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ADMISSION OF GUILT AND ITS CONSEQUENCES IN ROMANIAN CRIMINAL LAW AND CRIMINAL PROCEDURE LAW. THE ADMISSION OF GUILT AGREEMENT AND THE ABBREVIATED RESEARCH ON THE PROCEDURE OF ADMISSION OF GUILT

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***Abstract*:** *This study brings forth certain issues pertaining to the concept of negotiated justice, the influence of adversarial law on the Romanian law system, but also the most significant means by which these two institutions are implemented in national law, by also considering the situation of the Romanian justice system at the time these institutions were regulated. On the other hand, we will point out the most important aspects regarding the institution of the admission of guilt agreement in our system of law. We will also attempt to analyze the main aspects which allowed for different interpretations in judicial practice.*

Key words: *admission of guilt agreement, abbreviated research, negotiated justice, system of law.*

1. The situation of the judicial criminal system in Romania at the time the abbreviated procedure was introduced

Given the situation of the criminal system in Romania at the time the abbreviated procedure was introduced, the Romanian lawmaker, fully aware of the main issues of the system, understood that the current approach was no longer aligned with the criminal phenomenon; thus, new legislative measures were required, measures which were anchored in the legal reality of those times.

It was for these reasons that Law no 202/2010 regarding some measures for the acceleration of solving trials (published in the Official Bulletin of Romania no 714 of October 26th, 2010) came into force, a law which mainly entailed the simplified and increased degree of solving criminal cases.

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Before the coming into force of this law, the issues of the judicial system were mainly represented by the increased number of files, thus inevitably causing the overload of the courts of law and eventually leading to direct consequences regarding the time of solving each case and the quality of the act of justice.

As it was to be expected, this phenomenon of the Romanian criminal justice system was also reflected in the sentences pronounced by the Strasbourg Court in regard to the violation of the right to an equitable trial; one of the main reasons for the sanctions applied to our country was the increased duration of the judicial proceedings. (Văduva, 2019, page 51)

On the other hand, until February 24th, 2010, the Council of Ministers passed a Recommendation regarding the means to contest the excessive duration of proceedings [CM/Rec (20103] in which it was stated that the excessive duration of criminal proceedings represents an immediate threat to the efficiency of the Court and the system of protection of human rights, based on the European Convention (C.C.R., Decision no. 1106 of September 22nd, 2010, published in the Official Bulletin of Romania no 672 of October 4th, 2010).

The Parliamentary Assembly of the European Council, in Resolution 1787 (2011) regarding the enforcement of the decisions of the Court, passed on January 26th, 2011, stated that „violations of the Convention infringe on the state of law", one of the main issues being „the excessive duration of the proceedings" demanded that Romania „grant priority and approach the issue of the excessive duration of criminal proceedings". (Văduva, p. 52-53).

One of the first regulations of the abbreviated procedure was achieved by the coming into force of article 320^1 of the Criminal Procedure Code in 1968.

Unlike the current regulation, which has an extended area of enforcement, the previous regulations created a unified background, as there was just one article which regulated the judicial proceedings in case of admission of guilt.

Thus, by the coming into force of Law 202/2010 regarding some measures for the acceleration of solving trials it was also desired to respect the right to an equitable trial, which is one of the main components of the principle of ensuring the prominence of rights in a democratic society where speedy proceedings represents a defining element of this principle.

Unlike the admission of guilt agreement, which was passed by the new Criminal Procedure Code, this institution is not new. Similar regulations were found in the old Criminal Procedure Code.

Until the end of 2010, the Romanian lawmaker chose to valorize the positive attitude of the defendant, the full admission of the facts for which he was on trial only regarding material law, as an extenuating circumstance or a circumstance which could be valorized when the punishment was established, according to the provisions of the Criminal Code.

The origin and concept of this institution was developed under the common-law system (Lăbuș, 2010) by regulating the notion of „negotiated justice" subsequently extending it to continental law, much like the French and German system of law (Iordache, 2014, p. 22-23), but we must also consider the difference in vision between the two systems in regard to the purpose of the criminal trial.

According to some opinions expressed by the practicians of the adversarial system, the purpose of the adversarial criminal procedure is not necessarily finding out the real truth, but mostly ending litigation (Damaska, Mirjan, 1973, p. 580-581), but in the continental system of law, such an approach can't be accepted, the truth can't be negotiated or compromised; there are no sides to the story, just the case that must be solved by the court of law. (Langer).

Once the new Criminal Procedure Code came into force, we can appreciate the obvious intention of the lawmaker to regulate new institutions borrowed from other systems of law, being aware of the need to change the vision of implementing the criminal policy and allow for increased efficiency of the mechanism of criminal coercion, for our criminal law system to maintain the competitivity demanded by the new social realities and to respond to this type of necessities.

The Romanian lawmaker chose to disperse the institution of the simplified procedure in several articles, namely article 34 second alignment, article 374 fourth alignment, article 375, article 377, article 396 10th alignment, to the detriment of a more harmonized structure, which would have been easier for theoreticians, but also for practitioners.

As we can deduct from the title of Law no 202/2010, the introduction of the institution of the simplified procedure of the admission of guilt was mainly focused on the speedy solving of criminal cases which were an overload for the courts of law, thus creating benefits for law enforcement institutions and defendants.

By demanding an abbreviated procedure, the defendant forgoes the revisitation of all evidence entered in the phase of criminal prosecution, the right to file any other demands and be subjected to jury deliberation, outside the temporary limits set by the abbreviated procedure.

The conditions which must be met for this procedure are as follows: the crime which is subject to criminal proceedings must not be punishable by life imprisonment; the declaration of admission of guilt must be filed in person or by authentic document by the defendant before the court of law; the admission of the deed must be filed before the preliminary procedures before the court, the admission of guilt must pertain to the objective and the subjective side of the crime; the admission of guilt must be total, not partial, the court must acknowledge that the evidence entered is sufficient in order to establish the truth and to justly solve the case.

The lawmaker regulated, as a novelty, the possibility of the defendant to fully acknowledge the deeds, thus entering a simplified procedure with a dual purpose. Thus, on one hand, the legal strengthening of this institution is exclusively dedicated to the first phase of trial, thus providing „benefits" to the state authority by shortening the duration of the criminal trial.

On the other hand, the defendant benefits from an extenuation of criminal liability given his conduct of collaborating in order to establish the truth.

Another relevant aspect, as regulated by the mentioned provisions (D. Atasiei, H. Ţiţ, 2010, pages 307-312) is the means by which this procedure is started.

Thus, the defendant had the right to opt with regard to the form of this procedure, whether a personal statement before the court of law or an authenticated statement (before a public notary of a public servant of consulate or diplomatic office).

The content of the declaration must meet several mandatory conditions: the case must be filed before a court of law, the act by which the court is invested with solving the case must be filed, the full admission of the deeds and the express demand that the trial be continued solely based on the evidence entered in the criminal prosecution phase.

The defendant can demand the abbreviated procedure by authentic document or in an oral statement before the court of law, the latter will be entered as evidence in a distinctive document which is then signed by the defendant.

The abbreviated procedure can only be requested for crimes which are punishable by a fine or imprisonment, regardless of whether the defendant is an individual or a company, of whether the defendant is of age or underage; thus, defendants who are on trial for crimes punishable with life imprisonment are excluded from this procedure.

Therefore, we note this derogatory regime from the one which is usually applied, by restricting the evidence entered (only admissible evidence entered in the phase of criminal prosecution and circumstantial documents) as well as the benefits of the reduction of limits of punishment for the defendant (reduction by a third in case of imprisonment and by a quarter in case of a fine).

The declaration of the defendant pertains to an admission of the deeds, not the crime he is on trial for, by considering the optics of the lawmaker of those times, as the admission of guilt does not limit the right of the defendant to defend himself in regard to the circumstances in case the deed is not regulated by criminal law or the deed does not entail a specific social danger; these are *sine qua non* conditions for qualifying a certain deed as a crime (Article 17 of the July 28th Criminal Code: *„A crime is the deed which entails social danger, committed with guilt and regulated by criminal law''*). The lawmaker clearly distinguished between deed and crime.

The terms used by the lawmaker „Trial in case of the admission of guilt" entails expressing the subjective position of the defendant regarding the deed and the form of guilt, thus nuancing a condition of admissibility of the simplified procedure.

Regarding the admission that the defendant must make in order to be tried in the abbreviated procedure, we must note that, by considering that in the previous form of this institution the defendant was required to „admit guilt", nowadays the defendant must „admit to the deed he is accused of".

When the project of the new Criminal Code was on debate, the issue of whether the notion of crime entails that of guilt was subject to discussion; the members of the Judicial Commission concluded that, to avoid any different interpretation, the definition of crime must also entail guilt (a provision regulated in the content of article 15 of the Criminal Code).

By interpreting the provisions of article 320^1 third alignment, we deduce that the need for the defendant to be present before the court of law, an aspect which is not correlated with the provisions of the first alignment, can deprive the authentic document by which the defendant agreed to enter the simplified procedure of any legal effects.

The specialty literature (D. Atasiei, H. Ţiţ, 2010, page.309) claimed that a hearing of the defendant was necessary in order to enforce the principle of direct involvement.

Thus, it is necessary for the defendant to be present before the court of law in order to establish the truth, as the judge is granted the possibility to examine the admission of guilt filed by the defendant further than the mere legal filing of an authentic document.

As for the legal effects of the admission of guilt procedure, we must note that the literal interpretation of article 320^1 seventh alignment results in the following: the defendant benefits from the reduction of the limits of punishment only in case the court rules to condemn him; this led to the revitalization of this institution within the current regulation, by eliminating the task of the judge to sentence the defendant (M. C. Graur, 2016, pages 97-109.), as, nowadays, a mere *in concreto* evaluation of each case is necessary, thus contributing to the idea that the judge pronounces an equitable and just solution.

An aspect prone to controversy was the situation of enforcing Law no 202/2010 regarding some measures for accelerating the solution of trials which were underway, especially the possibility of enforcing the legal instrument *mitior lex*.

The specialty literature (Iordache, p. 53 apud. Barbu, 1972, p. 182.) noted that, in order to enforce *mitior lex* one can't consider criteria such as the object of regulation, the purpose, the nature or character of regulations, but the results, the effects the incriminating text produces in relation to removing, extenuating or aggravating criminal liability.

Thus, in case of a succession of procedure laws, if there were pending cases in which legal investigation was underway, the *mitior lex* principle would not apply and the defendants would undergo the common law procedure, as they can't make use of the reduction of the sentence, given that the stage in which the plea for admission of guilt should have been entered passed, namely „until the legal proceedings before the court of law begin". (Cioroabă, Ghigheci, 2020).

We agree with this point of view, as we can't consider the impossibility to file for this procedure to be a discriminating criterion, since the time criteria of this mechanism is not met, thus the legal effects it produces are different.

We conclude by stating that, the coming into force of Law no 202/2020 was an innovation of the legal system as it introduced new mechanisms to ensure the right to an equitable trial, both from the perspective of the speedy conclusion of trials and from the perspective of the procedural guarantees it provides.

In this context, it was stated that, in our system of law, we must maintain the current standards according to which, although the defendant forgoes some procedural rights, he doesn't forego the assumption of innocence regulated by article 21 11th alignment of the Constitution, article 4 of the Criminal Procedure Code or article 6 second paragraph of ECHR and the standard of proving guilt beyond any reasonable doubt. (the enforcement of the principle *in dubio pro reo*).

2. The situation of the Romanian criminal judicial system at the time when the admission of guilt agreement was introduced

Romanian criminal procedure has been updated to contemporary times once the new Criminal Procedure Code came into force on February 1st, 2014 (the Criminal Procedure Code was passed by Law no 135 of July 1st, 2010, published in the Official Bulletin of Romania no 486 of July 15th, 2010 with subsequent changes) as well as the law for enforcing it (Law no 255 of 2013 was published in the official Bulletin of Romania no 515 of August 14th, 2013). Thus, the Romanian criminal law system was faced with a remarkable, unprecedented moment, given the radical changes in this area, in the context of the normal evolution of society which caused such a phenomenon; thus, it was only normal that national law be aligned with the standards required to abide by all principles of law.

The above-mentioned law brought about significant changes in regard to the procedures which can occur within a criminal trial, changes which restructured the procedural logic of the new model of criminal trial, thus extenuating the inquisitorial nature of the Romanian system of criminal procedure law by introducing elements specific to the adversarial system (Bârsan, Cardiș, 2015, p. 1).

This is the situation of the admission of guilt agreement, an institution newly introduced in our criminal procedure system, which mainly responds to the need for creating a new *legislative procedural background in which the criminal trial is faster and more efficient*, which in turn entails reduced costs, as mentioned in the exposure of reasons of the current Criminal Procedure Code.

As vast as a research material centered on the concept of „negotiated justice" might be, it would still be incomplete without an analysis of the concept of admission of guilt, namely the „guilty plea".

The lawmaker tried to adjust the institution of the admission of guilt agreement to the specificity of the Romanian material criminal law, which is different from the systems of law on which it was based, but it was also an attempt to align it with the newly introduced criminal procedure regulated by the Criminal procedure Code which came into force on February 1st, 2014.

Such notable differences exist in regard to the conditions of concluding such agreements (the admission of guilt agreement can only be concluded in regard to crimes punishable by law with a fine or imprisonment of up to 15 years) in relation to the nature and severity of the crimes (some criteria are found in the provisions of article 74 of the Criminal Code), the contradictory character of the procedure before the court of law („*the court rules on the admission of guilt agreement by public sentencing, after hearing the prosecutor, the defendant, his lawyer, as well as the other parties, if present, and the injured party*"), the ability of the appeal court to conduct a new trial within the appeal procedure.

However, we must note, with some surprise, that the institution of the admission of guilt agreement was a failure, at least in part.

This conclusion is partly supported by the reduced number of such agreements in practice at the time the regulation was introduced. Although, in the first years after this

institution had been introduced, the practice of Romanian courts led us to believe that it was a failure, the last years an increase has been noticed in the number of criminal cases in which admission of guilt agreements were concluded (we must mention that in the USA, over 90% of criminal cases are settled by admission of guilt agreements). A first answer might be provided by the novelty character of these criminal procedure provisions.

We may also state that the time passed from the coming into force of these provisions should have been sufficient to overcome this effect. However, what we noticed is that throughout these years the lawmaker often revisited these regulations; we can easily see that this institution underwent permanent change.

From the first interventions of the constitutional control courts upon the legislative changes introduced by Government's Emergency Ordinance no 18/2016, to the decisions of the High Court of Justice in the procedure of appeals in the interest of law or solving conflicts of law, they have all generated a state of legislative instability felt by both practitioners, theoreticians and the participants to the act of justice.

It was noted that the number of newly recorded cases is greater than the number of cases which can be solved within a year, with the available human resources.

As a result, unsolved cases will be finalized by using the instruments regulated by the new Criminal Procedure Code to reduce the number of newly recorded cases (by dismissing incomplete claims) and the duration of solving cases (by using the admission of guilt agreement).

Also, in regard to the increase in the number of defendants which had been sent to trial, an increase in the number of admission of guilt agreements was noticed. The institution of negotiated justice, although an expediting means of solving criminal cases, is a concept which reflects a procedural culture, an entire philosophy of the criminal trial, a mindset. Therefore, a procedural culture can only be changed by changing the mindset.

3. Conclusions

The Romanian lawmaker was forced to introduce the concept of „negotiated justice" in the system of criminal law, considering the time, financial and human costs which had been increasing constantly because of an overloaded judicial procedure as well as of the passing of an extensive amount of time from when the deed had been committed to the time the punishment was enforced, hence the significant number of files and the general overload of the judicial system.

At the end of this endeavor, we can firmly state that the Romanian lawmaker undertook the necessary efforts in order to ensure that the initial form of these institutions is not a mere alignment of legal texts, but these regulations have also been adapted to our system of law at the same time ascertaining that the legitimacy of the criminal trial is not jeopardized and by increasing the degree of confidence of the participants to the act of justice, an issue which seemed inevitable when the new Criminal Procedure Code came into force.

We believe that only a unified practice in this area will be able to determine if, through the legal regulation of provisions regarding the admission of guilt agreement, the purpose of the criminal trial was fulfilled.

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