

THE PROCEDURE REGARDING THE ADMISSION OF GUILT

Andrei ZARAFIU*

Abstract

Considering the present normative framework, even if in criminal matters the transactions between the judicial organs, which exercise the procedural function of indictment, and the defendant are not permitted, the admission of guilt appears as an incipient form of negotiation of penalty. In anticipation of a future special procedure regarding the accord of admission of guilt, the present institution has generated a great amount of controversy which has, inevitably, caused a matchlessly practice to appear. The purpose of this study is to identify the primary consequences of the norms which now regulate the judgment regarding the admission of guilt and to offer concrete and punctual solutions to the grave problems generated by a defective normative framework. The article has as basic study a documentary material which is comprised not only of normative guidelines, but also of a judicial practice generated by the application of these norms for almost a year. Last, but not least, the actual dimension of the admission of guilt procedure is also underlined by the dealing of the legal issues introduced by the Constitutional Court's recently handed down decisions in these matters.

Keywords : *admission of guilt, special procedure, guilt acknowledgment, penalty, judgment.*

Introduction

The Constitutional Court in its attempt to eliminate the contradictions generated by the appearance of a deficiently regulated institution, has pronounced two important decisions in the matter of admission of guilt.

Being only a supervisory organism with jurisdictional attributions, the Constitutional Court, through the two decisions mentioned above, has determined a legislative intervention which would transpose, on a normative level, the findings of the constitutional litigation court.

By adopting the Government's Emergency Ordinance no. 121/2011, the content of the institution of judgment in case of admission of guilt has gained new dimensions, whose judicial consequences will manifest in the cases of trials started before the coming into force of this procedural institution.

The goal of the present article is to identify the procedural impediments generated by the introduction in Romanian Criminal Procedure of the judgment in case of admission of guilt.

The study also proposes appropriate solutions for the problems which appeared as a consequence of the intervention of the Constitutional Court.

The purpose of Law No. 202/2010, at both declarative and institutional levels, was the simplification and acceleration of the judicial activity criminal in nature.

With respect to the settlement of criminal causes in the first court of law, the lawmaker's intervention materialized into the introduction (regulation) of a new special procedure for judging the causes in case guilt is acknowledged.

Anticipating the new similar institutions regulated by the future Criminal Procedure Code, *i.e.* judgment in case guilt is acknowledged (the new Criminal Procedure Code, Art. 374) and the settlement of causes under the acknowledgement agreement (the new Criminal Procedure Code,

* Lecturer, Ph.D., Faculty of Law, University of Bucharest (e-mail: andrei.zarafiu@mnpartners.ro).

Arts. 478-488), the current institution generated, as a result of a deficient regulation, a non-unitary judicial practice and doctrine-related controversies.

Although institutions with a similar content are recognized in normative terms also in the legislation of other European states (Germany, France, Greece, Belgium), the settlement of criminal causes in the first court of law through a simplified procedure, even based on guilt acknowledgement, should present serious guarantees for the person who is to be convicted.

It is precisely the absence of sufficient guarantees, complying with both the exigencies related to the protection of the trial-related rights of the accused, and with the purpose of the criminal lawsuit, as foreshadowed in Art. 1 of the current Criminal Procedure Code, the fact that led to the dispute of this institution.

The juridical consequences of introducing this new institution claimed the intervention of specialized organisms meant to rectify the emerging deficiencies.

Therefore, before establishing the current juridical nature and the finality of judgment in case of guilt acknowledgement, the interventions of the Constitutional Court and of the Government foreshadowing the current content of this institution need to be analyzed.

In this way, the Constitutional Court was notified of the exception referring to the unconstitutionality of the provisions of Art. 320¹ of the Criminal Procedure Code, which exception was raised in files regarding criminal causes which are in different times of the lawsuit (judgment on the merits, appeal, second appeal and challenge to enforcement).

To motivate this exception, authors stated that the provisions of Art. 320¹ of the Criminal Procedure Code breach the constitutional provisions of Art. 15 regarding the Universality of law, of Art. 16 regarding Equality in rights and of Art. 21 regarding the free Access to justice, of Art. 23 para. (11) regarding the presumption of innocence, of Art. 24 para. (1) regarding the right to defense, of Art. 53 regarding the Restriction of the exercise of certain rights or freedoms, and of Art. 124, para. (2) regarding the uniqueness, impartiality and equality of justice, and of Art. 6, paragraph 1 of the Convention for the protection of human rights and fundamental freedoms regarding the Right to a fair trial.

The authors of the exception also stated that the provisions of Art. 320¹ para. (1) of the Criminal Procedure Code breach the application of the most favorable law principle, equality in front of the law and public authorities and the right to a fair trial, since it creates the possibility that, in the event that two co-perpetrators are referred to judgment in different files, the judicial inquiry starting for one of them and not for the other one, only the latter should benefit, in case of guilt acknowledgment, from a reduction of the penalty limits provided under the law.

Examining the exception raised in the files which are in the merits, in the appeal and second appeal stages, for which no final rulings were issued, the Court ascertained that the disputed provisions do not order *in terminis* with regard to a different penalization of those persons who are in the same juridical situation.

Being a newly introduced institution, its implementation into the criminal lawsuit system may generate, due to differing interpretations, consequences related to the annihilation of the retroactive application of the more favorable criminal law, for discriminating considerations which do not pertain to a certain attitude assumed by the defendants or to any other objective and reasonable reasons.

The Court also emphasized that such drawbacks could have been removed by introducing transitory norms in the body of Law No. 202/2010.

In this sense, the Court referred to the jurisprudence of ECHR (Ruling of September 17, 2009, issued in the Scoppola versus Italy cause), specifying that although the lawmaker did not provide *in terminis* the way to be followed in case of guilt acknowledgement by the defendants who were referred to judgment under the former law, but who, overrunning the trial-related time for the

beginning of judicial inquiry and until the final settlement of the cause, are to be judged according to the new law, the Court established that the more favorable law application principle is applicable in such a case.

In this way, in the case of such transitory situations, consideration should be given to the mixed nature of the provisions of Art. 320¹ of the Criminal Procedure Code, which consecrate a kinder character by reducing penalty limits.

In conclusion, the Court ascertained that the provisions of Art. 320¹ of the Criminal Procedure Code are not constitutional to the extent that they do not permit the application of the more favorable criminal law to all the juridical situations born under the former law, which continue to be judged under the new law until the conviction order remains final.

With respect to the exception raised in the files which are in the challenge to enforcement stage, for which final rulings were issued, the Court ascertained that the exception related to the unconstitutionality of the provisions of Art. 320¹ of the Criminal Procedure Code referring to the judgment under guilt acknowledgment is not connected to the settlement of the causes in which it was invoked, because –as revealed by its marginal name- the wording contemplated a judgment, belonging, with the exception of transitory situations, only to the merits and which must be also applicable only until a final ruling is issued.

Consequently, it is not susceptible of the applicability of the more favorable criminal law retroactivity principle.

With regard to the provisions of Art. 320¹ para. (8), providing a judge's possibility to reject the request for the defendant's guilt acknowledgement and to proceed with judgment according to the common law procedure, the Court ascertained that –due to its equivocal meaning- the article wording does not meet the clarity and predictability requirements which should have been contained by any normative provision. Thus, in the absence of certain objective criteria, the possibility granted to a judge may turn into an abuse that cannot be censored.

The Court established that the prevailing issue is not the establishment of the defendant's deeds or of the data regarding his/her person (the meanings of these criteria do not have univocal correspondents as compared to the ownership of other terms from the criminal law or criminal lawsuit fields), but the determination of the circumstances that a deed exists and that, according to the evidence produced, it was perpetrated by the defendant, and not by any other person.

Therefore, not the mere acknowledgment of guilt is decisive for rendering efficient a lawsuit performed within the limits of lawfulness and impartiality, as they constitute only a procedural condition, but the establishment of guilt [*is decisive*].

Any eventual criteria instituted by Art. 320¹ para.4 of the Criminal Procedure Code are insufficient for characterizing Art. 320⁸ as a clear and predictable norm.

Consequently, the Court ascertained that the provisions of Art. 320¹ para. (8) fail to offer the persons brought to justice the trial-related rights and guarantees sufficient to defend the interests related to their trial position.

For these considerations, the Constitutional Court, by its Decisions Nos. 1470 and 1483 of November 8, 2011 admitted the unconstitutionality exception and established that the provisions of Art. 320¹ of the Criminal Procedure Code are unconstitutional to the extent that they remove the application of the more favorable criminal; the Court also admitted the unconstitutionality exception of the final paragraph of Art. 320¹, ascertaining that it is unconstitutional, and it rejected as inadmissible the unconstitutionality exception of the provisions of Art. 320¹ raised within the challenge to enforcement.

In order to harmonize the provisions of Art. 320¹ of the Criminal Procedure Code with the Decisions issued by the Constitutional Court and in order to avoid a non-unitary judicial practice, Emergency Government Ordinance No. 121 was enacted on December 22, 2011 for the amendment

and supplement of certain regulatory acts. This Ordinance amended Art. 320¹ of the Civil Procedure Code, in the sense that para. (4) of the articles currently has the following wording: *“The court of law shall settle the criminal side when the evidence produced within the criminal prosecution indicates that the deed exists, it can be construed as a crime and it was perpetrated by the defendant”*, while para. (8) provides that *“the court of law shall reject the request when it finds that the evidence produced within the criminal prosecution are not sufficient to establish that the deed exists, it can be construed as a crime and it was perpetrated by the defendant. In this case, the court shall proceed with the judgment of the cause according to the common law procedure”*.

In conclusion, further to the matters stated by the constitutional control court, the lawmaker complied, and established clear and precisely formulated criteria, according to which, in each and every case, the competent courts of law shall deem whether the admission or the rejection of the request for judgment is required in case of guilt acknowledgment.

Although they have a special character by comparison to their application field, the provisions consecrating such criteria are coming under the general conditions according to which the criminal side is settled in the first of law. Thus, according to Art. 345 para. 2, a defendant shall be convicted if the court of law finds that a deed exists, it can be construed as a crime and it was perpetrated by the defendant.

In spite of this new legislative intervention, the logical and juridical connection between the settlement of the request for judgment in case of guilt acknowledgment and the settlement of the criminal side on the merits, in the first court of law, shall be consolidated, in the sense that the admission of the request for judgment according to this special procedure is also foreshadowing the merits solution.

As we shall show hereinbelow, the conviction solution is the only solution possible in case of guilt acknowledgment, so that the report on the admission of the request to apply such procedure shall have an interlocutory nature.

Moreover, when they verify the fulfillment of the conditions necessary to apply this procedure, in fact they appreciate in advance also the evidencing material relevant for the merits of the cause, since the same conditions are necessary both for the admission of the request for judgment in case of guilt acknowledgment and for the ruling of the conviction solution: *that the deed exists, that it can be construed as a crime and that it is perpetrated by the defendant*.

Since it involves essential elements of the conflict relation, the analysis of these conditions prior to the judicial inquiry and the debate stage seems a risky operation, which may be sometimes equated to a form of prior ruling.

In order to be able to judiciously identify the consequences of any interventions occurring in this field, a careful, institutional and functional analysis of the judgment in case of guilt acknowledgment is required for the beginning.

Even if it is not legally qualified in this respect, the judgment procedure in case of guilt acknowledgment has the nature of a proper special procedure, since its object is represented by the clarification of the content of the juridical conflict relation and, implicitly, by the entailment of the criminal liability of the perpetrators of crimes.

In this way, it becomes the fourth proper special procedure known in our judicial system, after the procedure for the prosecution and judgment of certain flagrant crimes, the procedure in the causes with underage criminals and the procedure for entailing the criminal liability of a legal person, all of these procedures implying the settlement of the merits.

The analysis of the content of Art. 320¹ indicates that the procedure in case of guilt acknowledgment is primarily composed of the norms of a regular procedure, supplemented by complementary and mandatory provisions; an express mention in this regard would have been useful, according to the model of the regulation of the special procedure applicable to underage individuals.

Unlike the other proper special procedures, this procedure contains norms derogatory only with reference to the judgment in the first court of the causes in which guilt acknowledgment occurs.

This special procedure essentially implies a simplified judicial inquiry, which takes place during a single hearing; in the essence of express provisions, the performance of the criminal prosecution, of the preliminary stage, of the debate, deliberation, ruling and drafting of the decision related to the judgment in the first court, as well as the performance of judgment in the challenge means shall be done according to the regular procedure of common law.

The procedure in case of guilt acknowledgment shall apply in every criminal cause except for those causes regarding crimes punished by life imprisonment.

The exception shall operate regardless of the provision of life imprisonment as an alternative punishment by imprisonment or as an autonomous punishment. We believe that the interdiction shall apply even if the crime retained as incumbent on the defendant remained an attempt, because the text refers to the punishment provided by law for the crime contemplated by the criminal action exerted in the cause, regardless whether, in fact, the crime was perpetrated in its standard form or it remained an attempt.

The procedure shall be initiated further to the defendant's personal statement, made verbally in front of the court of law or made under an authenticated writ.

This expression of will must occur until the commencement of the judicial inquiry, so until the reading of the notification act.

The lapse of this lawsuit term shall lead to the rejection of the request as filed late; a solution should be ordered under a separate court report as provided by Art. 320¹ para. 8, and not simultaneously with the merits settlement sentence.

In case the re-judgment of the cause was ordered further to the admission of the appeal or of the second appeal, the court that would proceed to the re-judgment of the cause might theoretically apply this special procedure, if the decision to admit the appeal or the second appeal cancels all the procedural acts performed in front of the first court, while the re-judgment limits do not explicitly or implicitly prevent guilt acknowledgement.

This solution results from the fact that the law does not make any distinction in such a situation, and the provisions of Arts. 384 and Art. 385¹⁹ establishing the procedure of re-judgment in case of admission of the appeal or second appeal provide that such procedure shall be performed according to the rules of judgment in the first court (Special Part, Title II, Chapters I and II, therefore and Art. 320¹), which shall apply accordingly.

In case guilt is acknowledged during the criminal prosecution, the judicial activity shall be carried out according to the usual procedure, as long as there are no derogations in this respect, and – according to Art. 202, para. 2- the duties of the criminal prosecution body related to the collection of the evidence necessary for a just and complete settlement of the cause need to be fulfilled even if the accused person or the defendant acknowledges his/her deed.

The statement made by the defendant during the guilt acknowledgment procedure must contain two ordering acts: an act for the acknowledgment of the deeds retained in the court notification act, and an act requesting that the judgment should be made on the basis of the evidence produced in the criminal prosecution stage.

In consideration of this aspect, guilt acknowledgment should not apply to those defendants who were underage at the crime perpetration time, even if their ordering acts were approved by their legal representatives.

This solution results, in the absence of an express provision, from the manner in which the law regulated this procedure, and it is confirmed by the fact that another special procedure for prosecution and judgment shall be applied to those underage persons who perpetrated crimes; these

persons shall automatically benefit from a cause for reducing the punishment limits by half, according to the substantive provisions of Art. 109 of the Criminal Code.

Also, at the level of principles, the special procedures pre-judging the merits cannot be applied concomitantly, due to the legal treatment related to derogatory norms, which solution results also from the interpretation of the provisions of Art. 479 para.1.

The essential premise for the special procedure in case of guilt acknowledgment is the existence of a criminal prosecution stage in which the evidence would have been duly produced and sufficient for the entailment of criminal liability.

The partial acknowledgment of the deeds retained in the notification act is not sufficient for the procedure application, as in civil law. Such an incomplete acknowledgment may be, however, appreciated as a judicial mitigating circumstance.

Even if the defendant acknowledges his/her guilt, his/her statement cannot have an absolute character.

In this way, if the evidence were unduly produced in the criminal prosecution stage, the defendant's acknowledgment statement made under the conditions of Art. 320¹ cannot cover the produced illegality.

The court of law, in virtue of its active role and of its obligations deriving from the regulation manner of the proof burden in the criminal lawsuit, does not have any possibility, according to Art. 64 para. 2, to use this proof, not even to apply the special procedure for guilt acknowledgment.

This solution is the consequence of the fact that the sanction which occurs, under Art. 64 para. 2, in the case of the means of evidence illegally obtained, has a *sui generis* character, and it consists in a general impossibility to use the unlawfully obtained information in evidence; this sanction of "dismissal" shall not be confounded with nullity, which knows, at least as far as relative nullity is concerned, the confirmation possibility.

If the special procedure is applied, the judicial inquiry shall be simplified and shall imply the performance of only two acts with a probating character: a mandatory act, hearing the defendant, and an eventual act, the production of evidence by writs as mitigating circumstances.

The drafting manner of Art. 320¹ reveals the following intention of the lawmaker: this simplified judicial procedure, just like the proper judgment, in fact, should be performed during a single court hearing.

As a result, if the production of evidence by writs as mitigating circumstances requires another court hearing, the court shall either reject the evidence and shall settle the cause according to the special procedure, or they shall continue judging the cause according to the common law procedure.

Also, if the settlement of the civil action at law requires the production of evidence, the severance of such action is imposed.

In such a hypothesis, even if the solution to be issued in the civil action at law depends on the evidence to be produced, yet such solution shall be largely subordinated to the conviction solution (the only possible one) issued in the special procedure, due to the *res judicata* authority of the decision settling the criminal action with respect to the existence of the deed, of the person who committed it and of the guilt of such person (Art. 22).

To be able to settle the criminal side based on the special procedure, the court must analyze the evidence produced in the criminal prosecution stage and must deem it as sufficient, so that it should lead to the result that the deed exists it is a crime and it was committed by the defendant.

The law permits a change of the juridical classification of the deeds retained as incumbent on the defendant within this procedure; however, the new classification needs to be covered as far as its constitutive content is concerned by the already produced evidence; if the new classification is not

supported by the probating evidence, the judgment shall continue according to the usual procedure with the production of the evidence necessary to clarify the cause in all respects.

As we have shown, the special procedure in the case of guilt acknowledgment shall be initiated by the defendant's verbal statement, made in front of the court of law, or by his/her written statement, made in the form of an authenticated writ.

Failing an express provision, in case there is a crime-related complex formed of several defendants in a criminal cause, and only some of such defendants request to be judged on the basis of guilt acknowledgment, then, if the court admits their request, the court should sever the cause, under the same report, forming a new file regarding the deeds of those defendants who requested the application of such procedure; this file shall be settled according to the special provisions applicable in this field.

The initial file, in which the application of the special procedure was not requested, shall be judged according to the norms of common law.

The procedure *per se* implies the succession of the following acts: interrogating the defendant in order to confirm his/her request and in order to make sure that such defendant is aware of the implications of his/her acknowledgment (Art. 320¹ para.3), hearing the defendant, the eventual production of writs for mitigating circumstances (320¹ para. 2), as well as raising for the contradictory discussion by the parties and the prosecutor of the defendant's request to apply the special procedure.

Concerning the first aspect, the law indicates that the court of law is bound to ask the defendant whether s/he requests that judgment should take place on the basis of the evidence produced in the criminal prosecution, known and recognized by him/her.

This last hearing does not have any legal coverage since, in the Romanian criminal procedure, no evidentiary means, not even the statement made by the defendant to acknowledge his/her deed, has a character binding on the court of law only through the fact of confirmation, appropriation or failure to challenge by the party to which such means relates.

As a consequence of the binding nature of the criminal action at law, as well as in consideration of the principles of truth discovery, official nature and active role, the court of law has the duty to appreciate the evidence under the imperative conditions of Arts. 62 and 68, inclusively from the perspective of their production by another judicial body.

If the evidence was obtained by violence, threats or by any other means of constraint or through the failure to comply with the procedure for producing evidence in the criminal prosecution stage, as we have shown, they cannot be used (*or are dismissed*) even in the special procedure for guilt acknowledgment and even if the defendant shows that s/he recognizes them.

The evidence by writs as mitigating circumstances can be approved only for the defendant and only if such evidence can be produced at the hearing in which the procedure is performed.

For the other parties, the law does not permit the approval of evidence by writs or of any other evidence, unless such is necessary for the settlement of the civil action at law and this action was severed.

Art. 320¹ para. 3 provides that, after hearing the defendant, the court of law shall allow the prosecutor and the other parties to plead. The analysis of the content of the entire article reveals that, at this time of the lawsuit, the prosecutor and the parties shall not be allowed to plead on the merits, but with respect to the defendant's request to be applied the special procedure.

Thus, after disputing the defendant's request, the court of law may ascertain the failure to meet the conditions provided by law.

In this situation, the request shall be rejected under a report, while the court shall continue to judge the cause according to the common law procedure.

If the court finds that the conditions for acknowledgment are met, the court shall admit the request and shall allow the prosecutor and parties to plead on the merits, since this procedure also implies a distinct stage of the debates, according to Art. 320¹, para. 6.

After the admission of the request for the application of the special procedure, the only solution through which a cause can be settled is the conviction solution; as a result, the admission of the request under a report has an interlocutory nature.

The punishment limits shall be reduced, however, by one third, in case of punishment by imprisonment, or by one fourth, in case of punishment by fine.

This special procedure implies, therefore, a distinct cause for reducing the punishment, a procedure which is unknown in case of the other proper special provisions. At the same time, the cause for reduction implied by the guilt acknowledgment procedure is the only such cause regulated by the procedural and substantive law.

Since the law does not contain any express interdictions, in the special procedure for guilt acknowledgment, other causes for mitigating or reducing the punishment, provided in the general or special part of the Criminal Code may be simultaneously applied, if their applicability is ascertained by means of the evidence produced in the criminal prosecution stage or by means of the writs produced as mitigating circumstances directly in front of the court of law.

The lawmaker unfortunately omitted to regulate the manner in which the punishment should be established in case of a competition between the reduction cause provided by this procedure and the causes provided by the general or special part of the Criminal Code.

The conviction solution shall be ordered under a sentence, this being the only type of Court ruling by mean the cause is settled on the merits in the first court, regardless whether such settlement occurs by way of the common law procedure, or by way of the special procedure.

Failing a contrary provision, the conviction sentence in case of guilt acknowledgment shall be subject to appeal or only to a second appeal, under the conditions of the common law.

In consideration of the purpose of this procedure, good use could have been made of a provision which should either regulate the final character of the sentence ruled in this field, or which should limit the reasons for appeal or second appeal only to issues pertaining to a re-consideration of the conditions under which the procedure can be applied, to any eventual consent flaws; or to the defendant's error related to the object or person, according to the model of other decisions ruled in case of acknowledgment, but in the civil field.

In conclusion, after we established the nature and functionality specific to this institution with a hybrid character in the criminal field, which involves substantial consequences in procedural norms, we have to point out the limits or the material applicability of the procedure, by comparison to the issues consecrated by the Constitutional Court with respect to the more favorable criminal law application principle.

In this sense, the transitory provisions regulated under Art. XI of Emergency Ordinance No. 121/2011 are extremely important; the said ordinance becomes thus *lex generalia* in this field.

In order to establish the application in time of the norms composing the judgment procedure in case of guilt acknowledgment and to settle the potential conflict of applicable regulatory acts, the Constitutional Court identified 3 analysis hypotheses.

1. A first situation envisages the hypothesis in which defendants were referred to judgment after the enforcement of Law No. 202/2010. With regard to such defendants, the text allows no discussion whatsoever, being applicable in its entirety. Since the procedural norms have an immediate application, guilt acknowledgment may also be pleaded in the causes in which criminal prosecution was carried out under the former law, as long as –at the time when the request was filed– the maximum term established in this respect, *i.e.* the reading of the notification act in the first court of law, was not overrun.

2. A second situation is that in which defendants, although having been referred to judgment prior to the issue of Law No 202/2010, the lawsuit term for initiating the judicial inquiry was not overrun. The text is applicable without any differentiation whatsoever also in this case.

3. A third situation envisages the case of those defendants who were referred to judgment under the former law, but who overran the term for the initiation of the judicial inquiry. For this last category, two sub/groups may exist; these two sub-groups have a differing legal treatment.

In this way, if the defendants have already been finally judged under the former law, the entry into force of Law No. 202/2010 cannot affect the positive and negative effects generated by the fact that a court order remained final. Consequently, it is not susceptible of the applicability of the retroactivity principle of the more favorable law.

Also, a contrary thesis cannot be admitted, since the stability of juridical relations would be impaired; in the absence of such stability, we cannot speak about the rule of law.

As a result, if the provisions of Art.320¹ of the criminal Procedure Code are invoked in causes that are finally settled by way of reviews, challenges pending cancellation, challenges to enforcement, etc., such request must be rejected as inadmissible.

In the case of the second sub-group, envisaging the defendants referred to judgment under the former law who overran the initiation time of the judicial inquiry, but who have not been finally judged yet, the provisions of Art. 320¹ of the Criminal Procedure Code shall be applied according to the transitory provisions of EGO No. 121/2011.

According to Art. XI of this regulatory act, in the causes pending for judgment in which the judicial inquiry in the first court had started prior to the enforcement of Law No. 202/2010, the provisions regarding judgment in case of guilt acknowledgment shall accordingly apply at the first hearing with the complete procedure that immediately follows the entry into force of this emergency ordinance.

Therefore, even if the special provisions for reducing punishment may be applied also to these defendants, such provisions should be invoked in consideration of certain procedural conditions which are just as precise (the first hearing with the complete procedure that immediately follows the entry into force).

Also, the provisions of Art. 320¹ of the Criminal Procedure Code may be invoked in compliance with this procedural term, even if the respective criminal cause is judged in the first court or in appeal or second appeal. The interpretation derives from the wording, which refers to causes that are generally pending for judgment, without distinguishing the type of judgment (in the first court, in challenge means or in re-judgment after cancelation or cassation), therefore prior to the remaining final of court ruling for merits settlement.

Conclusions

Ever since it appeared the institution of judgment in the case of admission of guilt has generated doctrinal controversy and an uneven judicial practice.

The intervention of the supervisory constitutional court has determined, after only one year of existence, the normative content of this institution.

Despite the double intervention, jurisdictional as well as legislative, the procedure of judgment in case of admission of guilt further presents numerous controversial aspects.

This institution represents a form of transition of the regulations in the new Criminal Procedure Code, expected to come into force in the near future..

The evolution of the changes of the present institution will offer the legislative bodies the solution for a supple and coherent normative framework in the matter of the admission of guilt agreement.

References

- THE CONSTITUTIONAL COURT, Decision No.1470/08.11.2011 published in Official Gazette No. 853/02.12.2011 and Decision No. 1483/08.11.2011 published in Official Gazette No. 853/02.12.2011.
- Emergency Government Ordinance No. 121/2011, published in Official Gazette No. 931/29.12.2011.
- NEAGU, *Criminal Procedure Treaty. Special Part, Universul Juridic Publishing House, Bucharest, 2009*;
- CRIȘU, *Criminal Trial Law, 2nd Edition, Hamangiu Publishing House, 2011* ;
- ZARAFIU, *Criminal Procedure, Law No. 202/2010, Comments and Solutions, C.H.Beck Publishing House, Bucharest 2011.*
- MICU, *Criminal Trial Law. Special Part. Course, Hamangiu Publishing House, 2010.*
- G.THEODORU, *Criminal Trial Law Treaty, IInd Edition, Hamangiu Publishing House, 2008.*