The Admission of Guilt and its Consequences in the Romanian Legislation

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Abstract

The admission of guilt has always had an attenuation effect on the punishment, meant to encourage the persons which have committed a crime to admit their deeds and to cooperate with the authorities in order to find out the truth of the case. In the last years, the legislator has used the admission of guilt to obtain a diminution of the duration of the trials and a relief of the courts of law. The Law no 202/2010 known as Small Reform Law has brought a simplified procedure for judgment the cases regarding the defendants which admit their deeds. The new settlement was a success, the procedure being used quite often. The new Criminal Procedure Code comes with a new regulation also known in other legislations as Plea bargaining. The simplified procedure for judgment is also stipulated. That is why we have to ask if admission guilt agreement has a chance to succeed in our legislation and to be used in the legal practice or is meant to fall into disuse ab initio.

The main aim of this paper is to examine how the conception of the legislator has evolved over the time and which legal stipulations are the most suitable for our legislation.

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1. Introduction

The purpose of the criminal trial, as defined in art.1 paragraph 1 of the Code of Criminal Procedure, involves identifying and determining the guilt of the person who has committed a deed stipulated by the criminal law, so that this person can be held criminally liable. To achieve this goal, the judiciary bodies and especially the prosecution are obliged to perform a thorough gathering of evidence that has to show beyond reasonable doubt that the person accused of committing the crime is or is not guilty of committing the criminal offense. In this
context, the admission of guilt by the criminal offender is an important aid to the judicial bodies as the probation work is simplified substantially. Therefore, all criminal laws provide as a reward, in exchange for admission, a reduction of the boundaries of punishment provided by law for the crime committed.

There are legislatures in which the admission of the deed by the defendant is regarded as full confidence of guilt, and the sentence can be based only on this admission made according to the law because it is believed that nobody would admit he/she was guilty knowing that he/she could be sentenced, if such admission did not correspond to the truth (Theodoru, 2007). The Romanian legislature has not acquiesced in this view. Thus, art. 69 of the current Code of Criminal Procedure provides that the defendant's statements made during the criminal trial may serve the truth only if they are corroborated with facts and circumstances which result of all the evidence in question. So, detailed and credible as it may seem, the statements made by the accused do not have an independent, self-reliant probative value, but a probative value conditioned by the existence of other evidence which proves their veracity.

2. The admission of guilt in the current Criminal Procedure Code

In the Romanian law, until 2010, the only statutory provision which rewards the author who admits his/her deed was that provided by art. 74 paragraph 1 letter c) of the Criminal Code based on which the mitigating circumstance of the criminal liability may be considered the attitude of the offender after committing the crime resulting from his/her appearance in front of the authority, his/her sincere behavior during the trial, the facilitation of the finding and arrest of participants. The retaining of this circumstance results under art. 76 of the Criminal Code, in setting a sentence below the minimum prescribed by law for the crime committed or in the change of the sentence (e.g. from life imprisonment into imprisonment or from imprisonment into a fine). As shown in the formulation of the legal text, the admission of the deed can be a mitigating circumstance, the judge being the one to decide whether to assign to the offender's attitude mitigating meanings, or if by taking into account the circumstances of the committing of deed, will appreciate that the offender's regret do not have the relevance and consistency of some circumstances able to mitigate the criminal liability and that the retributive and educational purpose of punishment cannot be achieved by applying a sentence under the special minimum. The judicial nature of the circumstance translated into not being binding in its application and its correlation, the reduction of the penalty was not and is not likely to be an incentive for those accused of committing a crime in admitting their deed.

The judgment of the legislature regarding the effects of the guilt admission changed in 2010, when the admission of guilt has acquired the character of legal cause for the reduction of sentence. Thus, by Law no. 202/2010, the so-called Small Reform Law, art.320\(^1\) was inserted in the Code of Criminal Procedure with the marginal name of "Trial in case of admitting guilt" that rewards guilt admission by reducing the punishment limits prescribed by law with a third in case of an imprisonment sentence and a fourth for a fine sentence. In order to achieve this result, the admission of the guilt regarding the deeds established in the document instituting the proceedings has to be made before the first court until the beginning of the criminal prosecution and be accompanied by a request for the judgment to be made on the basis of evidence taken during criminal investigations. Reducing the limits of punishment is in this context not only a reward for the perpetrator’s attitude – of guilt admission - , but also for the reduction of the duration and cost of criminal proceedings. This effect of admission caused the practitioners to call the judging procedure in case of admission of guilt a simplified (or short) procedure of judgment.

Along with the insertion of the new legal cause for reduction of sentence, the legislature did not eliminate the mitigating circumstance provided by art. 74 paragraph 1 letter c) of the Criminal Code, so that the courts found themselves placed in a position to determine the meanings attributed to the admission of guilt in cases pending. Thus, the question whether the court, provided that the defendant acknowledges unreservedly the crime for which
he/she is charged, may apply both art. 320\(^1\) of the Code of Criminal Procedure as well as art. 74 paragraph 1 letter c) of the Criminal Code or not comes into being.

The Supreme Court held in a pending case when applying the provisions of art. 320\(^1\) of the Code of Criminal Procedure, the sincere behavior during the trial consisting in the admission of committing the deeds found in the document instituting the proceedings cannot be exploited as a mitigating circumstance provided in art. 74 paragraph 1 letter. c) second thesis of the Criminal Code, since the admission of the committing of deeds cannot be given granted a judicial double valence. According to the court decision, the provisions on the mitigating circumstance may be applied simultaneously with the provisions of art. 320\(^1\) of the Code of Criminal Procedure, only when an attitude of the defendant after the committing of crime is different from the sincere behavior during the trial (HCCJ, Criminal Section, Decision no. 754 of 15 March, 2012).

As far as we are concerned, we believe that we must distinguish between cases in which the perpetrator had a sincere attitude of admission of the deed throughout the judicial activity in question and those in which the perpetrator has pleaded guilty only before the court of trial. Thus, if the perpetrator has admitted during the criminal investigation the committed deed, helping with his/her attitude the prosecution to prove his/her guilt, and then in front of the court he/she has maintained his/her position, acknowledging his/her deed and guilt in legal terms, he can benefit, in our opinion, both from the legal cause of reduction of punishment prescribed by art. 320\(^1\) and from the mitigating circumstances referred to in art 74 paragraph 1 letter. c) of the Criminal Code. The justification for this view is based on the objectives pursued by introducing art. 3201 of the Code of Criminal Procedure, namely that of shortening the duration of trial and settlement of criminal cases in which the offender admits his/her deeds and of reducing the costs determined by the re-administration in front of the court of the evidence administered during the criminal prosecution. The admission of the deed by the perpetrator even from the beginning or even before criminal prosecution is likely to simplify much of the prosecution bodies activity which are no longer put in a position to carry out checks of several suspects, to hear a significant number of people trying to find the people who can provide data and information as witnesses, to search for the objects used to commit the crime in an expanded area, etc.. Consequently, the costs for the discovery, collection and administration of evidence destined to prove the guilt of the perpetrator are reduced. Under these circumstances, we cannot talk of a double judicial valence of the admission made by the perpetrator before the court, because the sincere behavior of the perpetrator in question exceeds the admission made before the court.

Conversely, if the perpetrator has an insincere attitude during prosecution, denying the committing of facts or presenting fantasy scenarios by means of which he/she tries to justify the facts of the case, forcing the prosecution to make major financial and human efforts to discover, collect and administer the necessary evidence to prove his/her guilt as to check and eliminate the false paths offered by the perpetrator, there is no justification for retaining the mitigating circumstance of sincere behavior even though he/she admits his/her guilt in court. In such a situation, we consider that the admission made by the perpetrator is not the expression of a sincere attitude, but only an opportunism, as the perpetrator wishes to benefit from a reduction of the limits of punishment, given that he/she is aware of evidentiary material received during the criminal investigation and realized that his/her guilt is proven anyway. The court will apply in the case only the provisions of art. 320\(^1\) of the Code of Criminal Procedure, establishing a sentence within the limits reduced by a third or even a fourth, according to the case, unless there are other circumstances which constitute aggravating or mitigating circumstances.

3. The admission of guilt in the future Criminal Procedure Code

The new Criminal Procedure Code retains the simplified procedure of judgment, a regulation which has proved to be useful and effective in the judicial practice. Article 373 of the new code, which bears the marginal name of "Judgment based on the evidence administered in the prosecution phase", states a similar reduction of the limits of punishment for the perpetrator who pleads guilty on the facts found in the document instituting the proceedings. The terms and conditions in which such recognition must be made in order to produce its effects are
similar to present legislation. The issue of competition between mitigating circumstances and the legal cause for reduction of sentence is no longer raised as the new penal code no longer provides this mitigating circumstance.

The new Code also covers new institution in the matter of admitting guilt, namely the "Admission of guilt agreement", an institution which introduced for the first time in modern Romanian law, elements of negotiated justice. According to art. 473 of the new Code, the object of the admission of guilt agreement is the admission of committing the crime and the acceptance of the legal classification for which prosecution began and refers to the kind and amount of punishment as well as to its form of execution. Basically, the agreement consists of an arrangement between prosecutor and defendant in the cases and conditions provided by law, upon which criminal liability of the defendant is reached, without adversarial proceedings before the court, but only by the agreement acceptance by the court. The new institution, however, requires more than a simple procedure of admission of guilt. While in case of the simplified procedure, we talk about an acceptance of the defendant of the facts established by the prosecutor, in case of an admission of guilt agreement we talk about a deal, an agreement, namely about a negotiation between the prosecutor and the defendant regarding the deed of the trial, its legal classification, the penalty to be applied and the way in which it will be enforced. The admission made by the defendant will have the same result as in case of the simplified procedure – the limits of penalty will be reduced by one third or one fourth, as appropriate, or life imprisonment will be replaced with imprisonment - but the defendant will know with certainty the penalty to which he/she is exposed by admitting the deed. In addition, since this is a negotiation, it is possible, in exchange for the admission made, for the defendant to obtain some concessions from the prosecutor regarding the legal classification of the crime, the consequences and the punishment involved.

What would be the prosecutor's interest in following this procedure instead of an activity that would end in bringing the defendant before the court in a trial? The answer to this question is provided by the specificity of the probation activity performed during the conclusion of an admission of guilt agreement. According to art.474 paragraph 2 of the new code, the admission of guilt agreement ends when from the evidence administered, insufficient data on the existence of the crime for which prosecution was set in motion and on the defendant’s guilt exists. The phrase "sufficient data" used by the legislature must be understood, in our opinion, as referring to a minimum of data based on which the admission made by the defendant can be checked in order to prevent the admission of deeds by people who did not commit it. In the absence of evidentiary support for the deed or deeds admitted by the defendant, the agreement will be rejected. In this case, the rules of evidence able to prove beyond any reasonable doubt the defendant’s guilt are not complete. A contrary interpretation would render the guilt agreement institution ineffective, because prosecutors would not be interested, in cases in which they would have to collect and administer as much as evidence as for suing, suggest the defendant to conclude an agreement or accept the proposal of a defendant to conclude the agreement.

In contrast, in case of the simplified procedure, we deal with an activity of judgment based on the declaration of guilt admission made by the perpetrator in front of the court based on the evidence administered during the criminal investigation, evidence which must prove beyond any reasonable doubt the guilt of the perpetrator. Article 373 paragraph 4 states in this regard that the court admits the application when the evidence administered shows that the defendant's acts are established and sufficient regarding his/her person in order to allow for the establishment of a sentence. The rules of evidence administered during criminal investigations must therefore be capable of establishing exactly all the circumstances of the case and overturn the presumption of innocence from which the defendant benefits according to the law; it is not allowed for the admission of guilt to be is itself likely to lead to the establishment of the defendant’s guilt and conviction.

Unfortunately, the expression used by the legislature in art. 474 may be confusing for the legal practice, especially if we consider the provisions of art. 101 paragraph 2 of the new code according to which the "the sentence shall be imposed only when the court is convinced that the charge has been proved beyond any reasonable doubt". Since the admission of guilt agreement requires sentencing the defendant, some judges may be afraid to convict the defendant solely on the basis of his/her declaration of admission and on evidence which is
not proof beyond a reasonable doubt. We believe that such an interpretation would likely lead to the avoidance of the use of admission of guilt agreement by prosecutors. If we take into account the possibility that defendants may not wish to conclude an agreement, but wait for the trial phase to see if there is evidence to prove their guilt, knowing that they will get a reduction of sentence and if they admit the deed only before the court, the admission of guilt agreement can become obsolete ever since its entry into force. Avoiding this situation can be achieved mainly through a legislative amendment which has to clarify the extent of rules of evidence that have to be used in case of the conclusion of an admission of guilt agreement. Thus, the wide scale of appreciation left to the courts which may lead to inconsistent jurisprudence would be removed. Without the intervention of the legislature, the judiciary bodies will interpret the new legal norms in their spirit, in relation to the way in which these agreements are regulated in other countries which have a tradition in this field.

It should be noted, however, that the regulation of the admission of guilt agreement does not assume a return to the system in which the confession was considered the "queen of evidence", for the admission of guilt does not relieve the prosecutor of administering any other evidence showing the defendant’s guilt, but merely limits the obligation to explain all the aspects of the cause based on minimal evidence showing the existence of sufficient data on the existence of the deed for which the prosecution began and on the defendant's guilt. Such an assessment of the legal regulation is consistent with Recommendation no. 87 (18) of the Council of Europe on the simplification of criminal justice which states in paragraph III letter a of section 4 that when there is an investigation prior to the court referral, this should be done based on a procedure able to remove all unnecessary formalities and particularly to avoid the need of a formal hearing of witnesses when the facts are not disputed by the suspect.

4. Conclusion

The admission of the deed and of guilt by the defendant has always played an important role in criminal law and court proceedings, whether it mattered decisively in making a decision, or whether it served both the interests of finding out the truth and those of the perpetrator who benefited from the reduction of penalty imposed for the offense committed. The current Romanian legislation encourages the admission of guilt by the defendant, for reasons which mainly intend to simplify judicial procedures and reduce the costs of criminal trials, without assigning it the role of queen of evidence. As far as we are concerned, we consider that the legislature’s opinion is the correct opinion. The adoption of a plea guilty procedure that works in other legislations would be too big a challenge for the Romanian society and for the criminal judicial bodies, particularly in the current context characterized by an increased distrust in the act of justice.

Also, we declare ourselves in favor of assigning the character of legal cause of sentence reduction to the admission of guilt, even though the research literature has argued that the automatic reduction of sentence boundaries after admission of guilt is against the principle suum cuique tribuere as we can no longer talk about the criminal sanction as being a just and proportionate reward for the acts committed and admitted by the defendant (Văduva, 2013). As far as we are concerned, we do not share this view. The admission of guilt under the simplified procedure of judgment do not limit the possibility of the judge of dosing the sentence imposed to the perpetrator in relation to the specific circumstances of the commission of the offense and to the data that characterize the person accused, even if the sentence limits are reduced following his/her admission. It should be emphasized that the limits of punishment established by law can change at any time if the legislature deems it necessary, without affecting in any way the interests of justice.

References
