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LEGISLATIVE REMEDIES TO ENSURE THE REASONABLE TERM IN A CRIMINAL TRIAL. THE PLEA AGREEMENT: ROMANIA'S EXPERIENCE

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Abstract

Resolving a criminal case within a reasonable time is an important element of the right to a fair trial. The need to respect the reasonable term is succinctly expressed both in a frequently quoted British adage of justice delayed, justice denied, and in a French saying with a similar content, *justice rétive, justice fautive*. The purpose of the criminal process is not achieved by merely punishing the guilty. The prosecution must be carried out within a timeframe that proves that the state is taking prompt action to to ensure compliance with the law. Only in this way can the preventive purpose of the punishment be achieved and the confidence of the citizens in the ability of the state to protect them can be preserved. Legislatures are frequently choosing to introduce elements of negotiated justice in order to solve the problem of the length of criminal proceedings. The plea agreement procedure is thus seen in more and more countries as an important means of achieving this objective.

The plea agreement was introduced into Romanian law as of January 1, 2014. Previously, court proceedings had become overly formalistic, cumbersome, costly and not expeditious. At the same time, the strict application of the principles of establishing the truth and the direct administration of evidence by the court often led to an unjustified prolongation of the criminal proceedings and an unnecessary waste of state resources in some cases where the guilt of the defendant was obvious.

In this study we will try to see whether these objectives have been achieved in any way. To this end, we examined the existing

situation in the municipality of Bucharest within the six sector courts and the Bucharest Tribunal from January 1 to September 3, 2024. We verified the number of criminal cases that were resolved by these courts during this period of time. We also researched how many of these cases were solved on the basis of a plea agreement. In the cases where plea agreements were reached, we wanted to find out which offenses were targeted and how long the prosecution lasted. In terms of the time taken to solve the case, we took into consideration the time elapsed between the moment when the prosecution had evidence that the defendant had committed the crime and the time when the plea agreement was concluded.

Based on these data, we tried to establish whether the introduction of the plea agreement in the Romanian legislation has really contributed in ensuring a reasonable timeframe and what are the reasons why the institution does not generate the same results as in other countries.

The conclusion we have reached is that the institution of the plea agreement did not have the desired effects at the time of its regulation. The time taken to resolve cases has not been reduced, with many cases taking years to resolve, even though their complexity would allow a final solution to be pronounced in a few months.

Keywords: *plea agreement, reasonable term, right to a fair trial, negotiated justice, legal remedies, abuse of law, waiver of rights*

1. Introduction

Resolving a criminal case within a reasonable time is an important element of the right to a fair trial. According to art. 6 para. 1 of the European Convention on Human Rights, in the determination of his/her civil rights and obligations or of any criminal charge against him/her, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The need to respect the reasonable time element is succinctly expressed both in a frequently quoted British adage, justice delayed, justice denied, and in a French saying with a similar content, *justice rétive, justice fautive*. The Convention emphasizes the importance of the idea that justice must be done without delays that compromise its credibility and effectiveness. In addition, in criminal matters, the speed of the procedure tends to avoid keeping the accused person in a state of uncertainty as to his or her situation for a long period of time; as regards the settlement of civil actions, excessive length may lead to

inequalities, both morally and financially, between the parties. On the other hand, however, celerity is not necessarily a quality; swift justice may lead to a violation of numerous rights, which can lead to a miscarriage of justice. It is therefore up to the judge to strike a balance between the need for a speedy judgment and the need for a fair and complete judgment on the points of law and fact before the court (Chiriță, 2008, pp. 304-305).

2. The reasonable time in the criminal trial. Determination criteria

Compliance with the reasonable time-limit will be examined in concrete terms, taking into account the procedure as a whole, according to the following four criteria:

-**complexity of the case**. In this respect, the following aspects will be taken into account: the number of counts of indictment, the number of persons involved in the proceedings, such as defendants and witnesses, or the international dimension of the dispute. In *Neumeister v. Austria,* for example, the transactions investigated had ramifications in different countries, which required the assistance of Interpol and the implementation of mutual legal assistance treaties to conduct investigations abroad, 22 persons being involved, some of them established abroad. A case is also very complex when suspicions relate to "white-collar" criminality: for example, in *C.P. et. al. v. France*, a large-scale fraud involving several companies or complex transactions required significant accounting and financial expertise (*Guide on Article 6: Rights to a fair trial, criminal limb*, p. 32).

Particular importance will have to be attached to the evidence to be given. It is well known that in some cases the response to an interrogatory letter can take more than a year. Also, the need to carry out complex expert reports (e.g. an accounting report on the operations of a multinational company) automatically leads to a lengthening of the trial.

-**conduct of the authorities**. This criterion must be analyzed from a twofold perspective: on the one hand, compliance by the State with its obligation to create a legal and institutional system capable of settling cases within a reasonable time, and on the other hand, the actual conduct of the judicial bodies involved in the settlement of a particular case.

The European Court of Human Rights (from now on, ECHR) verifies whether States are fulfilling their positive obligation to organize their own judicial systems in such a way as to meet the requirements of the European Convention of Human Rights, by ensuring both an adequate material and human resources base for the proper administration of justice and an adequate legislative framework for the expeditious conduct of proceedings (Udroiu, 2020, p. 94).

States will not be able to invoke administrative or financial difficulties, the inexperience of the magistrate in relation to the novelty of the offense, or

the illness of the judge to justify the lack of speed in judicial proceedings (*ECHR,* Pelissier and Sassi v. France, 1999, para 74).

With regard to the other aspect, it will be taken into account whether there have been long periods of inactivity during the criminal proceedings (during the criminal prosecution, there were long periods during which no procedural activities were carried out or the time limits granted during the court hearings were too long), whether the case has been excessively postponed due to procedural incidents (e.g. unlawful summons, promotion of the judge to another court and failure to appoint another judge), and how long it took to give reasons for the judgment. Successive dismissals with remand for retrial will most often lead to violations of reasonable time, which are matters attributable to the authorities. The same conclusion also applies where the prosecutor repeatedly orders a decision to close the case, which is overturned by the pre-trial judge each time.

Even if a case is of a certain complexity, the Court does not consider inexplicably long periods of stagnation of the proceedings to be "reasonable". In *Adiletta et. al. v. Italy*, there was a period of thirteen years and five months between the referral of the case to the investigating judge and the questioning of suspects and witnesses, a period of five years and a further period of one year and nine months between the time when the case was returned to the investigating magistrate and a new referral of the parties to trial. The Court considered that period unreasonable (*Guide on Article 6: Rights to a fair trial, criminal limb*, p. 32).

-**conduct of the parties**. The exercise by a party, in good faith, of all the procedural means provided for her by the national law cannot be considered to have extended the length of the proceedings (*ECHR,* Holomiov v. Moldavia, 2006, para 143). For example, the defendant cannot be blamed for having exercised all the legal remedies provided by the law, which is the reason why the case was prolonged (*ECHR,* Kudla v. Poland, 2000, para 130).

If the delay in the proceedings is due to the dilatory behavior of the defendant, who was late in filing the documents necessary for the trial, evaded the execution of an arrest warrant, repeatedly requested postponement of the case, extended the time of hiring a chosen defense counsel, he cannot invoke the breach of the right to be tried within a reasonable time (*ECHR,* Dobbertin v. France, 1993, para 44).

Article 6 does not require active cooperation with judicial authorities. The defendant cannot be criticized for making full use of the remedies available under domestic law. However, his conduct constitutes an objective fact, not attributable to the defendant State, which must be taken into account in order to clarify the question whether or not the proceedings exceeded the reasonable time. In *Eckle v. Germany*, the applicants had repeatedly produced procedural incidents, in particular, the systematic use of recusal, of such a nature as to delay

the proceedings, some of which might even suggest deliberate obstruction (*Guide on Article 6: Rights to a fair trial, criminal limb*, pp. 32-33).

According to Romanian law, for the first court date, the party who lives abroad will be notified by summons that he has the obligation to indicate an address in Romania, an electronic mail or electronic messaging address, where all communications regarding the trial are to be semt. If he does not comply, the communications will be made to him by registered letter abroad. In this respect, if the party does not comply with this obligation, he will not be able to plead failure to comply with the reasonable time limit due to the very long time required for serving the summons or other documents (which in some countries may take several months). The party will be held responsible for the prolongation of the proceedings caused by a change of lawyers, his absconding, his refusal to receive certain documents, and failure to notify a change of address.

-importance of the case for the parties. It is true that normally, for a person involved in a trial, his or her case is the most important. However, in certain situations, the particular features of a case require the State to be much more diligent: the defendant is deprived of his liberty, the case concerns events that have had a particular resonance in society (e.g. a revolution or crimes committed by an oppressive regime), the civil party is very elderly or suffering from an incurable disease, the case concerns an offense committed by a public official or the case concerns a sexual offense committed against a minor.

The State is thus obliged to provide, in its domestic law, for a remedy which enables the person concerned, to exercise the rights and freedoms recognized in the Convention. The effectiveness of this remedy must be assessed by reference to its capacity to provide the person concerned with adequate satisfaction in relation to the violation suffered. Preventive or expeditious remedies aim to shorten the length of proceedings to avoid them becoming excessive. Compensatory remedies are primarily intended to cover damages suffered by a person involved in proceedings which have exceeded a reasonable period of time, regardless of whether the proceedings are pending or completed.

3. The importance of the plea agreement in ensuring the reasonable term

More and more legislations are choosing to introduce elements of negotiated justice in order to solve the problem of the length of criminal proceedings. The plea agreement procedure is thus seen in more and more countries as an important means of achieving this objective.

It has to be said that even in the case law of the United States of America, the benefits of the plea agreement were not always accepted at Supreme Court level. It was only in 1970, in Brady v. United States, 397 U.S.

742 (1970), that the Supreme Court of the United States of America upheld the correctness of the plea agreement, arguing that it is "intrinsic to criminal law and its administration and inseparable from it". In Santobello v. New York, 404 U.S. 257 (1971), the Court stated that "reconsideration of the charges following plea bargaining is not only an essential part of the criminal trial, but also a highly desirable part for all parties for a number of reasons" (Alschuler, 1979, p. 40).

Statistics show that in the 2000s, about 95% of criminal cases in the United States are resolved on the basis of a plea of guilt by the defendant or a plea agreement between the defendant and the prosecutor (Thaman, 2007, p. 19).

Currently, plea bargaining has become the primary way to resolve criminal cases in the United States, with nearly 98% of convictions nationwide currently coming from guilty pleas (American Bar Association, 2023).

The European Court of Human Rights not only accepted that the introduction of such procedures does not in any way affect the right to a fair trial, but it also stated that such a mechanism is capable of producing positive effects, including in terms of reducing the length of proceedings. It has been held in the case-law of the Court that " the plea bargain, in addition to offering important benefits such as fast solving of the criminal cases and the reduction of the workload of courts, prosecutors and lawyers, can also, if properly applied, be a successful tool in the fight against corruption and organized crime and can contribute to a reduction in the number of sentences imposed and, as a consequence, the number of prisoners. Neither the letter nor the spirit of Article 6 prevents a person from waiving these guarantees of his own free will. However, a fundamental principle implies that the waiver of certain procedural rights must always, in order to be considered effective within the meaning of the Convention, be unequivocally determined and accompanied by minimum safeguards proportionate to its importance. Moreover, it must not be contrary to an important public interest" (*ECHR,* Natsvlishvili and Togonidze v. Georgia, 2014, para 91-92).

In order that the plea agreement does not lead to a breach of the right to a fair trial, it is necessary that (i) the agreement is accepted by the defendant in full knowledge of the facts of the case and of the legal consequences and in a genuinely voluntary manner; (ii) the content of the agreement and the fairness of the manner in which it was concluded between the parties are subject to adequate judicial review (*ECHR,* Natsvlishvili and Togonidze v. Georgia, 2014, para 93).

One of the main criticisms of this institution is the possibility of an innocent man admitting to a crime he did not commit and entering into an agreement simply because he does not want to risk being put on trial and sentenced to a much more severe punishment. Also, victims and the public

cannot have the sense of justice if the defendant is allowed to plead guilty of a lesser offense or receive a lesser sentence or a lighter sentence, which is basically seen as corruption and manipulation of the judiciary system. Also, to reward with the possibility of concluding a plea agreement and a reduced sentence a person testifying against others creates the risk that innocent persons may be accused. At the same time, there is a risk that the defendant may minimize his own contribution to the crime and maximize the guilt of others involved.

However, as American doctrine has shown, while it is true that the plea agreement may be the result of unfair prosecutorial tactics, this criticism is directed at the process of negotiation, not the right to enter into the agreement. Indeed, the founders of the American system included the right to trial by jury as a core constitutional guarantee, but that does not mean defendants do not have the right to waive their rights in exchange for a lighter sentence. Simplifying the procedure cannot justify violating the Constitution, but the deficiencies of the plea agreement are procedural, not constitutional, therefore this institution must be reformed, not abolished (Sandefur, 2003, p. 31).

The possibility of concluding a plea agreement has been recognized even in the practice of the International Tribunal for the former Yugoslavia (see the case of Drazen Erdemovic) (Combs, 2002, pp. 2-152).

4. The plea agreement in the Romanian legislation

Before the plea agreement was introduced into Romanian law on January 1, 2014, court proceedings had become overly formalistic, costly and they lacked celerity. The legal provisions required the court to re-examine all persons heard during the initial investigation that took place before the prosecutor, even if the defendant admitted the charge and did not contest the facts.

The financial and material resources allocated by the Romanian state were also not commensurate with the increase of criminality and the improved methods of committing offences. It was therefore necessary to shift the resources of the judicial authorities from cases where the facts were clear to those cases which were truly complex.

One of the newly-introduced institutions designed to resolve these problems was the plea agreement.The following conditions must be met for entering a plea bargain (Iugan 2015, pp.32-65):

- the law prescribes for the offense or offenses covered by the agreement only a fine or imprisonment of up to 15 years, whether or not alternating with a fine

- the criminal proceedings have been instituted and the evidence adduced in the course of the pretrial phase is sufficient to establish the existence

of the crime for which criminal proceedings have been instituted and the guilt of the defendant

If the court considers that the evidence presented does not prove beyond reasonable doubt that the act exists, constitutes a criminal offence and was committed by the defendant, it will reject the plea bargain, even if the defendant has admitted committing the act (Criste, 2018, p 114).

- in the case of a defendant who is a minor, there must be the consent of the legal representative

- the defendant is assisted by a chosen or court-appointed lawyer

Legal assistance is mandatory throughout the negotiations, from the time the guilty plea is initiated up to the moment of signature. Failure to comply with this provision is punishable by absolute nullity and may be relied on until the judgment is final.

- the defendant expressly acknowledges the commission of the crime and accepts the legal framework for which the criminal proceedings have been brought

- the prior written approval of the chief prosecutor setting the limits within which the agreement is to be concluded

- the case prosecutor and the defendant reach an agreement on the manner in which the sentence is to be individualized

- the agreement so concluded be approved by the chief prosecutor

The approval of the chief prosecutor is required at two points in time: before negotiations begin and after the agreement is concluded (Ștefan, 2014).

According to Romanian law, if there is more than one defendant, a separate plea agreement may be concluded with each of them, without prejudice to the presumption of innocence of the defendants for whom no agreement has been concluded.

Therefore, if one of the defendants enters into a plea agreement, he will have to acknowledge the contribution of the other participants, and the court, if it accepts the agreement, will mention the participation of other persons at the commission of the crime in the sentence it pronounces. However, this judgment is not *res judicata* on these issues, as the other defendants may subsequently prove their innocence.

In the same sense, the case-law of the Court of Justice of the European Union has held that the presumption of innocence is not breached if in the reasoning of the national court's decision admitting the plea agreement signed by a defendant, express reference is also made to the criminal behaviour of another defendant. However, two conditions must be met: on the one hand, this statement is necessary for the qualification of the legal liability of the person who concluded the agreement and, on the other hand, that the same agreement clearly indicates that these other persons are accused in separate criminal

proceedings and that their guilt has not been proved according to law (*Court of Justice of the European Union*, 2019, Case C-377/18).

The injured person and the civil party have no role in the conclusion of the plea agreement. The public prosecutor is not obliged to consult them as to whether a plea agreement should be concluded or as to the individualization of the penalty to be imposed on the defendant (Micu, Slăvoiu & Zarafiu, 2022, p. 798).

According to the ECHR, the fact that national law does not allow the injured person to intervene in the procedure of the admission of guilt to seek a heavier sentence is not contrary to the Convention aim. The main purpose of the injured person in criminal proceedings is to exercise a right to "private revenge", but this right is not guaranteed by the Convention. (*ECHR,* Mihova v. Italy, 2010)

The public prosecutor may refuse from the beginning of the procedure to negotiate a plea bargain. He or she may also change his or her mind throughout the procedure up to the point at which the agreement is signed. The prosecutor may refuse to conclude the agreement even after the prior opinion of the chief prosecutor. For example, if the chief prosecutor has given an opinion on a suspended sentence, but the case prosecutor considers that a sentence should be enforced, he may refuse to conclude the agreement. Also, the defendant can change his mind at any time up to the time of signing the agreement.

The defendant is entitled to a one-third reduction of the limits prescribed by law in the case of imprisonment and to a one-fourth reduction of the limits prescribed by law in the case of a fine.

In Romanian law, unlike in other countries, the prosecutor cannot drop some of the charges if the defendant enters into a plea bargain. It is also not possible to negotiate a lighter legal framework than the one resulting from the evidence (involuntary manslaughter instead of murder, for example).

If a plea bargain is not entered into or is rejected by a final judgment, the statement given by the defendant cannot be used in the future proceedings without his express written consent in the presence of his chosen or appointed counsel. In the absence of such consent, the document recording the statement made by the defendant for the purposes of the plea bargain shall be removed from the case file.

Once the plea agreement has been concluded, the public prosecutor shall refer the case to the court having jurisdiction. The plea agreement will be sent to the court together with the case file. The defendant, the other parties and the injured party will be summoned to appear at the scheduled hearing. The defendant may not withdraw before the court the consent given when the agreement was concluded unless he proves that it was invalid (Pascu & Manea, 2015, p. 56). If the court finds that the legal framework is wrong, the agreement

will be rejected. In this procedure, the legal framework cannot be changed (Slăvoiu & Lăncrănjan, 2015).

The participation of the prosecutor is mandatory. Legal assistance for the defendant is also mandatory. The court shall decide on the plea agreement by judgment in public session, after hearing the public prosecutor, the defendant and his lawyer and, if they are present, the other parties and the injured party. After hearing the parties, the court shall accept or reject the plea bargain. If the plea is accepted, the court will pronounce the outcome of the agreement. In practice, the court will not be able to change in any way the situation of a defendant who has reached a plea bargain. The court cannot aggravate or mitigate the situation of the defendant. If the conditions laid down by the law are met only in respect of some of the offenses, the plea agreement will be rejected and not accepted in part (Neagu & Damaschin, 2022, p. 540).

The plea agreement can only be admitted in respect of some of the defendants and will be rejected if:

- the conditions that we presented earlier are not met in respect of all the alleged offences committed by the defendant which were the subject of the agreement (e.g. there is insufficient evidence to prove that the defendant committed the crime, the agreement was concluded in respect of a crime for which the law provides for a prison sentence of more than 15 years, or the defendant did not receive legal assistance during the negotiations of the agreement).

- the court considers that the solution agreed between the prosecutor and the defendant is unlawful (e.g. the sentence was set outside the legal limits, the legal framework is wrong, etc.)

- the court considers that the solution agreed between the prosecutor and the defendant is unduly lenient in relation to the seriousness of the offense or the dangerousness of the offender.

As regards the court's assessment that the punishment determined in the agreement is unduly lenient in relation to the seriousness of the offense or the dangerousness of the offender, it should be noted that the court will never be able to impose a harsher sentence on the defendant, but will simply reject the agreement as unjustified.

As has been pointed out in the doctrine "this provision attenuates the conventional nature of the agreement by establishing a greater role for the judge in the process of individualizing the sentence as an important part of the judicial function he performs. In this way, the regulation moves away from the adversarial form and moves closer to the specific features of the continental type of criminal trial, in which the judge does not act as an arbitrator but has a role in ascertaining the truth in all its aspects" (Ghigheci, 2017, p. 1389).

However, the court will not be able to reject the plea bargain if it considers that the solution is excessively harsh in relation to the specific situation.

If the court rejects the plea bargain, it will return the case to the prosecutor.

The prosecutor, the defendant, the other parties and the injured person may appeal against the judgment of the court deciding on the plea agreement, within 10 days of the notification.

After the case has been returned to the prosecutor's office, the prosecutor may enter into a new plea agreement with the same defendant (leading to a legal and well-founded decision), commit the defendant to trial by indictment or decide not to prosecute the case further. If the defendant is subsequently indicted, he will be able to plead his innocence without the agreement being used against him.

5. What was the outcome of the implementation of the plea agreement in Romanian legislation?

Ten years after the introduction of the plea bargain legislation, we will analyze how widely this institution has been used and whether it has really contributed in solving cases within a reasonable timeframe.

To this end, we examined the existing situation in the municipality of Bucharest within the six sector courts and the Bucharest Tribunal during 2024.

From January 1, 2024 to September 3, 2024, the following number of cases were settled in these courts:

Court name	**Number of solved cases**	**Number of cases adjudicated by way of a plea bargain.**
Bucharest 1st District Court	438	21
Bucharest 2nd District Court	449	26
Bucharest 3rd District Court	223	16
Bucharest 4th District Court	438	48
Bucharest 5th District Court	559	41

Bucharest 6th District Court	334	32
Bucharest Tribunal	399	85

In analyzing the **Bucharest 1st District Court, we found that** the 21 cases that were determined by plea agreement involved the following offenses:

Type of offences for which plea agreements have been concluded	**Number of cases adjudicated by way of a plea bargain**
Driving a vehicle under the influence of alcohol or other substances	9
Fraud	3
Fraud and forgery	8
Embezzlement	1

In the **Bucharest 2nd District Court**, plea bargains concerned the following offenses:

Type of offences for which plea agreements have been concluded	**Number of cases adjudicated by way of a plea bargain**
Driving a vehicle under the influence of alcohol or other substances	13
Driving a vehicle with a suspended driving license	2
Leaving the scene of an accident	1
Unauthorized exercise of a profession or activity	1
Rape	1
Embezzlement	1
Embezzlement and forgery	2
Forgery	1
Assault	1
Misconduct	1
Termination of pregnancy	1
Fraud	1

Analysing the case law of the **Bucharest 3rd District Court**, we have found that the prosecutor and the defendant entered into plea agreements in respect of the following offences:

Type of offences for which plea agreements have been concluded	**Number of cases adjudicated by way of a plea bargain**
Driving a vehicle under the influence of alcohol or other substances	3
Embezzlement	3
Fraud and forgery	8
Violation of protection order measures	1
Assault or other violence	1

In the **Bucharest 4th District Court**, plea bargains concerned the following offenses:

Type of offences for which plea agreements have been concluded	**Number of cases adjudicated by way of a plea bargain**
Driving a vehicle under the influence of alcohol or other substances	22
Driving a vehicle without a driving license	7
Driving with a suspended driving license	7
Refusal or evasion to take biological samples	1
Sexual intercourse with a minor	1
Sexual assault	1
Aiding escape	2
Forgery	2
Embezzlement	1
Fraud	1
Involuntary manslaughter	1
Harassment	1

In the **Bucharest 5th District Court**, plea agreements have been entered in relation to the following offences:

Type of offences for which plea agreements have been concluded	**Number of cases adjudicated by way of a plea bargain**
Driving a vehicle under the influence of alcohol or other substances	27
Driving a vehicle without a driving license	5
Driving with a suspended driving license	2
Fraud and forgery	1
Forgery	2
Embezzlement	1
Domestic violence	1
Disturbing the peace and public order	1

In the **Bucharest 6th District Court**, the guilty plea addressed to the court concerned the following offenses:

Type of offences for which plea agreements have been concluded	**Number of cases adjudicated by way of a plea bargain**
Driving a vehicle under the influence of alcohol or other substances	26
Driving a vehicle without a driving license	2
Refusal or evasion of taking biological samples	1
Driving with a suspended driving license	2
Fraud and forgery	1
Forgery	2
Involuntary manslaughter	1

At the **Bucharest Tribunal** the cases resolved by plea agreement concern the following offenses:

Type of offences for which plea agreements have been concluded	**Number of cases adjudicated by way of a plea bargain**
Forming a criminal organization and disclosing secret or non-public information	7 (it should be noted that the same case was targeted, with 7 separate plea agreements with 7 different defendants)
Forming a criminal organization	1
Forming aa criminal organization, procuring and money laundering	1
Use, in any way, directly or indirectly, of information not intended for public use	1
Drug trafficking	8
Drug trafficking and possession of drugs for own use	3
Possession of drugs for own use and refusal or evasion of taking biological samples	1
Taking bribes	9
Offering bribes	5
Trading in influence	2
Buying influence	2
Unlawful transactions involving products likely to have psychoactive effects	2
Offenses against the financial interests of the European Union	5
Possession of drugs for own use	16
Possession of drugs for own use and driving a vehicle under the influence of psychoactive substances	10
Forgery	1
Embezzlement with particularly serious consequences	2
Concealment	1
Aggravated robbery, fraudulent financial transactions and illegal access to a data processing system	1
Aggravated robbery, fraudulent financial transactions and illegal access to a data processing system	1
Trafficking in human beings	3
Trafficking in human beings and extortion	1
Procuring	1

6. Considerations on the types of offences covered and the respect of reasonable time limits in cases settled by a plea agreement.

In terms of the time taken to solve the case, we took into account the time elapsed between the moment when the prosecution had evidence that the defendant had committed the crime and the time when the plea agreement was concluded.

With regard to the plea bargains settled by **Bucharest 1st District Court**, in the case of driving a vehicle under the influence of alcohol or other substances, the duration was between 6 months and 3 years. Only in three cases the duration was less than 1 year (in two cases 10 months, in one case 6 months). In cases concerning the offences of fraud (separately or together with the offences of forgery) the duration ranged from 1 year to 2 years and 6 months, in one case 4 years. In the case concerning embezzlement the duration was 2 years.

Next we will examine the length of time it took for cases resolved through a plea agreement by **Bucharest 2nd District Court**. For the offense of driving a vehicle under the influence of alcohol or other substances, the duration of the case ranged from 2 months to 4 years and 4 months. In one case the duration was less than 1 year while in 3 cases the procedure lasted 4 years or more. In the two cases concerning the offense of driving a vehicle with a suspended driving license, the duration was 3 years and 6 months and 4 years and 6 months respectively.

For the other cases, the duration ranged from 2 months (for the offenses of unlawfully exercising a profession or activity) to 4 years (for the offenses of embezzlement and forgery). 5 cases lasted 1 year or less (for fraud - 6 months, for termination of pregnancy - 1 year, for misconduct - 4 months, for forgery - 6 months).

The time taken to solve the cases through a guilty plea by **Bucharest 3rd District Court** ranged from 4 months (a case concerning the offenses of violation of protection order measures) to 4 years (a case concerning the offense of driving a vehicle under the influence of alcohol or other substances). Only in 6 out of the 16 cases the duration was less than 1 year (the 3 cases of embezzlement - 6 months, 2 cases of driving a vehicle under the influence of alcohol or other substances - 11 months and one case of fraud and forgery - 6 months).

More than three quarters of the plea bargains admitted by **Bucharest 4th District Court** concern traffic offenses. The time taken to solve cases involving the offense of driving a vehicle under the influence of alcohol or other substances. varied between 2 months and 4 years. However, only in 8 of these cases did the duration exceed 1 year. Basically, almost 2/3 were solved within 1 year or less.

At the same time, the duration of the 2 cases of sexual assault was 2 and 5 months respectively. For the offense of sexual intercourse with a minor the duration was 5 months. On the other hand, the time taken to solve the cases concerning the offenses of fraud and embezzlement was 4 years, for forgery - 3 years and 6 months and harassment - 3 years.

In practice, more than 85% of the plea bargains referred to **Bucharest 5th District Court** concern traffic offenses. The time taken to resolve cases concerning the offense of driving a vehicle under the influence of alcohol or other substances ranged from 4 months to 2 years and 6 months. However, in more than half of these cases (14) the duration was more than 1 year. For the offenses of driving a vehicle without a driving license and driving a vehicle with a suspended driving license, the duration of the cases ranged from 2 months to 2 years and 6 months. Of the 7 cases concerned, only in 2 cases did the duration exceed 1 year.

As regards the other cases, the domestic violence case was solved in 2 months, the case of disturbing the peace and public order in 10 months, the case of forgery offenses in 2 years and 6 months and the cases of fraud and embezzlement in 1 year and 6 months.

With regard to agreements settled by **Bucharest 6th District Court**, in fact, only 2 of the 32 cases settled on the basis of a plea agreement did not concern traffic offenses. The time taken to solve cases concerning the offense of driving a vehicle under the influence of alcohol or other substances ranged from 4 months to 4 years and 6 months. In contrast to the last two prosecution units where there was a certain celerity in dealing with this type of case, from the cases on the solved by the 6th District Court of Bucharest, only 2 were resolved in less than 1 year, while in 8 (approximately one third), the duration was 4 years or more. In the two cases that did not concern traffic offenses the duration was about 2 years.

As we have observed, the statistics prove that most plea agreements were settled by the **Bucharest Tribunal**. About half of the agreements concern offenses related to drugs and psychoactive substances. The length of time between the time when the prosecution had evidence concerning the person who committed the crime and the date of the agreement ranged from 2 months to 4 years. Of the 85 settled agreements, 52 of them (more than half) were settled within 1 year or less.

Extremely large differences are found for the same type of offenses. For example, in the case of agreements concerning the offenses of possession of drugs for own use and driving a vehicle under the influence of psychoactive substances, the duration of the settlement ranged from 4 months to 2 years and 6 months, with only in 3 cases (out of 10) the duration of the settlement being less than 1 year. Likewise, the length of time taken to reach a plea agreement

for the offense of possession of drugs for own use varied from 4 months to 4 years.

However, better results exist in the case of corruption offenses. For example, all 5 plea bargains concerning taking bribes were concluded less than 8 months after the perpetrator was discovered (the shortest being 2 months); 5 of the 9 cases concerning offering bribes were concluded within 6 months, the 2 cases concerning trading in influence were concluded after 6 months and the 2 cases concerning buying influence were concluded after 6 and 8 months.

As can be seen, the plea bargain occupies a rather minor place in terms of the way in which the prosecutor deals with cases. Apart from the Bucharest Tribunal, where, as we have seen, the plea bargain accounts for more than 20% of all cases brought to trial, the percentage is less than 10% in the Bucharest sector courts (in Bucharest 1st District Court, even 5%).

As regards the offenses covered, in the case of offenses falling within the jurisdiction of the district courts, the main offenses are traffic offenses. As already mentioned, the percentage is around 75% in the 4th District Court, 85% in the 4th District Court and 93% in the 6th District Court.

7. Conclusion

In conclusion, we believe that the use of this procedure does not contribute to reducing the length of proceedings during the pretrial investigations. There are many cases that are not very complex, such as possession of drugs for own use or driving a vehicle with a suspended license, which take up to 4 years before the case is brought to trial. In practice, as far as reasonable time is concerned, very often the plea bargain only has an effect on the duration of the proceedings in front of the court and not the time it takes the case to be adjudicated.

Thus, in the Romanian legal system, before the actual judgment of the defendant, the case goes through a preliminary procedure aimed at verifying the legality of the initial investigation. This is mandatory. In these circumstances, even in cases that are not very complex, about half a year normally passes between the time when the case is referred to the court and the time when the issue of the defendant's guilt will be examined. There have been cases where such pre-trial proceedings have taken up to 3 years. To this time will be added the time needed to resolve the case.

In the case of a plea agreement, this preliminary procedure is not necessary. Also, the issue of whether to accept or reject the plea agreement will be resolved within one or a maximum of two court terms. In the context that this judgment can be appealed, in general, if a plea agreement is concluded, there will be a final solution in about half a year (from the moment the agreement is concluded).

Thus, the reluctance of prosecution authorities to use this procedure and the long periods of inactivity in the conduct of criminal proceedings, resulted in the plea agreement not having the effect the legislature expected in 2014. This is the reason why the plea agreement is not used as widely as in other countries. Its positive results in terms of the speeding the procedure can be observed in very few cases, as we have seen from the statistics presented above. These represent an extremely small percentage of the cases dealt with by Romanian judicial bodies. As far as the actual judgement is concerned, a number of positive results can indeed be observed in this respect. However, the low proportion of plea agreements and the type of cases concerned (generally not very complex cases) show that this institution does not have a significant impact on the functioning of the judicial system and does not reduce the courts' workload.

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