

# Some Considerations Regarding Reaching an Agreement for the Admission of Guilt

Carmen-Silvia Paraschiv

*University Professor, PhD, Titu Maiorescu University of Bucharest, Department of Law, Bucharest, Romania, paraschivcrmn@yahoo.com*

**ABSTRACT:** The agreement for the admission of guilt can be defined as an understanding which may be completed and concluded in the phase of penal investigation, during an ongoing penal procedure, between the prosecutor and the defendant under investigation, by which the latter agrees to recognize the entire content of evidential material as proof she is guilty of a certain accusation brought against her, in exchange for obtaining certain concessions or milder treatment by the prosecution. This means, among other things, that the defendant shall plead guilty to a lesser accusation or to one or more of the accusations brought against her, in exchange for the prosecution waiving the penal consequences of the commission of other infractions, or admitting guilt to an infraction in exchange for a less severe penalty.

**KEYWORDS:** agreement for the admission of guilt, prosecutor, defendant, rights and obligations, trial phase, special procedure

Upon the entry into force of the new Code of Penal Procedure, the Romanian legislative came up with a series of modifications. These new regulations were inspired by the legislations of several European and American jurisdictions, which were transposed into our legal system of penal procedures. Some of these changes raised discussions and resulted in controversy, since our legal system is based on a specific continental concept of law, according to which the judicial truth must be identical to the objective, factual truth, meaning that courts cannot retain anything but what actually happened. In our Code of Penal Procedure, finding the truth is stipulated as the basic rule, by article 5 para. (1), where it is provided that: *“Judicial authorities have the obligation to ensure, based on evidence, the finding of the truth regarding the facts and the circumstances of the case, as well as regarding the person of the suspect or the defendant.”* Therefore, the principle of the active role of the judge is implied [art. 3 para. (2) of the Code of Penal Procedure], that is, an absolutely necessary instrument for accomplishing the principle of finding the truth (Ghigheci 2012). The desire of the legislative in adopting these newly provided for regulations was that of updating our domestic legal system, to bring equilibrium within it, to increase the efficiency of the judiciary and the observance of principles.

One of the institutions of the new penal procedure, representing a novelty in our legal system is the agreement for the admission of guilt, which is an element of negotiated justice, and may be concluded only by fulfilling certain conditions provided for by art. 480 of the Code of Penal Procedure.

The agreement for the admission of guilt is a newly regulated institution in the Code of Penal Procedure, found in its Special Part, at Title IV, Chapter I “Special Procedures” (articles 478–488), which overwrite the general rules provided for by other legal norms and allow an agreement between the prosecutor and the defendant, by way of an understanding based on negotiation, with regards to the kind of penalty proposed, and the modality of its execution. Its purpose is to reduce the duration of the penal trial by a special and simplified procedure.

The institution of the agreement for the admission of guilt resulted in a number of advantages. Some of the more important ones are the decrease in the duration of finalizing the penal trial, the decrease of costs, a simplification of judicial activity and relieving the pressure on courts by solving certain cases that do not present a high degree of danger (Conferences on the New Code of Penal Procedure, 2015), minimalizing legal fees covered by the defendant,

observing the rights of the defendant (among which, regarding her right to a fair trial we hereby mention the jurisprudence of the European Court of Human Rights, where it has been established that the right to a fair trial guaranteed by art. 6 of the Convention, is not an absolute right, but one that the party can waive in a valid way).

There are various advantages to permitting by law the entering into an agreement for the admission of guilt. In an era in which the criminal phenomenon is ever more exacerbated, the state can concentrate its financial, material, and human resources on instrumenting cases that are indeed important. Defendants would not anymore be relegated to waiting for years on end in order to find out what the consequences of their deeds are. Also, would benefit from clemency, as a result of procedural attitudes.

Case *Blackledge vs. Allison*, 413 U.S. 63 (1977) highlighted some of the advantages of the agreement for the admission of guilt:

“Whatever might be the situation in an ideal world, the fact is that the guilty plea and the often concomitant plea bargain are important components of this country’s criminal justice system. Properly administered, they can benefit all concerned. The defendant avoids extended pretrial incarceration and the anxieties and uncertainties of a trial; he gains a speedy disposition of his case, the chance to acknowledge his guilt, and a prompt start in realizing whatever potential there may be for rehabilitation. Judges and prosecutors conserve vital and scarce resources. The public is protected from the risks posed by those charged with criminal offenses who are at large on bail while awaiting completion of criminal proceedings” (Pascu and Manea 2015).

We consider that prudence should be the attitude in receiving and implementing the agreement for the admission of guilt, since various advantages offered by this procedure, when regarded from a different angle, may constitute serious inconveniences which may upset the legal, social and economic order of the rule of law. For example, receiving milder penalties is undoubtedly an advantage for the defendant, yet what is the price paid by society for such a concession?

The traditional model of the penal trial is a laborious one: over-proceduralised in the context of the importance of the social values it is meant to defend, having a contradictory character in the context of which truth must be ascertained in a reasonably undoubtful manner; due to the large number of cases the judiciary has on its hands it commits valuable human resources (police, prosecutors, judges, attorneys, clerks, guards etc.) to fulfilling its purpose. In other continental systems, transactional elements in penal matters consist of regulated non-judicial procedures, by which the prosecution offers to the accused perpetrator of an offence, those penal investigations against her cease in exchange for the payment of a fine (Bosly and Vandermeersh 2005, 242). It should be stressed however, that, as this is an exception from under the principle of indisposability of the public prosecution, such transaction may take place only in expressly established cases provided for by law.

Beyond these reasons of a procedural and financial character, the law aims to provide new rights in favor of those accused of committing antisocial acts, respectively, the right to submit themselves to the rigor of the law within a short time, eliminating intervals of uncertainty between the moment of the start of the judicial procedures and their sentencing under the penal law. Beyond the various necessities which may be invoked in supporting this option of the Romanian legislative, a modernization of the Code of Penal Procedure was also necessary, by the addition of a new institution which already exists in most of the EU member states, and aiming to simplify the processing of criminal cases.

Another argument in support of the agreement for the admission of guilt is that a smaller number of persons are brought before the court, since without the option of concluding such an agreement, an important number of “weak” cases might be solved by being dismissed, or “thrown out” as is sometimes said in English legal terminology.

Courts may be exonerated from solving certain types of cases where there is no real debate, due to the abbreviated procedure permitted by the agreement.

Following the conclusion of this “transaction” between prosecutor and defendant, the latter would maintain their reputation. A penal trial in the public phase may be averted by seizing the court with the agreement for the admission of guilt, thus significantly reducing exposure of less pleasant aspects of the defendants’ personal lives; admission results in a faster solution and less mediatization of the case, as compared to the traditional criminal trial.

Avoidance of social stigmatization and reduction of legal fees covered by the defendant are also among the benefits provided by the institution of the agreement for the admission of guilt. The psychological element of the positive effect that the option of concluding such an agreement has upon the defendant’s consciousness, the knowledge of participating with an active role in the decision-making regarding the penalty, preserves in a way their dignity and impresses upon them a new impetus for the respect of the law and penal institutions.

The agreement for the recognition of guilt allows both parties to maintain positions of advantage, the defendant benefitting this way from a decrease of the duration of any penalty involving incarceration, or the amount of the fine, while the prosecutor, and society will not witness acquittals, this way the guilty are sentenced, while meeting the interests of those involved in the criminal trial.

By concluding an agreement for the admission of guilt, the defendant waves the right to trial in a “full” (Volonciu et al. 2018) judicial procedure and renounces a fairly large number of rights. On this consideration, defendants should take this step only when benefits are obtained. Also, they must understand very clearly the consequences of their decision.

The defendants should consider the eventual opportunity of concluding such an agreement, based on the evidence in the case file and:

- They must be minutely familiarized with the prosecutor’s version regarding the circumstances of the case, as well as with the version proposed by the defense,
- They must consider the existence, severity and amplitude of criminal antecedents as well as,
- The quantity, and especially quality of evidence in the file, both against them, and in their favor,
- They must know if the prosecutor is able to prove guilt. Often, only on the day of the trial will they find out that all witnesses will be present in court or are willing to provide testimony, as well as whether other evidence proving their guilt is actually present,
- They must know if they may invoke up legal arguments that might lead to the rejection of certain evidence.

## Conclusions

Concluding an agreement for the admission of guilt helps to expedite the solution of a penal trial, meeting the fundamental principle of celerity, also representing a possibility for the offender to decrease the penalty disposed by the court.

We consider that this special procedure, introduced by the New Code of Penal Procedure is useful, when applied while respecting the procedural provisions and while maintaining the objectivity of the prosecutor, who has the option to admit or dismiss the conclusion of this agreement.

## References

Bosly, H.D., Vandermeersh, D. 2005. *Droit de la procedure penale (Law of Penal Procedure)*, 4<sup>th</sup> edition. La Chartre. Bruges.

- Case Blackledge vs. Allison, 413 U.S. 63 (1977). <https://supreme.justia.com/cases/federal/us/431/63/> (last accessed: October 10, 2019).
- Conferences on the New Code of Penal Procedure*. 2015. National Council of Magistracy. National Institute of Magistracy. Four Aces. Bucharest.
- Ghigheci, C. 2012. *Despre sistemul procesual penal român (Regarding the System of Romanian Penal Procedure)*, <http://juridice.ro> (last accessed: October 10, 2019).
- Neagu, I., Damaschin, M. 2015. *Tratat de procedură penală (Treatise on Penal Procedure)*. Bucharest: Universul Juridic.
- Pascu, M. and Manea, T. 2015. *Acordul de recunoaștere a vinovăției (The Agreement for the Admission of Guilt)*. Bucharest: Universul Juridic.
- Strengthening the Capacity of the Romanian Judicial System to Face New Legislative and Institutional Challenges*. Sinaia Summer School: The Agreement for the Admission of Guilt.
- Volonciu, N., Uzlău, A.S., Moroșanu, R., Văduva, V., Atășiei, D., Ghigheci, C., Voicu, C., Tudor, G., Gheorghe, T.V., Chriță, C.M., Manea, T. 2018. *Codul de Procedură Penală – Comentat (The Code of Penal Procedure – Commented)*. Bucharest: Hamangiu.