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GUILT ADMITTANCE AGREEMENT PROCEDURE AND THE PROSECUTOR'S ROLE IN THIS SPECIAL PROCEDURE

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GUILT ADMITTANCE AGREEMENT PROCEDURE AND THE PROSECUTOR'S ROLE IN THIS SPECIAL PROCEDURE

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Abstract

With the intent of supporting the judicial bodies by shortening the procedure involved by the criminal trial and the defendants who perpetrated offenses for which the law provides fine or jail not exceeding seven years, the lawmaker introduced an absolutely new procedure within the Romanian criminal trial, named guilt admittance agreement. It is regrettable that the law texts referring to this criminal trial simplification special procedure, such as currently provided in Criminal procedure code, are unclear and lacunar, leaving room to numerous interpretations and question marks. In the study hereto the author presented a series of opinions regarding the role of the hierarchically superior prosecutor to the case prosecutor in this procedure, and in the end the own opinions are expounded with regard to the legal provisions referred to, to their possible interpretation and the need to be clarified by the Romanian.

Keywords:

agreement, guilt admittance, case prosecutor, defendant, hierarchically superior prosecutor.

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Galateanu, O. (2015). Guilt admittance agreement procedure and the prosecutor's role in this special procedure. Jurnalul de Studii Juridice, Year X, No. 1-2/2015, 97-104.

1. Introduction. Guilt Admittance Agreement Procedure And The Lawmaker's Purpose By Its Introduction

An absolute novelty element the new Criminal procedure code brought into the Romanian criminal trial is the guilt admittance agreement. This agreement is a special procedure provided by Title IV of the special part of the new Criminal procedure code named "special procedures".

From the recitals for the new Criminal procedure code appears that by the introduction of this special procedure economic reasons were pursued, appreciated as favouring all criminal trial parties and especially the state which, by simplifying the procedure in those cases where such agreement operates, manages through smaller human and material resources to carry out criminal justice and fulfill the criminal trial's purpose.

Another goal the lawmaker pursued by introducing this special procedure was to guarantee the effectiveness of the justice act and another aimed at expediting the procedure to accomplish the challenge of quick settlement of cases.

But what is actually this guilt admittance agreement? Analysing the provisions of art. 478 par. (1) of the new Criminal procedure code, one deducts that it is a bilateral agreement settled by the defendant and the prosecutor, during the criminal investigation, as a result of the admittance by the former of his/her guilt. From the same law text results that such agreement may intercede during the criminal investigation, only after the criminal action was initiated.

By this condition we believe that the lawmaker wished to avoid the possibility of judicial errors being produced, as the settlement of the agreement can only be accepted after serving enough evidence to clarify all the circumstanced regarding the existence of the offense and the defendant's guilt, evidence rendering possible and grounded the initiation of the criminal action against the defendant. We ascertain the same considering the provisions of art. 309 par. (1) from the new Criminal procedure code according to which "the criminal action is initiated by the prosecutor (…) during the criminal investigation, when (s)he finds there is evidence whereby results that a person perpetrated an offense and there is none of the cases preventing the initiation or enforcement of the criminal action provided by art. 16 par. (1)".

Such as expressly provided in par. (3) from art. 478 Criminal procedure code and art. 379 from the same Code, the guilt admittance agreement may be initiated by both the prosecutor and the defendant and its object is the admittance of perpetrating the deed and the acceptance of the

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legal framing for which the criminal action was initiated, targeting the kind and amount of the penalty as well as its execution form.

Such agreement may be settled only for those offenses for which the law provides as sanction the penalty of fine or imprisonment of maximum 7 years, according to the provisions of art. 480 par. (1) new Criminal procedure code. Also, it cannot be applied to juvenile offenders, which is natural, considering that no penalties may be enforced on them, but only educational measures.

Analysing the legal provisions set out in par. (2) and (4) of art. 478 Criminal procedure code, we find that according to the lawmaker's will, *"the effects of the* guilt admittance agreement *are subject to the advice* of the hierarchically superior prosecutor" and "*the limits* of settling the guilt admittance agreement *are set out by the prior written advice* of the hierarchically superior prosecutor". These two law texts arose our interest with regard to the prosecutor's role within the guilt admittance agreement procedure, for which reason, in the study hereto we shall try a personal analysis and interpretation of the same, in the attempt to understand what was the lawmaker's will.

2. Prosecutor And His/Her Role In The Guild Aadmittance Agreement Procedure

Speaking of the prosecutor and his/her role in the guilt admittance agreement special procedure, we find to start with, from the trial provision in the matter, that in this procedure is involved on one hand, the case prosecutor, and on the other, the hierarchically superior prosecutor to the case prosecutor. Moving forward, a second finding is that the case prosecutor performing or supervising the prosecution, has a certain role within the guilt admittance agreement, and his hierarchically superior prosecutor has another involvement, entirely different.

Under art. 478 par.(1) Criminal procedure code, not only the defendant may be the holder of the guilt admittance agreement but also the case prosecutor, in his capacity of judicial body. This legal provision is concretely transposed by the fact that only the prosecutor who supervises or even undertakes the prosecution may initiate this agreement, negotiating with the defendant on the one hand. On the other hand, we must be aware of the fact that even if it is the defendant who initiates this agreement, yet the prosecutor settling the case is the one to decide whether such agreement shall be settled, regardless of the defendant's or his defender's wish and independently of his hierarchically superior prosecutor.

Galateanu, O. (2015). Guilt admittance agreement procedure and the prosecutor's role in this special procedure. Jurnalul de Studii Juridice, Year X, No. 1-2/2015, 97-104.

Practically the defendant benefits from the procedural right to settle such an agreement, due to which reason the case prosecutor is bound to inform the defendant during the prosecution of this right. Otherwise, he might be responsible for the default of the defendant's trial rights, his attitude incurring the relative nullity of the performed acts, under the provision of art. 282 Criminal procedure code.

As to the hierarchically superior prosecutor and his role within the special procedure we are referring to, such as expounded above, art. 478 from the Code comprises express provisions in two distinct paragraphs ((2) and (4)) that are being referred to, in one the *limits* of settling the guilt admittance agreement and in the other the *effects* of the same agreement, specifying that the limits "are set out" by the same through a written prior advice and the effects are "subject to his advice".

We consider that these legal provisions are unclear, the same being the reason for which different discussions and opinions in the criminal doctrine and practice arose. The questions asked further to the analysis of these law texts were: concretely how many advices the hierarchically superior prosecutor grants in case of settling a guilt admittance agreement, one or two advices?; what is the content of this/these advice(s)?; if the answer is more than one advice, what should be their form?

In doctrine two opinions formed up regarding these aspects, namely:

1) in the first opinion it was underlined that, logically, the hierarchically superior prosecutor should grant one advice, given prior to the agreement settled by the holders.[2] A given motivation focused on one hand on the fact that par. (2) from art. 478 Criminal procedure code refers to the "agreement's effects", not to the intimation of the court about this agreement, and on the other hand the to the drafting of the document recording the guilt admittance agreement, which, even after being approved by the hierarchically superior prosecutor, does not produce *per se* an effect and that actually, the agreement's effects as to its legal consequences, are produced only on the date the court's ruling remains definitive, whereby the court pronounces a solution regarding the criminal action. The adepts of this opinion also support the fact that, if the idea were accepted that the hierarchically superior prosecutor should grant a second advice, then practically he could only advice the verification of the observance of the

[2] To this effect, Bodoroncea, G, (2014) , *The guilt admittance agreement,* Conference „Fundamental regulations in the new Criminal code and the new Criminal procedure code", Law Faculty, Bucharest University, 3-4 April 2014, Annals of Bucharest Univ., C.H.Beck Publishing house, 2014, p.320-336

Galateanu, O. (2015). Guilt admittance agreement procedure and the prosecutor's role in this special procedure. Jurnalul de Studii Juridice, Year X, No. 1-2/2015, 97-104.

negotiation limits set out by the first advice of the prosecutor, which would practically be meaningless, as long as the prosecutor may renounce at any moment this negotiation procedure and decides to sue the defendant, without the hierarchical prosecutor being able to intervene in his decision.

2) In another opinion[3], the legal provision referring to the "effects" of the agreement and subjecting them to the hierarchically superior prosecutor's advice, seems to consider a procedure subsequent to the agreement's settlement and, that from the succession of the two legal texts, it is deduced that the lawmaker pursued that the procedure provided in par. (2) be subsequent to the one regulated by par. (4). On the other hand, the adepts of this theory also support the unclear nature of the terminology of the "agreement's effects" that should be subject to the advice of the hierarchically superior prosecutor, and with good reason, as the agreement does not produce any effect on the defendant's status by its mere settlement, but only its approval by the legally summoned court and subsequently the ruling of a solution regarding the criminal action having such an effect. Due to this reason, the supporters of this opinion underline that the term "effect" used by the legal text is inadequate.

Lastly, the supporters of this opinion consider that practically in par. (2) the lawmaker established the general rule of settling a guilt admittance agreement provided that an advice of the hierarchically superior prosecutor to the one performing/supervising the prosecution in the case exists, as in par. (4) this rule is transposed, in this text setting out the conditions under which such agreement is given- in writing and previously. They also ascertain that practically the role of the hierarchically superior prosecutor to the case prosecutor is not only to approve or reject the agreement initiated by the case prosecutor, considering its content, but to also set its limits. Therewith, they claim that the advice is meant to establish milestones for the settlement of the agreement, the hierarchically superior prosecutor being able to indicate a certain punishment the defendant should execute, a minimum amount or execution form, or to remove a certain manner of the punishment's execution, and between these limits the case prosecutor has the possibility to settle with the defendant a guilt admittance agreement.

The adepts of the second opinion regarding the provisions of art. 478 Criminal procedure code claim that this refers to two advices, whereby a

[3] To this effect also Stefan ,Ghe. D.(2014), Prosecutor's role in achieving the guilt admittance agreement. Practical and theoretical problems in the unfolding of the special procedure provided by the new Criminal procedure code, www.juridice.ro/ 5 September 2014.

Galateanu, O. (2015). Guilt admittance agreement procedure and the prosecutor's role in this special procedure. Jurnalul de Studii Juridice, Year X, No. 1-2/2015, 97-104.

previous one, such as provided in par. (4), and the second subsequent to settling the agreement, under par. (2). The first one must be made in writing and the second can consist only in a mention on the document where the guilt admittance agreement was registered.

In this opinion there is a drafting error by the provision of the prior advice after the one referring to the subsequent advice.

In this opinion, the prior advice that the hierarchically superior prosecutor must issue in writing, must establish for which deeds and persons the same grants the advice for settling the agreement, whether the legal framing is correct, whether the evidence allows such procedure and to indicate the solutions he/she deems receivable for settling the agreement, all these actually representing the limits of the agreement. Subsequently to this advice, the adepts of this opinion consider that the case prosecutor must settle the agreement establishing the kind, amount and form of punishment execution or the postponing solution of the punishment's application or to renounce the punishment's enforcement. According to this opinion, all these aspects included in the content of the agreement represent its "effects". They motivate the opinion of the necessity of the existence of the second advice of the hierarchically superior prosecutor by making reference to the provisions of art. 484 par. (1) Criminal procedure code, on the basis of which, should the agreement lack a mention from the mandatory ones set out in art. 482 of the same Code, the court shall rule the coverage of such omission in maximum 5 days and for the same intimates the head of the prosecution office that issued the agreement. They ascertain that this intimation would be motivated only if the same would be attributed the responsibility of verifying the guilt admittance agreement not only before its settlement, but also subsequently to the court's intimation.

At last, it is considered that the just solution is that the hierarchically superior prosecutor should intervene both in setting the limits within which the holders may settle the agreement, and to verify the agreement as court intimation act. The latter activity should be performed, as it is performed in the case of the procedure where the court intimation act is the prosecution. In this final procedure the prosecution office's lead prosecutor is bound to verify the legality and ground of the prosecution in order to submit to the court a legal and thoroughly drafted intimation document issued under art. 382 par. (1) Criminal procedure code, and in the event of intimating the court by a guilt admittance agreement it should not be proceeded otherwise, due to which reason this act too must be submitted to the verification of the hierarchically superior prosecutor – head of the prosecution office.

Galateanu, O. (2015). Guilt admittance agreement procedure and the prosecutor's role in this special procedure. Jurnalul de Studii Juridice, Year X, No. 1-2/2015, 97-104.

3. Personal Conclusions And Opinions

Analysing the legal provisions of the new Criminal procedure code regarding the special procedure of the guilt admittance agreement, we consider that it truly helps the judicial bodies, as it simplifies a lot the proceedings to be undertaken to achieve the purpose of the criminal trial and also supports the defendant who, by going through the same, might benefit from an easier conviction or from another solution, the more in his favor, as well as the renouncement to the enforcement of the punishment or the postponement of the punishment's enforcement. Yet, in order to produce the advantages we believe it was intended for by the lawmaker, it should benefit from a simple and unequivocal legal framework, so as not to give rise to several interpretations, and consequently, to a non-unitary judicial practice. At present, such as expounded in the study hereto, the provisions of art. 478 Criminal procedure code are not sufficiently clear, for which reason they gave rise to numerous discussions and interpretations. We limited ourselves to only presenting the opinions arisen with regard to the role of the hierarchically superior prosecutor to the case prosecutor in the case of the guilt admittance agreement procedure, although the legal provisions regarding this procedure generated discussion regarding other unclear aspect or not at all comprised in the law texts.

In our opinion, besides the written prior advice that should be granted by the hierarchically superior prosecutor (provided as mandatory in par. (4) of art. 478 Criminal procedure code), the same should give his advice – even as mention written on the document issued pursuant to the agreement's settlement by the subordinated case prosecutor. This is because it is the responsibility of the prosecution office lead prosecutor regarding the court intimation act. And we also envisage the express legal provisions according to which he/she should verify the legality and ground of the prosecution as court intimation act (therefore to approve it). In the case of the guilt admittance agreement procedure that, in our opinion, should not be regarded as having lesser importance than the prosecution, considering that it is an act also based on the convictions of the case prosecutor, arisen from the evidence served in the prosecution stage. However, we consider that the lawmaker should clarify the legal provisions comprised in the case of the special procedure we refer to, in the sense of their completion or amendment, if we consider that from no current legal provision in force results that such an advice given by the hierarchically superior prosecutor with regard to the guilt admittance agreement as court intimation act produces any effect. There is no legal mention regarding the consequences

Galateanu, O. (2015). Guilt admittance agreement procedure and the prosecutor's role in this special procedure. Jurnalul de Studii Juridice, Year X, No. 1-2/2015, 97-104.

of the lack of such advice, nor regarding its existence. From the provisions of art. 482 Criminal procedure code we find that the court analyses the achievement of other elements deemed as mandatory and required to be mentioned in the guilt admittance agreement, only their default having as effect the return of the case to the prosecutor for the necessary completion.

Considering the lawmaker's purpose to create a unitary national case-law, we believe that these aspects should be clarified, which refer to the advice that the hierarchically superior prosecutor should give, thus highlighting whether he/she understands that such advice indicated in art. 478 par. (2) current Criminal procedure code is important or not.

Bibliographical references

Scientific articles

1. Bodoroncea, G, (2014), *Guilt admittance agreement*, in "volume of Conference Fundamental regulations in the new Criminal code and the new Criminal procedure code", Bucharest University Annals, C.H.Beck Publishing house, Romania
2. Kuglay, I., Şinc, A.,M. (2014), *Settling procedure of the guilt admittance agreement*, Public Ministry – Prosecutor's Office under the Cassation and Justice High Court, study on 07.04.2014
3. Roibu, M., (2014), *About a different compromise in the new Criminal procedure code*, in volume of Conference Fundamental regulations in the new Criminal code and the new Criminal procedure code, April 2014, Bucharest University Annals, C.H.Beck Publishing house, p. 337-352

Web pages

1. Stefan, Ghe, D, (2014) Prosecutor's role in achieving the guilt admittance agreement. Practical and theoretical problems in the unfolding of the special procedure provided by the new Criminal procedure code, www.juridice.ro

Galateanu, O. (2015). Guilt admittance agreement procedure and the prosecutor's role in this special procedure. Jurnalul de Studii Juridice, Year X, No. 1-2/2015, 97-104.