Certain Aspects concerning Trial under Admission of Guilt

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Abstract: The trial under admission of guilt is an abbreviated procedure relying on a guilty plea, and it may be applied if the conditions stipulated in the New Criminal Procedure Code are fulfilled. One of these conditions is for the defendant to fully admit of the deeds presented by the prosecutor in the indictment (he must not, however, admit the same upon the legal classification of offences). Pursuant to the simplified procedure, in the case of conviction or postponement of the application of the sanction, the punishment limits stipulated under the law are reduced by one third for imprisonment, and by one fourth for fine sanctions. The present article is a a continuation of the author's own research and it represents a clear comment regarding trial under admission of guilt according to the New Criminal Procedure Code, in the purpose of understanding the legislator's intention and how the new regulations will apply.

Keywords: trial phase; trial phase-specific principles; trial under admission of guilt

1. Trial – Important Phase in the Criminal Procedure

In the criminal procedure law terminology, the notion of trial has two definitions (Dongoroz et al., 1976, p. 119; Neagu, 2010, p. 175). Thus, the concept of trial restrictively concerns the logical operation through which the panel of judges rules on a criminal case. However, in much broader terms, the trial represents one of the criminal procedure stages, made up of a combination of activities mainly carried out by the law court.

The notions of criminal "case", "triggering event", or "affair" represents the material fact that leads to the initiation of the criminal procedure; the criminal law conflict is taken into account. The concept of "criminal case" should not be mistaken for the notion of "process", which concerns the complex of measures taken in order to settle the criminal law conflict. (Pop, 1948, p. 182)

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In its broader meaning, trial is regarded as the central and most important stage of the criminal procedure (Kahane, 1963, p. 242), because it aims at finally settling the criminal case. the trial phase also justifies the importance it is granted through the fact that, within this phase, the law court checks the entire procedural activity carried out with all other participants, both before and after the trial. (Volonciu, 1972, p. 7)

Moreover, the importance granted to this procedural stage is also reflected in the regulations consecrating the principle of separation of power, and, implicitly, the independence of the judiciary power. To this end, the Constitution of Romania shows, in art. 124 that "*Justice is done in the name of the law"* and that *"Judges are independent and only abide by the law*". Similarly, according to art. 1 paragraph 2 from the Law no. 304/2004 on judiciary organization, the "*Superior Council of the Magistrature is the guarantor of the freedom of justice*".

The purpose of the trial phase is to find out the truth on the deed and the person brought before the court, in order to pass a legal and grounded decision.

During the trial phase, the court checks the lawfulness and the grounded nature of the criminal charges lodged by the prosecutor, as well as of the civil claim lodged by the civil party, and passes a decision through which it settles both the criminal and the civil side of the criminal procedure. The decision of the criminal court may be subjected to judiciary review, through the application of challenge means, or by the prosecutor.

Trial acts are jurisdictional acts based on which the trial activity is carried out in order to achieve the purpose of the criminal procedure, and they include decisions passed by the law court during the procedure with regards to the settlement of the criminal or civil case. (Udroiu, 2013, p. 528)

2. Trial Phase – Specific Principles

Apart from the fundamental principles of the criminal procedure, which also are applicable in the trial phase, there is a set of principles specific to this stage: publicity, immediacy, orality, and contradiction.

Regulated in art. 290 paragraph 1 of the Criminal Procedure Code of 1968, the principle of trial phase publicity is consecrated in art. 352 of the New Criminal Procedure Code. The publicity of the trial session is the basic rule of the criminal

procedure, consisting of the judgement of a case in public session. Court sessions are public, all persons being allowed to participate, including the media.

The presence of the public allows it to be informed on the way in which the act of justice is performed and guarantees its or the media control over the fulfilment of the act of justice. (Udroiu, 2013, p. 528)

It is not necessary for the public to be actually present in the court room during the trial, but the public must, however, have access to the court session. In other words, in this stage of the criminal procedure, the proceedings are public. (Neagu, 2010, p. 177)

Because it represents an important guarantee as to the objectiveness and impartiality of the trial, the public nature of the court session is expressly stipulated in the Constitution of Romania[1], as well as in the Law no. 304/2004 on judiciary organisation[2].

There also are exceptions from the principle of court session publicity. These are circumstances expressly stipulated under the law, in which publicity no longer is mandatory.

Moreover, according to art. 351 paragraph 1 from the New Criminal Procedure Code, the case is trialled before the court set up according to the law, and it is carried out in a session, orally, immediately, and with the observance of the principle of contradiction, the regulation being similar to the one in art. 289 from the Criminal Procedure Code of 1968.

Immediacy represents the court's obligation to directly and immediately receive the proof produce in the case, as well as the claims of the prosecutor or of the parties to the criminal trial. Through immediacy, the court comes into direct contact with all pieces of evidence. (Volonciu, 1972, p. 327)

The principles of contradiction and orality combine with the principle of immediacy, according to which the judge "*directly, immediately assesses the activity of the parties and of the secondary parties in the trial; directly, immediately hears the parties, the witnesses*"(...). All debates are seen and heard by the judge and the parties. Hence, the judge has to perceive and assess the elements of the debate and the evidence, *de visu et de auditu*, within a session, in the

[1] According to art. 127, *court sessions are public, apart from the cases stipulated under the law.*
[2] According to art. 12, *court sessions are public, apart from the cases stipulated under the law; decisions are passed in public session, apart from the cases stipulated under the law.*

presence and under the control of the interested parties, and even of the assisting public. And it is only based on what he sees and hears during such sessions, under his direct observation and control, that he can base his conclusion". (Pop, 1946, p. 214)

In order to ensure immediacy, the principle of the continuity of the panel of judges was regulated. According to this principle, the criminal case is trialled by the same panel of judges to which the case was randomly allotted, throughout the criminal proceedings. To this end, the principle of the continuity of the panel of judges supposes that "*the entire debate takes place under the eyes of the same judges, uninterruptedly, continuously, so that the judges hold a minute documentation on each point in the debates and reach a unitary conclusion pursuant to the debates*". (Pop, 1946, p. 214)

The principle of contradiction, which is specific to the trial phase, concerns the fact that the evidence produced during this phase is discussed by the participants in the session, the different positions of the parties to the trial being thus highlighted. (Lorincz, 2009, p. 353)

The principle of contradiction is closely related to the principle of equality of instruments, as a component of the right to fair trial, and it involves each party's right to acknowledge all case-related acts or the comments, reports submitted before the judge, and to discuss the same before him, in order to influence the decision of the court of law, within a procedure based on the principle of contradiction that does not disadvantaging any of the parties. (Udroiu, 2013, p. 533)

Moreover, according to the principle of orality, the entire procedural activity before the judge is carried out verbally.

Orality does not only concerns the performance of the court session, but it should also be understood depending on the legal effects it produces in the trial phase, being an imperative condition for the validity thereof, because, when ruling, the court will take into account not only the written mentions, but also the verbal discussions held in the debates stage. (Volonciu, 1972, p. 354)

3. Trial under Admission of Guilt

Concerning the trial procedure applicable in the case of admission of guilt, the New Criminal Procedure Code does not group these simplified procedure norms under a

single article (unlike the Criminal Procedure Code of 1968, which regulates the trial procedure in the case of admission of guilt in art. 320^1). Thus, the abbreviated procedure norms are stipulated in art. 374 paragraph 4, art. 375, art. 377, art. 395 paragraph 2, and 396 paragraph 10 from the New Criminal Procedure Code.

Pursuant to the covering of the initial proceedings concerning the lawfulness of the summons, the reading of the indictment, the communication of the applicable rights to the defendant, as well as the notification of civil parts, civilly liable towards the prejudiced party within the preliminary chamber procedure, the judge asks the defendant whether he wants to opt for a simplified procedure according to art. 374 paragraph 4 of the New Criminal Procedure Code or not.

A first condition to be fulfilled for the application of the abbreviated procedure is that, if the defendant opts for trial under the admission of guilt, his option has to concern the full admission of the facts presented by the prosecutor in the indictment (but not the admission of the legal classification of offences).

Thus, art. 374 paragraph 4 from the New Criminal Procedure Code stipulates that if the criminal procedure does not concern a crime punished with life imprisonment, the chairman informs the defendant that he may request that the trial be held based on the evidence produced during the criminal investigation and the documents submitted by the parties only, if he fully admits of having committed the offences he is charged with, while also communicating the provisions in art. 396 paragraph 10 from the New Criminal Procedure Code.

The simplified procedure does not apply if the defendant only admits of a part of the facts presented in the indictment (e.g., only one of the concurrent crimes or only one or some of the continuous crime material acts). In this case, the court of law may not apply the simplified procedure for acts that were not admitted, and disjoin the case and order trial according to the common law procedure for acts that were not admitted.

The defendant is not also bound to admit the legal classification of the offence(s) as stipulated in the indictment, and he may request the amendment of such classification. However, through the legal classification request, the defendant must not target the altering of the factual situation as presented in the indictment (Udroiu, 2013, p. 591). The legal classification may also be proposed *ex officio* by the law court or upon the request of the prosecutor or of the prejudiced, civil, or civilly liable party.

Concerning the trial procedure under admission of guilt, regulated under art. 320[1] from the Criminal Procedure Code of 1968, the High Court of Cassation and Justice has shown that the admission of offences has to be full and unconditional, the only admissible challenge being the one related to the legal classification of offences. Even from this latter point of view, the challenging of the legal classification of offences may not target the alteration (even if partial) of the factual situation, as exposed in the indictment document[1].

A second condition to be fulfilled in order for the simplified procedure to apply is for the trial to exclusively rely on the evidence produced during the criminal investigation and on the documents submitted by the parties, according to art. 374 paragraph 4 from the New Criminal Procedure Code. However, the defendant must agree to the trialling based on the evidence produced during the criminal investigation and on the documents submitted by the parties, as well as by the prejudiced party (in the case of the procedure under admission of guilt, the parties, as well as the prejudiced party, may submit documents, in the hypothesis of an abbreviated court procedure).

According to the New Criminal Procedure Code, the documents do not have to be only circumstantial (as opposed to art. 320[1] paragraph 2 from the Criminal Procedure Code of 1968, which stipulated that the trial under admission of guilt could be carried out exclusively based on the evidence produced in the criminal investigation phase, only if the defendant stated that he fully admitted of the offences retained in the indictment, and did not request the submission of evidence other than the circumstantial documents), the submission of type of documents concerning both the criminal and the civil side being possible.

The documents may be proposed by the defendant, as well as by the civil party, the civilly liable party or the prejudiced party (according to art. 375 paragraph 2 from the New Criminal Procedure Code), but not by the prosecutor (the latter submitting all evidence during the criminal investigation stage).

The third condition for the applicability of the abbreviated procedure, which derives from the provision of art. 374 paragraph 4 from the New Criminal Procedure Code is that the defendant mush not be charged with an offence for which the law stipulates life imprisonment.

[1] Î.C.C.J., *secţia penală, decizia nr. 3136/2011,* www.scj.ro.

It is irrelevant whether life imprisonment is stipulated as the only punishment or whether the law stipulates it as an alternative to imprisonment.

Moreover, in order for the trial procedure under admission of guilt to be applicable, the defendant must have committed the offence after the age of 18. To this end, according to the New Criminal Procedure Code, educational measures (with or without deprival of freedom) apply in the case of minor defendants or defendants above the age of 18 who have committed a crime before turning 18, or, in the case o the simplified procedure for trial under admission of guilt the tendency is towards an attenuated regime by relating legal provisions not to educational measures, but to punishments. Moreover, regarding the guilt admission consent (as another simplified procedure stipulated under the New Criminal Procedure Code), it concerns two conditions: the punishment for the committed crime should not exceed 7 years, and the defendant must not be a minor.

A new conditions resulting from the provisions of the New Criminal Procedure Code in order for the abbreviated procedure to become applicable is for the admission and request of trial under admission of guilt to be lodged *in personam.*

In this case, according to the provisions of art. 374 paragraph 4 of the new regulation, showing that the "defendant may request the trial to rely exclusively on the evidence produced during the criminal investigation and on the documents submitted by the parties, if he fully admits the charges brought against him", as well as according to the provisions in art. 375 paragraph 1, stipulating that "if the defendant requests that the trial be held according to the provisions in art. 374 paragraph 4, the court proceeds to his hearing" (the defendant's hearing being mandatory), it follows that the trial under admission of guilt can be applied only if the defendant is brought before court prior to the commencement of the judicial investigation and if he so requests in person.

According to the provisions in art. 320^1 paragraph 1 from the Criminal Procedure Code of 1968, the defendant may declare in person, or through an authenticated document that he admits of having committed the offences he is charged with in the indictment, prior to the reading of the court notification document.

The abbreviated procedure does not apply in the case of the defendant who declares that he admits the charge(s) brought against him and accepts the exclusive submission of evidence produced during the criminal investigation stage, but who decides to make use of the right to remain silent.

Similarly to the regulation in the Criminal Procedure Code of 1968, after the admission of the request for trial according to the simplified procedure, the defendant may not return, during the criminal proceedings, on his option to be trialled according to the abbreviated procedure, as the legislator does not expressly stipulate such a possibility; thus, the defendant's admission of guilt is irrevocable. (Udroiu, 2013, p. 597)

Concerning the admission or rejection of the request for trial under admission of guilt, after a contradictory debate it is decisive whether the law court considers that the existing evidence is sufficient to proceed to the trial according to the abbreviated procedures, as the criminal procedural law does not stipulate any conditions related to the admission or rejection of the request. Thus, according to art. 375 paragraphs 1 and 2 from the New Criminal Procedure Code, if it admits the request, the court asks the parties and the prejudiced party if they propose the submission of documentary evidence.

The documents may be lodged on the date when the court rules on the request in art. 375 paragraph 1 from the new regulation or on a subsequent date, granted to this end. The court may only grant one term for the submission of documents, according to art. 377 paragraph 2 from the New Criminal Procedure Code.

If it denies the request, the court proceeds according to art. 374 paragraphs 5 – 10 of the new regulation (the procedure being the common law one).

The Criminal Procedure Code of 1968 stipulated, in art. 320^1 paragraph 8, that the court rejected the request if it considered that the evidence produced during the criminal investigation was insufficient to set whether the fact existed, represented a crime, and was perpetrated by the defendant. In this case, the court continues the trialling of the case according to the common law procedure.

Concerning the hypothesis in which the law court rejects the request for trial under admission of guilt, there might be cases in which, though the defendant opted for the trialling according to the abbreviated procedure, the court rejects the request and applies common law rules on the trial, and after deliberations, it is found, pursuant to the body of evidence that the deeds described in the indictment and known to the defendant are approved beyond all reasonable doubt.

From this point of view, art. 396 paragraph 10 from the New Criminal Procedure Code expressly stipulates that if the court rejects the request for trial under admission of guilt and if such denial is followed by a common law procedure, if the

same factual situation as the one described in the notification document and acknowledged by the defendant is retained, in the case of conviction or postponement of the application of punishment, the punishment limits are reduced by one third in the case of imprisonment, and by one fourth in the case of fine sanctions.

Moreover, art. 395 paragraph 2 from the New Criminal Procedure Code concerns the remanding of the case. If the request for trial under admission of guilt is accepted, the documentary evidence is produced, the debates are carried out, and the defendant exerts his right to the last word, but, during the deliberations, the court believes that additional evidence - apart from the documents stipulated in art. 377 paragraph 1 – 3 from the New Criminal Procedure Code - is required, it remands the case, and orders the performance of the judicial review. Pursuant to this procedure, if the existence of the triple identity concerning the deed for which the case was sent to court, the deed admitted by the defendant, the deed retained after the judicial review, pursuant to art. 396 paragraph 10 from the New Criminal Procedure Code, in the case of conviction or postponement of the application of punishment, the punishment limits are reduced by one third in the case of imprisonment, and by one fourth in the case of fine sanctions.

According to the provisions in the New Criminal Procedure Code, there is no limitation as to the solutions the court may order pursuant to the trial under admission of guilt. Thus, the judge has to rule on the criminal case, and it is not limited to the ordering of a conviction solution only. Hence, pursuant to the trial under admission of guilt, the court may pass a conviction, acquittal, criminal procedure closure decision, but it may also order the waiver or the postponement of the punishment.

According to the provisions in the Criminal Procedure Code of 1968, a matter of controversy in judicial practice was whether the court always had to pass a conviction solution of the defendant opted for the trial according to the simplified procedure. The High Court of Cassation and Justice was flexible in terms of the possibility to pass an acquittal decision based on art. 10 paragraph 1 lett. b^1) from the previous regulation, rejecting the possibility to order acquittal based on other grounds.

However, the legal literature (Udroiu, 2013, p. 600) has shown that, pursuant to the procedure in art. 320^1 of the Criminal Procedure Code of 1968, the court could order: a conviction decision (in most cases); an acquittal decision [pursuant to art.

10 paragraph 1 lett. b) from the previous regulation, for instance, if the deed for which the defendant was sent to court and which he admitted of was not an offence, but a contravention; pursuant to art. 10 paragraph 1 lett. d) from the Criminal Procedure Code of 1968 if, for instance, the defendant fully admitted the offence for which he was sent to trial, but he did not hold the special capacity stipulated under the law to be regarded as the author of the crime]; a criminal procedure closure decision (for instance, if the special term for the prescription of criminal liability occurred after the date on which the defendant was sent to court and before the first court date).

4. Conclusions

Concerning the trial procedure applicable in the case of admission of guilt, the New Criminal Procedure Code does not group these simplified procedure norms under a single article (unlike the Criminal Procedure Code of 1968, which regulates the trial procedure in the case of admission of guilt in art. 320^1). Thus, the abbreviated procedure norms are stipulated in art. 374 paragraph 4, art. 375, art. 377, art. 395 paragraph 2, and 396 paragraph 10 from the New Criminal Procedure Code.

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The simplified procedure does not apply if the defendant only admits of a part of the facts presented in the indictment (e.g., only one of the concurrent crimes or only one or some of the continuous crime material acts). In this case, the court of law may not apply the simplified procedure for acts that were not admitted, and disjoin the case and order trial according to the common law procedure for acts that were not admitted.

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