

SUBJECT: SPECIAL TRIALS, THEIR RELATION TO CRIMINAL LAW AND EVOLUTION IN OUR COUNTRY

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The meaning and significance of special trials

The necessity of establishing rules for a fast and fair trial in criminal proceedings have required from the institute of criminal procedural law the sanctioning a set of legal norms in the Criminal Procedures Code, based on the experience of democratic legislation in developed countries of Western European and other international norms in the field of freedom and universal human rights.

Such a request cannot be better accomplished than the obligation provided by the provision of special trials, where on one side we have the sanctioning of the right of the prosecution to seek a direct trial and on the other side the right of the accused to seek an accelerated trial. The establishment of special trials in Criminal Procedures Code is in itself a revolution in criminal procedural system, which marks the transition from "inquisitorial" in a clean system "accusatorial".

The substance of special trials is the expression of will of the parties in criminal proceedings. It is interesting to note from the outset that these types of trials are real guarantees that ultimately provide acceleration to defendants case in the proceedings against him when he repents and expresses his guilt not only at the stage of preliminary investigation, but also on the stage before the start of trial sessions, so when the investigation is terminated by the prosecutor and was sent to the court for the hearing.

Special trials have not shared any kind of so-called "special investigations and trials", which was a way of realizing political inclination to any political opponent in the former communist totalitarian state.

The fact that the law guarantees fast and real trial by special trials, in one of the forms of this judgment is a procedural right that can carry prosecutor as well as the defendant. On the other hand it clearly shows that through this kind of trial did not violate the principle of equality at all the parties in a criminal proceeding.

These new features in criminal procedures, which are distinctive features of the basics of special trials, mainly based in the French and Italian criminal procedure legislation, as well as international conventions on human rights. This serves that in the field of special trials to uphold at all times the specific legal basis of democratic nature in justice administration.

As mentioned, judgment of special trials includes two types of trials, specifically direct trial and the accelerated trial. Despite their legal notion that they are summarized as special trials, the procedural specification of the two categories mentioned, is due to the particularity of the

procedural Subject that takes the initiative to seek review of the criminal case through such a trial.

The importance of special trials compared with the usual trials lies in the advantages of this kind of trial and so are summarized as below:

- Efficiency of the whole trial process and minimization the financial costs to the defendant, in particular.
- Shorten the time of the investigation and trial time trial directly for expedited trial, increasing efficiency and quality in the delivery of justice.
- Avoiding delays in the process and creation of real guarantees to the rights and freedoms of the individual, through the creation of opportunities parties during the process, in order to choose the most advantageous form and of interest in the proceedings.

Special trials, despite of the importance outlined above, are mainly related to the efficiency and early conclusion of the trial. This does not affect the basis of the judgment, which are:

- The principle of respect for the independence and impartiality of the court
- The principle of the presumption of innocence and defense
- The principle of uninterrupted trial and the trial behind closed doors
- Publicity of the process and the principle of the use of the Albanian language.

However, there is a certain category of these principles which are violated by the application of specific trials such as the principle of orality (Oral Culture) and the principle of contradiction or other principles relating to disqualification of a judge who has issued a remand order (arrest) or disrespect to the obligations with regard to the deadlines of hearings.

The common interest of all parties in the special trials is the fast proceeding towards finalizing the criminal process. The mutual condition in special trials is that in each case is the court which decides whether to accept or not the request of the parties for the special trial proceedings.

COMPARATIVE OVERVIEW ON SPECIAL TRIALS

Although our legislation in the field of special trials refers to systems in European countries, there are differences in development of special trials. Thus, Italian legislation provides special trial proceedings by criminal decree and by agreement to the procedure. In this agreement the parties define the responsibilities and procedural safeguards that the special trial could cause. With regard to special trials, in these countries special preliminary hearing are developed, in the presence of the judge, the prosecutor and the defendant or his counsel, where there's quest for an accelerated trial and where the parties submit their reasons for such a judgment. By contrast, our legislation provides for the exercise of the right to request a summary trial proceeding by depositing a request with the court secretariat, or at the time of the opening of the hearing.

Further, in contrast to our legislation in the field of criminal procedure, in Italy the application of criminal decree and at the same time institute of agreement and agreement on the procedure for special trials.

While criminal proceedings in the Anglo Saxon system provides separate trial on the basis of the plea, the foundation of which is sanctioning the rules to be followed for legal prosecution in

connection with a plea from the defendant and the court gives guarantees for legal benefits. The agreement is measured by the court and this agreement is legally binding. Procedural law provides the right of parties to waive it. I think that the implementation of these procedural mechanisms in our criminal procedural legislation would be of interest in further ameliorating the special trial procedures.

DIRECT TRIAL

Direct trial is part of the special trials and the distinguishing feature is the fact that the only procedural subject who has the right to request such a trial is reserved exclusively and solely to the PROSECUTOR.

This type of judgment represents the right of the prosecutor to appear before the court within the legal deadline (48 hours) for evaluating the application of a detention measure and instantaneously to request the evaluation of the defendant's trial, the flagrant arrest, and admission of the defendant's charges within 15 days when the guilt is obvious. Also direct judgment can develop even when the prosecutor and the defendant jointly consent to do so, always with the receipt of such request by the court.

Thus, when the prosecutor within the specified legal deadline, requests the competent court for an assessment of his remand order or the flagrant arrest of a person, at the same time he can submit the request the court to review the merits of the case charged to the defendant, then seek direct trial on the basis of the evidence presented. The evaluation of the prosecutors' request is reviewed by the judicial body competent court, which decides along with the evaluation of the prohibition measure even if there are legal requirements for the development of direct trial. If these conditions exist, the panel of judges allows the proceedings of direct trial to continue on the merits, accordingly, to the prosecutor's request.

However, with regard to the direct judgment, a the question is raised: *What if the preliminary investigation the defendant pleads guilty after having procedural deadlines are exceeded summary trial, a prosecutor has the right to require before the court a direct trial?*

The Criminal Procedure Code specifies the precise way that after the expiry of 15 days of the preliminary investigation by the prosecutor, the latter has no right to request for direct trial. Therefore during the investigation, the prosecution and the defense counsel make it clear to the defendant that his guilty plea within the time limit of 15 days guarantees facility at trial, even though after this period these rights cannot be attributed.

The Criminal Procedure Code states that "the prosecutor may proceed directly to trial against the defendant, who during questioning, has affirmed his guilt. In this case the defendant summoned to appear within 15 days from the date of registration of the offense.

To this extend, another interesting question raises, *would a defendant apply the right to legal benefits, according to the Criminal Procedure Code when he repented and affirmed or assumes to the criminal offense, after 15 days?*

The answer to this question, in contrast to the prosecutor the right to seek direct trial after the expiry of the deadline, finds legal basis to carry out such a thing, but this time not through the direct trial proceedings directly but through trial by summary trial.

In cases where the defendant is free and the prosecutor determines that conditions exist to direct judgment, notifies the defendant that must appear in court within three days. Notification must be by a written order, of which is informed about the day, time and place of trial, the order of which he is obliged to submit to the competent judicial secretariat for proceedings.

The law does not accurately determine the deadline that requires the prosecutor to inform the defendant of the elected or appointed lawyer, but given the term stipulated in the clause stating that the prosecutor informs the defense counsel "without delay", it is understood that the notice should be initiated parallel at the same time as a defendant or for defense. In contrast to the development of trial could be jeopardized due to lack of necessary procedural subjects as parties in a criminal trial.

It should be borne in mind that the order of the prosecutor to notify the defendant and his counsel to appear at the direct trial, cannot deny them the right to appear before court with prior request, because for summary trials, the general rules of judicial evaluation are applied.

In these conditions, the defendant and his lawyer have the right to demand the court to three days' time to prepare for defense, a claim which must be accepted by the court, which must necessarily postpone the trial of the case, by setting another trial session, if this deadline has pas Otherwise would affect unbearable principles of fair and impartial trial.

In practice it may happen that the offense for which direct judgment is sought, be connected with the commission of other offenses for which the court may proceed with the usual proceedings due to lack of direct trial conditions or when other the trial is related to other parties.

In this case, the prosecutor considers that since the defendant has admitted the committing of the offenses and that as such it does not affect the process of further investigation, the defendant may require before the court the allocation of direct trial procedure and meanwhile for other allegations or other defendants to proceed with usual trial procedure.

In wanting to emphasize, that procedural exercise of the right of the prosecutor to seek direct trial does not constitute legal obstacle to the defendant and his counsel, that during trial with a direct procedure also to require a summary trial. This safeguard is sanctioned in Article 402 of the Criminal Procedure Code, where rules of direct trial are defined.

Referring to this provision, the argument is that when the trial has begun a direct trial based on the request of the prosecutor and the defendant requires a summary trial, immediately after the submission of this application, the court is obliged to take the expressed opinion of the prosecutor. If the prosecutor agrees, the court proceeds with a summary trial. Unless the prosecutor is expressed in favor of the request for a summary trial, the court shall proceed with the direct trial procedure, because otherwise the principle of equality of parties in a criminal process will be infringed, leading to the denial of the prosecutor's procedural right, as it is the right of direct judgment.

As a result, direct judgment should not be understood as a necessary simplification of procedures to be applied to a fair criminal trial, but in respect to all of the rules that characterize judicial

review of the matter, in accordance with all requirements of the procedural provisions of judgment case on its merits.

SUMMARY TRIAL

A summary trial is enshrined as an institute of the criminal law, by virtue of its entry into force in August the 1st, 1995 and marks a significant step in the context of the protection and respect of human rights.

The main features of the summary trial compared with other types of judgment can summarize:

- **Firstly**, it is a special type or special criminal judgment and
- **Secondly**, it is a kind of trial that is set in motion by the defendant or his counsel.

Summary judgment should be seen as a particular to the plane of judicial economy, as the speed of the criminal process is increased significantly. This is because unlike the usual trials, it avoids one of the longest stages of litigation, judicial review, by going directly to the "discussion on the issue."

The legal requirement of summary trial is the termination of the trial, when the issue can be resolved with the situation in which the acts are. On the basis of this criterion is the existence of the accusatorial system itself.

Summary trial has legal benefits from the defendant. These benefits relate primarily to the reduction of the prison sentence with a third of the sentence, fine reduction, reduction of the sentence to life imprisonment to 25 years in prison. Secondly, this type of judgment has material benefits, moral and family benefits, which are related to the length of the trial, the length of detention and other.

Elements of summary trial can be summarized in:

1. *The right to request a summary trial.*
2. *Evaluation of the prosecutor's case regarding the acceptance or rejection of the application.*
3. *Review and written decision by the court on the acceptance or not to the request for a summary trial on the basis of the acts administered in the case folder.*
4. *Completion of the development process and the decision on the case.*

1. The right to request a summary trial it can only be claimed by the defendant or his counsel, through a special power of attorney. It has in itself the expression of the will of the accused to a fair and differentiated trial, but always dictated by the situation in which the acts are filed, without being subjected to judicial review. From the formal point of view this requirement is provided in the Criminal Procedure Code.

The request for a summary trial may be made in writing and in such a case should be filed with the court secretariat, or orally at the hearing. In both cases we are dealing with a legitimate request, while the assessment of formalizing the assessment of the reliability and the possibility of judgment in favor of changing the written submission.

In any case, the submission of a request for a summary trial by defense counsel, the court proceeded with the consent of the defendant. This is a decisive move after application of this type of trial is directly linked to the fate of the defendant's interests.

The fundamental premise of the request for a summary trial is the submission of the request itself without judicial review. In an ongoing ordinary trial, the summary trial cannot be requested. When the precise moment of the request for a summary trial is to be a fragile moment and it requires precise interpretation. Here we must distinguish clearly and in a unified manner that the moment of opening of judicial review is not the same as the start of the trial. I am emphasizing this point, as it happens that these two moments unify and as a consequence the request for a

In countries from which we referred in drafting procedural provisions in the discussion, the Code of Criminal Procedure provides a special session prior to the submission of applications, and in this context the request for a summary trial. This means that the start of the trial does not coincide with the opening of the trial. To this context the defendant or his representative provided with a special power of attorney, may submit a request for a summary trial at the opening moment of trial, on the contrary, this option becomes null after starting judicial review.

2. Review of the request for a summary trial is made by the panel and the acceptance or the rejection of the request given by a specific decision against which appeal is allowed. But in practice often occurs in cases of misinterpretation of the procedural right to a summary trial.

There have been many cases, especially recently, when the court rejected the request for a summary trial by defense counsel's, arguing that the special power of attorney issued by the defendant to his lawyer, was not explicitly stated that the defendant empowered his lawyer to provide for the exercise of the right to request an expedited trial. Thus, in my opinion is a wrongful moment of interpretation, because at the time of the delivery of the power of attorney, the lawyer is entitled to represent the defendant at all stages of investigation and trial and on all procedural acts permitted by law, and to this extend, I think that the court should consider the request as legitimate, despite not being explicitly stated in the special power of attorney.

Where a court has rejected the defendant's request for a summary trial, the latter does not have the right to repeat such a request before the same panel.

Another delicate moment is the acceptance of a request to be tried by summary trial, which is conditioned by the fact that at the time of exercise of the right of this requirement, there is a presumption that the defendant has pleaded guilty. This is a wrong interpretation, as the acceptance of a request of a summary trial is related to the fact of receipt of the development process on the basis of acts filed. There is no legal restriction that although the defendant requested a summary trial or his representative to plead innocence, also there is no legal restrictions that prohibits the court after reviewing the evidence acts, to acquit the person who requested the summary trial.

The legal analysis of the summary trial is referred specifically to the role of the court and the request for summary trial.

The acceptance or not of the request by the panel is a procedure which inevitably requires the necessary time to study the defendant's file. The presentation of such is an obligation of the panel, not only in terms of formal evaluation of the application, but also the conclusions that must be reached regarding acts deposited and their influence of these acts in the establishing guilt or innocence of the defendant. In practice it often happens that the evaluation of the request

for a summary trial is made by the panel immediately, within the hearing of the judicial review, which in my opinion is wrong not only from the standpoint of ethical judgment.

The court, prior to take a decision whether to accept or refuse the request, must necessarily assess the state of acts filed and on the basis of this assessment to reach a decision based on the acts filed, without violating the administration of justice and upholding the respect for the rights and freedoms of the defendant.

3. The trial of defendants charged and receipt of the written decision.

Upon receipt of the request for a summary trial, the investigation file is transformed into a judicial file, and from this moment the prosecution may not provide new evidence to the case.

Upon receipt of the request for a summary trial, the panel evaluates the acts filed. The lack of debate at this stage of the discussion on the issue, from the formal standpoint increases the accountability of assessment such acts.

The decision give should refer to the Criminal Code, by classifying the offense under the provisions of this Code, in relation to the requirements of these provisions the extent of the punishment is assessed, and then given the penalty is deducted third, because the summary trial, or 25 years, when provision provides for life imprisonment. In summary trial, law has taken into account the fact that the defendant must necessarily participate in the trial session, not only for the fact that the defendant is an important subject in a criminal proceeding, but also for the fact that individualization of the penalty assignment, where the degree of anti-social behavior is to be taken into consideration. Just be hearing the circumstances of the offence, the court may decide he court may decide on the offence.

It is interesting the need to examine the request for summary trial by the Special Representative of *the defendant in absentia*, a phenomenon that has been a source of debate in the criminal literature, or else in the case law and where imminent unification of attitudes is so required.

Related to this, there is a demarcation of attitudes between criminal law experts, some of which categorically rule out accepting such a request, as far as the defendant is in absentia or avoiding investigation and trial. The rest claim that the request can be taken into consideration, but subject to explicit expression of the defendant's will in absentia through the power of attorney, that he is willing to be represented in absentia.

Acknowledgement of the request for a summary trial in a case is based on:

Firstly the application is made by a special counsel pursuant to Article 403/1 of the Criminal Procedure Code, stating conjunction "or" (... or special counsel), according to the will of the defendant, materialized in special act of representation, legalized before a notary.

Secondly, the other issue which allows the recognition of the request for a summary trial has to do with the fact that the defendant is aware of the acts, but importantly the state of the acts filed, as they may determine the outcome of the trial, according to Article 404/1 of the Criminal Procedure Code. The state of the acts filed, does not influence the presence or not of the defendant.

Thirdly, the absence of the defendant in the process is a direct expression of the defendant's will to a summary trial via his special representative. I think the expression of will on the part of the defendant through the act of representation, supersedes the requirements of Article 405/1 which deals with his presence at the hearing, stating that "*the hearing is held with the participation of the prosecutor, the defendant and his counsel..*". This results from the general principles of our criminal procedural legislation, which uphold the principles of fundamental freedoms and human rights, and not to hinder the development of trials in absentia. No obstacle is found in obligating the defendant to participate in the hearing.

On the other hand, Article 352/1 of Criminal Procedure Code provides for the development of a trial in absentia as when the defendant expressly requires it, and when "... consent ...", is given. So the express of consent to the hearing in absentia, does not limit his legal right nor is the expression of his will to be represented the special representative.

The case law of the Court of Appeal even though has argued the dismissal of appeal for summary trials in the same manner as the court of first instance, the final determination of the sentence, in contrast to the first instance court has reduced sentence 1/3 of its effect on criminal procedural law.

It is interesting and I think is interesting to treat a legal situation, which occurs in practice when the court alters the legal qualification of the offense charged to the defendant, from an indictable offence to a more serious offence, when the court accepted the summary trial procedure is accepted.

Thus, the defendant is being tried in a summary trial procedure for the offence of "robbery with violence". The District Court after making a change of legal qualification of the offense, decided among other, that the defendant is guilty of the criminal offense of "robbery resulting in death", as an accessory to theft in attempt, and sentenced him to 21 years imprisonment.

After recourse to the appellate court, the latter decided to uphold the decision of the district court, and so did the Criminal Chamber of the Supreme Court. The Constitutional Court during the analysis conducted with regard to the issue considers that the constitutional principle of the right to be informed in a criminal process is infringed, as well as other principles like the equality of arms, the principle on contradiction which are closely related to the protection of the defendant's defense. The qualification of the offence must be considered a key element of the process, on which the prosecutor's case is based for summary trial processes.

Legal analysis of the above case law, in connection with the summary trial consists of two directions:

Firstly, in terms of interpretation under Criminal Procedure Code, the summary trial's significance stands for the economy of the process, resulting in shortening of procedures, increasing the speed and efficiency of the high court to administer justice, to the benefit of the defendant in the reduction of one third of the penalty and the non-application of life imprisonment penalties. But at the time of the decision on whether or not to grant the request for a summary trial, the court should be guided not only by the above facilities, but in particular should take into account the principle of effective administration of justice, which means that

court accepts the request when it is confident about the outcome of the case based in the existing documentation without the need for normal judicial process.

Secondly, in terms of constitutional interpretation, the court in its jurisprudence, considers the fact that once the court has given judgment of conviction has accepted summary trial, has taken into consideration that the defendant has voluntarily waived, for legal reasons, some fundamental aspects of the right to a fair legal process, in return for benefits that the law recognizes for such a case. This is accomplished by being acquainted with the legal qualification of the offense, or otherwise in relation to the charges filed by the prosecutor, but also by having a minimum guarantees in this regard. To bring this clearly, the defendant accepts to be tried by special trial procedure, as he's aware of the evidence against him and the benefit of the requalification of the legal offence, and taking into account the fact that the facilities acknowledged by law, he waived from a real and effective protection and accepted the summary trial . But in other circumstances which may change the application of rules to the detriment of the defendant, after the process has begun, the defendant should be given the opportunity to predetermine the deadline associated with the position to be held for trial and change of strategy of defense in terms of new legal qualification.

On the other side, the constitutional jurisprudence has set standards such that changing the legal qualification of the criminal offense may be allowed by the courts of jurisdiction only over ordinary judgment and legal change in the summary trial process is to the defendant as it falls contrary to the very purpose of this type of trial. The right of the individual to immediately become aware of the nature and content of the charge is a constitutional guaranteed by the Constitution not only in Albania, but also by the jurisprudence of the European Court of Human Rights.

In these circumstances the Constitutional Court could not have acted otherwise as to accept of the request of the defendant and dismissing decisions of the district court, appeal court and the Criminal Chamber of the Supreme Court.

Given the fact that the courts in practice have held different positions and therefore have led to wrong decisions, the Criminal Chamber of the Supreme Court has unified the case law on this issue.

The Unification of the Criminal Chamber of the Supreme Court consists on the unification of all the positions before the courts in the territory of the Republic of Albania with regard to:

1. Summary trial should realize unequivocally goal to cut back the legal process and, increasing the speed and efficiency of the trial and ensure the benefits of the defendant as provided by law. But in any case this benefit should not go to the detriment of justice.
2. The summary trial may not be required once the review began with the usual trial and no request for a summary trial shall be accepted. The latter is possible only after changes in the Criminal Procedure Code in 2002. Article 404/2 of the Criminal Procedure Code (repealed) established the legal right stating: "The rejected application can be resubmitted until the final conclusions have not been made by the parties ...".

3. 3. When a defendant in litigation is being accused for more than one offence, for one or more of them may be allowed to proceed with a summary trial procedure and the rest of the offences via a normal hearing. In any case there is a necessity to separate the case which will be tried with a summary procedure without surpassing the processes of other offences.
4. In the same process and the same judicial body, it can never operate with one or several defendants subject to summary trial and the others subjected to the ordinary trial.
5. In such a case it is necessary to split the case between those who have requested to be tried by summary trial and between those who are subject to the ordinary hearing, individually. It is wrong to perceive that summary trial procedure is considered only as an efficient tool to benefit the accused and until this benefit may come, no matter the type judgment held. A trial under the summary trial procedure may not proceed with ordinary judicial procedure, as this trial lacks stages of obtaining evidence and the admissibility of such evidence
6. In exercising the right to a summary trial, it may happen for the parties to present claims of absolute or relative invalidity of acts filed, and seek a declaration of the invalidity. In this case, the court cannot allow it and proceeds with summary trial. The court before operating should rule out the opportunity of summary trial and proceed with ordinary trial.
7. In proceedings for a summary trial, the court should not depart from the understanding or consensus of the prosecutor to the case, which in turn has all legal procedural rights to appeal that decision final.

It is of particular interest the analysis for the case when in a trial, for one or more defendants a summary trial takes place, and for the same issue but for other the defendants are being preceded with ordinary hearing procedures.

In this case we'll have a misbalance with regard to the partition of decisions for the same case which requires a unified legal solution.

In my opinion the process of defendants charged with ordinary judgment should be suspended pending the outcome of the decision taken for the defendant tried in a summary trial. The process against defendants in an ordinary trial should proceed only after the decision has been reached by the High Court. And only after the court decision becomes final against defendants with ordinary trial.

Besides as discussed above, in practice there are other legal situations regarding summary trials. I think that the court should treat the matter case by case in the spirit of the rules and general principles, of our criminal procedure legislation and constitutional law, giving absolute priority to the freedoms and human rights, which underlies our system of criminal law.

CONCLUSIONS

On this subject I have tried to treat one of the most innovative institutes of criminal procedure, such as special trial. I have tried to briefly define, so much of this institute of criminal procedural law, as one of the expressions of democratization of our criminal procedural

legislation. I tried to analyze some of the most complex legal situations that occurred in practice, and compare these decisions with the Criminal Chambers of the Supreme o with the decisions Constitutional Court and to express my opinions about rational legal solutions.

During the thesis of the article I have referred to some concrete decisions of the Court of Tirana District Court, from the case law of this court.

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