings of the trial will be summoned the probation service, the parents of the underage child or, if it is the case, the legal guardian, custodian or the person under whose care or supervision the underage person might be for a temporary amount of time. (2) The persons mentioned on par. (1) have the right and the obligation to offer explanations, to file requests and to present proposals regarding the measures to be adopted. (3) the failure to appear of the summoned persons does not prevent the proceedings of the case.