THE OBJECT OF THE ADMISSION OF GUILT

Constantin NEDELCU[*]

Abstract

This paper aims at studying how elements of negotiated justice specific to common law systems entered into the Romanian criminal procedural law system. It particularly deals with the admission of guilt and about one of its most controversial aspects – the object of recognition. The research concludes that what is recognized within this simplified procedure it is the deed and not its legal classification given by the criminal prosecution bodies.

Keywords: *criminal trial, admission of guilt, legal qualification, negotiated justice.*

1. Introduction

A prestigious scientific work shows that the specialists of law in the common law systems are often very surprised when they find out that there is no institution similar to that of the admission of guilt (pleading guilty)[1] in the (inquisitorial) law systems on the continent. The reason for which this reaction appears is that accusatorial systems developed a tradition in the sense of simplifying judicial procedures in the criminal field in the assumptions in which the defendant chooses to plead "guilty", taking on the charges brought to him. In these cases, a too brisk rejoinder from the State authorities is no longer necessary because the defendant's position is no longer a position of denying the charges.

However, at present, it is no longer possible, as noted in the specialty literature[2], to classify a criminal justice system as entirely accusatorial or entirely inquisitorial, so that *the mixed criminal trial* appeared. This trial preserves inquisitorial features in the phase preliminary to judgment, while judgment has characteristics of the adversarial form. The victim's role is a subsidiary role in relation to the prosecutor, who is regularly initiating the prosecution and exercising the criminal action, while the victim may elect to participate in the criminal trial as an injured party and/or as a civil party. In certain hypotheses strictly indicated under the law, the victim is allowed to takeover the prerogative of pressing charges, which is normally reserved for the public accuser. This phenomenon to assimilate the elements of negotiated justice in the inquisitorial systems of traditional law is primarily generated by the influence exerted on national laws by the European Court of Human Rights. Through the jurisprudence developed by this court in connection with the applicability of Art. 6 of the European Convention of Human Rights with reference to the right to a fair trial, many elements specific to accusatorial systems irradiated to inquisitorial systems, stabilizing the balance between the protection of the common interest and the protection of the individual interest.

2. Admission of guilt in Romanian Trial

Romania, as a State that ratified the European Convention of Human Rights and accepted also the jurisdiction of the Strasbourg Court, could not remain outside this trend of modernizing criminal procedural rules. Thus, once the new Criminal Procedure Code (Law No. 135/2010) is enacted, a whole series of elements specific to accusatorial systems and even some timid aspects of negotiated justice are recorded in the Romanian criminal trial. Some f these institutions could also be found in the previous Criminal Procedure Code (as is the case of the Procedure for the Admission of Guilt), while others are marked by novelty (such as the *agreement for the admission of guilt*). About such latter agreement, we shall say that it can be found in the category of the special procedures defined under Title IV of the Special Part of the Criminal Procedure Code, Arts. 478-488.

The object of the agreement for the admission of guilt consists in "the recognition of the perpetration of the deed and the acceptance of the juridical classification for which the criminal action was initiated and also regards the type and quantum of the punishment, as well as its form of execution" (Art. 479 of the Criminal Procedure Code). According to the norms included in Chapter I of Title IV under the Special Part of the Criminal Procedure Code, during the criminal prosecution, after the initiation of the criminal action, *the defendant and the prosecutor may conclude an agreement*, as a result of the admission of guilt by the defendant. The effects of the agreement for the admission of guilt are subject to endorsement by the hierarchically higher prosecutor who is also setting the limits for the conclusion of the agreement. The agreement may be initiated by both the defendant, and

[*] Lecturer, PhD, Faculty of Law, "Nicolae Titulescu" University of Bucharest (e-mail: **constantin.nedelcu@univnt.ro**).

[1] Mireille Delmas Marty, J.R. Spencer, European Criminal Procedures, Cambridge University Press, 2006. P. 27.

[2] C. Dănileț, Victima infracțiunii, acuzator în procesul penal, published online *www.cristidanilet.ro*

by the prosecutor and produces effects *in personam.* However, in no case may underage defendants conclude agreements for the admission of guilt.

The conditions for the conclusion of the agreements for the admission of guilt are established under Art. 480 of the Criminal Procedure Code, providing that: it may be concluded only with regard to those crimes for which the law provides the punishment by a fine or by imprisonment by at most 7 years and only when the evidence produced revealed sufficient data concerning the existence of the deed for which the criminal action was initiated and concerning the guilt of the defendant.

The contents that the agreement should have revealed that this is not a typical element of negotiated justice, as encountered in the systems of de common law, because there is no possibility that negotiation might result in a solution of "closed case", determined by this very aspect of the conclusion of the agreement. Otherwise, Art. 482 provides that the contents of the agreement should include, *inter alia*: „d) the description of the deed forming the object of the agreement; e) the juridical classification of the deed and the punishment provided under the law;… g) the defendant's express statement whereby such defendant admits to having perpetrated the deed and accepts the juridical classification for which the criminal action was initiated; h) the type and quantum, as well as the execution form of the punishment or the solution of waiving the application of punishment or of postponing the application of punishment with regard to which the prosecutor and the defendant reached an agreement...".

After the conclusion of the agreement, it will be subject to censorship by the court which would be competent to judge the case on the merits. If the agreement for the admission of guilt lacks any of the mandatory mentions or if some of the conditions provided under the law were not observed, the court will order that the omissions should be rectified within 5 days at most and will notify in this respect the head of the prosecutor's office who issued the agreement. After remedying these deficiencies, analyzing the agreement, the court will issue one of the following solutions: to admit the agreement in full, to reject the agreement or to admit the agreement only in part (Art. 485 of the Criminal Procedure Code). The prosecutor and the defendant may file an appeal against the issued sentence within 10 days from its service.

Together with this element of novelty regulated by the Criminal Procedure Code, another one can be found, which has a correspondent in the previous Criminal Procedure Code. This is the "Procedure in Case of the Admission of Guilt" regulated by Art. 375 of the Criminal Procedure Code in force; the doctrine states about this element that it is an adaptation of the institution introduced by Law No. 202/2010 regarding certain measures for the acceleration of the settlement of lawsuits in Art. 320[1] of the Criminal Procedure Code, previously referred to as the *judgment in case of the admission of guilt*[3].

Although the legal text invoked raised numerous controversies and sometimes generated a non-uniform practice, it was appreciated that it should be maintained by equivalent in the new regulation, because it also determined positive effects on the activity of the courts of law.

Obviously, by instituting a simplified procedure in case the accused person "admits the guilt", certain causes were solved with significant celerity and, implicitly, the activity of the courts before which such a procedure was performed was relieved.

Unlike the previous regulation, the institution can no longer be found in a single text in the new Criminal Procedure Code, the elements forming the special regime being divided among several legal texts. Thus, on the strength of Art. 374, para. (4) of the Criminal Procedure Code, in the cases in which the criminal action does not target a crime which is punished by life imprisonment, the chairman will draw to the defendant's attention that such defendant may request that the judgment should take place only based on the evidence produced during the criminal prosecution and based on the writs submitted by parties, if the defendant fully admits the deeds with which he is charged, informing him of the provisions of Art. 396 para. (10) of the same code. The text to which reference is made provides that, in case the judgment was carried out according to a simplified procedure, the punishment limits provided under the law in case of the punishment by imprisonment will be reduced by one third, and –in case of the punishment by a fine- by one quarter.

Furthermore, it is also specified that even when the defendant's request that judgment should take place according to a simplified procedure was rejected or when the judicial inquiry took place according to the usual procedure, *and the court retained the same factual situation* as that described in the writ of summons and acknowledged by the defendant, the effect of punishment reduction will be maintained. The hypothesis envisaged the provision of Art. 375 of the Criminal Procedure Code in accordance with which the admission of the request for judgment according to a simplified procedure is not mandatory, the court ruling on it after hearing the defendant, the prosecutor and the other parties.

What we would like to highlight further on in our study, particularly in this context of the facultative nature for the court of the request for judgment according to a simplified procedure, is composed of the conditions which should be met for such request to be admitted. The doctrine underlines that, for the request to follow a simplified procedure to be admitted, it is required that the court should verify: a) whether the deed retained in the indictment is not

[3] A. Zarafiu, Procedură penală, Beck Publishing House, Bucharest, 2014, p. 385.

punished by life imprisonment. When verifying the fulfillment of this condition, the court will not consider also the provisions of Art. 39 para. (2) of the Criminal Code in accordance with which, in case of concurrence of crimes, when several punishments by imprisonment were established, if, by adding to the higher punishment the increase of one third from the total of the other established punishments by imprisonment, the general maximum of the punishment by imprisonment were exceeded by 10 years or more, and for at least one of the concurring crimes the punishment provided under the law is the imprisonment for 20 years or more, the punishment by life imprisonment can be applied. The punishment which will be taken into account is the punishment provided under the law for each and every crime; b) if the request is complete, in the sense that it includes the two expressions of will referred to in Art. 374, para. (4) of the Criminal Procedure Code, with regard to the full admission of the deeds with which the defendant is charged, respectively to the acceptance of the circumstance that judgment is carried out only based of the evidence produced in the stage of criminal prosecution and, eventually, based on the writs produced by the parties; c) the request was made in person before the court, the doctrine[4] stating that such expression o wills cannot be made even by means of the lawyer that has a special mandate in this respect; d) if the request was made within the term provided under the law, namely until the initiation of the judicial inquiry; e) if the evidence produced within the criminal prosecution is sufficient to find out the facts and the fair settlement of the cause.

From the conditions indicated previously, the one requiring certain clarifications is that referring to the full admission of the deeds with which the defendant is charged. This requirement envisages the factual context, as it is retained through the arraignment. It is, thus, mandatory that the defendant should assume the perpetration of the deed, but not the legal classification proposed by the prosecutor's office. The conclusion is very clearly revealed also from the provisions of Art. 377 para. (4) of the Criminal Procedure Code ordering that, if the court finds, *ex officio*, upon the request of the prosecutor or of the parties, that *the legal classification given to the deed through the writ of summons should be changed*, the court os bound to raise the new classification for discussion and to draw to the defendant's attentions that the defendant is entitled to request the postponement of the cause. In this case, the defendant's possibility to benefit from the punishment reduction generated by the benefit of a simplified procedure is not compromised if the new legal classification of the deed as established by the court is different than the one from the indictment, which had been initially accepted by the defendant. The reason for adopting this solution is exactly that by the acceptance of the guilt, the deed is what is admitted, and not the legal classification of the deed. The solution is the same even if the one challenging the legal classification is the defendant himself. In case that the change of the legal classification leads to the establishment of a legal classification envisaging a crime that requires the prior complaint of the injured party, the court of law calls the injured party and asks such party if it intends to file a prior complaint. Should the injured party file a prior complaint, the court continues the judicial inquiry, or it may otherwise order the cessation of the criminal trial.

The same solution of accepting the fact that, under the conditions of Art. 374 para. (4) of the Criminal Procedure Code, what should be admitted is the deed and not its legal classification is also indicated by the comparison between the institution of the admission of guilt and the institution of the agreement for the admission of guilt. As previously underlined, in case of the agreement, the legal classification proposed by the Prosecutor's office and even a punishment should be admitted, including in terms of the method of its execution. In this respect, with regard to the agreement for the admission of guilt, Art. 479 of the Criminal Procedure Code expressly indicates that the object of the agreement is formed of "the admission of the perpetration of the deed and the acceptance of the legal classification for which the criminal action was filed and regards the type and quantum of punishment, as well as the form of its execution". Differently, Art. 374 para. (4) of the Criminal Procedure Code, regarding the procedure of the admission of guilt provides that: "…the chairman draws to the defendant's attention that the defendant may request that judgment takes place only based on the evidence produced during the criminal prosecution and based on the writs submitted by the parties, if the defendant fully admits the deeds with which the defendant is charged …". Even the interpretation of the names of the two institutions: the agreement for admission of *guilt*, respectively the procedure in case of the admission of the *accusation* comes to support the same conclusion.

When, for establishing the legal classification or when, after changing the legal classification, it is necessary to produce other evidence, the court, taking the conclusions of the prosecutor and of the parties, orders the performance of a judicial inquiry according to the usual procedure, without affecting the occurrence of the effect of punishment reduction referred to in Art. 396, para. (10) of the Criminal Procedure Code .

Another issue deriving from the object of the admission of guilt is that regarding the possibility to adopt solutions of non-conviction further to the performance of a simplified procedure. Given the application of the previous Criminal Procedure Code, jurisprudence indicated that "The provisions of Art. 320^1 para. (7) of the Criminal Procedure Code

[4] A. Zarafiu, op.cit., p. 387.

referring to the issue of decision to convict in case the simplified procedure is followed, shall not exclude the application of the provisions of Art. 18[1], because a decision to convict may only be issued if the deed admitted by the defendant presents the social hazard degree of a crime; otherwise, we are in the presence of a deed provided by the criminal law and not in the presence of a crime." On the other hand, in the same decision, the High Court of Cassation and Justice indicated the fact that: "The only grounds for acquittal which is compatible with the simplified procedure are those provided in Art. 11, item 2 letter a) related to Art. 10 letter b[1]) of the Criminal Procedure Code, all the other grounds for acquittal provided in Art. 10 of the Criminal Procedure Code imposing the performance of the judicial inquiry which should establish the existence of the deed, whether the deed is a crime and whether it was perpetrated by the defendant"[5]. In other words, if the texts from the previous legislation were applied, an acquittal solution, for instance, could not be issued, because it was considered as incompatible with the specific nature of the simplified procedure for the admission of guilt.

When the new Criminal Procedure Code is applied, exactly because the deed, and not the guilt or the provisional legal classification proposed by the Prosecutor's office in the writ of summons addressed to the court, forms the object of the admission of guilt, solutions may be very different. Thus, on the strength of Art. 396, para. (10) of the Criminal Procedure Code, when the judgment was carried out under the conditions of a simplified procedure, and the court retains the same *de facto* situation as that described in the writ of summons and admitted by the defendant, the solution of *conviction* or of *postponing the application of punishment* (which is a non-conviction solution) may be issued. We also believe that, after performing this procedure, the court may also order the solution of ceasing the criminal trial (for instance, in the assumption in which the intervention of a special cause for non-punishment is ascertained). This can happen, for instance, in the assumption of the special cause for non-punishment applicable in case the perjury is withdrawn. In the respective case, the author admits the perpetration of the deed and withdraws the perjury made, for which reason the only possible solution in the criminal side of the cause is the cessation of the criminal trial, on the strength of Art. 396 para. 6 of the Criminal Procedure Code related to the provisions of Art. 16 letter h) of the same code. To an equal extent, we believe that it is possible to resort to the acquittal solution, which is no longer considered by jurisprudence as incompatible with the procedure of the admission of guilt (Art. 375 of the Criminal Procedure Code)[6]. This because, as the court indicates, "unlike the provisions of Art. 320[1] para. (8) of the Criminal Procedure Code of 1968 providing that the court shall reject the request when the evidence produced during the criminal prosecution is not sufficient to establish the existence of the deed, is a crime and was perpetrated by the defendant, from the provisions of Art. 349 para. (2) of the Criminal Procedure Code related to Art. 374 para. (4) of the New Criminal Procedure Code the court retains that the request to apply the abbreviated procedure is admissible from these points of view if the produced evidence is sufficient to find out the facts and to fairly settle the cause. Such rewording corroborated with the phrase used by the lawmaker in Art. 396 para. (10) NCPP, respectively *in case of conviction* forms the court's belief that, within the procedure provided by Art. 375 of the New Criminal Procedure Code any of the solutions provided by Art. 396 of the New Criminal Procedure Code, including acquittal, is possible."

Elements of admission appear in the Romanian criminal trial also in connection with the civil side of the cause. Thus, according to Art. 23 of the Criminal Procedure Code, during the criminal trial, with respect to civil claims, the defendant, the civil party and the party whose civil liability is entailed may conclude a settlement agreement or a mediation agreement, according to law. The defendant, with the consent of the party whose civil liability is entailed, may admit, in full or in part, the claims made by the civil party. In such cases, the court shall bind [*the defendant*] to pay damages only to the extent of admission.

3. Conclusions

We have set out hereinabove the most important issues related to the object of the admission of the criminal charge. The attack launched by the elements of accusatorial law versus the performance rules of the Romanian criminal trial is obvious, especially in relation to the provisions of the new Criminal Procedure Code, and the most important mechanism through which this is made is the jurisprudence of the European Court of Human Rights. The one which was particularly subjected to analysis was the procedure in case of the admission of guilt, especially in terms of its object. The fact that this procedure generated a series of positive effects is beyond any doubt. Firstly, it allows the criminal trial to be carried out with a significant celerity, which has a positive influence on the level of compliance with the principle of guaranteeing the right to a fair trial in terms of the reasonable duration of judicial proceedings. This effect has a particular importance, especially in terms of the fact that our country is subject to the justice monitoring procedure, and it is doubled by another beneficial effect, which is not at all to be ignored in the context of the financial recession – the decrease in the

[5] ICCJ, Criminal Sentence, Decision No. 343/2012, www.scj.ro

[6] Sector 6 Bucharest Court of Law, Criminal Division, Criminal Sentence No. 389/2014, quoted in M. Udroiu, Procedură penală, Partea specială, C.H. Beck Publishing House, Bucharest, 2014.

costs occasioned by judicial proceedings. Even under these circumstances, it is ascertained that the guarantees of observing all the fundamental rights of a person who is subject to the procedure, including in the performance of the simplified procedure, are maintained active.

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