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THE EFFECTS OF GUILTY PLEA AFTER THE START OF COURT INVESTIGATION. CHANGE OF CHARGES FOR THE OFFENCE

Mihaela Laura PAMFIL*

Abstract

The aim of this paper is to analyze the legal provisions governing the guilty plea procedure in the case of guilty plea and the procedure to be followed if it appears necessary to change the charges for the offense for which the defendant has been sued. In the case under consideration, the court proceeded to change the legal classification of the deed, after the beginning of the court investigation, and after the defendant had challenged all the evidence administered during the criminal prosecution, and, receiving the statement of acknowledgment of the defendant after the change in the legal classification of the deed, wrongly attributed to it, the value of an application for the application of the simplified procedure, although the time-limit for that procedure had already expired. The court of appeal found that the criticism regarding the application of the guilty plea procedure was well founded, as the court ordered the beginning of the court investigation as a result of the fact that, at the court interpellation, according to art.374 Code of Criminal Procedure, the defendant has testified that he does not acknowledge the facts. Analyzing the legal provisions of the Criminal code of Procedure, I appreciate that the decision of the appeal court is correct although the applicability of art. 396 paragraph 10 did not influence the punishment applied nor did it in any way breached the rights of the parties to the proceedings.

Keywords:

Guilty plea, change of charges, court investigation.

Circumstances of the case

By the indictment of the Prosecutor's Office attached to the District Court Iasi no. 10776 / P / 2016 dated December 5, 2016, the defendant I.G.G. was sued for committing the crimes of deceit and attempted deception, facts provided and punished by art.244 paragraph 1 and paragraph 2 Criminal Code, respectively art. 32 Criminal Code related to art. 244 paragraph 1 and paragraph 2 Criminal Code, all with application of art.

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38 paragraph 1 Criminal Code and of art. 41 paragraph 1 Criminal Code, being found that the defendant on June 14, 2016, around 20:30, contacted the said VE by telephone, recommending himself as a lawyer and misleading her that her son caused a road accident with human casualties, asking for and receiving the amount of 1000 Euro, on September 08, 2016, around 01:46, contacted the said OA by phone, recommending himself as lawyer and trying to mislead her that her son caused a road accident with human victims in order to obtain patrimonial advantages and that on September 13, 2016, around 3:45, he telephoned spouses C.N. and C.M., recommending himself as a lawyer and misled them as to the fact that their son caused a road accident with human victims, asking for and receiving the amount of 2000 Euro and 3000 lei.

Following the commencement of the trial before the Iasi District Court, the defendant said he wanted to rely on the right to silence and challenged all the evidence administered in the course of the criminal investigation, which is why the court began the court investigation. After the beginning of the court investigation, following Decision no. 368 of May 30, 2017 (published in the Official Gazette no 566 / 17.07.2017) by which the Constitutional Court of Romania found that the phrase "and against the same passive subject" from art. 35 paragraph 1 Criminal Code is unconstitutional, thus allowing the classification as a continuous offense of the acts of the same nature committed on the basis of the same criminal resolution by one person against several injured persons, the court called into question the change of legal classification of the facts for which the defendant had been sued the offenses of deceit and attempted deception, facts provided and punished by art. 244 paragraph 1 and paragraph 2 Criminal Code, respectively art. 32 Criminal Code related to art. 244 paragraph 1 and paragraph 2 Criminal Code, all with application of art. 38 paragraph 1 Criminal Code and art. 41 paragraph 1 Criminal Code for the offense of deceit, deed stipulated and punished by art. 244 paragraph 1 and paragraph 2 Criminal Code, with the application of art. 35 paragraph 1 Criminal Code and art. 41 paragraph 1 Criminal Code. Both the prosecutor and the defendant assisted ex officio by an appointed defence counsel stated that they agreed to change the charges of the offences, and that there was no need for clarification as to what the court said ex officio. Following these discussions, the defendant stated that he wanted to make a statement in the file and, being heard, said that he acknowledged the commission of the offense withheld in his charge, as described in the act of apprehension and wishes to be judged on the basis of evidence administered during the

prosecution, requesting the application of the guilty plea procedure. The court questioned the defendant's request and, taking the conclusions of the other participants in the criminal trial, found that the acknowledgment of charge procedure was applicable to the defendant and accepted the request.

By criminal sentence no. 3420 of December 18, 2017, the Iasi District Court ordered, on the basis of art. 274 paragraph 4 and art. 396 paragraph 10 Code of Criminal Procedure, sentencing the defendant to 2 years and 6 months of imprisonment for committing the offense of deception, provided by art. 244 paragraph 1 and paragraph 2 Criminal Code, with the application of art. 35 paragraph 1 Criminal Code and of art. 41 paragraph 1 Criminal Code.

Against this sentence, the defendant filed an appeal in due time, requesting the judicial review court to reconsider the sentence in terms of the amount of the main sentence, and the Prosecutor's Office attached to Iasi District Court, which claimed, by way of appeal, that the criminal sentence is unlawful in terms of determining the amount of the main penalty, as well as the deduction of the period in which the defendant was under detention. Before the Iași Court of Appeal, referred with the judgment of the appeals in question, the prosecutor of the hearing supplemented the grounds of appeal, arguing that the application of the simplified procedure was challenged in the court of first instance.

By criminal decision no. 220 of March 29, 2018, the Court of Appeal of Iasi admitted the appeals declared by the Prosecutor's Office attached to the Iasi District Court and the defendant against the criminal sentence no.3420 / 18.12.2017, ruled by the Iasi District Court, sentence which it partially abolished, in the criminal area. By re-judging the case, within the limits of the dissolution, the appeal court excluded the application of the provisions of art. 396 paragraph 10 Code of Criminal Procedure and maintained the 2 years and 6 months imprisonment sentence imposed on the defendant for committing the offense of deception, provided by art. 244 paragraph 1 and paragraph 2 Criminal Code, by application of art. 35 paragraph 1 Criminal Code and art. 41 paragraph 1 Criminal Code.

In order to decide in this respect, the court of appeal found that the criticism regarding the application of the guilty plea procedure was well founded, as the court ordered the beginning of the court investigation as a result of the fact that, at the court interpellation, according to art.374 Code of Criminal Procedure, the defendant has testified that he does not acknowledge the facts. The court of appeal also pointed out that the fact that, the circumstance that after the beginning of the court investigation, the

legal classification of the facts was questioned as a result of Decision no. 368/2017 of the Constitutional Court cannot cause the defendant to be reinstated in the situation prior to the beginning of the court investigation and the modification of the position of the defendant no longer allows the application of the simplified trial procedure provided by art. 396 paragraph 10 Code of Criminal Procedure Code, the court having only the possibility to qualify this attitude as a waiver of the administration of the evidence during the criminal prosecution, within the meaning of art. 374 paragraph 7 Code of Criminal Procedure, with possible consequences in the context of the judicial individualization of the sentence within the criterion regarding the conduct during the criminal proceedings.

Comments on the interpretation and application of the law in the present case

The manner of interpretation and law enforcement by the two above mentioned courts gives us the opportunity to analyse the legal provisions governing the simplified trial procedure in the case of guilty plea and the procedure to be followed if it appears necessary to change the legal classification of the deed or deeds for which the defendant has been sued.

The establishment of a special, simplified trial procedure in the case of acknowledgment by the defendant of the charge brought by the indictment dates back to the Romanian legislation from 2010, when by Law no. 202/2010, also known as the Small Reform Law, the stated purpose of the regulation being to reduce the duration of the trial and the costs involved in the administration of the evidence, by not re-administering the evidence administered during the criminal prosecution and possibly also other new evidence, which could have been requested by the parties before the court. As a "reward" for help in shortening the criminal trial, the defendant benefited from a reduction in the punishment limits prescribed by the law for the offense committed. The regulation, which proved to be effective in practice, was also maintained after the legislative changes in the field in 2014, the Code of Criminal Procedure in force, regulating art. 374 paragraph 4, art. 375, art. 377, art. 396 paragraph 10, the procedure for the acknowledgment of charge.

Thus, according to art. 374 paragraph 4 Code of Criminal Procedure, in cases where the criminal proceedings do not refer to a crime punishable by life imprisonment, the chairman informs the defendant that he may require for the trial to take place only on the basis of the evidence administered during the prosecution and the documents submitted by the

parties; and by the injured party, if he acknowledges the deeds in his charge, informing them on the provisions of art. 396 paragraph 10 according to which, in case of guilty plea in this form, the penalty limits provided for by the law in the case of the prison are reduced by one third, and in the case of the fine, by a quarter.

According to art. 375 paragraph 1 Code of Criminal Procedure, if the defendant requests that the trial be conducted only on the basis of the evidence administered during the prosecution and the documents submitted by the injured party and the parties, showing that he acknowledges the deeds in his charge, the court proceeds to the hearing, after which, taking the conclusions of the prosecutor and of the other parties, shall rule on the application.

If it accepts the application, in accordance with the provisions of art. 375 paragraph 2 Code of Criminal Procedure, the court asks the parties and the injured party if they propose the administration of the evidence with documents. Judicial investigation is limited, in this case, according to art. 377, to the administration of the evidence with the approved documents.

It should be noted that art. 374 Code of Criminal Procedure bears the marginal name of "Informing on the charge, clarifications and demands", and paragraph 1 begins with the phrase "at the first hearing of the court to which the summoning procedure is legally fulfilled and the case is in judicial phase", thus indicating, without a doubt, the moment at which the defendant may exercise his right to request the application of the guilty plea procedure, respectively at the first court hearing. Guilty plea is not incompatible with the change of legal classification of the deed, art. 377 paragraph 4 regulating the procedure to be followed in the event that the legal classification given to the deed by the act of apprehension must be changed. Research literature is unanimous in judging that the defendant is not obliged to acknowledge the legal classification of the deed or to accept the legal classification of the deed given by the prosecutor. It is essential, however, that the deed, in its materiality, to be acknowledged by the defendant, and the acknowledgment should have been made at the interrogation of the President, before beginning of court investigation. Subsequently to this hearing, the acknowledgment of the deed made by the defendant, possibly accompanied by a waiver of the evidence proposed to be administered, can no longer lead to the application of the simplified trial procedure or to the reduction of the punishment limits prescribed by law, the defendant being virtually deprived of the right to benefit from the procedure regulated by art. 374 paragraph 4, art. 375, art. 377 and art. 396

paragraph 10. It is also essential, in my opinion, that the defendant should not challenge the evidence administered during the criminal prosecution, since the simplified procedure requires the court to base its conviction on the statement of acknowledgment made by the defendant and on the evidence administered during the criminal prosecution, evidence the legality of which has already been dealt with in the preliminary chamber procedure.

In the case under consideration, the court proceeded to change the legal classification of the deed, after the beginning of the court investigation, and after the defendant had challenged all the evidence administered during the criminal prosecution, and, receiving the statement of acknowledgment of the defendant after the change in the legal classification of the deed, wrongly attributed to it, the value of an application for the application of the simplified procedure, although the time-limit for that procedure had already expired.

It should be noted, on the other hand, that the penalty imposed on the defendant for the deed for which he was sentenced, the imprisonment for 2 years and 6 months, is within the penalty limits provided by art. 244, paragraphs 1, 2 Criminal code which provide for the imprisonment penalty of 1 to 5 years, the maximum term being extended for a further 3 years as a result of the observance of the continuation of the offense. In fact, the court of appeal maintained this punishment that it considered appropriate for the offense committed and the purpose pursued by the application of punishment. As a result, we cannot talk about the application of a punishment within other limits than those prescribed by law.

As regards the trial activity performed by the court of first instance which did not complete the administration of the entire evidence, taking note of the defendant's manifestation of will, to acknowledge the deeds and to demand that the trial be made based on the evidence administered during the criminal investigation, it does not breach the procedural provisions. Art. 374 paragraph 7 Code of Criminal Procedure provides that evidence administered in the course of criminal prosecution and uncontested by the parties is not re-administered during the judicial investigation. Taking note of the defendant's statement that he no longer disputes the evidence administered, the court could stop the administration thereof, even without questioning and deciding the application of the simplified procedure, the performance of further judicial investigations which is unnecessary as long as no one challenges the evidence already administered.

Examining the decision of the first instance in the light of the above, its dissolution, as regards the removal of the applicability of art. 396

paragraph 10 Code of Criminal Procedure was necessary for legal accuracy, being exceeded the period up to which the procedure allowing the application of this law can be followed, even if the applicability of art. 396 paragraph 10 did not influence the punishment applied nor did it in any way breached the rights of the parties to the proceedings.

References:

Code of Criminal Procedure

Decision no. 368 of May 30, 2017. Published in the Official Gazette no 566 / 17.07.2017

Decision no. 368/2017 of the Constitutional Court