ADMITTING GUILT IN COURT CASE IN ACCORDANCE WITH NEW LEGISLATIVE CHANGES

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Abstract
Entry into force of the law no.202/2010 regarding some measures to speed up the trial processes already raises some problems of interpretation especially concerning cases that are pending. Such a situation was inevitable since the transitional provisions could not cover all situations arising in practice, and the law mentioned above create some completely new institutions in our criminal law. But I believe that for the new institution of admitting guilt in court case, would be required to adopt transitional rules necessary to eliminate the controverses that arise and will arise in practice. As any new institution, admitting guilt in court case will require a certain period of time untill crystallize an unitary practice field, even more because the text contains some vague expressions. Unfortunately, the courts have no benefit yet of a fast and efficient mechanism for unifying the jurisprudence, and this fact will probably affect also the solutions that will be taken by the courts in this matter.

Keywords : *guilt, offence, court,unfair, controverses.*

Introduction

Under the statement of reasons in the Law no. 202/2010, regarding some measures for speeding up the cases settlement it has been illustrated that: *"the introduction in the Code of Criminal Procedure of a new institution, such as the institution of trial in case of pleading guilty, satisfies the need of efficacy of the judgment, contributing to the annulment of some time consuming procedures and often useless for establishing the legal truth, subsuming to the qualitative requirements of the act of justice"*.

However, the entry into force of the Law no. 202/2010, stirred up numerous discussions amid the practitioners and it has already generated a series of interpretation problems in the judicial practice, especially regarding the application of this law to the pending cases, under process of settlement, as long as the above-mentioned law has introduced some completely new institutions in our criminal law, and the provisional measures could not cover all the possible situations occurred into practice.

Under the marginal title *"The judgement in case of pleading guilty",* the new art. 320^1 of the Criminal procedure code provides that *"until the initiation of the court investigation, the accused can declare either personally of by means of an authentic document that he / she acknowledges to have been committed the incriminated actions recorded in the court notification instrument and asks for the judgement to be settled based on the evidence submitted to the file in the stage of criminal investigation"* (art. 320^1 paragraph 1 Code of criminal proc.). In the case of applying this procedure *"the court shall decide on the conviction of the accused, who benefits of the remission by one third of the limits of the sentence provided by the law, in the case of sentence to imprisonment, and a remission by one fourth of the limits of the sentence provided by the law, in the case of punishment by administrative fine"* (art. 320^1 paragraph 7 C. criminal proc.).

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Paper content

Regarding the application of the new art. 320^1 of the Code of crim. proc., regulating the trial procedure in case of pleading guilty, as far as concerning the cases pending at the effective date of this text of law, these provisions are susceptible of being interpreted differently in the judicial practice, as there are possible several solutions, depending on the procedural stage of the case, on the accused position as to that moment, on the criminal plurality registered in the case and on the legal frame of the action.

Thus, one of the problems that have occurred was the one of the moment up to which the accused can plead guilty and what consequence causes the fact that the request of being judged based on the evidence gathered during the criminal prosecution is submitted after the initiation of the court investigation.

In the cases where the court investigation has not been initiated yet, and before the procedural moment up to which pleading guilty can become incidental (the initiation of the court investigation), the accused can use, beyond any discussion, of the provisions of the art. 320^1 Code of criminal procedure, operating the rule of immediate application of the norms of criminal procedure law (*tempus regit actum*).

In the cases where the court investigation has begun or such procedural stage has not been reached, and the accused did not admit his guilt, it is not yet a matter of pleading guilty.

However, a thorough analysis of the legal provisions called forth presupposes both the hypothesis where, in the cases pending with the courts of law, where the court investigation has begun, the accused admitted to have committed the deed ever since the criminal prosecution stage, stating this position also in front of the court, as well as the case when, the accused has not pleaded guilty during the criminal prosecution stage, but, after the initiation of the court investigation, he understands to reconsider the procedural position in the sense of admitting his / her guilt, thus as, although, as procedural stage, there has been exceeded the moment of initiating the court investigation, the accused requires to be applied the new procedure.

According to the opinion of theoreticians of law as well as to the practice of the courts, there is a first trend that considers that the accused is not automatically granted the right to benefit of the provisions of the art. 320^1 Code of criminal procedure, from the very moment of the enforcement of this text, regardless of the considered hypothesis, resulting from the above-illustrated facts.

In supporting this opinion and the solutions passed by the courts in this sense, there is, firstly, the argument, according to which, one must consider the fact that the criminal trial has exceeded the procedural moment up to which the accused could plead guilty and could admit committing the crimes and when he could ask for the judgement to be done based on the evidence submitted to the file in the criminal prosecution stage (initiation of the court investigation).

The deadline established by the legislator that is until the initiation of the court investigation, is equal to the expiration of a time-limit. This presupposes that any statement formulated after the initiation of the court investigation must be dismissed as belated.

This is because the criminal trial must carry out operatively, without interruptions and reinstatements to the prior stages, and a reinstatement to a previous stage or procedural phase is likely solely in the cases in which the law expressly stipulates such action (i.e. in the case of cassation for re-judgement or in the case of reopening the criminal investigation).

However, the accused whose decision has been quashed or cancelled in one of the remedies at law, and the case has been sent to be re-judged by the court of first instance, he/she can make use or not make use of this procedure depending on the limits, in which the decision is cancelled and of the last valid procedural instrument, from which point on the criminal trial must be recessed.

Another argument of those supporting the above-opinion is that, the rule of immediate enforcement of the procedural criminal law cannot be ignored and cannot have a retroactive character unless expressly provided as such by its text. In the doctrine there has been even ascertained that the

retroactivity of the new procedural criminal law cannot be accepted under any circumstances, as it is not allowed by the art. 15 paragraph 2 of the Constitution, providing the possibility of retroactivity only for the criminal law but nor for the procedural criminal law.

It is appreciated that, in the case of a succession of procedure laws the discrimination cannot be called forth, as the procedure law applies immediately to all the persons in the same procedural stage, without any discrimination. However, the accused whose court investigation has proceeded face a different situation than those not yet in that procedural stage, and the possibility to ask for the judgement solely based on the evidence submitted during the criminal prosecution granted only to the later ones, does not represent a discriminatory act. Thus, it would mean that the new procedure law would apply to all the persons facing the same situation, including those that have been definitively convicted, which is deemed to be absurd.

Besides, if there would be adopted the contrary solution it would mean that the judgement procedure for the case of pleading guilty would be applicable, including in the case of the files under the appeal or recourse stage, such a point of view being less likely to be generally accepted.

In analysing the incidence of the art. 320^1 paragraph 7 Code of crim. pr. in the case of the files already under investigation with the court at the date of entering into force of such Code, one cannot simply ignore the fact that this norm is not one effective on its own, without entailing any condition, but a norm whose incidence is conditioned by the performance of a certain procedural action of the accused, that is the acknowledgement of the facts by the accused and his/her request, *made prior to the initiation of the court investigation*, that the judgement shall be done based on the evidence submitted during the criminal prosecution stage.

However, it is considered that, in the cases where the court investigation started before the effective date of this new art. 320^1 Code of crim. pr. this condition is not complied with and it can no longer be complied with. If the courts would only apply the art. 320^1 paragraph 7 Code of crim. pr., without considering the fact that the conditions under the paragraph 1/6 of the same article are not complied with, the result would be that the provisions of the new law and the old law would combine, thus giving birth to a new law (*lex tertia*), which is not admissible.

Thus, the surpassing of the procedural moment up to which the perpetration expression of will can intervene, entails the inapplicability of that cause providing the lack of sentence or the remission, and any likely changes in the accused plead, occurred subsequent to that moment, are ineffective, therefore, if the court investigation proceeded and if any evidence have been served to the court, the judgement cannot no longer be grounded on the evidence submitted during the criminal prosecution stage.

There is however a new approach of some courts who have admitted that both the accused acknowledging their actions since the criminal prosecution stage can benefit of the provisions of the art. 320^1 Code of crim. proc., maintain this position in front of the court, even if, by reference to the effective date of the new legal provisions, the starting date of the court investigation had passed, as well as the accused who, although have not pleaded guilty during the criminal prosecution stage, have changed their procedural position understanding to acknowledge their action and asking for the judgement to be carried out according to the new regulated procedure.

Practically speaking, as we talk about a law containing also provisions of substantial criminal law – as it provides a ground for remission by one third of the limits of the sentence provided by the law, in the case of sentence to imprisonment, and a remission by one fourth of the limits of the sentence provided by the law, in the case of punishment by administrative fine – it can apply retroactively, as this is a more favourable law.

Regarding the criteria for differentiating between the norms of substantial criminal law and the ones of criminal procedure, in the doctrine, we have a unanimous opinion according to which the placement of such norms in the Criminal Code or Criminal Procedure Code does not represent a criterion for differentiating such norms, hence, the fact that the relevant text appears in the Criminal

procedure code does not represent an impediment for its assessment as a norm of substantial criminal law, susceptible of being, thus, retroactively applied, if it is more favourable.

Even if the constitutional provisions contained in the art. 15 paragraph 2 stipulate that the *„law orders only for the future, except for the more favourable criminal law (...)"*, we consider that the reasoning of the legislator upon the drafting of such norm was to provide the possibility to retroactively apply any criminal law or procedural criminal law, containing more favourable provisions.

An extensive interpretation of the constitutional law provisions is required, in the sense that, even if the text does not expressly stipulate that the criminal procedural law can also retro-activate, we must accept that, if we talk about the remission of the sentence limits, any law, whether criminal or procedural criminal law, is subject to retroactivity.

The legislator did not refer to the constitutional law provisions of the art.15 paragraph2 and to the criminal procedural law, as the remission of the sentence limits, fall under the matter of criminal law, the provisions of the art. 320^1 Code of crim. proc. being the first procedural provisions containing norms of criminal substantial law.

We deemed as compulsory the interpretation of the art. 320^1 paragraph 7 Code of crim. proc., as it is a norm concerning the quantum of the sentence applicable to certain offences or crimes, to be further framed beyond any doubt in the category of the criminal substantial law, and not in the category of the criminal procedural norms category.

Besides, the finality of norms edicting by the legislator is represented by the granting of a right, being excluded the fact that the above-mentioned legal provision regulates any formalities, the actual result to which the application of this legal provision leads to targeting the criminal liability that can be decreased.

Thus, as far as a norm, by its actual application on the case referred to judgement, regardless of the law section it belongs to, introduces a change in the incrimination conditions, in the conditions of charging the criminal liability or in the sanctions, shall fall under the incidence of the more favourable law (mitior lex).

We also consider that, in the case of some accused that caused criminal offenses at the same date, it would be deemed as discriminating if the judgments passed by the courts to be different, in the sense of considering as incidental or not the provisions of the art.320^1 Code of crim. proc., depending on the expedience of a criminal investigation authority in more effectively run through the procedural stages and phases of research and /or execution of the criminal prosecution.

Even more discriminating would be considered the different judgments in a trial in process of settlement, if the accused had committed a criminal offense for which he/she is judged by the court, while another accused that has committed a criminal offence long before the previously-referred to accused, either a similar offence, or a different offence, but due to a more complex criminal participation, or due to the fact that the crime has been committed in a series of criminal offences, circumstances which, due to the case complexity, resulted in a longer criminal investigation.

We consider that, in the given situation, such a treatment would be a discriminating one, as long as the causes generating it are as objective as it gets, being obviously not imputable to the accused. Thus, we get to the situation in which the accused that committed a single criminal offence, related to which the evidence service did not require a long period of time, hence the file has been referred for settlement by the competent court, will not benefit of the new simplified procedure, while other accused that have committed the criminal offence long before the other accused, will benefit of the simplified procedure of pleading guilty.

For this purpose, we called forth the Decision no. 86/27.02.2003 of the Constitutional Court, establishing that the provisions of the art. 8 of the Law no. 543/2002 regarding the pardoning for certain sanctions and the removal of some measures and sanctions that are unconstitutional, because they limit the application of the law for sanctions established by means of final court decisions, unchallenged by the date of entry into force of the law, excluding the sanctions applied subsequently

for actions committed before such date. In grounding the decision the Constitutional Court showed that the situations of certain categories of persons should basically differ for justifying the difference in the legal treatment and such difference should be based on an objective and rational criterion.

Another issue of interpretation and application is the one regarding the disjunction and incompatibility, and it concerns the case where in the same case there are two or more accused with different pleadings: one or several acknowledging to have committed the criminal offence described in the indictment and requesting the case settlement based on the evidence submitted to the file during the criminal prosecution and another one or ones not recognising to have committed the criminal offence or not requesting the application of the art. 320^1 paragraphs 1-6 Code of crim. proc.

From the text analysis, it results that the legislator did not expressly provide the coercitiveness to disjoint the case in such a situation, as provided under paragraph 5 of the art. 320^1 of the Code of crim. proc. for the case where evidence are required for the settlement of the civil action.

Although we do not deal with an imperative provision that would establish the coercitiveness of the case disjunction, in the case where any of the criminal participation forms is held and the procedural position of the participants to the offence is different, the court can decide the disjunction, only when possible. In such case, the court shall proceed according to the rules of simplified procedure for those that comply with the conditions, ordering by its decision the case disjunction for the other accused parties.

The accused sentenced on the grounds of *"pleading guilty"* can be heard as witnesses in the disjoint case, in relation to the other accused parties.

The judge passing the sentence for convicting the accused, according to the simplified procedure, can find himself/herself incompatible to judge the case of the other participant to committing the criminal offence.

Based on this interpretation of the text of law, included in a study published by the Superior Council of Magistracy, some courts facing such a situation declared themselves incompatible to judge the accused towards whom they ordered the case disjunction.

Considering the rule established by the art. 32 Code of crim. pr., text providing that, the case disjunction would not represent the best solution, in case of indivisibility or joint cases, the first instance judges all the cases, if the court settles all the criminal offences and all the accused.

Even if the art. 38 Code of crim. pr. allows the disjunction in the cases of incompatibility provided under art. 33 let. a) and in all the joint cases, one should not forget the basic rule, that is, in such situations the cases it operates and prevails the case joining, and the disjunction is merely the exception.

The only case that might be taken into account is the one regulated by the art. 47 paragraph 2 of the same code, which provides the fact that the judge who has pre-empted on the judgement that might be reached in the case can no longer participate to the case settlement.

According to the legal provision quoted above, the judge that, prior to the case settlement, pre-empts on the merits of the case is incompatible for judging the case. It is of no importance if the pre-emption occurred before the appointment or during the trial, if it has happened during first instance or in during the redress procedures, if it happened in an official environment or in an occasional case.

By using the word "settlement", the legislator referred to the situation in which the judge determined on the existence of the criminal action and on the guilt of the accused, and not to other situations such as the change of juridical framing of the offence, the extension of the criminal judgement on other material actions, on other deeds or on other persons. In fact, in both the doctrine and the practice, the opinion according to which the judge that has previously settled the criminal law part of the trial is not incompatible for settling also the disjoint civil part is the majority opinion.

By relating to the provisions of the art. 33 let. a) and art. 34 Code of crim. pr., if we take into account the situation in which there was a criminal participation when the criminal offence was committed, all the persons have been sent to judgment, and, prior to the commencement of the court

investigation three of the accused have requested to be judged based on the simplified procedure, while the other accused have not pleaded guilty, if the case is disjoint, the court must order the conviction of the three persons, applying the provisions of the art.320^1 and the disjunction related to the other two accused, that will be judged by a different panel of judges.

If, in this case, there exists a prejudice, the means of settling the civil action shall be an extremely difficult one, in the context in which the three accused, that have chosen to benefit of the new procedure implied by pleading guilty, do not challenge the prejudice, precisely because the modality established in the indictment is a convenient one for them, considering the rule of solidarity operating between the debtors.

In such a case, will the court jointly convict solely the three accused that have opted for calling forth the new legal procedure in their favour, further the solidarity being established on the occasion of convicting the other two accused, or will it disjoint, regarding the three accused, the civil matter settling it together with the criminal matter that concerns the other two accused, as well?

Moreover, we have to consider the issue of what happens in the case where, on the occasion of judging the two accused, shall there be ascertained that the entire prejudice has been caused by the three accused that have benefited of the procedure of pleading guilty, and, in relation to them, has the criminal court decision, establishing the fault or the contribution to the prejudice, remained final?

We consider that the answer to the two above-posed questions is represented by the fact that, in a case like the above-illustrated one, the disjunction is not the best solution, therefore, in such a case, when the legal conditions are complied with, for the accused choosing the simplified procedure the court shall have to limit to admitting the judgement based on the evidence serviced during the criminal prosecution stage, and the judgement for these accused shall be passed concurrently to the one of the accused judged according to the ordinary procedure.

There is, however, the case when, due to different reasons, the case disjunction could not be possible. In this hypothesis, a pertinent question would be can the court dismiss the request of an accused to apply the simplified procedure, only because the other one does not agree?

Practically, in case there is a criminal offence committed by several authors and one of the accused intends to benefit of the simplified procedure, acknowledging the committing of such offence based on the evidence serviced during the criminal prosecution and the other accused opts for the ordinary procedure of settling his case, and, thus, we have a case in which the disjunction is impossible, if the case reaches the stage of court investigation and the evidence is submitted to the file pending with the court, can it still be supported the compliance with the premise for applying the remission of the sanctions limits, according to the art. 320^1 paragraph 7, if the case has not been settled solely based on the evidence serviced during the criminal prosecution?

In this case, considering the argument related to the indivisible nature of the norm provided under art. 320^1 Code of crim. pr. and to the impossibility of applying the paragraph 7 of the same article in case of concurrent non-application of the paragraphs 1-6, we consider that the accused pleading guilty should neither benefit of the remission of the sanction.

Nevertheless, in this case, the difference of legal treatment between the two accused is to be carried out, like before the effective date of the new art. 320^1 Code of crim. pr., by applying the sanction particularization criteria or by holding the mitigating circumstances for the accused pleading guilty of committing the actions indicated in the indictment.

However, we ask ourselves if it is equitable and non-discriminating that the accused who intended to benefit of the simplified procedure should receive a conviction the only mitigating factor applicable to his case being the mitigating circumstances for his honest attitude and for acknowledging his/her deed. It is obvious that, although this accused agrees that the judgement shall only be carried out based on the evidence serviced during the criminal prosecution, finds himself/herself in the impossibility of making use of the simplified procedure due to causes independent of his/her will, as long as the second accused (co-author to committing the criminal offence) understands to adopt a procedural position of pleading not guilty and the cause cannot disjoint.

On one hand, due to the occurrence of a cause independent of his/her will, the accused should be able to benefit of the new procedure. On the other hand, as long as the other accused does not acknowledge the guilt of committing the criminal offence, thus, the criminal trial must follow its course in front of the court, the file enters the stage of court investigation and other evidence is implicitly serviced during the criminal trial, thus that the first accused could no longer call forth the provisions of the simplified procedure. It is a situation that the judiciary practice must solve by adopting a majority solution in this sense.

It is true that the doctrine and jurisprudence have accepted the possibility of combining more favourable provisions stipulated under different laws, when such provisions concern institutions that are susceptible of being applied autonomously, such as, for example, the case of multiple criminal offences, where there shall be selected the more favourable law for each offence separately, and further there shall be selected that sanctioning treatment for multiple criminal offences, provided by successive laws, which is more favourable. Is, however, the institution of guilt acknowledgement, regulated by the art. 320^1 paragraphs 1-6 Code of crim. pr. one susceptible of being applied autonomously of the institution of the cause of sanction remission, provided under paragraph 7 of the same article? Does the norm provided under art. 320^1 Code of crim. pr. have a divisible nature, allowing a separate application of the paragraph 7 of this article, independent of the special procedure of pleading guilty, regulated under the paragraphs 1-6 of the same article? We believe that the answer to such questions can only be a negative one, as, according to all the criteria proposed by the doctrine, the norm provided under the art. 320^1 has indivisible nature, and the application of the sanction remission cause, provided under paragraph 7 of this article to be conditioned by the application of the separate procedure of acknowledging the guilt, regulated by the paragraphs 1-6 of this article.

Thus, in the foreign doctrine, there has been ascertained that *"the milder provisions of the new law are a sort of a counterparty to the more severe provisions the two series of provisions are trying to balance, therefore the two series of provisions cannot be applied independently one of another"*. However, it is obvious the legislator's intention to grant a "*compensation*" consisting in the remission of sanction only to that accused that pleaded guilty and facilitated a more efficient settlement of the criminal trial by the request of settling the case based on the evidence serviced during the criminal prosecution.

We deduce this also from the fact that the simple acknowledgement of guilt, without the judgement carried out based on the evidence gathered during the criminal prosecution (due to various reasons, including the dismissal of the request by the court, according to art. 320^1 paragraph 8 Code of crim. pr.), does not lead to the remission of the quantum of the sanctions applicable to the accused.

Another problem in applying the provisions of the art. 320^1 Code of crim. pr. is the significance of the verb*"to hear"*.

There are opinions according to which the hearing is carried out after the court has previously informed the accused on all the consequences deriving from opting for the simplified procedure, followed by the reading of the intimation.

It has been considered that this hearing focuses on admitting the actions described in the indictment and on accepting the evidence serviced during the criminal prosecution and that is does not have the legal nature of an evidence (not being applicable the provisions of the art. 69-74 Code of crim. pr.), representing but a mandatory procedural activity required for establishing the procedural frame, being placed at the time of prior matters, before admitting the claim for judgement, according to the procedure provided under art. 320^1 Code of crim. pr.

The mandatory nature of this procedural activity is correlated with the accused right to opt for the simplified procedure. The supporters of this opinion have accepted the fact that this simplified procedure can carry out by default, in the absence of the accused, if the legal requirements are complied, in the hypothesis in which the acknowledgement has been made by means of an authentic deed.

However, this opinion, presents some drawbacks, that we shall further detail:

Placing the action of hearing the accused at the time of prior matters not correct. From the art. 44 Code of crim. pr., marginally called *"prior matters"*, it results that: *" The criminal court has the competence to try any prior matter on which the resolution of the case depends, even if, by its nature, that matter falls under the competence of another court. The prior matter is tried by the criminal court according to the rules and probative means regarding the field to which the matter belongs. The final decision of the civil court on a circumstance that represents prior matter in the criminal trial has authority of res iudicata in front of the civil court."*.

The text of the art. 44 Code of crim. pr., illustrates the fact that, there is no provision on the procedural moment when the accused can call forth this matter and that this moment can occur whenever during the criminal trial, both in the prosecution stage (see art. 45 Code of crim. pr.), as well as in the judgment stage (both before and after the court investigation initiation).

The hearing of the accused, provided under art. 320^1 Code of crim. pr., even if, apparently, has the value of a simple statement of acknowledgement, it cannot be reduced to it. It cannot be carried out by omitting the fact that the judgment stage is governed by certain rules. These rules require an active role to both the judge and prosecutor, and provide the right of the other parties to ask questions.

As a matter of fact, the hearing of the accused must be placed in the context established by the Code of criminal procedure. After analysing the order of the legal texts it results that, in a criminal trial, the order of the activities shall be the following:

- according to the art. 320 C. cr. pr., the chairman shall explain to the damaged person that he/she can have the capacity of party in a civil trial or it can participate as damaged person in the criminal trial;
- according to the art. 320^1 paragraph 3 Code of crim. pr., the chairman shall ask the accused if he/she requires for the judgement to be carried out based on the evidence serviced during the criminal prosecution stage, evidence he/she acknowledges, or, based on the ordinary procedure and shall take note of the expressed position;
- according to the art. 320 paragraph 2 Code of crim. pr., the chairman shall ask the prosecutor and the parties if they have formulated pleas, applications or if they propose new evidence; in case of a negative answer, the court declares the court investigation initiated, and such investigation shall be carried out according to the provisions of the art. 321 Code of crim. pr.
- according to the art. 322 Code of crim. pr., the chairman shall order that the clerk to read or to make a summary of the court intimation deed.
- according to the art. 323 Code of crim. pr., the court shall proceed to hearing the accused; if there are several accused, the hearing of each of them shall take place in the presence of the others.

Practically, after hearing the accused, according to art. 323, art. 324 Code of crim. pr., the court shall be able to determine on the request of the accused to be judged based on the evidence serviced during the criminal prosecution, fully aware of the case details.

Regardless of the means of action of the court, the disjunction regarding the other accused and the continuation of the trial, the statement of the accused opting for the simplified procedure shall have the value of evidence.

After a careful reading of the provisions of the art. 320^1 Code of crim. pr., it can be noticed that under this aspect, the legislator points out two moments: the one in which the accused states that he/she opts for being judged based on the evidence serviced during the criminal prosecution, prior to commencing the court investigation and the one of hearing the accused that can only be realized as above-indicated.

Of course, it would be possible for the accused that has submitted to the file the authentic statement, but is not present, to be brought in front of the court, if the court considers his/her present necessary.

What differentiates the two procedures is the fact that in the case of simplified procedure, the evidence gathered in the criminal prosecution no longer have to be services by the court, according to oralitaty, contradictoriality and publicity conditions, as provided for the regular procedure.

As a matter of fact, we should not forget the reason of introducing such procedure that was grounded on some actual realities, the fact that the courts had to re-service the evidence during the criminal prosecution, even if the accused was admitting the actions for which he was undergoing trial.

Another interpretation issue generated by the simplified procedure of the judgement in case of acknowledging the guilt results from the ambiguous content of the paragraph7 of the art. 320^1, also mentioned by the provisions of the art. 320^1 paragraphs 1-6 Code of crim. pr., the chairman does not apply in case the criminal action targets an offence sanctioned with life imprisonment, leaving unregulated another situation much more often met in the practice, that is the one in which the law provides the sanction of life imprisonment, alternatively with the imprisonment sanction for the committed offence.

If we take into account the fact that, upon the procedural moment when the legal provisions, regarding the guilt acknowledgement, can be applied (prior to the court investigation), the court cannot assess if the judgement to be passed is the sanction of life imprisonment or the imprisonment sanction, one might consider that the provisions of the art. 320^1 Code of crim. pr. are not applicable either if the criminal action targets an offense sanctionable with life imprisonment alternatively with the imprisonment sanction.

However, if we take into account the fact that the legal provision above mentioned is of strict interpretation and application, the conclusion to be drawn is that the legislator, by the plea it has created, had in mind only the offences that are exclusively sanctioned with life imprisonment.

In an interpretation *per a contrario*, in the case of committing the criminal offences for which the law provides the sanction of life imprisonment alternatively to the imprisonment sanction, the accused can benefit of the simplified procedure, if, based on the list of evidence serviced in the case, the court shall reach the conclusion that the life imprisonment is to apply, the guiding principle being that, if the evidentiary material provides data based on which the court considers that the life imprisonment sanction should apply, even if it used the simplified procedure, the accused cannot benefit of it.

Moreover, it is difficult for the court to accurately interpret and assess the possibility of an accused to benefit of the simplified procedure in the case of committing a series of criminal offences in which we have one offence punishable only by life imprisonment and another sanctionable only by imprisonment.

In such a case, we consider that it is mandatory for the court to assess that the provisions of the art. 320^1 Code of crim. pr. are not applicable.

However, we ask ourselves what would be the solution adopted in the practice in the above-mentioned hypothesis when the accused acknowledges this/her guilt by reference to the criminal offence for which the law provides solely the imprisonment sanction, and during the trial the evidence leads to the inexistence of the accused guilt by reference to the offence sanctioned by life imprisonment, thus, in relation to such offence the court shall order the acquittal of the accused. Can the court still relate retroactively to the fact that the accused initially pleaded guilty for the offence sanctionable by imprisonment, thus as for the accused to benefit of the remission of his sanction limits, according to the simplified procedure? Because we could encounter such judicial errors that are not covered by our legal framework and for which the legislator and the judicial practice must clear such aspects.

Another aspect that needs to be brought into discussion is the one regarding the means of applying the text of the art. 320^1 paragraph 3 Code of crim. pr., which provides that at the hearing *"the court asks the accused if he/she requires the judgement to be made based on the evidence serviced during the criminal prosecution stage, evidence that he/she acknowledges and accepts, and*

in such case it proceeds to hearing the accused and then it grants the permission to speak to the prosecutor and to the other parties".

First of all, it does not clearly result what the hearing of the accused refers to, that is if it only concerns the aspect related to the judgment made based on the evidence services during the criminal prosecution stage or the hearing should also concern aspects related to the offence subjected to trial?

From the text of the paragraph 1 of the art.320^1 C. crim. pro. that provides the fact that the accused can declare also by means of an authentic deed that he/she admits to have committed the offence held in the intimation, we could deduce that the hearing of the accused concerns solely the first aspect, related to the formal statement of admitting to have committed the offence and to the request for the judgement to be made based on the evidence serviced during the criminal prosecution stage.

The same interpretation would be also required by the fact that in this case it is not about a hearing carried out during the court investigation, as the text does not make any reference to reading the intimation, or to the commencement of the court investigation, but, on the contrary, from the paragraph 1 of the art. 320^1 Code of crim. pr. we deduce the fact that the entire procedure takes place *"prior to the initiation of the court investigation"*.

Moreover, the entire reasoning of the text, of simplification and expedition of the procedure for judging the cases in which the accused acknowledges the offences described in the indictment, might lead to the same conclusion, that the hearing only refers to the formal statement of admitting to have committed the offences described in the indictment and to the express request of the accused for the judgment to be carried out based on the evidence serviced during the criminal prosecution, which, of course, can include a detailed statement of the accused regarding the offence referred for settlement, to be considered upon judging the case.

If we take into account the *cases Colozza vs. Italy*, *Ilisescu and Chiforec vs. Romania,* we can only conclude that the above-illustrated interpretation does not contravene to the ECHR case law in the matter, as the accused has expressly waived his/her right to be heard and to ask the hearing of witnesses in front of the court, in which case the right to a fair trial is not infringed.

Secondly, the text does not clearly explain what it means to grant the permission to speak to the prosecutor and to the other parties: is the permission to speak is granted based on their statement on the case merits or only on the accused request, of settling the case based on the evidence serviced during the criminal prosecution?

Based on the fact that the paragraph 6 of the art. 320^1 Code of crim. pr. expressly provides that in case of settlement of the file by means of this procedure, there shall be applied the provisions of the art. 340-344 Code of crim. pr. (referring to, among others, to granting the permission to speak during the debates and the last hearing being granted to the accused), we may implicitly conclude that the permission to speak granted to the prosecutor and to the other parties, after hearing the accused, concerns only his/her request of case judgment by means of the special procedure of pleading guilty.

Further, after the court approved this request of the accused, the court would grant the permission to speak both during the debates on the case merits and the last intervention would be granted to the same.

Another interpretation issue raised in the discussion is the one concerning the judgement to be ordered by the court in the case of applying the provisions of the art. 320^1 paragraph 7 Code of crim. pr..

By using the categorical formula of the legislator *"the court shall determine the accused conviction"* we might deduce that another solution than the conviction is not possible, even if there are grounds for acquittal, as provided by the art.10 C.of crim. proc., and, implicitly the accused acquittal based on the art. 10 let. b^1 Code of crim. pr., when the offence does not present the social danger of a crime, would not be possible.

It is hard to believe that the legislator would have consider that the procedure of pleading guilty is incompatible to any other solution, other than the accused conviction, although the text leaves no room for interpretation.

It might be ascertained that, for the case in which it intends to pass an acquittal, the court might dismiss the accused request to be judged based on the evidence serviced during the criminal prosecution stage and to carry on with the court investigation.

In this case, if it intends to order the acquittal of the accused based on the art. 10 let. b^1 Code of crim. pr., it would be pretty difficult for the court to reason the dismissal of the accused request to apply the procedure under the art. 320^1 Code of crim. pr., without pre-empting on the judgment to be passed in the case.

Moreover, the judiciary practice is to establish what happens in case a person, due to various considerations, takes over himself / herself the liability of a crime, that he/she did not actually committed, requests for the judgement to be made based on the simplified procedure, the court orders conviction, within the remission limits, and after a while the true author of the crime is discovered?

Shall it be considered that the criminal prosecution authorities have committed a serious judiciary error that led to the considering that person as author of the criminal offence? Shall it be considered that the statement of the accused of pleading guilty represented major evidence, and thus the state authorities shall be exonerated of any liability by reference to the existing judiciary error, as long as the accused took over him/her the crime he / she hadn't committed?

Or, in case a person, that is not guilty, still pleads guilty, due to the lack of confidence in the impartiality and objectiveness of the court, the procedural conduct of pleading guilty only for eliminating the possibility to receive a higher sanction, and later on, during the court investigation, it proves to be innocent, can there be considered the accused supporting statement, according to which he / she pleaded guilty, even if not guilty, because he/she was afraid of getting a higher sanction, for assessing the existence of a judiciary error? We will find an answer to this question again from the judiciary practice, the answer being imposed by the majority opinion.

Another problem occurred in the practice is represented by the statement of guilt acknowledgement of the accused. In relation to such statement, it has been said that the accused must not acknowledge also the legal framing of the offence, such as held in the intimation, being able to ask for the legal framing of the same, according to art. 334 Code of crim. pr.

Moreover, it has been stated that, considering the capacity of guarantor for the compliance with the right to a fair trial, the court may order the exclusion of the illegally or unfairly gathered evidence, even if the accused requested to be judged based on all the evidence gathered during the criminal prosecution stage.

This opinion is questionable in the light of the aspect referring to the court opportunity to exclude, in this simplified procedure, certain evidence as illegally or unfairly gathered. Practically, a condition for the request admissibility is that the accused must not challenge such evidence, and the court must ascertained that the same was legally gathered. If the court shall ascertain the contrary, it must dismiss the request of the accused and must settle the case according to the ordinary procedure.

As resulting from the content of the art. 320^1 Code of crim. pr., the only evidence to be serviced in this procedure are those in favour of the accused proving his/her bona fide conduct prior to such offence.

The last paragraph of the article in discussion is also susceptible of leading to non-unitary interpretation by the fact that it does not enumerate, not even as an example, the causes for which the court might dismiss the accused request for applying the procedure of the judgment in case of pleading guilty.

We could deduce from the paragraph 4 of the art. 320^1 Code of crim. pr. that such a request can be dismissed in case the evidence gathered during the criminal prosecution shows that the actions of the accused are not determined or when there are not enough evidence regarding the accused, for determining a sanction.

In lack of express provisions we consider that the request shall be analyzed by reference to the provisions of the art. 320 paragraph 4 Code of crim. pr., providing that the *"trail court settles the criminal matter when, from the serviced evidence, it results that the accused actions are determined and there are sufficient data regarding his/her person for enabling the court to reach a verdict"*.

Therefore, when the accused actions are not determined and there are not sufficient evidence regarding his/her person for enabling the court to reach a verdict, the court will be able to dismiss the request. Considering that all the citizens are equal in front of the law, as provided under the art. 16 of the Constitution, it can be considered that this provision is unconstitutional as it establishes different treatments between the accused whose request is allowed and the ones whose request is dismissed, the first ones benefiting of a substantial remission while the others do not, just because their actions are not determined and there are not sufficient evidence regarding their person for enabling the court to reach a verdict.

However, considering the deficiencies occurred during the criminal prosecution cannot be imputable to the accused, there is no reasoning that would lead to the conclusion of his / her „sanctioning'' by dismissing the request for applying such procedure, as it would implicitly render his / her impossibility to benefit of the remission of the sanction limits as provided by the law.

It seems that a great deal of interpretation is left with the courts, when settling the accused request to be judged based on the evidence gathered during the criminal prosecution.

This circumstance has a double nuance, consisting in both a positive aspect, if we refer to the attempt of eliminating the possibility that, due to different reasoning, the accused will acknowledge offences he did not commit, but also in a negative aspect if we take into account that, if, after the court investigation, the court reaches the conclusion that the accused really committed the offence, as described in the indictment, it can no longer apply the sanction within the limits of the remission, according to the art. 320^1 par. 7 Code of crim. pr..

Even if the text of law does not provide such a possibility, we deemed as correct the opinion according to which the accused must benefit of the legal cause for remission according to art. 320 paragraph 7 Code of crim. pr., moreover, this happening in the situation in which, although he/she opted for the simplified procedure, the court dismissed the request and applied the common law rules regarding the judgement, and, on the occasion of deliberation on the case, after analysing the evidentiary material, has ascertained that the facts described in the indictment and acknowledged by the accused are proved beyond any doubt.

A major aspect is the corroboration between the art. 320^1 Code of crim. proc. and the provisions of the art.18 of the Law no. 508/2004 on the set up, organization and functioning within the Public Ministry of the Directorate for Investigating Organized Crime and Terrorism.

Thus, according to the art.18 of the Law no. 508/2004: "the person committing one of the provided by the law under the jurisdiction of the Directorate for Investigating Organized Crime and Terrorism, and during the criminal prosecution denounces and facilitates the identification and the holding criminally responsible other participants to the criminal offence benefit of the remission to half of the sanction provided by the law''.

Considering the fact that the art. 320^1 paragraph 7 C. crim. proc. provides the remission by one third of the sanctions provided by the law in the case of imprisonment sanction, there is one question to pose: how will the court act in case a person that committed a criminal offence provided by the Law no. 508/2004, has adopted a procedural attitude by which he/she has contributed, during the criminal prosecution, to the identification and to holding criminally responsible other perpetrators, thus, becoming incidental the provisions of the art. 18 of the special law, and before the court, prior to initiating the court investigation, he/she maintains the same honest attitude and understands to use the simplified procedure of pleading guilty?

We consider that in the above-illustrated example, the court will have to pass a decision by which to order the application of the art. 320^1 paragraph 7 C. crim. proc. in relation to the accused and to order the remission by one third of the imprisonment sanction, but relating to the sanction

already reduced to half, according to the art.18 of the special law. Practically, in such a situation, the court should reduce the imprisonment sanction, to be applied to the accused, by two thirds.

Conclusions

These are only some of the issues raised by the application of the new text of the art. 320^1 Code of crim. pr., the discussions that can occur and the interpretations to be given, being definitely more than those above-mentioned. As any new institution, the judgment in the case of pleading guilty shall require a certain period of adjustment until the unitary practice in this matter shall be reached, especially that the text contains some inexact formulations, meant to create multiple interpretations. Unfortunately, the courts do not yet benefit of a quick and effective mechanism for unifying the judiciary practice, fact that has affected and shall probably continue to affect the solutions adopted in this matter.

We consider that for the new institution of judgment by pleading guilty, the adoption of some transitory norms would have been required, as being necessary for eliminating the controversies occurred and still to occur in the practice, as the possible interpretations to be given to the texts related to this institution can no longer refer to the prior Romanian case law and doctrine, and the consulting of the judgments from the comparative law is still a desideratum out of the reach of most of the interested ones.

Although apparently simple, the means of settling the issue causes numerous consequences in the practice, consequences we deem solvable solely through the promotion and admission of recourse actions for judicial review that would render impossible to pass contrary judgments in similar cases, thus ensuring unitary judgments in the judiciary practice, for eliminating the discriminating verdicts, in which the same text of law is applied differently, although the situations are identical.

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