

THE AGREEMENT ON THE CONDITIONS OF ADMISSION OF GUILT AND SENTENCING: A THEORETICAL AND PRACTICAL PERSPECTIVE		Legal Studies
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Abstract		
<p>The institution of the agreement on the conditions of admission of guilt and determination of punishment is a relatively new mechanism, introduced for the first time in the Albanian Criminal Procedure Code in 2017 as part of the essential changes brought by justice reform. This procedural institute is regulated in articles 406/d–406/f of the Code, which set out in detail the procedural rules that must be observed. The process begins with the agreement reached between the prosecutor and the defendant and continues until the court hearing of the prosecutor's request for approval. The analysis of these provisions from a theoretical perspective provides insight into the real value of these procedural innovations. Equally important is the examination of judicial practice, which highlights how this institute has been implemented in practice. This study aims to be comprehensive and professional, presenting findings, reflections, recommendations, suggestions, and possible solutions to identified problems, all supported by logical and legal arguments.</p>		

INTRODUCTION

Judgment upon agreement is a procedural institution codified in Section IV, Chapter IV of the Albanian Criminal Procedure Code (Criminal Procedure Code of the Republic of Albania, 1995), specifically articles 406/d through 406/f (Amendments of Criminal Procedure Code of the Republic of Albania, 2017). This institution was introduced by Law No. 35, dated March 30, 2017, which amended nearly two-thirds of the Code and, among other reforms, incorporated this institution as a procedural mechanism. The amendments entered into force on August 1, 2017, and have since been applied by legal practitioners. Subsequently, in March 2021, Law No. 41, dated March 23, 2021, modified the procedure, particularly regarding the manner in which courts dispose of requests presented before the judge of the preliminary hearing (Amendments of Criminal Procedure Code of the Republic of Albania, 2021).

Although these provisions have been implemented in judicial practice, and their application has revealed both consolidation and challenges, legal practitioners have encountered procedural obstacles. On the other hand, scholars, theoreticians, researchers, professors, and law students have debated the scope and interpretation of the provisions. The absence of consolidated jurisprudence from the Supreme Court, including interpretative or unifying decisions of the Criminal College, has further complicated the consistent application of plea agreements in criminal proceedings (Dervishi, 2020; Krasniqi, 2021).

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In this perspective, referring to the interpretations of these provisions, the illustration with judicial practice, as well as the treatment or analysis of the various problems that are evidenced during their implementation, it is considered appropriate that every issue that belongs to this procedural institution should be treated first in the form of a fragmented study in this scientific conference and a little later in the form of a proper study or monography.

It should also be highlighted the fact that even though it has been about 9 years since the criminal procedural institute of judgement upon agreement came into force, the developments or progress of judicial practice have evidenced several problems found during their implementation. As a result, they pose the need for solutions by setting the best practices for similar criminal cases, or by legal amendments of the Criminal Procedure Code. Seen from this point of view, in function of these two types of findings, it can be said without hesitation that doctrinal treatments play another, not less important contribution in terms of the analysis or legal treatment of these problems, whether in the form of various scientific studies, or even in the form of works, studies, and monographies. This in the conditions when all these, in relation to this procedural institute, are few in some cases, or are almost absent in other cases.

Given this gap, the present study seeks to make a modest contribution to the academic discourse on judgment upon agreement. Its content may serve as a foundation for juridical discussions among practitioners and scholars and may inspire more extensive and in-depth studies in the field.

METHODS

The method used in this study is a qualitative legal research method, combining doctrinal analysis with case-based examination of judicial practice.

In the beginning, the study presents the institute of the agreement on the conditions of admission of guilt and determination of punishment within the historical development of Albanian criminal procedural law referring to the legal framework of years 1925, 1928, 1956, 1980, and 1995. From this historical overview, it is noted that this institute first appeared in 2017 in the

Criminal Procedure Code, as part of justice reform

The study further conducts a doctrinal analysis, that consists in the examination of the provisions of Albanian Criminal Procedure Code that foresees the agreement on the conditions of admission of guilt and determination of punishment (articles 406/d–406/f). It interprets these provisions, focusing on the meaning and the scope of this legal institution, and the procedures that the prosecution office and the court have to follow. In addition to the theoretical analysis, this study also deals with the comparison of the Albanian legal basis with the provisions that provide

for this legal institution in other countries, such as Germany, Italy, and the United States of America.

At the same time, the study evaluates practical implementation of the respective provisions of the Albanian Criminal Procedure Code by prosecution offices and courts in real cases. It identifies the problems encountered in practice, different interpretations of procedural provisions, different positions held by judicial bodies, as well as the damage caused by the failure to correctly implement these provisions. Findings are drawn from case law trends across different judicial districts.

RESULTS

Historical and comparative overview of Judgement upon agreement

A. Historical overview

If we examine the history of criminal procedural laws in Albania, we find no evidence that agreements on the conditions of admission of guilt and the determination of punishment were provided as procedural institutions in these laws. Beginning with the earliest law, the Kanun of Zhuri, and continuing through later criminal procedural laws, such as those of the Republic (1925–1928), the Monarchy (1928–1939), and the Criminal Procedure Codes of 1956 and 1980, such an institution was not explicitly foreseen in their content. Similarly, the Criminal Procedure Code of 1995, at the time of its initial entry into force, did not provide for this procedural institute. As noted above, this institution was introduced for the first time in the Criminal Procedure Code in 2017.

An analysis of these laws and codes reveals that, while they contained provisions reflecting humanistic elements and offered certain legal benefits to defendants, they did not include any dispositions regarding agreements on the admission of guilt and the determination of punishment. Specifically, there were no provisions establishing agreements between the prosecutor, on one hand, and the defendant and defense counsel, on the other, involving unconditional acceptance of guilt followed by negotiation of the punishment. From this perspective, the 2017 amendments to the Criminal Procedure Code represent a procedural innovation, particularly in introducing the institute of judgment upon agreement.

On the other hand, comparative legal analysis shows that judgment upon agreement is recognized as a special institute of criminal procedural law in the legislations of various states. Examining these criminal procedural frameworks allows us to identify both commonalities and distinctive elements across jurisdictions.

B. Comparative overview

In examining German federal criminal procedural legislation, we find that it explicitly provides for the institution of judgment upon agreement (*Verständigung im Strafverfahren*). Specifically, the German Criminal Procedure Code (*Strafprozessordnung*, StPO) regulates this mechanism in paragraph 257c StPO, which establishes the legal framework for agreements between the court and the parties involved in a trial. Interpreted literally, the provision confirms that the German legal system recognizes judgment upon agreement as a procedural institute.

In German criminal procedure, such agreements allow the court and the parties to reach consensus on the further course and outcome of the trial. The most common application involves agreements on the expected punishment in exchange for a confession of guilt (Roxin & Schünemann, 2017). The public prosecution and the court are often interested in such agreement, because it reduces the costs of the criminal process and the duration of the main hearing. Due to this procedure, the burden of the courts is avoided also. On the side of the defendant, he has some advantages, because he gains certainty and significantly reduces the punishment. In addition, the defendant can save himself long main hearing, which can also be very stressful for him sometimes. Another positive aspect of this procedural institute is on behalf of victim protection, avoiding the questioning of the victim by the court and promoting understanding between the victim and the defendant.

When comparing German legislation with Albanian criminal procedure, it is evident that many of the positive elements of judgment upon agreement have been incorporated into Albania's Criminal Procedure Code. These include reduced punishment for defendants, shortened investigation and trial procedures, decreased caseloads for prosecutors and judges, and the elimination of the need to examine every piece of evidence individually, including questioning of defendants or victims.

The Italian Criminal Procedure Code explicitly provides for judgment upon agreement (*patteggiamento*) as a special procedural institution of the trial, specifically regulated in articles 444–448 of the Code of Criminal Procedure (*Codice di Procedura Penale*). In substance, the Italian legislation aligns closely with the provisions of German criminal procedural law, particularly in recognizing negotiated agreements as a legitimate means of concluding criminal proceedings (Grande, 2000).

The innovations introduced by this type of agreement are largely consistent across jurisdictions that foresee judgment upon agreement.

In addition to the legislations of the states that are part of the continental system (civil law), the judgement upon agreement is included in the legislations of the states that belong to the common law system also. A classic case in relation to these legislations is that of the United States of America. In many U.S. states, plea agreements are codified in procedural laws and reinforced

through judicial precedents. Statistical data consistently show that the majority of criminal cases in the United States are resolved through plea agreements rather than full trials, making this approach a consolidated judicial practice (Bibas, 2004; Alschuler, 1979).

Despite its widespread use, the legal conditions for reaching an agreement differ across jurisdictions, referring to the legal conditions for reaching an agreement, we must highlight two elements of American Law in comparison with other legislations. Thus, the agreement, even according to American legislation, is a voluntary act reached between two parties, who are called procedural subjects. Specifically, on one side it is the public prosecutor who raises or formulates the charge and defends it before the court, while on the other side stands the defendant and his chosen or appointed defense lawyer. It consists in the voluntary acceptance of the charge, completely and unconditionally. On the other hand, the prosecutor negotiates and agrees on the punishment, its type and measure. After that, the agreement is signed by the procedural subjects who are obligated by law to do that. At the same time, as in all other legislations and in the American one, the positive effects of an agreement are the same as those we have reflected and analyzed above.

However, the essential distinction between American and Albanian (or broader civil law) legislation lies in the factual and technical-legal conditions required to reach such agreements. Each jurisdiction specifies its own procedural requirements, and these differences constitute the fundamental distinguishing element between civil law and common law approaches to judgment upon agreement.

DISCUSSION

The Albanian Criminal Procedure Code (Criminal Procedure Code of Republic of Albania, 1995/2017) regulates the procedural rules of judgment upon agreement in articles 406/d–406/f. The focus in this study is on the most significant findings related to this institute, both in terms of legal predictability and practical applicability. The analysis therefore considers not only the theoretical framework but also the developments in judicial practice regarding the implementation of judgment upon agreement.

The first notable finding concerns the procedural moment when the parties have the right to submit a request to the court for approval of an agreement on the admission of guilt and determination of punishment. According to article 355 of the Criminal Procedure Code, such a request may be submitted from the moment the suspect's name is registered in the criminal proceedings until the beginning of judicial review. During this period of investigation and trial, the parties may exercise this right either before the judge of the preliminary session or before the judge of judicial review, referred to articles 332/c/5 and 406/d/1 of Criminal Procedure Code.

Initially, referred to article 332/dh/1/b of Criminal Procedure Code, the preliminary session judge acted merely as an administrator of such requests, without authority to review or decide

upon them. However, approximately four years later, legislative amendments to the Criminal Procedure Code expanded the role of the preliminary session judge. Under these changes, the judge first exercises the functions of a preliminary session judge by administering the request and subsequently assumes the attributes of a judicial review judge by examining the legality of the request and issuing a decision. These reforms have had positive effects, enhancing efficiency and consistency in judicial practice (Beci, 2018; Belishta, 2022).

Another important condition established by the Code concerns the margin of punishment applicable to offenses subject to judgment upon agreement. The law requires that the offense carry a maximum sentence of seven years' imprisonment, with the sole exception of justice collaborators, for whom no maximum limit applies, referred to article 406/d/2 of the Criminal Procedure Code. Judicial practice, however, has raised questions about the criteria underlying this legislative threshold. Case law demonstrates that agreements may be reached even beyond this statutory limit, provided that the disclosure of the truth regarding guilt is not compromised (Elezi & Anastasi, 2017).

According to the relevant provisions of the Albanian Criminal Procedure Code, agreements must be formal and must contain a clearly defined set of legal elements. These include: identification of the criminal act, the defendant's unconditional admission of guilt, the type and extent of the principal criminal sanction, any supplementary sanctions and the manner of their execution, rulings on material evidence and items connected to the criminal offense, confiscation of the means and proceeds of the crime, determination of procedural expenses, and—where applicable—the civil plaintiff's written consent regarding compensation for damages. The agreement must also bear the signatures of the parties and the defense lawyer, referred to article 406/d/3 of the Criminal Procedure Code.

Referring to these nominated elements in the code regarding the content of the agreement and their literal interpretation, it is found that there is room for legal adjustments or updates, in certain parts of the Criminal Procedure Code. For instance, when the legislator specifies the manner of execution of both principal and supplementary punishments, greater precision is required with respect to the main sanction. This is because execution methods differ depending on the nature of the punishment. If the principal sanction is a fine, execution relates to deadlines and installment payments. Conversely, if the sanction is imprisonment, execution concerns alternatives to incarceration, as regulated by articles 58–65/a of the Criminal Code (Republic of Albania, 1995/2017). Supplementary sanctions, however, are not subject to agreement; their execution begins according to the type of sanction imposed.

Additionally, legislative reform is needed regarding the nomination of material evidence. Current provisions should be expanded to explicitly include items related to the criminal offense, as well as tools and products derived from the offense that are subject to confiscation. All these elements, items connected to the crime, means used to commit it, and products resulting from it,

can be grouped under the legal terminology of material evidence (Elezi & Anastasi, 2017; Beci, 2018).

Article 406/d, point 4 of the Albanian Criminal Procedure Code establishes the obligation of the prosecutor to notify the victim or the victim's heirs when their identity or place of residence is known. It should be noted that the requirement to notify victims or their heirs was introduced through the legislative amendments of 2017, which aimed to harmonize Albanian criminal procedure with broader European recommendations and directives on victims' rights. At the outset of these amendments, prosecutors' offices and courts encountered difficulties in determining which victims or heirs should be notified and in what order. Nowadays it can be said that these difficulties have been overcome in a certain way. Thus, judicial practice has accepted the notification of the victim, or the heirs of the victim, when the latter has passed away, only if it results from the acts of the proceedings that their identity or their place of residence are known. If these two elements are not present, the prosecuting body does not have the obligation to notify them, thus not causing delays in the investigation or trial. As for the fact that whose heir should be notified, this has already been almost consolidated. According to the progress of judicial practice so far, the heir who has a known identity and a known place of residence must be notified or summoned, regardless of whose order of legal inheritance it belongs (Civil Code of Republic of Albania, 1994).

Another important finding concerns the necessary presence of the defense lawyer during negotiations between the prosecutor and the defendant to reach an agreement. Referring to the developments of judicial practice, it is established that the presence of the defense lawyer in the negotiations as well as in the phase of reaching the agreement should not be merely and only formal. This is because the legislator has seen the defense lawyer as a central figure in the agreement that *de facto* protects the defendant's interests. So, being a person with legal expertise, he must guarantee an effective defense to the defendant, explaining legally every element of the agreement. In fact, referring to the cases researched, it turns out that the defense lawyer didn't always play his role during the agreement process. It should be emphasized that the defense lawyer's involvement is a legal obligation, regardless of whether the lawyer is chosen by the defendant or appointed by the court (Elezi & Anastasi, 2017).

During the submission of the request for approval of the agreement, the judge of the preliminary session or the judge of judicial review has a specific obligation to directly ask the defendant five fundamental questions, whose presence is mandatory, referred to article 406/e/4 of Criminal Procedure Code. The judge must ascertain whether the defendant: (1) signed the agreement voluntarily; (2) was represented by a defense lawyer during negotiations and signing; (3) knows the content of the agreement; (4) understands its consequences; and (5) agrees to its implementation (Criminal Code of Republic of Albania, 2017). These are actually not and should not be formal questions. This is because the legislator has recognized the right of the judge as an arbitrator, to verify the legality of the content of the agreement on the conditions of admission of

guilt and setting punishment. In this perspective, by mandatorily asking these questions, the judge evaluates the legality of the agreement, ascertaining the fact that the agreement was concluded in accordance with the law and that the defendant was involved in the entire procedure of negotiations and conclusion of the agreement.

Within the framework of examining a request for agreement approval, the court may refuse the agreement if it identifies one of the factual elements expressly provided by law, referred to article 406/ë/1 of Criminal Procedure Code. In such circumstances, the defendant retains the right to withdraw from the agreement, withholding consent to its approval. This withdrawal may occur at any point from the moment of signature until the court's examination, prior to the issuance of a judicial decision.

The court may also refuse the agreement if it is established that the defendant's will was flawed, that is, if the agreement was not entered into freely and without undue influence. Another ground for refusal, explicitly provided by the legislator, arises when the defendant fails to appear at the hearing without legitimate justification, despite having been duly summoned. Given that the defendant's participation in this session is mandatory, illegitimate absence constitutes a valid reason for refusal. In such cases, the legislator has rightly foreseen that the agreement cannot proceed, as the defendant's absence indirectly demonstrates a lack of interest in resolving the criminal case through this procedural mechanism (Beci, 2018; Elezi & Anastasi, 2017).

The legislator has also identified three additional grounds for refusal of an agreement. First, the court must reject the agreement if, during its examination, the evidence contained in the investigation file contradicts the defendant's admission of guilt. This provision prevents the avoidance of liability for third parties by ensuring that guilt cannot be accepted solely by the defendant when the evidence points otherwise.

Second, refusal is warranted when the legal qualification of the criminal offense or the circumstances of its commission are incorrect. It may happen in cases of the accomplice of the criminal offense, or the commission of a criminal offense in more than one episode, which are qualifying circumstances and directly affect the legal qualification of the criminal offense. Such circumstances directly affect the legal qualification of the offense. For this reason, the legislator explicitly refers to the "circumstances of the commission of the criminal offense," meaning qualifying circumstances that shape the legal definition of the offense, rather than aggravating or mitigating circumstances, which do not alter its legal qualification (Elezi & Anastasi, 2017).

Third, the legislator provides that the agreement must be refused if the punishment determined is inappropriate in relation to the offense committed and the character of the defendant. This requirement reflects the fundamental purpose of the agreement, which consists of two essential elements: the admission of guilt and the determination of the sanction. In negotiations, the prosecutor and the defendant, assisted by defense counsel, must ensure that the punishment is suitable and proportionate. While the prosecutor considers all relevant

circumstances in proposing the sentence, these considerations must not exceed the principle of appropriateness. If the punishment is disguised or distorted through the agreement, the court is obliged to refuse its approval. In this way, judicial oversight ensures that agreements remain consistent with the law and the objectives of criminal justice (Beci, 2018).

A final case identified by the legislator as a ground for refusing an agreement concerns the existence of one of the legal bases for non-initiation of proceedings or dismissal of the charge or case. Unlike the other refusal grounds, where the legislator requires the court to reject the agreement and return the documents to the prosecutor without permitting the submission of a new request, in this situation the law grants the court the authority to dismiss the case altogether.

Considering all the legal grounds under which an agreement on the admission of guilt and determination of punishment may be approved, refused, or dismissed, judicial practice in Albania has proven to be both rich and diverse. All the courts of the first instance have examined cases on judgement upon agreement. As a result, the decision-making has been different, based on different reasons and legal reasonings. This has caused that the institution of the agreement on the conditions of admission of guilt and setting punishment has become increasingly widespread and is consolidated in the Albanian judicial practice.

A positive element that emerges in relation to the agreement is the absence of an appeal against the court's decision to either approve or refuse it, referred to article 406/f of Criminal Procedure Code. The legislator deliberately excluded the possibility of appeal in these two scenarios, thereby ensuring a fair, legal, and objective resolution. This ensures the avoidance of delays in the judicial process.

If the agreement is approved, it becomes immediately executable. Conversely, if it is not approved, the trial concludes at the first-instance level, and the prosecutor must proceed with a full judicial review of the case. The only exception to this rule concerns the dismissal of the case. In such circumstances, the legislator has rightly provided the prosecutor with the right to appeal, subject to the general deadlines for appeals, specifically, within 15 days from the day following the communication of the decision. In this instance, appellate trial procedures are respected, ensuring consistency with broader principles of due process (Beci, 2018; Elezi & Anastasi, 2017).

Through these provisions, it becomes clear how the legislator conceived the judicial examination of agreements: limiting appeals to dismissal decisions while ensuring efficiency, legal certainty, and procedural fairness in the approval or refusal of agreements.

CONCLUSIONS

After approximately nine years of implementation of the institute of judgment upon agreement, several conclusions can be drawn regarding its importance and effects. Depending on the purpose of this analysis, we may highlight certain key findings as conclusions.

First: The institution of judgment upon agreement, apart from being an innovation in the entire history of Albanian criminal procedural law, has produced several positive effects on the progress and development of judicial practice. It has been recognized not only by scholars of law in general, and of criminal and procedural law in particular, but also by legal practitioners as a necessary institution to be established and applied. Consequently, this institute holds significant theoretical and practical importance. Moreover, its relevance is closely connected to the legal, structural, and human resource developments that the Albanian justice system has undergone in recent years. For these reasons, the importance of this institute appears both current and immediate in the context of criminal court cases.

Second: Judgment upon agreement has simplified the procedures for closing or ending a criminal case. Referring to the criminal procedural provisions that regulate this institute, the rules that formalize, finalize, and approve the agreement for the admission of guilt and the determination of punishment are simpler, clearly defined, and free of ambiguity. They provide a legally structured way of concluding a criminal case, in accordance with the contours established by the Criminal Procedure Code. Through this mechanism, criminal matters can be resolved significantly faster than cases that follow the normal procedures of investigation and trial.

Third: The time required to reach an agreement and obtain its approval by the court is shorter than the time needed by the prosecution and the court investigates and adjudicates a criminal case that is not resolved by agreement. The Criminal Procedure Code allows the agreement to be reached at any stage of the investigation. Even when concluded at the beginning of the criminal investigation, the agreement must comply with the legal conditions prescribed by law. This substantially reduces investigation time. Similarly, the time required for judicial review of the prosecutor's request for approval of the agreement is considerably shorter compared to the deadlines for reviewing a criminal case under normal trial procedures. The Code itself sets a 30-day deadline for the submission of the request for its examination. When compared to the longer trial periods of ordinary criminal cases, this constitutes a much faster resolution. Thus, it can be concluded that judgment upon agreement reduces the overall duration of criminal proceedings.

Fourth: Judgment upon agreement also reduces procedural complexity and economic costs for both the prosecutor's office and the court. Simplified procedures in the investigative and judicial phases automatically lead to lower costs for investigations, trials, and the parties involved. This is due to fewer procedural actions, fewer hearings, and consequently reduced expenses for all subjects. Furthermore, since the law does not allow an appeal against the judge's decision regarding the review of the agreement, except in cases where the judge dismisses the case-costs

are further minimized. The review of the agreement is the exclusive competence of the judge of first instance, and only dismissal decisions may be appealed. From this perspective, the absence of appeal constitutes another positive aspect of this type of judgment.

As a result of the findings and conclusions reached in this study, several suggestions and recommendations can be made:

- Greater recognition and awareness of the institute of judgment upon agreement: This recommendation is for all legal scholars or theorists, primarily, but more for the practitioners, who directly or indirectly apply this institute of criminal procedural law. Such a recommendation can be implemented through trainings, seminars, symposiums or workshops with such a specific theme, organized at the regional or national level.

- Broad participation in discussion forums: Professors, researchers of criminal procedural law, judges, prosecutors, judicial police officers, and practicing lawyers should be involved in these discussions. The School of Magistrates can play a particularly important role by incorporating this topic into its continuous training programs. The primary purpose of such discussions is to foster legal debate and the exchange of positive experiences, thereby ensuring the efficient implementation of this institute in judicial practice.

- Inclusion in academic curricula: Being relatively a new institute and that is increasingly being implemented in practice, the institute of judgement by agreement should be provided as a special mini module within the curricula of the criminal procedure course, by different public or private faculties of justice. Thus, the future generations of law students will have better knowledge of this procedural institute combining theoretical and practical teaching methods.

- Active participation in scientific research: Jurists, researchers, or actors of judicial practice should participate in various scientific, regional, national or international conferences referring to this type of procedural institute. In these activities, the participants may discuss on innovations, developments of judicial practice, difficulties or problems encountered. On the other hand, the publication of scientific research articles, studies and monographs represent an added value in this direction.

- Consideration of further legal amendments: Since its introduction approximately six years ago, the institute has undergone only one amendment, in 2021, concerning the administration and review of requests for judgment upon agreement before the preliminary hearing judge. These changes were driven by law's needs. Of course, if a real professional study is done in this direction, this procedural institute may also need amendments or other legal changes, referring to the problems that have been found in judicial practice. Working groups established for this purpose must include highly qualified experts in both doctrinal and practical aspects of law. A balanced composition of researchers and practitioners ensures that reforms produce sustainable and high-quality results. Identifying problems and subjecting them to extensive professional discussion would lead to effective and lasting legal amendments. Such recommendations require a certain maturity period, as the solutions they provide are essential and definitive.

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