ASPECTS OF GUILTY PLEA AND PROCEDURE OF GUILT ADMITTANCE, NEW JUDICIAL INSITUTIONS FOR A CRIMINAL TRIAL OF HIGHER QUALITY

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Abstract

During the broad reform process that has taken place in recent years for the criminal proceeding activity, following the entry into force of the new Criminal Procedure Act on February 1st 2014, there have been changes of some legal institutions from the old Criminal Code, such as the procedure of admitting the deeds the defendant is held responsible for (art 320 from former Code of Criminal procedure) by its provisions in the content of art 374, alignment 4, as it has been modified by Government Emergency Ordinance and introducing new ones, such as the guilty plea (art 478-488) under the circumstances of modifying GEO nr 18/2016 a special procedure meant to insure the judging of causes with celerity. Both procedures have a common component given by the guilt plea from the defendant, having an additional condition in the case of the guilty plea, besides the aforementioned one, which is the one of accepting the legal classification of the offence for which the criminal proceedings were commenced.

The two legal institutions ensure the compliance with the procedural guarantees of the right to a legal counsel of the defendant, sanctioning this one, taking place with a reduction of the sentence, under conditions stipulated by law.

Furthermore, by admitting the guilt and the legal classification of the offence by the defendant found guilty, in the two procedures also takes place a confirmation of the legality and compliance of the evidence submitted in the course of criminal proceedings.

Keywords: *simplified procedure, guilty plea, admittance of guilt, legal classification of offences, quality of the criminal proceedings.*

1. Introduction

1.1. Procedure of admitting the acts by the defendant.

The Romanian legislature has consolidated the new institution of admitting facts to be totally under the accused responsibility as it has been regulated and modified in the contents of art 374, Alignment 4 from the Criminal Procedure Code with reference to art 375 and 377 from the same Code. So, if in the art 374, alignment 4 exists the legal obligation for the president of the court in first instance to inform the defendant that he may request the trial by simplified procedure, in two other norms, of distinct nature there have been regulated procedure in the case of admittance of guilt, in art 375 and respectively judicial inquiry in the case of guilty plea, art 377. The guilty plea by the defendant only based on evidence gathered during criminal prosecution and based on documentary evidence brought by parties and by the injured party is constructed based upon a deep awareness process of the defendant that reflects upon the way in which criminal prosecution took place, the way in which legal provisions were obeyed during the administration of evidence by prosecutors, both those in favour and those against, the way in which the accused 'defendant expressed both requests and conclusions regarding the evidence presented.

In other words, when the defendant understood to request his/her judgment by simplified procedure he has accepted that the total admittance of deeds in his case is also a consequence of the prosecutor's activity in his case, confirming the abeyance of legal provisions in the case of evidence needed to prove the facts.

This request of the defendant for a total guilty plea of all his/her acts does not clear the judge from checking how evidence was administrated during the criminal prosecution , as far as its foundation is concerned since from a legal point of view they have been already undergone a judicial control from the preliminary chamber judge.

Therefore, if regarding the factual component, it is exclusively in the defendant's capacity to admit them, as far as legal classification it is concerned, the obligation belongs to the judge to assess over it, and when it is determined the need for changing it, whether ex officio, whether by the request of the prosecutor or parties, first to bring it into discussion and to draw the attention simultaneously to the accused that he has the right to request to leave the cause to the end.

1.2. The guilty plea procedure.

This procedure has been introduced into the new Criminal Procedure Act and modified afterwards in terms of specific provisions leading thus to a new retrial, in higher court, with respect to the retrial in higher court.

The specific nature of this institution is based on a negotiation form between the prosecutor's office and

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defendant resolved through an agreement whose object is strictly regulated by the content of art. 479 of the Criminal Procedure Code as it has been modified by Government Emergency Ordinance no.18/2016, namely the acknowledgement of the act and the acceptance of the legal classification for which the criminal proceedings were commenced and the manner and addresses the manner and length of the sentence as well as the way of enforcement of the sentence, the type of educational measure or as the case may be the solution to dismiss the penalty or the solution to postpone the penalty.

As opposed to the simplified declared procedure, which is based on the defendant's admittance of guilt, in the special declared procedure of the guilty plea, in addition to the admittance of guilt the defendant has to also agree with the legal classification of the offence that commenced the criminal proceeding, both being cumulative conditions.

2. Content

The procedure of pleading guilty by the defendant, as it was regulated at present in the Criminal Procedure Code, offers more dynamism to the criminal trial, as it benefits from increased quality, by swiftness and sensible judging of causes but also underlining the quality of criminal prosecution, respectively obeyance of legal provisions, but also the proper foundation of evidence means.

At the same time it is worth mentioning that the lawmaker allowed also the issue of admitting the facts and also requesting the judging of the cause by simplified procedure and by authenticated document, by this aspect retruning and referring to the old regulation from the previous Criminal Code.

However, we believe that the change has occurred with the purpose of an improved efficiency of judging the cause, in its simplified procedure, when the accused finds himself unable objectively speaking to present himself in front of a judge.

As seen in practice in judicial court, Even if the cause is solved by simplified procedure, The sentence delivered is well documented and motivated by the judge, retaining as to fact or law, based on evidence from prosecutor's, analyzing the judicial classification maintained, as well as fixing the individuality of the applied sanction with reduction of its limits under the provisions of art 396, align 10 from the Criminal Code, giving more efficient sense to the contents of art 374 align 4.

In the sense of the above mentioned, it exemplifies two cases settled by the High Court of Cassation and Justice at the first instance, where the simplified procedure was applied[1].

Thus, in first instance, the Supreme Court held that after the implementation of the provisions of Art. 374 par. 1 of the Criminal Procedure Code and the provisions of Art. 374 par. 4 of the same code, the defendant R.N. declared his intention to avail himself of this procedure by acknowledging the acts as described in the act of apprehension, requesting that the trial be based on evidence administered during the criminal investigation phase. In this respect, according to art. 375 Code of Criminal Procedure Code the defendant was made a statement, the court granting his request to be tried in the simplified procedure.

In the recitals of the sentence, the High Court essentially held that "in 2009, at the proposal and with the opinion of the deputy R.N. (Deputy in the Parliament of Romania for the legislature 2008-2012), R.C.(His daughter) was employed in his parliamentary office in the constituency no. 7 B, also in 2010, deputy R.N. has concluded a civil service contract in the same parliamentary office with his daughter, P)former R) S.

The High Court finds that the issue in fact presented in the indictment, also admitted by the defendant R.N. (Evidence not contested by the defendant), the whole evidence proving - beyond reasonable doubt - the existence of the acts committed by the defendant and his guilt for committing the offense of conflict of interest"

It was also reasoned that "the constitutive elements of the offense of conflict of interests are met. Thus, the actively qualified subject, respectively the civil servant who has the competence to carry out acts and / or to participate in decision-making. .. In order to achieve the material element of the offense there is no need for damage and only for the realization of a material benefit for himself / herself, husband / wife, which in this case has been achieved.

The daughter of the defendant R.N., called R.C. has earned a salary of 6391 lei during 19.10.2009-1.06.2010 on the basis of the individual labor contract no. 4924/09 and 5267 lei during 15.06.2010-01.04.2011 on the basis of civil contract 1436/2010.

Thus, the public money accesible to the defendant was directed to the members of his family, and due to this personal interest of patrimonial nature, it results that the legal condition is the non-fulfillment of the duties attributable to him as a member of the Parliament of Romania, in accordance with the principles underlying the exercise of public dignity.

The rule of incrimination does not includes that the material benefit to be unjust, but only that it has actually been obtained through a biased procedure. Thus, obtaining a material benefit is the condition for achieving the objective side of the offense provided by art. 253 [1] The previous criminal code, which does not convey to the act the character of an offense of damage, since the main strain of social relations protected by the

[1] Sentence nr .869 from 30th September 2014 of High Court of Cassation and Justice, remaining definitive by no appeal;Sentence nr. 950 from 27th october 2014 of High Court of Cassation and Justice remaining definitive by decision nr.14 from 9 th february 2015 of High Court of Cassation and Justice, Judicial Formation of 5 Judges.

law is the correct exercise of public authority by civil servants.

The facts of the defendant R.N. have created a state of danger regarding the social values protected by the law, regarding the functioning of the institutions, since the indirect patrimonial interest of the MP can influence the objectively fulfilling of the attributions, thus fulfilling the stipulation in the indictment rule.

In regards to the subjective side of the offense of conflict of interest results in the fraudulent intent of the defendant R.N. to act in the direct interest of his family, which has facilitated him to obtain material benefits from the budget of the Chamber of Deputies.

Thus, the case meets both the subjective aspect and the objective ones, the constitutive elements of the offense of conflict of interest provided by art. 253^1 previous Criminal Code, a text on the basis of which the defendant will be sentenced to imprisonment for 4 months, with the provisions of Art. 396 par. 10 Criminal Procedure Code and Art. 41 paragraph. 2 Criminal Code .

In regards to the method of execution of the punishment, it is considered that, in relation to the personal data of the defendant, the purpose of the punishment can be achieved without the execution of the sentence in detention, which is why it will order the conditional suspension of the execution of the sentence".

In the second cause, also conflict of interests, the High Court has retained that defendant K.K assited by chosen attorney, that he declared in front of the court that he request trial based just in evidence administrated during the criminal prosecution, admitting his facts as stipulated in the documents submitted to the court, but without accepting their judicial classifications, assessing that this aspect does not interfere with his ability to ask for simplified procedure trial.

Thus, for the case file the defendant filed a statement (also signed by his attorney) in which he made these remarks, underlining that he committed the act being convinced that it does not constitute an offence, the conviction being reinforced by the customary law existing in his activity area and confirmed by the circumstance that the legal interdiction occured later when the acts have ceased.

Along the same lines it has been pointed out in that extrajudicial statement that the defendant understood to file it to the case file in order to outline his procedural position- that his conviction of innocence has been reinforced also by the regulations of other states with democratic regime.

At the same time his hearing directly before the court, the defendant requested a time limit for filing documents, circumstantial evidence.

In view of the defendant's willingness to demand that the trial be conducted only on the basis of the evidence administered in the course of the prosecution and the documents filed in the file, in the context of the process of fully recognizing the facts detained in its task, as found and described in the indictment, as well as the fact that the High Court of Cassation and Justice - the Criminal Section did not identify any reason for which at the term of ... to reject the request for simplified procedure, the judicial investigation here in this case was conducted according to art. 375 of Criminal Procedure Code - art. 377 par. 1 Criminal Procedure Code, with the consequence of applying art. 396 para. 10 Code of Criminal Procedure concerning the Settlement of Criminal Action against defendant K..K.

With a view to the delivered sentence, it was retained the issue in fact and law, the judicial classification was motivated, dismissing the invoked defence. Therefore, „contrary to the claims made by the defence regarding the so called lack of precision, predictability and foreseeable quality of criminal law, in the sens that at the date of the acts there was no legal interdicition on hiring family members in the Parliamnetary offices – The high Court of Cassation and justice finds the conflict of interest offence as stipulated in art 253 Former Criminal Code (legal text for incident mentioned) was introduced by Law 278/2006, and the interpreting of the incrimination text brings the conclusion that the acts of the accused falls under the scope of criminal illicit when the activity of a public clerk is related to personal interest by not acting in a transparent way, and not to abstain from decison making, with the purpose of gaining material benefits for any of the persons mentioned in the incrimination norm.

Neither the defense constructed on the lack of quality for the active subject of the criminal offence, that of public clerk, cannot be accepted in consideration to the fact that in the special status of MPs, the Constitutional Court has stated that "although the constitutional and legal status of MPs, as poeples representatives, is different from public clerks status, and different from other citizens in general ….but this status cannot be retained as being enough to accept a different legal treatment in report to other categories of individuals for which the law 176/2010 on integrity and public function is applied (to be consulted decision 279/2006 of CC, decision 81/27 February 2013. In the cause above mentioned the accused received a 2 year sentence in prison, by applying art 86 Criminal Code and art 5 Criminal Code, with application of complementary sentence and accessory penalty, being reduced to 1 year and 6 months, by applying art 81 from former Criminal Code and removing the complementary penalty applied initially, by course of appeal from accused that was accepted.

Unlike the admittance of guilt by the defendant in front of a judge, in first instance the guilt plea is a special procedure that has been recently introduced in the Romanian criminal procedure with incidence during criminal prosecution, based on a negotiation process between prosecutor and the defendant in limits explicitly provided by its object, in limits established by a preliminary notice and written by a prosecutor with a superior role in hierarchy. Admittance of guilt is

under judicial control from the court instance, its sentence may be submitted under legal and regular remedies. Therefore, the procedure starts in the course of the criminal prosecution, the initiator of the agreement, being both the prosecutor and the defendant, the subject of cumulative conditions, namely the acknowledgment of the commission of the act and the acceptance of the legal classification for which the criminal proceedings were initiated, unlike the procedure in which recognition does not concern legal classification and the type and amount of the punishment, as well as its form of execution, namely the type of the educational measure, or, as the case may be, the solution to the application of punishment or postponement of punishment.

In the judicial practice, the application of this special procedure is increasingly applicable in view of the change in the sense that the guilty plea agreement can only be concluded with regard to the offenses for which the law provides for the fines or imprisonment For 15 years. As with the simplified procedure, the consequence of the application of this procedure is that the defendant benefits from a reduction in punishment.

The scope of the offenses in which an agreement on the recognition of guilt can be concluded is widely extended, in the case of the High Court, either in the cases of jurisdiction at first instance or in the appeal, ranging from conflicts of interest under the conditions Old regulations, art. 253 1 of the Criminal Code, as a result of the more favorable criminal law, for abuse of office against public interests, provided by art. 248 Previous criminal code, favoring the offender, provided by art. 264 par. 1 Penal Code, False Intellectual Code provided by Art. 289 Penal Code, the offense of using in any way, directly or indirectly, information which is not intended to be advertised or to allow unauthorized persons access to such information for the purpose of obtaining for itself or for another undue advantage provided by art. 12 letter B of Law no. 78/2000, the driving on the public roads of a motor vehicle by a person who has an alcoholic admix of over 0.80 gr / l of pure alcohol in the blood provided by art. 87 para. 1 of GEO no. 195/2002 with the application of art. 5 Criminal Code.

Thus, as an example, in the agreements with which it was invested admitted, condemning the defendants to the punishments in the amounts and modalities of execution[2], either admitted in the appeal, as a result of the finding that the provisions of art. 478-481 Criminal Procedure Code that the penalties applied and the manner of execution is appropriate[3].

Conclusions

In the research carried out over the newly presented institutions, respectively the admission of facts by the accused and the special procedure of guilt plea, it has been noticed that these two have a real and efficient applicability during the criminal trial, offering a guarantee for the obeyance of right to defence, but as well of respecting principles such as contradiction, oral speech and finding the truth.

The existence of such procedures in the Romanian Code of Criminal Procedure ensures an alternative to the procedure of common law, that reflects the reality when the quality of criminal prosecution gives the possibility of guilty plea or/and judicial classification, reduction of sentence under conditions stipulated by law, ensuring the possibility of raising awareness of the consequence of a criminal act done.

The quality of the criminal trial in the simplified procedures presented can be found also within the contents of the decisions given, in which are examined not only legal provisions, but also the factual situation, the judicial classification and the analysis of observing the fulfillment, criteria that are needed for the individual sentence in each and ways of serving the sentence.

References:

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- Sentence nr. 1049 from 4th December 2014 of High Court of Cassation and Justice, Criminal Section, remaining definitive by no appeal;
- Sentence nr. 67 from 2nd February 2016 of High Court of Cassation and Justice, remaining definitive by no appeal;
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- Decision nr. 53/A from 16 th february 2015 of High Court of Cassation and Justice, Criminal Section;
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[2] Sentence nr. 1049 from 4th December 2014 of High Court of Cassation and Justice, Criminal Section, remaining definitive by no appeal.

[3] Sentence nr. 67 from 2nd February 2016 of High Court of Cassation and Justice, remaining definitive by no appeal; decision nr. 200/A from 3th june 2015 of High Court of Cassation and Justice, Criminal Section; decision nr. 53/A from 16 th february 2015 of High Court of Cassation and Justice, Criminal Section; decision nr. 201/A from 4 th june2015 of High Court of Cassation and Justice, Criminal Section.