



Summary Judgment

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Abstract

The summary judgment is provided for in Articles 403 to 406 of the Code of Criminal Procedure, as one of the alternative requirements for trial, unlike ordinary judgment. This judgment is otherwise called a special trial where it essentially entails the admission of floors collected during the preliminary investigation phase and avoids taking evidence at a hearing and the related debate.

So, this judgment avoids the stage of judicial inquiry, in contrast to the ordinary trial and at this stage the stage of obtaining evidence and demanding its invalidity is missing. 1 A summary judgment is of value to the judicial economy because it simplifies and shortens procedures, increases the speed and effectiveness of adjudication and results in the defendant reducing his or her sentence by 1/3. 2 This kind of trial was first foreseen in Albania in 1995 differently from the direct trial provided earlier in Albanian criminal procedural legislation. The request for summary judgment is filed by the defendant or defense counsel represented by a special act, since according to Article 403 of the Code of Criminal Procedure we clearly interpret that this claim is closely related to the defendant. Therefore, according to the above doctrine 3, the defense counsel for the defendant to be entitled to file this claim must have been provided with an act of representation expressly affirming the claim for summary judgment.

Keywords: Summary judgment, preliminary hearing, sentence, preliminary investigations

Introduction

The summary judgment is provided for in Articles 403 to 406 of the Code of Criminal Procedure, as one of the alternative requirements for trial, unlike ordinary judgment. This judgment is otherwise called a special trial where it essentially entails the admission of floors collected during the preliminary investigation phase and avoids taking evidence at a hearing and the related debate.

So, this judgment avoids the stage of judicial inquiry, in contrast to the ordinary trial and at this stage the stage of obtaining evidence and demanding its invalidity is missing [1]. A summary judgment is of value to the judicial economy because it simplifies and shortens procedures, increases the speed and effectiveness of adjudication and results in the defendant reducing his or her sentence by 1/3 [2]. This kind of trial was first foreseen in Albania in 1995 differently from the direct trial provided earlier in Albanian criminal procedural legislation. The request for summary judgment is filed by the defendant or defense counsel represented by a special act, since according to Article 403 of the Code of Criminal Procedure we clearly interpret that this claim is closely related to the defendant. Therefore, according to the above doctrine [3], the defense counsel for the defendant to be entitled to file this claim must have been provided with an act of representation expressly affirming the claim for summary judgment.

The Constitutional Court also holds such a position, explaining that although the defendant is not present and

will not be represented by his defense counsel in this type of proceeding if the latter is provided with a special representation act [4] Subjects who may require summary judgment must first have the ability to file the claim and second the defendant must have the age of criminal responsibility [5]. This is due to the fact that the lack of mental capacity to understand the advantages and disadvantages of the special judgment where certain rights are waived and consequently would invalidate the above claim. On the other hand, we have to do with the age of the defendant, especially when the defendant is a minor. In this case the application must be made by "his or her legal representative and the parents or guardians". The request for summary judgment by the defendant or his / her defence counsel by act of representation must be filed at the preliminary hearing or in the court hearing when proceeding pursuant to Article 400 paragraph 3 of Article 406 / d of this Code with a consequence of non-acceptance. Within 5 days from the submission of the request, the judge of the preliminary hearing shall set the date of the hearing [6]. The hearing is held behind closed doors with the necessary participation of the prosecutor and the defendant [7]. During the hearing, the prosecutor shall summarize the results of the preliminary investigations and the evidence supporting the request for referral, the defendant may submit his or her claim related to the evidence and may request a summary judgment only after the prosecutor has made the request for trial.

But the assessment of the request for summary judgment is

¹ Tartale Fatmir "Gjykimi i shkurtuar, një alternativë gjykimi", Journal "Studime juridike" Publication of the Law Faculty UT, no.2, 2007

² Decision of the Constitutional Court No. 4date 10/02/2012

³ Islam. H, Hoxha. A, Panda... i Komentari i Procedurës Penale 2012, rredition pg.155

⁴ Decision of the Constitutional Court No. 35, dated 20.12.2005

⁵ Bozhaku Enida "Gjykimi i shkurtuar, profile interpretuese doktrinare"

⁶ Article 332 of the Code of Criminal Procedure, July 2017 Tirana

⁷ Article 332 / d of the Criminal Procedure Code, July 2017

not made by the pre-trial judge but by the competent court, for this very reason the judge of the preliminary hearing after having made a formal check of the case file sends it to the said court. The assessment of the request for summary judgment is made in a court session pursuant to Article 405 of the Code of Criminal Procedure. It may also be carried out under Article 400 of the Code of Criminal Procedure, where the procurator submits the request of the court during the arrest in flagrante within 48 hours and in this case the court notifies the defendant of his right to request a summary judgment ^[8]. Another case where an application for summary judgment may be filed at a court hearing is that provided for in paragraph 3 of Article 406 / ç. At the moment when the court accepts the objection made to the court's decision approving the criminal order by the defendant or the person responsible for it, the court sets the date of the trial and notifies the parties. During this hearing, the defendant may file a request for summary judgment, otherwise it will continue with the ordinary trial ^[9]. The requests must contain the following elements:

- The identity of the applicant or his counsel
- The object of inquiry and summary of the introductory facts of the case
- Evidence of the fact that the situation where the acts in the file are located gives the court the opportunity to objectively resolve the case.

The request for summary judgment is examined by the competent court that has to consider the case on the merits. Article 405 of the Code of Criminal Procedure states that "When the defendant or the defense counsel, with special authorization, has filed a request for summary judgment at a preliminary hearing, in accordance with the provisions of Article 332 / c of this Code, the hearing shall take place with the participation of the prosecutor, his or her defense counsel, the victim or his or her heirs, when their identity and residence are the result of the acts of proceedings as well as of the private parties. " Law No.35 / 2017 has brought changes to abolish Article 404 removing the court's jurisdiction for summary judgment and added paragraph 6 of Article 405 (preliminary hearing).

Court decision

After hearing the allegations of the prosecutor at the same hearing, the court decides to grant the summary judgment request when it considers that the case can be resolved in the light of the acts. Otherwise, it rejects the request and proceeds with ordinary trial. In case of acceptance of the request, the court invites the parties to submit final arguments. After this moment she withdraws to make the decision in the counseling room and announces it at the hearing. In case the court finally disposes with the announcement of the verdict the defendant guilty then it must state the amount of punishment to be given at ordinary trial then apply a reduction of 1/3 of the sentence due to the application of the summary judgment ^[10]. If the defendant is found guilty of several criminal offenses then the court should impose a sentence for each and then reduce the sentence for each offense, whereas when the defendant is sentenced to a full sentence (imprisonment) and an

additional sentence (e.g. fine) then the reduction will only apply to the main sentence to imprisonment. As for the offenses sentenced to life imprisonment, the summary judgment is not applied in these cases in a taxable manner ^[11]. This provision was amended by Law No.35 / 2017, because life imprisonment was replaced by 35 years of imprisonment before the latter was approved. When the court accepts the request for summary judgment, the civil lawsuit in this process is not considered, as this would drag on and create unnecessary delays in the summary trial.

Appeal against a decision granting or rejecting a request for summary judgment

The right to appeal must be understood as an opportunity for any individual to have the necessary procedural remedies to challenge a decision rendered by a lower court to a higher court guaranteeing the individual the right to face justice at all levels ^[12]. The decision of the court in the case of accepting the request for summary judgment as in rejecting it is an interim decision. An appeal may be filed against the court for granting or rejecting the request for summary judgment together with the final decision ^[13]. The prosecutor and the defendant may appeal against this decision; in which case the provisions of Articles 405 to 421 of the Criminal Code shall apply.

Having regard to the effects of the summary judgment on the judicial economy and, in particular, the extent of the sentence, the Court noted the necessity of avoiding arbitrary restrictions on the right of appeal rejecting this type of judgment. The choice of summary judgment excluding ordinary proceedings affects the sentence which is reduced by 1/3 if this request for summary judgment is accepted. So, in this case we have a direct connection to criminal law with criminal procedural law. If the request for a special trial has been dismissed in the first instance court then the court of appeal if it reasoned that the case could be resolved under the conditions of special trial, that is to say, in the case in which the acts are situated, it may change the decision as to the extent of the sentence by applying the provisions of Article 406 et seq. of the Code of Criminal Procedure. According to the position of the Constitutional Court, by decision no. 21, dated 16/04/2012, it is stated that the court of appeal can rule on the above situation only if the court of first instance requested special and non-ordinary trial as well as in cases where this request was rejected by the defendant in violation of the law. The fact that the defendant receives a reduced sentence by a summary judgment does not have to affect the proceeding authority not to seek or reject this judgment, the latter only having to decide on the situation of the acts of fascicle.

Conclusions

During this paper we highlight the need for change brought about by law no.35 / 2017 on the circumstances of applying the summary judgment.

The summary judgment is included in the special hearings provided for in Articles 403-406 of the Code of Criminal Procedure. When the court requests the defendant to proceed with this type of trial if it considers that the matter can be resolved in the state of the acts without the need for

⁸ Article 402 of the Code of Criminal Procedure

⁹ Article 406 of the Code of Criminal Procedure

¹⁰ Uniform Decision No. 2 of 29 January 2003 of the United Colleges of the Supreme Court

¹¹ Article 403/2 of the Code of Criminal Procedure.

¹² Decision No. 5 dated 02.03.2010 of the Constitutional Court

¹³ Article 405/6 of the Code of Criminal Procedure.

further action, it accepts the request for summary judgment. The consent of the prosecution body is not a necessary condition for the court to accept or reject the request. The request for summary judgment under the applicable procedural law must be filed at a preliminary hearing. A summary judgment increases the effectiveness of the trial by simplifying and shortening legal procedures to the benefit of reducing the sentence for defendants by 1/3 of the sentence. This benefit should not in any way prejudice the administration of justice, so the court should only accept the foregoing claim where it is satisfied that the matter may be dealt with in the state of affairs without ordinary trial. As I have stated above, this type of special judgment cannot apply to offenses punishable by life imprisonment. Also what we have noticed in recent years is the number of cases adjudicated by summary judgment has increased relative to those judged by ordinary judgment, this further emphasizes the necessity of applying special judgments, namely summary judgment.

References

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