

# **«Plea Bargain» under Swiss Law Accelerated proceedings (art. 358-362 Crim PC) General and selected issues**

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# Plan

- A) Introduction
- B) Principles
- C) Opening of the proceedings
- D) Indictment
- E) Unexploitability of statements made *for the purpose of the accelerated proceedings* in the ordinary proceedings
- F) Appellate remedies
- G) Conclusion

# A) Introduction

- Confederation : 2018 : 1 AP out of 10 indictments, i. e. 10%; 2017: 3 AP out of 21 indictments, i. e. 14%; 2016 : 3 AP out of 14 indictments, i. e. 21%; 2015 : 5 AP out of 20 indictments, i. e. 25%; 2014 : 9 AP out of 16 indictments, i. e. 56%
- Vaud, 2017 : 119 AP out of 604 hearings in which the Public Prosecutor intervened before the district court, i. e. about 20%
- Geneva, 2014 : 180 AP out of 1406 indictments, i. e. about 13%
- Zurich, 2011 to 2017, Staatsanwaltschaft III (komplexe Wirtschaftsdelikte), about 26% of indictments

## B) Principles (358 CrimPC)

- Penalty  $\leq$  custodial sentence of 5 years
- Accused's request
- At any time prior to bringing charges
- What happens in the event of a transaction reached after the procedure for taking evidence ? TF 6B\_862/2014 of 4 November 2015

# Informal pre-negotiations

- Not settled by the CrimPC (Directive No 2.4 of the Public Prosecutor's Office Fribourg : informal talks are not recorded in the minutes)
- Does art. 76 al. 1 CrimPC require the verbalization of these negotiations ?

# Prior confessions (358 al. 1 CrimPC)

- Issue

# C) Opening of the proceedings (359 CrimPC)

- The Public Prosecutor's Office (PPO) rules definitively without having to justify its decision (FF 2006 1280)
- No appeal against the refusal to implement the AP (FF 2006 1280). No right to an AP, nor violation of the principle of expeditiousness when PPO opens AP, then renounces to it (CJ GE AARP/193/2014 of 16 April 2014 c. 2; TC VD (CAPE Jug/2014/139 No. 69) of 7 April 2014 (PE11.010383 c. 4)
- If PPO accepts the opening of the AP, it fixes a time limit of 10 days for the private claimant to announce his civil claims and the procedural indemnities claimed (359 al. 2). If he neglects to do so, he only retains the status of a criminal claimant and is remanded to act before the civil judge for his prejudice (FF 2006 1280; contra Yvan Jeanneret).

# C) Opening of the proceedings (359 CrimPC)

- If plurality of accused persons : disjunction ? TF 1B\_187/2015 of 6 October 2015 c. 1.5.3 and 2.8; nullity of the AP conducted in violation of the principle of procedural unity : TF 1B\_11/2016 of 23 May 2016 c. 3
- TF 1B\_467/2016 of 16 May 2017 c. 4.8 cancels disjunction
- TF 1B\_553/2018 of 20 February 2019; TF 6B\_467/2019, 6B\_468/2019, 6B\_500/2019, 6B\_508/2019 of 19 July 2019 c. 3.5



# D) Indictment : content (360 CrimPC)

- Amount of the sentence (ATF 144 IV 189 c 5.4.1; TF 6B\_807/2017 of 30 January 2018 c. 2.6; in the case of preventive detention : TF 1B\_12/2014 of 28 January 2014 c. 3.3)
- Ruling on the civil claims made by the private claimant
- Ruling on costs and damages
- Notice to the parties that by consenting to the indictment, they waive their rights to ordinary proceedings and their rights of appeal (« *Rechtsmittel* »)

# Notification of the indictment (360 al. 2 Crim PC)

- The parties must declare within 10 days whether they consent to the indictment or not
- Presumption of acceptance when the private claimant fails to give written notice rejecting the indictment within the time limit
- Acceptance is irrevocable (ATF 142 IV 229 c. 2.1; but ATF 139 IV 233 c. 2.5 and 2.6 = JdT 2014 IV 102)

# E) Unexploitability of statements made for the purpose of the accelerated proceedings (362 al. 4 CrimPC)

- Admissions and statements of the accused
- Declarations or commitments of the Public Prosecutor's Office (ATF 144 IV 189 c. 5.4.1)
- Transactional arrangements with the private claimant (FF 2006 1281)
- ATF 144 IV 189 c. 5.2.3 : -> 141 al. 5 CrimPC
- TPF 2018 143 (international mutual assistance in criminal matters)

# F) Appellate remedies

## Appeal (362 al. 5 CrimPC)

- By law, appeal only on the grounds that a party did not consent to the indictment or that the judgment does not correspond to the indictment
- When «*AP by analogy*» after the closure of the procedure for taking evidence => ordinary appeal 399 al. 1 CrimPC (TF 6B\_862/2014 of 4 November 2015 c. 1.4)

# F) Appellate remedies

## Review ?

- Question left open in ATF 142 IV 307 c. 2.7
- Possible when AP is influenced by an offence or in the presence of a serious defect of will, but not because of new facts or evidence (ATF 143 IV 122 c. 3.2.6)
- Not permissible on the grounds of flagrant contradiction with a subsequent criminal judgment within the meaning of 410 al. 1 let. b CrimPC (ATF 144 IV 121)

# G) Conclusion

Thank you for your attention

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