THE PLEA BARGAIN, A "NEGOCIATION" BETWEEN THE PROSECUTOR AND THE DEFENDANT?

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Abstract

The new Code of Criminal Procedure brings a new institution among special procedures "the recognition agreement."Those who can conclude this agreement are the prosecutor and the defendant. Will it be a fair negotiation? It provides sufficient guarantees to avoid being violated the defendant's rights? With this study we want to introduce the new elements of this special procedure, comparative aspects with other institutions or rules of criminal procedure from other countries. Last but not least, with the necessary modesty, we will criticize and we will make a proposal for law regarding the chosen theme.

Keywords: *Plea bargain, new code of penal procedure, prosecutor, defendant, reduction of sentence boundaries with 1/3.*

Introduction

This study aims to open a door to a newly established institution in the Romanian criminal procedural law, namely the plea bargain, under the regulation of Chapter I of Title IV of the New Criminal Procedure Code, chapter dealing with special procedures.

This study is of particular importance as we attorneys, interns, theorists need to be familiar with innovative elements that are covered in the New Code. We find difficult this small scientific approach but hope to take a step forward to the "new".

The need for a new codification in the criminal procedure, presentation of the institution, to break through the buncombe in order to reach the legislator's judiciousness theologically interpreting the legal text, the aspects that are comparable to other countries and why not criticism and also feedback to this procedure are the goals that we want to achieve. Taking into consideration that the Law 135 of July the 1st 2010 on the Criminal Procedure Code, published in the Official Gazette no. 486 of July the 15th 2010, is for the ones who accede to knowledge and should have stir a strong effervescence, there is no relevant doctrine on this subject. Few but important works, together with the comparative law, the explanatory memorandum of the law the rules of criminal procedure that we will interpret are ways in which we will try to answer the set objectives.

I. The context of the new regulations. Definitions.

In the explanatory memorandum[1], the current legal realities have revealed the lack of prompt conduct of criminal trials in general, mistrusts of litigants in the act of justice and the substantial social and human costs, meaning a high use of time and financial resources. All these aspects have led to the establishment of a climate of distrust in the effectiveness of the criminal justice act. The main issues that the criminal justice current system are facing are related to the overcharging prosecution and courts, the excessive duration of the proceedings, the unjustified delay of the causes and failure to complete the cases due to procedural reasons.

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[1] *Statement of reasons*, www.just.ro.

Therefore a legitimate question arises: was the new codification necessary in terms of criminal procedure? A famous professor, member of the drafting of the new criminal procedure code committee answered this question[2], "No, it was not necessary. The abbreviations have though a big flaw, as it can sometimes distort the meaning of what was meant to be expressed. I actually wanted to say that it was not only necessary, but I would say a wider need is required". The new criminal procedure texts are harmonized with Mike Farkas's aphorism, "*the key is the one which creates music",* meaning that the buncombe language of the legislator is reduced, giving priority on the podium to a more accessible speech.

Therefore behind the New Code's curtain occur elements of negotiated justice: mediation, plea bargain and trial if the guilt is admitted. The expression of negotiated justice or consensual justice, as it is used, may be at first sight a paradoxical, contradictory expression in the context of criminal law and criminal procedure[3].

Thus, by "negotiated justice", it is understood the procedure in which the parties are allowed to intervene in a smaller or larger extent, in a positive or negative way, within the criminal proceedings, affecting through their approach the outcome of these procedures. The possibility conferred to the defendant to refuse or to accept certain proposals, isolated seen, is not likely to confer a negotiated kind of procedures. The emphasis is on the ability of the parties to submit the discussed aspects of criminal proceedings, with the power that through mutual concessions, to at least partially influence the content of those proposals, leading ultimately to a decision that represents the outcome of negotiations[4].

We draw the conclusion that the procedure is marked by three aspects: simplicity, efficiency, celerity. The new institution not only reduces the trial, but also simplifies the activity within the criminal investigation. The advantage of this procedure is of economic nature favoring almost all parts of a process, but the state is the one that has the best benefit since it has the possibility to save monetary and human resources that are absolutely essential to the needs of justice. Without neglecting the rights of the aggrieved person, the defendant has the opportunity to negotiate the terms of the agreement with his lawyer and thus to participate to the court in in determining the penalty. Such participation promotes the individual's dignity.

The plea bargain is an innovative legislative solution which will ensure solving cases within an optimal and predictable time and is also a remedy for elimination of deficiencies in the Romanian legal system, namely the long term conduct of court proceedings[5].

II. Special procedure analysis regulated by the legislator within the Title IV, Chapter I, art. 478- art.488.

1. Holder of the plea bargain and its limits.

Reading the provisions of Article 478 of the New Criminal Procedure Code we notice that the main actors who bring to life an act of a play in the trial (plea bargain institution) are the prosecutor and the defendant. Thus, during the criminal investigation, after the prosecution starts, the defendant along with the prosecutor may conclude a plea bargain agreement. However, in order for this agreement to be admissible, its effects are passed through the filter of a hierarchically superior prosecutor for approval. It thus provides a guarantee to the defendant since the agreement cannot be completed with a conviction solution according to this urgent

[2] „*Nicolae Volonciu despre noul Cod de procedura penală",* www.juridice.

[3] See, M. Nemeş, *Justiția negociată în contextul dreptului penal din perspectiva Drepturilor Omului,* Revista Dreptul no. 7/2010, p.188.

[4] See, F. Tulkens, M. Van der Kerchove, *La justice penale*, Brussels, 1999, p.124.

[5] *Statement of reasons*, www.just.ro.

procedure in the event that the hierarchically superior prosecutor would notify some irregularities. This control also implies the fact that the agreement's limits are set by prior and written approval.

According to paragraph 3 of the same article, the agreement may be initiated by both the defendant and the prosecutor. In theory, one of the negotiated justice's prerequisites, also of "contractual" nature, is equality between the parties. Considering this contractual nature, almost private of the agreement, equality of arms deals with a whole new dimension compared to the traditional procedure, given that the essence of an agreement is not only equality of arms, but also equality between the parties[6].

The principle of equality of arms enshrined in the European Court of Human Rights involving the obligation to enable each party for a reasonable opportunity to present its case on terms which do not place a net disadvantage compared to its opponent[7].

In specialized literature[8], it is supported the idea that the analyzed procedure is applicable in case of crimes for which the law provides at least 5 years of imprisonment (the discrepancy will be discussed below), and those who commit such crimes often come from the poorest strata of society, and especially of ethnic minorities. The author argues that those who are better prepared and armed negotiate best, and a defendant belonging to such categories does not receive any benefit, thus such court is likely to become a privileged instrument of domination of the weak by the powerful, being likely to exacerbate inequalities between the parties.

We dare not embrace this point of view because it should be noted that under the new Penal Code the penalty limits were substantially modified in the sense that they were lowered for most of the crimes. By way of example, the crime of theft in simple form is penalized under the current penal code with a penalty of between one and twelve years and in the new penal code, according to the provisions of Article 228, is penalized by imprisonment from six months to three years or a fine. Therefore, a limit of seven years by reference to the provisions of the new Penal Code constitutes an imprisonment sentence for a medium to severe crime. What balances the procedure if we accept the idea of a weak "negotiator" is the defender, considering the fact that such a procedure the legal assistance is compulsory.

In case the criminal proceedings were started for several defendants, the legislature allows the conclusion of a separate agreement with every one of them, without prejudice to the presumption of innocence for those who have used this facility. Unfortunately, consider that this regulation will cause a series of problems in practice. For example, we will have as many agreements as defendants are, will be disjunctions regarding the civil side of the case, and the separately vested courts will be unable to resolve the civil side when the defendant's liability is solidary. An indictment will be formed with regard to defendants for whom the plea was not made. Therefore, in this situation we cannot talk about the economy and celerity, the only actions will be the multiple files, in various stages, cropped state of act.

According to paragraph 6 of Article 478 the juvenile defendants cannot conclude plea bargaining agreements. Also in the specialized literature[9] the opinion was stated that this procedure should also be applicable to minors, this procedure being easily done with the consent of the legal representative and in the presence of a probation officer. We appreciate that the

[6] See, M. Nemeș, *Justiția negociată în contextul dreptului penal din perspectiva Drepturilor Omului,* Revista Dreptul nr. 7/2010, p.194.

[7] See, M. Udroiu, O. Predescu, *Protectia europeana a drepturilor omului si procesul penal roman,* ed. C.H.Beck, București 2008, p.658.

[8] See, M. Nemeș, *Justiția negociată în contextul dreptului penal din perspectiva Drepturilor Omului,* Revista Dreptul nr. 7/2010, p.194.

[9] See, S. Siserman, *Considerații privind acordul de recunoaștere a vinovăției*, www.juridice.ro.

legislature felt the need to regulate such a provision taking into account the new changes in the field of juvenile criminal liability regime of the new Penal Code. Thus, the social defense reaction against juvenile delinquency cannot be reasonably and effectively accomplished by the same type of crimes as in the adult crimes. Therefore to the juvenile offenders one should applied a separate system of criminal sanctions, made up mainly of predominantly educational sanctions and only alternatively of repressive sanctions such as penalties. The progress made in both criminology and in other criminal science such as penology have set new guidelines for the criminal sentencing system generally, targeting the diversification of penalties, a strong focus on non-custodial penalties and the diversification of the means of penalties individualization and personalization[10].

2. Subject, conditions, form and content of the plea agreement.

Pursuant to Article 479, the agreement's subject is the crime admitting and acceptance of the legal classification of the crime for which the prosecution was made and concerns the type and amount of penalties, as well as execution form. There seems to be a discrepancy between the way regulated by the legislature and the explanatory statement in the sense that the latter states that the agreement is subject to review by the court with regard to its object and conditions, and in case of plea the court will sentence the defendant to a penalty that shall not be greater than the one required by the prosecutor, by mutual agreement[11]. Reading Chapter I of Title IV we notice that there is no such regulation. We find that through this procedure the legislature gave the prosecutor, also the master of the following criminal investigation phase, more power, and in this manner could enter the judge's scope, setting the type, amount and form of penalty of the execution. In this respect, a notorious jurist argued that the prosecutor has become increasingly more forces, became increasingly powerful by unlimited and fast access to data and information, but this power was not balanced by increasing procedural safeguards, through the defense right and by strengthening the provisions on the innocence presumption. Unfortunately, the New Criminal Procedure Code further strengthens the power of the prosecutor.

Moreover, we notice that prejudice is brought to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the fact that the guilt of a person can be determined by an independent and impartial court of law. However, in this situation the master of the proceedings, in this case is not the judge as it is in a traditional court of law, but the prosecutor who does not comply with the objective impartiality requirements in the purposes of the Convention[12]. We believe however that the judge's filter to which the agreement is presented, truthfully reflects on the principles governing the trial stage the contradictory and immediacy, is theoretically sufficient to compensate for any lack of impartiality of the prosecutor.

We consider that a state of law crowned by professionals serving altar of justice and bringing the contribution on both the prosecution and the defense side, may prove once again the mastery of the act of justice.

The first *sine qua non* condition concerns the special maximum penalty of imprisonment, namely seven years. Hence, no for any offense the defendant can "negotiate" his penalty, but with regard to offenses for which the law provides penalty of fine or imprisonment of up to

[10] See, G. Antoniu, *Explicații preliminare ale noului Cod penal,* ed. Universul Juridic, București, 2011, p. 112.

[11] *Statement of reasons,* www.just.ro.

[12] See, M. Nemeș, *Justiția negociată în contextul dreptului penal din perspectiva Drepturilor Omului,* Revista Dreptul nr. 7/2010, p.194.

seven years. This time we also find a discrepancy in the statement of reasons, in the meaning that the maximum limit is of five years. Given the above reasons regarding the penalty boundaries reduction in the new Penal Code, we consider that the majority of the crimes have a "vocation" through the defendant to be subject to this procedure.

This agreement may be concluded at an early stage of criminal investigations as it is necessary that out of the evidence showing the existence of sufficient data for which the criminal proceedings started regarding the defendant's guilt. The most important aspect to be mentioned is that the when concluding the plea bargaining agreement legal assistance is required. We meet therefore a new situation in which the defendant's legal assistance is mandatory, as provided in Article 90[13]. We ask ourselves how the defendant could agree to this procedure taking into consideration the fact that we are in the midst of criminal prosecution phase, which is governed by the non-publicity principle, in this way not having access to criminal prosecution files. Also the new Code of Criminal Procedure, in Article 94 regulates the file consulting institution. Thus, during prosecution, the prosecutor sets the date and duration of consultation within a reasonable time. We consider that in order to give effective recognition of the institution, the defendant must be allowed to study the case together with a counsel and take a decision afterwards. To proceed in other ways would bring prejudice to Article 6, paragraph 3 of the Convention which stipulates the defendant's right to be informed, in detail, not only with regard to the cause of the accusation, namely the material facts of which he is accused and on which the accusation is founded, but also and with regard to nature of the prosecution, namely the legal classification of the case[14].

For the sincere attitude of the defendant, for the celerity of criminal prosecution phase conduct, it benefits from reducing by one third the limits prescribed by law for punishment penalty of imprisonment and one quarter reduction to the penalty limits provided by law in case of fine penalty. We notice that the defendant "takes benefit" of the same treatment as in the plea bargain case in the trial phase, according to Article 320 index 1 of the current Code of Criminal Procedure, similar institution.

The plea agreement must be concluded in writing and include the following elements: date and place where it is concluded, name surname and the capacity of those who conclude it, data regarding the defendant, description of the crime which is the subject of the agreement, the legal classification of the crime and the penalty provided by the law, the evidence and means of evidence, the explicit declaration of the defendant in which he recognizes having committed the crime and accepts the legal classification for which the criminal proceedings started, the prosecutor's demands, signatures of the prosecutor, the defendant and the lawyer.

3. Procedure in the law court: referral, adjudication, settlement

Following the conclusion of the plea bargain, the prosecuting attorney approaches the Court to which belongs the authority to judge the respective case, and communicates all the material prosecution agreement hitherto investigated. The problem arises in a situation where we have more criminal acts of the same person and several defendants. |In this situation, the referral is made separately with regard to the defendants and other offences, but this time the prosecutor

[13] *See article 90, new Code of Criminal Procedure, mandatory legal assistance of the suspect or defendant: a) when the suspect or defendant is a minor, admitted to a detention center or a center of education, it is detained or arrested in another case even when it was ordered to safety measure hospital care, even in another case, and in other cases provided by law, b) if the judicial body considers that the suspect or defendant could not defend himself; c) during the trial in cases where the law provides for the offense penalty of life imprisonment or imprisonment of more than five years.*

[14] See ECtHR., Judgement of 23rd March1999, in case *Pelissier & Sassi v.France, paragr. 51.*

shall send the court of law the documents relating to criminal acts and those which were the subject of the agreement. We consider that in this situation, the idea of sending a truncated file trial to the court of law, out of which certain evidence cannot be taken in order to determine whether or not the defendant's guilt is mistaken. We consider that entire file must be sent to the court of law and not fragments of it, in order for the judge to give efficiency to the truth establishing principle and to take a judgment in relation to judicial truth.

With regard to the civil action performed in criminal proceedings, if the defendant, the civil party and civilly responsible party conclude a transaction or a mediation agreement, they are presented to the court of law by the prosecutor with the plea agreement. In our opinion, the transaction or mediation agreement should be integrant part of the plea agreement, meaning that the legislature may regulate the content of Article 482 regarding the agreement and aspects of civil action and way of termination at this stage of proceeding. We state this opinion because just the idea of plea with regard to a criminal offence, the defendant's regret and desire to compensate for the injury suffered by an individual are prerequisites in the conclusion of such an agreement. We do not share the idea[15] according to which the regulation that would have been more accurate if it was stated that the compensation for the injury is a prerequisite for acceptance of the agreement. Such a criminal procedure provision would have limited the defendant's possibility who could not afford, for objective reasons to settle the civil side, the title in concluding the plea agreement.

The procedure before the court of law is conducted as follows: if the agreement lacks one of the compulsory particulars referred to in Articles 481-483 of the form, content and notification of the court, the judge decides to cover the omissions within a time limit of 5 days. The decision of the court of law regarding the coverage of the agreement's irregularity notifies the head prosecution who issued the plea agreement.

The type of decision which given by the court of law is a judgment. The new aspect in the criminal procedures is that the court is acting by judgment, followed by un-contradictory proceedings, in open court, after hearing the prosecutor, the defendant and his lawyer as well as the civil party if present. Thus we talk about non-contradictory proceedings before the court of law. At first sight we could say that is an exception to the principle of contradiction, but we must not forget that we are in the first phase of trial, the prosecution, which is limited, among others, by the principle non-contradiction. Therefore, the legislature intended that the proceedings before the court of law to be a formal one, in which the judge shall be responsible only to entrench the defense and prosecution bargain or they can go through their own filter of the plea agreement? In our opinion, considering how the whole procedure is regulated, the judge appearance is a formal stage of this institution. Prejudice is brought to the truth establishing principle by this non-contradictory procedure, because if the defendant was under pressure in front of the prosecuting authorities and forced to recognize an act that was not committed, he cannot reconsider the agreement before the court of law. The possibility of different opinions before the court of law makes the procedure become inconsistent. The court must find the *ex propiis sensibus*, through the declaration that is made by the defendant and by analyzing all evidence that the plea agreement is an uncorrupted manifestation of the defendant and it is not about an occult "arrangement" between the prosecutor and the defendant, or between the participants to the criminal activity in order to hide more serious offenses or to hide the true perpetrator. The judicial compromise as a form of plea agreement cannot be conceived as a

[15] See, S. Siserman, *Proiectul noului Cod de procedură penală,* Revista de Drept Penal no. 3/2009, p. 41.

means for concealing the truth, but as a way to avoid prolonging the trial when the real culprit is largely identified through the already provided evidence[16].

Analyzing the agreement, the court of law may issue one of the following solutions:

- accepts the plea agreement and sentences the defendant to a term of imprisonment or a fine whose limits were reduced with either a third or a quarter if they meet the conditions for substantive and formal regulated in Articles 480-482, on all the offenses incriminating the defendant who made subject of the agreement;
- rejects the plea agreement and sends file to the prosecutor for further prosecution, if the conditions for and formal regulated in Articles 480-482.

Also, the court may accept the agreement only with regard to some of the defendants, and also may reject its own motion agreement with regard to the defendant's arrest. In the same judgment the court of law also pronounces the legal costs.

We note that in this case the legal text runs counter with the explanatory memorandum[17] stating that the agreement is subject to review by the court of law regarding to its object and concluding conditions, and where admission sentencing court shall order the defendant to a term not may be greater than that requested by the prosecutor in agreement. It is deficient the regulation regarding the plea agreement and the imposition of a sentence whose limits were reduced, meaning that we do not know whether the court can "validate" understanding, but to act on the penalty proposed by the prosecution and the defense. For example, suppose that the defendant committed the offense of cheating punishable with imprisonment from 6 months to 3 years, according to new Criminal Code. The prosecutor is the one proposing a plea bargain, decides for a penalty of 1 year imprisonment with execution, taking into account that the offense penalty limits are reduced by one third. Afterwards the court of law is seized with this agreement, and the judge, according to regulation, accepts or rejects the agreement. If the court of law considers that the conditions are being fulfilled, but the punishment of 1 year imprisonment is too high and requires a smaller sentence, or chooses as means of implementation the suspension by supervision applies or rejects such penalty? Analyzing the code provisions it should be rejected. In our opinion, such an interpretation would be absurd, and the text should be amended so that the court of law could either fully accept and validate the agreement was concluded, or be partially accepted, being able to modify it only in favor of the defendant, or modify it if the conditions are not being met. We consider that this is a fair solution, because the judge is in top judicial bodies, watches and also contributes to the judicial truth, being the arbiter between the defense and the prosecution, due to its impartiality and its tenure. According to Article 2 Law 304/2004, justice is carried out in the name of law, is unique, impartial and equal for all, being accomplished through the courts of law.

On resolving the civil side in this special procedure, we find that through the court makes the sentence if a mediation or transaction agreement is concluded, or may decide the split of the civil action and send them to the competent court according to civil law, where its resolution would hold trial solution. We also notice that the presence of civil party does not make reference to the plea agreement in court but it can be heard, if present. Thus we can draw the conclusion that its presence is compulsory in court. The new aspect consists in that the criminal court can disjoin the civil action but which is competent to solve it but it is no longer a civil court, but a criminal one.

The judgment shall include in addition to the mandatory particulars listed for all decisions also the offence for which the plea agreement was concluded and its legal classification. We

[16] See, G. Antoniu, *Observații la proiectul Noului cod de procedură penală (IV),* Revista de Drept Penal no. 3/2009, p. 12.

[17] *Statement of reasons*, www.just.ro.

consider that the legislature would have to establish that the judgment should be also comprised of references concerning the conclusion of a mediation agreement or a transaction relating to a civil action.

To proceed against an accepted or rejected judgment of a plea agreement is by means of appeal. Thus, the decision may be appealed within 10 days from the notification. According to Article 407 of the new Code of Criminal Procedure, after delivery, a copy of the minutes of the decision shall be forwarded to the prosecutor, the parties, the injured party, and if the defendant is arrested in the administration of the detention, for exercising the appeal. After drafting the judgment, they shall communicate the decision as a whole.

III. The institution of plea agreement in light of other legal systems

In the explanatory memorandum it is stated that several European countries (Germany, France, Belgium, Greece) have adopted in their legislation procedures are similar to the plea agreement. The project took elements from the French and German criminal justice systems and adapted them to the Romanian judiciary system.

The most representative system in which the "negotiated justice" is applied can be found in United States of America law, doctrinaires preferring this procedure with a contract[18]. The origin of the institution is found throughout the American people, where in the early twentieth century, for pragmatic reasons, in order to facilitate the work of the courts of law, "the plea bargaining" was born. Formally recognized in 1960, this institution appeared in the common-law system and was also taken in the Roman-Germanic legal system. If the principles are the same everywhere - an agreement between the parties that is presented for consideration by a judge – the application techniques vary from one system to another.

In the American system, the subject of negotiation may be a penalty, the *sentence bargaining*, in this case being a vertical agreement that requires the judge, the *change barganing*, in this case being a horizontal agreement between the accused person and the prosecutor, the latter being able to either drop the charges or amend charges[19]. In the U.S., approximately 90% of convictions are based on this type of recognition. Regarding the offenses which may fall under negotiation, it is admitted that anything can be subject to that institution. There are still states that refuse to grant defendant's right to plead guilty if they had committed a serious crime for which imprisonment is applicable in perpetuity, or for sensitive crimes (use of firearms, driving under the influence of alcohol or drugs products), federal crimes (treason, espionage). The demand or supply can be expressed on the eve or the morning of the hearing, or immediately before delivery of the verdict by the jury[20]. The judge has the task of checking whether the plea was immediate, if the defendant understands all the implications it has this manifestation of will, and that he did not act under the influence of threat, force or promises.

In Japan, the negotiation is applied to 70% of cases. Given that this guilt is established in the criminal prosecution made by the prosecutor, the judge's role being much diminished, defendants often prefer to follow the path of negotiation.

This procedure had a strong echo in the European criminal law, which emerged within the Recommendation R (87) 18 of 17 September 1987 of the Council of Ministers of the Council of Europe concerning the simplification of criminal justice.

[18] See, R. E. Scott, W. J. Stunz, *Plea barganing as a contract*, 1992, p. 101.

[19] See, M. Nemeș, *Justiția negociată în contextul dreptului penal din perspectiva Drepturilor Omului*, Revista Dreptul nr. 7/2010, p.188.

[20] See, M. Nemeș, *Justiția negociată în contextul dreptului penal din perspectiva Drepturilor Omului,* Revista Dreptul nr. 7/2010, p.190.

In Germany, the principle, inquisitorial, which requires the authorities of truth finding, seems at first sight incompatible with the idea of negotiated justice. However, the special procedure of plea agreement recently underwent an upward trend to accelerate procedures. The *informal arrangements*, *informelle Absprachen,* are established between the accused lawyer, prosecutor and judge, and in exchange for recognition of facts from the defendant, the judge is obliged to reduce the sentence, exempt from the duty to also establish the offenses based on the evidence and to ascertain the legality and credibility of the evidence means[21].

In the United Kingdom, although there is no explicit legal regulation of the practice, the procedure follows the American model with two types *charge bargaining* and *sentence bargaining.*

In Italy, there are two special procedures based on legal recognition of understanding the effects that occur between the accused and the prosecutor. Therefore[22], for the first procedure, if the person is accused of committing a crime for which the law provides an imprisonment sentence of less than two years, or this, the prosecutor can ask the judge to impose a penalty on which they mutually agreed. The second procedure *giudizio abreviato,* if the first procedure, if the person is accused of committing a crime for which the law prescribes a prison sentence of less than two years, whether or prosecutor can ask the judge to impose a punishment on which they agreed. Decision may be one of acquittal or of conviction, but the penalty is reduced by one third, without that last sentence to the convicted criminal record.

In the French law it is provided a special procedure consisting in the possibility of negotiations but only on minor offenses, *comparetion immediate*, of maximum 5 years or a fine. The offender is given a 10 days reprieve to accept or reject this offer. The judge has the right to modify the agreement, having only opportunity to approve it or not.

IV. Conclusion

"The negotiated justice" is without doubt an alternative to the conflict resolution in the context of too many courts of law. The special procedure of plea bargaining is perfectible but praised the legislature's intention to line up our laws to the European countries.

The U.S. Supreme Court recognizes the "negotiation" as an "essential component of justice which, if well managed, should be encouraged". On the contrary, if the provisions of criminal procedure violated the defendant's rights and the purpose of this procedure can be played by a Russian proverb "the pure way, sincere recognition, directly to jail"[23].

Through this special procedure will be solved the major problems the criminal justice system is facing namely the overloading of the prosecution and courts, the excessive length of certain proceedings, the unjustified delay of the causes and completion of the files on procedural grounds.

Every beginning starts with a handicap because the unknown is hard to decode. I look forward to bubbling in specialized legal literature on the institution of plea bargaining for students, practitioners and the curious who to understand both the letter and spirit of the law[24].

As philosophers held that the touchstone of truth is practice[25], our wish is that the new Code of Criminal Procedure to take effect and that this new institution to overcome difficulties

[21] See, F. Tulkens, *Negociated justice*, Cambridge University Press, 2002, p. 663.

[22] See, M. Nemeș, *Justiția negociată în contextul dreptului penal din perspectiva Drepturilor Omului,* Revista Dreptul nr. 7/2010, p.192.

[23] See S.Cazacu, *Acordul de recunoaştere a vinovăţiei, procedură fariseică?,* www. sergiucazacu.com.

[24] „*Nicolae Volonciu despre noul Cod de procedura penală"*, www.juridice.

[25] See, www.limbalatină.ro.

beginning and gradually open the way to European values leaving excessive nature of the inquisitorial exacerbated system of the communist period.

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