Direct Trial According to Albanian Criminal Procedural Legislation

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Abstract

Our Code of criminal procedure regarding special trials is characterized from the binomial of direct trial and abbreviated one. The direct trial provided by articles 400-402 of this code, different from the phases of ordinary trial procedure holds in itself several features which generally can be more evident in judicial process economy, the avoidance of delays of judicial hearings, but even in corruptive phenomena prevention which are not rare during the evolvement of judicial processes. Exactly the direct trial being very different from the ordinary judgment procedure, as the term of preliminary investigations is "substantially" very reduced, can be considered to enter with full rights in the category of alternatives of trials provided by our code of criminal procedure. In interpretation of provisions of this code it is noticed that the direct trial can be applied in two typical cases: firstly basing on article 400 paragraph 1 of the Code of Criminal Procedure this type of judgment is applied when "the defendant is arrested on view/spot", and secondly basing on paragraph 3 of article 400 of Criminal Procedure Code, when "the defendant during the interrogation, has confessed and his guilt is plain".

Keywords: *direct trial, defendant, criminal procedure code, arrest on spot, defendant, arrest on spot, confession of defendant.*

1. Arrest on View Case

Article 400 of Criminal Procedure Code in its first paragraph cites that "When the defendant is arrested on view/spot, the prosecutor may, within forty eight hours, file in court the concurrent application for the evaluation of the arrest and simultaneous the trial".

Basing on criminal procedure code provisions, to make an arrest on view, there must be general and special conditions accompanied by criterions of assigning safety measures, to have the situation of catching the defendant on view, and one of criminal acts provided by article 251 of Criminal Procedure Code happening (Islami, Hoxha, & Panda, Commentary of Criminal Procedure, 2010, p. 335). Regarding to terms and criterions of assigning the safety measures they briefly can be summarized in general and special conditions. As for general conditions they can be identified, firstly on existence of a reasonable doubt based on proofs; secondly on existence of a criminal act; and thirdly on existence of sentencing conditions. Special terms provided by article 228 paragraph 3 of Criminal Procedure Code can be identified in cases when there are significant reasons which endanger evidence taking or its veracity, when the defendant has left or there is the risk to leave, and when because of facts and personality of defendant's circumstances there is the risk that he may commit severe crimes or crimes of the same sort for which he is proceeded. Nevertheless, the criminal procedural doctrine (Islami, Hoxha, & Panda, Commentary of Criminal Procedure, 2010, p. 336) beyond the general and special conditions there must be the situations provided by legal criterions under articles 229 and 230 of Criminal Procedure Code.

As defined in article 400 of Criminal Procedure Code, the direct trial requires as fact that defendant is arrested on view as committing the criminal offense.

Basing on provisions of this code on flagrance, actually under article 252 it is cited that: "It is under a state of flagrance the one who is caught committing a criminal offence or the one who immediately after committing the offence is chased by judicial police, injured person or other persons or one who is caught with items and material evidence that

appear that he has committed the criminal offence".

Referring to the above mentioned formulation it is concluded that, the state of flagrance can be identified or ascertained in three cases: firstly, it is under a state of flagrance the one who is caught committing a criminal offence, differently saying the person who is caught in dynamics and ahead of consuming the criminal act; secondly, the person is in state of flagrance when once after having consumed the criminal offense is prosecuted by judicial police, by the injured person or other persons; thirdly the person is still under a state of flagrance when he is caught with items and material evidence that appear to have committed the criminal offence. In criminal acts in continue the flagrance state lasts as long as the criminal act committing is extended.

2. Legitimate Subjects to Perform Arrest on Spot

The Criminal Procedure Code defines clearly the subjects who can perform the arrest on spot. By reading article 251 of Criminal Procedure Code (Arrest on the spot) it is concluded that the arrest on the spot can be performed by judicial police officers and agents and by any citizen.

It must be underlined that this code provision provides the compulsory activation of judicial police agents or officers to act for arresting on flagrance and in the other cases as well when this code determines that the judicial police officers or agents have the right to arrest on the spot the person who is under the state of flagrance. In the recent case, the judicial police officers or agents have the discretion to decide if they will perform or not the arrest on the spot. Thus this code sanctions the compulsory arrest on the spot and the facultative arrest as well by the side of judicial police agents or officers and it is worthy saying that this difference is based on grade of dangerousness of the act and therefore on sentence extent provided by criminal code for the criminal act that is being consumed. However the judicial police officers or agents can perform arrest even in cases not provided by paragraph 2 of article 251 of Criminal Procedure Code, but only when there is the element of dangerousness of subject or the significance of criminal fact. In this case the judicial police officers or agents have to motivate or argue in the verbal report kept as consequence of arrest and the reasons of arrest, without being provided in paragraph 2 of article 251 of criminal procedure code.

In addition the arrest on the spot referring to article 4 of article 251 of Criminal Procedure Code, can also be made by any citizen (regardless he is an officer or not of judicial police) who lives near the place where the criminal act has been committed. This rule is based on general rule according to which, in case we have a criminal act performing in our presence, we can take measures to prevent it happening and we can arrest the author as well.

The authorization given according to paragraph 4 of the above mentioned article about any citizen for arrest on view, intends only the crimes that are ex-officio prosecuted by the proceeding authority and therefore, no arrest on view can be performed by any citizen when we are in case of a criminal offense for which a complaint or a denunciation by special subjects must be made.

Once after the arrest of person by the side of judicial officers or agents, the last ones are obliged to immediately notify the prosecutor of the area of arrest. This is an obligation defined in article 255 of the Code of Criminal Procedure, where among others the arrested has to be informed about his discretion to choose a lawyer, and he is not obliged to make a statement because anything he may say can be used against him in trial. It is significant to underline that the arrest on view of the person must be accompanied by the arrest verbal report, a document which takes a special importance expressing in it plainly the moment of arrest on view and the reasons why this case was processed by arrest on view by the judicial police officers or agents. The arrest verbal report must be undersigned by all the persons who have participated to the arrest on view of the person. Here we remind that the arrest verbal report must be sent without delay to the prosecutor as soon as possible as provided under article 255 paragraph 2 of the Criminal Procedure Code.

The prosecutor assigned for the case investigation once it has the arrest on spot verbal report at his disposal, has to assess in the shortest time possible if the arrest on spot is done in conformity with and in execution of terms required by the criminal procedural law on arrest on view. If the prosecutor concludes that the arrest has not been done in respect of provisions of this code, then in application of article 257[1] of the Criminal Procedure Code, then he must order the

[1] *Article 257 of Criminal Procedure Code (Immediate release cases of arrested or detained person) defines that: "1. When it's clear that the arrest or detention is made because of the person implication or because the law requirements are not respected or when the arrest or detention measure has lost its effect because of term violation for the request of measure assessment, the prosecutor orders, through a motivated decision, that the arrested or the detained person must be released immediately. In these cases the release may also be ordered by the judicial police officer, who immediately informs the prosecutor of the area where the arrest or detention of the individual was made."*

immediate release of arrested person. So, a case of immediate release of an arrested person by the side of prosecutor maybe the case when after the arrest the action results to be done because of the duty or a legal right exercising or in cases when there is an impunity reason provided under article 254 of Criminal Procedure Code.

If the prosecutor does not dispose for the immediate release of the arrested person because the case is not one of those provided by article 257 of Criminal Procedure Code, then within 48 hours has to ask from the local court where the arrest or detention is performed, to make the assessment of measure. If such term is not respected then the arrest loses its power. It is recalled that this term is very reduced considering that we are dealing with the restriction of personal individual freedom and that even the Constitution of Albania and the European Convention of Human Rights as well define very minimal terms regarding the appearance before the court of the arrested person.

3. Appearance of the Person Arrested on Spot before the Court

The acts taken by the subjects legitimated by the code about arrest on spot are temporary and restricted on time. This happens because in a very short time, they become object of control by the prosecutor and then by the court. Thus, basing on article 400, paragraph 1 of Code of Criminal Procedure, in forty eight hours the prosecutor can submit in court the request of assessing the arrest and the simultaneous judgment. This very short term provided by the code is in conformity with article 28 of Constitution which in paragraph 3 underlines that: "The person whose liberty has been taken away, according to article 27, paragraph 2, subparagraph c), must be sent within 48 hours before a judge, who shall decide upon his pre-trial detention or release not later than 48 hours from the moment he receives the documents for review". Nevertheless it must be underlined that the initiative to apply for an immediate judgment is not obligatory for the prosecutor but it is in his discretion that after having performed the necessary investigating acts and having assessed them (all the accumulated proofs) to be sufficient for charge defence he can ask for "an direct trial" of the charge raised by him (Ajazi, On direct trial, procedural aspect and discussions from juridical practice, 2010) .

Moreover, according to article 258 of the Criminal Procedure Code, in case the prosecutor does not order the immediate release, then in forty eight hours since arrest he must ask for the arrest assessment in local court of arrest and failing to respect such term brings the loss of arresting effect as consequence.

In the session of assessment the prosecution asks for legal assessment of arrest on spot and of assigning the safety measure but even the proceeding with a direct trial of criminal case. We remind that according to article 259 paragraph 2 of Criminal Procedure Code the prosecutor has to argue before the court, the reasons of arrest on spot justifying the procedural arresting act as an act performed in conformity with what is provided in article 252 of Criminal Procedure Code (flagrance condition) and on article 251 (arrest on flagrance) of this code. This means it must be argued that the situation of flagrance has really happened in one of cases provided about flagrance and that the judicial officer or agent has performed the acts of arresting he has encountered one of criminal offenses happening as defined *in abstracum* under article 251 of Criminal Procedure Code.

In interpretation of article 259 of Criminal Procedure Code the court can decide in alternative ways: *first* the arrest on spot may be assessed legitimate but the safety measure is not assigned; *second* the arrest on spot may be assessed legitimate and the safety measure is assigned; and *thirdly* the court can ascertain the illegitimacy of arrest on spot (ordering the immediate release of arrested) but assigns the safety measure in conformity with terms and needs of security as provided in articles 228 and 229 of Criminal Procedure Code.

In case when the arrest is assessed legitimate and there is no need for other inquiries, basing on article 400 paragraph 2 of Criminal Procedure Code the court proceeds with the request for direct trial, while when the court concludes that the arrest was not performed according to the requirements of articles 251 and 252 of Criminal Procedure Code, then it proceeds with return of acts to the prosecutor. However it seems that to return the acts to the prosecutor, article 400 in its paragraph 2 provides that the arrest must have been made in conflict with the procedural law and above all, and to exist the need of performing other inquiries.

This because the consolidated opinion in practice and in doctrine (Ajazi, Special Trials according to the code of Criminal Procedure, 2009) concludes that the crucial condition to proceed with immediate judgment is when there is no need for further inquiries. This does not mean that if the court does not assess the arrest on spot to be legitimate can not apply for an immediate judgment, but in continue it will be very difficult to reach in a fair decision. In addition even the paragraph 2 of article 400 of Criminal Procedure Code underlines that, in case the judge concludes that the arrest on flagrance is irregular, if the defendant and prosecutor give the consent, the court proceeds with an immediate judgment. This formulation of legislator must be understood that the court should apply the direct trial only when it concludes that there is no need for further inquiries. So the court must be convinced that the prosecutor has done all the procedure acts

on which the charge is based and at first look, it is concluded that it is not necessary to make any further acts by the side of prosecutor.

Nevertheless there is to refer that if the arrest is not assessed or validated by the court as legitimate, it cannot be proceded with an immediate judgment. This because even the article 400 of Criminal Procedure Code in its paragraph 2, seems to superposes the will of the parties to proceed with direct trial and even when the validation of arrest on view is not done, but considering the ratio of this judgment as well, it is concluded that if the evidences are not clear then the request for a direct trial can not be accepted. In consequence of this reasoning, if the "clarity" of evidence is not concluded by the existence of a flagrance situation, then no other evidence can conclude to it!

Considering the above mentioned in interpretation of article 400 of the Criminal Procedure Code, the conclusion is that the principal condition of a direct trial is the existence of flagrance situation of defendant which brings as consequence the assessment of procedural act of arresting on view to be legal. However this is not sufficient because the prosecution organ must have done all the acts on which the charge is based so that no deficiencies can be found out during the trial. Only if these two requirements are met, then it is easy to state that the requirements of article 400 of the Criminal Procedure Code are fulfilled, and this in function of giving a fair decision based on evidence and on law. In case the court decides for an immediate judgment, then at this moment can be said that the inquiring file turns to a judgment file automatically.

4. Case of Defendant Assertion

Article 400 of Criminal Procedure Code in its paragraph 3 defines that: "The prosecutor may proceed with the direct trial even with the defendant who, during the interrogation, has confessed and his guilt is plain. In this case the defendant is summoned to appear within fifteen days from the date of the registration of the criminal offence."

Regarding this second condition about the application of direct trial, in interpretation of above mentioned provision it is ascertained that, in difference from paragraphs 1 and 2 of article 400 of the Criminal Procedural Code it is not indispensably required that the person taken for defendant is under the effect of a personal safety measure. As a consequence it is reasoned that the defendant for whom a direct trial is required maybe in free condition (in vinculus) or under personal safety measure[2].

In the second case we are in circumstances when as a consequence of arrest on spot or person detention, the prosecutor has done the request for assessment of detention or even for assigning a personal safety measure. But the prosecutor has not done a request for proceeding with an immediate judgment because he has judged that other evidences are needed. Meanwhile, if in 15 days since filing the criminal case, the defendant during the questionnaire asserts his culpability and this is plain then an immediate judgment can be asked.

During questioning of defendant the requirements of articles 38 and 39 of Criminal Procedure Code are respected where actually the proceeding organ before taking him in questions has to inform the defendant that he has the right to be assisted by a lawyer during the questions. It must be emphasized that the proceeding organ has to notify the defendant that the last one has the right not to respond to the questions made and though not responding the process must continue.

Moreover, the proceeding organ has to explain clearly and accurately all the facts that fall on defendant with criminal responsibility and the charge or charges attributed to him. Once all the above mentioned formalities are fulfilled, the defendant is called to give explanations about facts and circumstances object of charge where the questions and given answers are written in the verbal report kept during questioning. It is important to underline that during questioning of defendant no methods or techniques which could influence on his will or memory can be used because this would take to a deformed or unwillful assertion of the defendant.

If the defendant has been awared by the prosecutor of all law provided requirements and about all his rights and meanwhile the defendant has asked for giving explanations, then the last one take the value of evidence. In conformity with law requirements, the defendant assertion can be asked to take the value of evidence in case judgment. The

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[2] Basing on article 227 of Criminal Procedural Code the measures of personal security are grouped in coercive and prohibitive measures. Whereas basing on article 232 of the Criminal Procedure Code the coercive measures are: a) prohibition to leave the country; b) obligation to appear in judicial police; c) prohibition and obligation to stay in a certain place; ç) patrimonial guarantee; d) house arrest; dh) jail arrest; e) temporary hospitalization in a psychiatric hospital. Basing on article 240 of the Criminal Procedure Code, paragraph 1. Restraining orders are: a) suspension from carrying out a public duty or service; b) temporary restraining from carrying out certain professional or business activities.

assertion of defendant during 15 days from the registration of criminal proceeding and taken during the preliminary inquiries can be used as an evidence in case judgment when the assertion is in conformity with the other evidences which together prove their veracity. There is to add that regardless the attitude of defendant in trial, his assertion about accepting the culpability will serve as basis for giving the sentence by the court. Basing on article 400 of Criminal Procedure Code, beyond the assertion of culpability by the side of defendant it is required for his culpability to be clear and evident. In pursuance of this condition, it is reasoned that the defendant sayings may serve as the unique evidence for his conviction.

The assertion of defendant is one of evidences provided by our code of criminal procedure and like the other ones it does not have any predetermined values. This fact is based on article 152 of Criminal Procedural Code where it is expressively said that "...Evaluation of evidence is establishing their accuracy/authenticity and evidential value. Any evidence is subject to (trial) examination and has no pre-determined value. The court evaluates the evidence based on its conviction after their examination in their entirety".

Referring to above mentioned it is stated (Elezi, 2013) that the defendant's statements have the same proving value and effect like the other evidences provided in Code. This is because our Criminal Procedural Law does not provide for any evidence, even when we are before the assertion of defendant to have a pre-determined value. The prosecutor during the inquiry phase and the court during the trial have the duty to verify any sort of saying, indication, or fact and to intersect them with one another in order to find a match between them. In addition during the judicial examination all the gathered data will be used in the judicial cross examination and will be verified for the way they are taken in respect of code provisions.

5. Preparation of an Immediate Judgment

Basing on article 401 paragraph 1 of Criminal Procedure Code, in case the prosecutor thinks that must proceed with a direct trial he orders the appearance of the defendant in the hearing. The appearance of defendant is indispensably required when he is arrested on spot and when the direct trial is applied in conditions when during questioning the defendant has asserted his culpability and his culpability is plain.

In interpretation of this paragraph it is reasoned that the prosecutor's order for appearance of defendant is applied when the defendant is in arrest condition, because regarding the defendant in free condition, the term to appear is not less than three days.

However, in case the defendant is detained (but not because of been arrested in flagrance) the order of prosecutor for defendant appearance does not imply the fact that the defendant is obliged to appear in hearing. It's the order of prosecutor which is communicated to the institutions that have to accompany the defendant. This term is left to the defendant in free condition so that he can have all the sufficient time to prepare his defense. The order of prosecutor basing on article 401 paragraph 2 of Criminal Procedure Code is sent to the secretary of court. The prosecutor must notify without delay the defendant's lawyer regarding the date of trial, because this way the laywer can be aware of and extract copies of all the documents related to evolvement of inquiries of the person defended by him.

Regarding the appearance of defendant in tiral it is underlined that it is his right to take part to the trial or to agree that the trial be hold in his absentia (Islami, Hoxha, & Panda, Commentary of Criminal Procedure, 2010, p. 542). In this case it is argued that basing on article 351 of Criminal Procedure Code, if the defendant detained or free is not present in the hearing and it results to have been regularly notified and he has no legal reason to justify his absentia, after the court receives the opinion of the parties declares his absence, and in this case the defendant is represented by his lawyer.

6. Conduct of Direct Trial

According to article 402 paragraph 1 of the Criminal Procedure Code in conduct of direct trial are applied the provisions provided on judicial examination, rules which are applied in ordinary trial.

We remind that the decision through which the defendant absence is declared must be taken when all the verifications regarding the notification of defendant about helding the hearing are made because otherwise, if the defendant has not been notified regularly or he is absolutely impossible to be present, the hearing must be suspended and the calls for trial must be repeated. Otherwise the court decision can be pronounced invalid. In addition, if the defendant asks for or agrees for the trial to be held in his absence, or as detained he refuses to participate to the trial then he is represented by his lawyer. If the defendant, according to article 352, paragraph 2 of Criminal Procedural Code after been present in hearing, asks to leave the court, then he is considered to have participated in the hearing on

condition that he is represented there by his lawyer.

In the preliminary requests provided by article 354 of Criminal Procedure code and before the judicial examination, the defendant can ask for proceeding with an abbreviated trial as provided by article 402 paragraph 4 of Criminal Procedure Code. At this moment basing on article 402 paragraph 3 of the Criminal Procedure Code the defendant has the right to ask for time to prepare the defence up to 3 days. According to the request for an abbreviated trial, the court should take the opinion of prosecutor, and then decide if will proceede or not with an abbreviated trial.

Here we underline that though the procedure provisions refer for the court to take the opinion of prosecutor, the court is not obliged to follow his opinion if the process must be an abbreviated trial or not. Taking the opinion of prosecutor for the court is justified from the fact that the prosecutor is the one who has made the preliminary investigations and as a consequence he has gathered all the facts found in the judgment file and as a result his opinion would help the court to take the decision if *"the case can be solved as the facts actually are".*

In many cases of judicial practice, the court in the evaluation hearing of arrest on spot has decided to accept the request of prosecutor for a direct trial proceeding of criminal case, while in the first hearing, in the preliminary requests of the parties has accepted the defendant's request to proceed with an abbreviated trial. After performing the acts provided by article 354 of Criminal Procedure Code the judicial examination is declared open following all the rules as provided on ordinary trial. Thus it is proceded with declaring the judicial examination open and then the sole judge or the chairman of judging panel proceeds with identity of defendant and with the charge against him. Later in application of article 356 of Criminal Procedure Code, the prosecutor proceeds with propounding the summarized facts, the object of charge, and all the evidences on which it is based. After this the word goes to the defendant who through his lawyer presents the evidences to be examined.

In direct trial and in ordinary trial too, it is allowed to take the new proofs which are not presented by the parties. This conclusion comes from combination of articles 356 paragraph 3 and article 402, paragraph 2 of the Criminal Procedure Code. Regarding the evidences submitted by the parties they are used during the cross examination between the parties and after having listened to the parties the court takes the decision of taking the evidences. Onward all the provisions on evidence taking according to the criminal procedure code are applied as provided in section III of Chapter II of Title VII of Criminal Procedure Code about the trial.

Referring to the above mentioned rule that in helding the direct trial the rules of ordinary trial are applied it can be highlighted the fact that in this alternative trial form are also applied the rules on new charges as it is proceeded in ordinary trial.

So, in case during the judicial examination the facts result to be different from that described in the call for trial, then even in the direct trial (on condition that even the changed charge is in the competence of the court) the prosecutor changes the charge proceeding with the respective charge as it is defined in article 372 of Criminal Procedure Code on ordinary trial.

Here we emphasize that during the direct trial in case of changing the charge, it has no importance if from changing the charge we are dealing with a more severe or lighter one because the provision referring to the code, does not provide any restriction regarding this aspect and what's more even during the direct trial. In the judicial examination in case when the prosecutor ascertains that the fact is different from the one described in the call for trial, the court must accept the request of prosecutor for charge change. This because the charge evaluation in proportion with facts on which it is based on is an exclusive attribute of charge representative. When the court admits the request forwarded by the prosecutor to change the charge, the charge representative has the obligation to continue the trial with the changed charge and at this moment the defendant is notified for the new charge.

When during the judicial examination during the direct trial another criminal act comes out, which is related to the act in judgment, or it comes out an aggravating circumstance which was not mentioned in the call for trial, the prosecutor proceeds with communication to the defendant of the charge for another offense or for the new coming aggravating circumstance but on condition that the trial is not in the competence of a higher court (as provided in article 373 of Criminal procedure Code).

Regarding the charges for a new fact, it is based the opinion that even in direct trial the rule defined in article 374 of Criminal Procedure Code is fully applied. In such case it is reasoned that the prosecutor must apply the general proceeding rules withdrawing the file in order to continue with the preliminary investigations. The court does not prejudice this new fact but it must decide the return of file to the prosecutor on request of the last one as it is determined in article 374 of the Criminal Procedure Code. Nevertheless, if by the request of prosecutor and if the defendant gives the consent, when the court evaluates that it does not harm the judicial proceeding, it can allow the examination of the new fact in the same hearing as well. Otherwise the court must give back the file to the prosecutor.

As in the ordinary trial even in the direct trial are applied the provisions of article 375 of Criminal Procedure Code, on possibility of legal qualification of criminal offense. This conclusion is reached because except what is mentioned above, that the ordinary trial rules are applied in this sort of, but beyond this considering also "the reduced time" that prosecutor had at his disposal for inquiries, we might be found in a case where the prosecutor has not concluded to a right determination of legal qualification of criminal act referring to the evidences already gathered.

7. Conclusions

The direct trial contains several characteristics which distinguish it from helding the trial with ordinary rite. So, regarding the preliminary investigations terms in case of direct trial these terms are limited, where for the case of flagrance the investigating term (article 400/1 of Criminal Procedure Code) is forty eight hours, while in case of defendant assertion and when his culpability is plain this term is fifteen days (article 400/3 of Criminal Procedure Code).

In direct trial it is not applied the rule provided by article 15/2 of Criminal Procedure Code regarding the incompatibility cases because of participation to trial of the judge who has evaluated the security measure. As a result in the direct trial it is made the simultaneous examination of security measure and judging the case in merits and if the arrest is assessed to be correct and there is no need for other inquiries, then it is immediately proceded with case judgement. When we have a charge for an act for which it is provided a maximum of conviction of more than seven years of imprisonment, the prosecutor's request for arrest assessment and the direct trial must be examined by three judges.

In the direct trial do not apply the rules for preparatory acts provided for the ordinary trial. In this logic when direct trial of criminal act is required because of arrest on spot, the rule defined in article 333 paragraph 1 of Criminal Procedure Code is not applied, because once after the court makes the evaluation of arrest on view as legal, it passes to the trial in merits of the case. Despite this the rule defined in article 333, paragraph 1 of Criminal Procedure Code is applied in the case of direct trial because of assertion of culpability by the side of defendant (article 400 paragraph 3 of Criminal Procedure Code).

Moreover in development of direct trial it is not applied the rule provided by article 333 paragraph 2 of Criminal Procedure Code regarding the notification of date assigned for judicial hearing. This is because in the direct trial the hearing date is notified to the parties when the court assesses to proceed with trial of criminal act in the direct trial form.

Article 402, paragraph 4 of Criminal Procedure Code allows the possibility of "replacing" the sort of trial, that means the transition from judging the criminal act in direct trial to judging it in abbreviated one, on condition that the request to change the form of trial by the side of defendant is made before the initial of judicial examination. In the last case, the provision of article 402, paragraph 2 of Criminal Procedure Code regarding the presentation of other evidences, part of judging file, by the sides of the parties is not applied.

In the direct trial are applied the rules on charge change (article 372 of Criminal Procedure Code), charge for another act (article 373 of Criminal Procedure Code), charge for a new fact (article 374 of Criminal Procedure Code) and the change of legal qualification of criminal act (article 375 of Criminal Procedure Code).

In practice the direct trial is applied for charges for which in itselves they do not require complex investigating acts even though theoretically this sort of trial can be applied for any sort of charge because the provisions of criminal procedure code do not provide limitations regarding certain charges to hold a direct trial.

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