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Plea agreement - cause for reduction of sentence in criminal procedural law

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Abstract. Considered a very useful legal institution, the plea agreement is a special procedure regulated by articles 478-488 of the Code of Criminal Procedure, with a multitude of benefits, both for the person who committed a crime and for the justice system.
Reduction of the sentence is the main advantage that the plea agreement offers the defendant. In the event that a defendant admits the act, he benefits from a less severe sentence compared to the sentence that would have been applied to him by the court following a full trial. Also, the efficiency of the judicial system will increase if criminal trials will no longer be lengthy, and the plea agreement will very often be accepted by the defendants.In addition to the advantages of the plea agreement, there are also a number of disadvantages, such as: the defendant's waiver of the right to a full defense and the damage to the defendant's public image.
Keywords: special procedure; cause for reduction of sentence; plea agreement; subject of plea agreement; holders of plea agreement.

1.Introduction

During the 1970s, the increase in crime caused a crisis in the criminal courts in Europe, characterized by the inability to judge the large number of applications. (Tulkens, 1987)

Thus, against the background of these changes, the idea of negotiated justice or consensual justice arose. (Pradel, 1988).

In Romania, the introduction of the special procedure of the plea agreement into criminal law represented an action to resolve criminal cases with speed, the institution being regulated in the Code of Criminal Procedure – Special Part – Title IV. Special Procedures, art.478-488.

At the European level, the plea agreement exists in the legislation of states such as France, Bosnia and Herzegovina, Germany, Italy, Serbia, Spain, the United Kingdom of Great Britain and Northern Ireland, the Republic of Moldova, the Czech Republic, Estonia, Hungary, Slovakia, Bulgaria, Malta, Montenegro, Slovenia, Switzerland, the plea agreement taking the form of an agreement by which the defendant negotiates the punishment in some cases, and in other cases the defendant negotiates the accusation. Studies show that the negotiation of the punishment is more common than the negotiation of the accusation. (Negruț & Boroi, 2024)

In the German Code of Criminal Procedure there is no special criminal procedure, the legislator only provides for the reduction of the punishment limits, as a result of the perpetrator's conduct after

committing a crime, namely the conduct relating to the repair of the damage caused to the injured person[1].

Italian criminal legislation[2] presents in the Code of Criminal Procedure two special procedures that are supported by the plea agreement: the first special procedure applies to crimes for which the penalty provided by law is less than two years, the perpetrator or the prosecutor may request during the criminal investigation, as well as during the trial phase, the admission of the plea agreement, having as its object the reduction of the punishment. The second special procedure can be applied to all crimes, except those for which the penalty is life imprisonment, this procedure consisting of the defendant's request for the trial, namely that the trial be conducted only on the basis of the evidence administered during the criminal investigation phase. Thus, if the judge accepts the defendant's request, he will pronounce a decision of acquittal or conviction, the penalty being reduced by one third, and the convict waives the right to exercise any further appeal against the judgment. (Nemeș, 2010)

2. Research methodology

The first representative stage in the research of a scientific work is represented by the research methodology of that work, an organized and structured stage, carried out by the researcher in his study. Any scientific legal work must include a well-defined structure, comprising several techniques, principles, methods, phases, instruments for scientific investigation of legal phenomena and concepts. (Avornic, 2009)

From a grammatical point of view, the word "methodology" is formed by composing two Greek words, respectively "methodos" and "logos", representing the science of method. At the scientific level, any legal phenomenon requires the use of a series of research methods. (Danos, 2020)

This paper on the plea agreement - a cause for reducing the sentence in criminal procedural law required a wide range of principles, methods and means, according to the complexity of the legal topic, because it refers not only to the plea agreement as a special procedure regulated by the legislator in Romanian criminal law, but also to the idea of a special cause for reducing the sentence.

In the first stage of the scientific research, we went through the bibliographic list corresponding to the chosen topic in order to know the current research study regarding the concept of plea agreement and the concept of special cause for reducing the sentence. A bibliographic list was organized based on studying the database and the catalog of the Central - University Library in Bucharest, the National Library and the Library of the "Alexandru Ioan Cuza" Police Academy in Bucharest.

Throughout the article "Plea agreement - cause for reducing the sentence in criminal procedural law" we used several legal research methods such as the logical method, the analysis method and the comparative method. The logical method was used to define the concepts of plea agreement, cause for reducing the sentence and special cause for reducing the sentence. Using the analysis method, we identified the plea agreement as a special procedure in criminal procedural law, regulated within the Special Part of the Code of Criminal Procedure, through the provisions of articles 478-488.

3. Plea Agreement – Special Cause for Sentence Reduction in Romanian Criminal Law

Criminal law literature uses the notion of "mitigating or aggravating circumstances" as a complex notion, which includes both the circumstances that are closely related to the crime committed by the perpetrator, namely the legal mitigating and aggravating circumstances, and certain circumstances that, although not related to the committed act, have an influence on the seriousness of the act and the degree of dangerousness of the offender, these being known as mitigating circumstances or aggravating circumstances. The category of mitigating circumstances includes attempt and special causes for reducing the sentence, and the category of aggravating circumstances includes recidivism,

[1] www.gesetze-im-internet.de.

[2] www.leggeonline.info.

concurrent offenses and continued offense. Even if in ordinary speech the difference between mitigating or aggravating causes and mitigating or aggravating circumstances is not always made, the notion of "causes" is much more comprehensive than that of "circumstances", the circumstances represent only a part of the mitigating or aggravating causes. (Antoniu et al., 2025)

According to art.79 par. (1) Penal Code, when in the case of the same offense two or more provisions are incident that have the effect of reducing the punishment, the special limits of the punishment provided by law for the committed offense are reduced by successively applying the provisions regarding the attempt, mitigating circumstances and special cases of reduction of the punishment, in this order1. (Duvac et al., 2019)

In the case of the competition between the mitigating causes that can be retained within the same crime, first, the act is legally and correctly classified and the special punishment limits provided for by the incrimination norm are determined, then the punishment is established taking into account, first of all, the regulation regarding the punishment of the attempt2. After taking into account the punishment of the attempt in the application of the punishment, the applicability of the provisions of art. 76 of the Penal Code is verified, respectively the effects of the mitigating circumstances1, then the special legal provisions for the reduction of the punishment, regulated in the Special Part of the Penal Code2, are applied. (Antoniu et al., 2025)

In the operation of judicial individualization of the punishment, the court is obliged, whenever the mitigating causes are cumulatively found, to respect the order of their application, namely: the provisions regarding the attempt, the mitigating circumstances and the special cases of reduction of the punishment, when they are in competition3. The effect of the mitigating or aggravating causes is represented by the exceeding only of the special limits, not of the general limits of the punishment. Thus, the general limits of the punishment will never be exceeded, regardless of the nature of the mitigating or aggravating causes incident in the case. The punishment applied cannot be lowered below the general minimum by the successive application of the mitigating causes. (Antoniu et al., 2025)

From the analysis of Romanian criminal legislation, it can be observed that the legislator accepted the majority tendency present in the specialized literature regarding the consideration of the notion of “causes” as a notion –genus, which includes the species of states and circumstances. (Streteanu & Nițu, 2018)

According to some authors, within the mitigating states, attempt and special cases of mitigation are included. The category of special cases of mitigation includes: the agreement of recognition of guilt[3]; the procedure in case of recognition of guilt, which has a similar effect to the agreement; the full recovery of the damage in case of tax evasion[4]; denunciation and facilitation of the identification and criminal liability of other persons[5]; facilitating the discovery of the truth and criminal liability of members of an organized criminal group or of persons who commit crimes against national security[6]. (Streteanu & Nițu, 2018)

The plea agreement is one of the special causes for reducing the sentence, according to art.480 paragraph (4) of the Criminal Procedure Code – the defendant benefits from a reduction of one third of the punishment limits provided by law in the case of imprisonment and one fourth of the punishment limits provided by law in the case of a fine.

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[3]The effect of the plea agreement is regulated by art.480 paragraph (4) of the Code of Criminal Procedure and consists of a reduction by 1/3 of the limits provided by law in the case of imprisonment or by 1/4 of the limits provided by law in the case of a fine.

[4]Art.10 paragraph (1) of Law no. 241/2005, with the effect of reducing the special limits by half.

[5]Art.15 of Law no.143/2000, art.19 of Law no.682/2002, art.15 of Emergency Ordinance no.78/2016 – all with the effect of reducing the punishment limits by half.

[6]Art. 367 paragraph (5) of the Penal Code, respectively art. 441 of the Penal Code, with the limits reduced by half.

In the case of minor defendants, these aspects will be taken into account when choosing the educational measure, and in the case of educational measures involving deprivation of liberty, the limits of the periods for which these measures are ordered, provided by law, are reduced by one third. (Negruț & Boroi, 2024)

4. Subject of the plea agreement

The defendant's admission of the commission of the act and the acceptance of the legal classification for which the criminal action was initiated are the subject of the plea agreement, according to art. 479 of the Romanian Penal Code. The subject of the plea agreement concerns the type, amount of the punishment and the form of its execution, respectively the type of educational measure or, as the case may be, the solution of waiving the application of the punishment or postponing the application of the punishment.

Initially, the prosecutor could not consider other punishment limits when concluding the plea agreement than those provided by law for the offense that was the subject of the agreement, taking into account all the causes of reduction or aggravation of the punishment, the provision of reducing the punishment limits for defendants who choose to conclude such a plea agreement not existing in the past. The High Court of Cassation and Justice, the Panel for resolving legal issues in criminal matters, ruled by Decision no. 25/2014[7]: "in applying the provisions of art. 480-485 of the Code of Criminal Procedure, the prosecutor cannot, in the criminal prosecution phase, in the plea agreement procedure, retain the provisions of art. 396 paragraph (10) of the Code of Criminal Procedure, with direct consequences on the reduction of the punishment limits provided by law for the crime committed". Under these conditions, the defendants were tempted to use the trial procedure in the case of admission of guilt, having as a benefit the reduction of the punishment limits by one third in the case of imprisonment and by one fourth in the case of fine. (Negruț & Boroi, 2024)

5. The defendant and the prosecutor – holders of the plea agreement

The defendant and the prosecutor represent the two holders of the plea agreement in criminal procedural law. Since the legislator does not expressly state whether the defendant refers only to a natural person, the plea agreement can be concluded by both the defendant - a natural person and the defendant - a legal person. Unlike the defendant, to whom the law offers the possibility of concluding such a plea agreement, the suspect is not allowed to conclude a plea agreement. The hierarchically superior prosecutor plays an important role in concluding a plea agreement even if the legislator does not directly list him among the holders. Thus, art. 478 para. (4) Code of Criminal Procedure provides that the limits the conditions for concluding a plea agreement are established by the prior written opinion of the hierarchically superior prosecutor, and art. 478 para. (2) of the Code of Criminal Procedure provides that the effects of the plea agreement are subject to the opinion of the hierarchically superior prosecutor.

The civil party and the injured party do not play any role in concluding a plea agreement, but they will be summoned before the court. In the event that in a criminal case there is only a part of the defendants who wish to conclude a plea agreement, its effects will not apply to the other defendants who continue to benefit from the presumption of innocence until the trial of the case. The defendants with whom the agreement was concluded may be heard as witnesses in the separate case, without the statement given as a witness ever being used against them. Also, the plea agreement can be concluded by minor defendants, but with the consent of their legal representative and in compliance with the provisions regulating this institution of criminal procedural law, according to the provisions of art. 478 paragraph (6) of the Romanian Criminal Code (Negruț & Boroi, 2024)

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[7] Official Gazette No. 935 of December 22, 2014.

6. Court's acceptance or rejection of the plea agreement

The trial court may rule both by accepting the plea agreement and by rejecting it. The plea agreement is accepted by the court when the legal conditions are met for all the acts provided for by the criminal law, held responsible by the defendant and which constitute the subject of the agreement. The solutions that the court may order after accepting the plea agreement are represented by convicting the defendant, waiving the application of the penalty or postponing the application of the penalty. In the case of accepting the plea agreement, the civil action may be resolved by the court or may remain unresolved. In the first situation, the civil action will be resolved by the court in the case of accepting the plea agreement if the parties conclude a transaction or a mediation agreement regarding it, the court taking note of this fact by sentence. In the second situation, when the parties do not conclude a settlement or mediation agreement regarding the civil action, the court leaves the civil action unresolved. Thus, the decision by which the agreement was admitted does not have the authority of res judicata on the extent of the damage before the civil court. (Negruț & Boroi, 2024)

In the event that the conditions provided for in art. 480-482 of the Romanian Penal Code are not met with respect to all the acts held against the defendant or if the court considers that the solution reached through the plea agreement is unjustified in relation to the seriousness of the offense or the degree of dangerousness of the offender, the plea agreement will be rejected by the court. In the event that the court rejects the plea agreement, it will also rule ex officio on the defendants' state of arrest. (Negruț & Boroi, 2024)

7. Conclusions

The plea agreement is a simplified procedure by which the guilt of the offender in a criminal case is acknowledged. In the situation where the courts are faced with a phenomenon of increasing the number of criminal cases, the legislator offers an alternative way of resolving the cases brought to trial, by regulating a very useful legal institution such as the plea agreement, a special procedure regulated in articles 478-488 of the Code of Criminal Procedure. By taking over some influences from European comparative criminal law, we can consider that the entire initiative of the Romanian legislator is innovative, constituting a remedy for the need for rapid access to justice, for simplifying and resolving criminal cases in a reasonable time.

The substantial reduction of the economic and human resources that the Romanian state uses in the process of holding criminals accountable is another positive aspect of the plea agreement. The purpose of the special plea agreement procedure is also expressed in the explanatory memorandum to the Code of Criminal Procedure: "the plea agreement represents an innovative legislative solution that will ensure the resolution of cases in an optimal and predictable time frame, while also being a remedy for eliminating a major deficiency of the Romanian judicial system, namely the long duration of judicial proceedings."[8]

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